

WEST VIRGINIA LEGISLATURE
EIGHTY-FIRST LEGISLATURE
REGULAR SESSION, 2014



ENROLLED

Senate Bill No. 202

(BY SENATOR UNGER)

[PASSED MARCH 7, 2014; TO TAKE EFFECT JULY 1, 2014.]

E N R O L L E D

Senate Bill No. 202

(BY SENATOR UNGER)

[Passed March 7, 2014; to take effect July 1, 2014.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new chapter, designated §31F-1-101, §31F-1-102, §31F-1-103, §31F-2-201, §31F-2-202, §31F-2-203, §31F-3-301, §31F-4-401, §31F-4-402, §31F-4-403 and §31F-5-501, all relating to authorizing a corporation to elect to be a benefit corporation; authorizing a corporation to amend its articles of incorporation to include a statement that the corporation is a benefit corporation; authorizing a corporation to terminate status as a benefit corporation; authorizing the articles of a benefit corporation to identify as one of the purposes of the benefit corporation the creation of specific public benefits; establishing that a director shall not have a duty to a certain person; providing that a director shall have immunity from liability under certain circumstances; requiring a benefit corporation to deliver to each stockholder an annual report; defining terms; and generally relating to benefit corporations.

Be it enacted by the Legislature of West Virginia:

That the Code of West Virginia, 1931, as amended, be amended by adding thereto a new chapter, designated §31F-1-101, §31F-1-102, §31F-1-103, §31F-2-201, §31F-2-202, §31F-2-203, §31F-3-301, §31F-4-401, §31F-4-402, §31F-4-403 and §31F-5-501, all to read as follows:

**CHAPTER 31F. WEST VIRGINIA BENEFIT
CORPORATION ACT.**

ARTICLE 1. GENERAL PROVISIONS.

§31F-1-101. Short title.

1 This chapter is and may be cited as the West Virginia
2 Benefit Corporation Act.

§31F-1-102. Definitions.

1 As used in this article:

2 (a) “Benefit corporation” means a corporation organized
3 pursuant to the provisions of this chapter:

4 (1) That has elected to become subject to this article; and

5 (2) The status of which as a benefit corporation has not
6 been terminated under section two hundred three, article two
7 of this chapter.

8 (b) “Benefit enforcement proceeding” means any claim or
9 action brought directly by a benefit corporation, or derivatively
10 on behalf of a benefit corporation, against a director or officer
11 for: (i) Failure to pursue the general public benefit purpose of
12 the benefit corporation or any specific public benefit purpose
13 set forth in its articles of incorporation or bylaws or otherwise
14 adopted by its board of directors; or (ii) a violation of a duty or
15 standard of conduct under this article.

16 (c) “General public benefit” means a material positive
17 impact on society and the environment taken as a whole, as
18 measured by a third-party standard, from the business and
19 operations of a benefit corporation.

20 (d) “Independent” means having no material relationship
21 with a benefit corporation or a subsidiary of the benefit
22 corporation, either directly as a shareholder of the benefit
23 corporation or as a partner, a member or an owner of a
24 subsidiary of the benefit corporation or indirectly as a
25 director, an officer, an owner, or a manager of an entity that
26 has a material relationship with the benefit corporation or a
27 subsidiary of the benefit corporation. A material relationship
28 between a person and a benefit corporation or any of its
29 subsidiaries will be conclusively presumed to exist if:

30 (1) The person is, or has been within the last three years,
31 an employee of the benefit corporation or a subsidiary of the
32 benefit corporation;

33 (2) An immediate family member of the person is, or has
34 been within the last three years, an executive officer of the
35 benefit corporation or its subsidiary; or

36 (3) There is beneficial ownership of five percent or more
37 of the outstanding shares of the benefit corporation by:

38 (A) The person; or

39 (B) An entity:

40 (i) Of which the person is a director, an officer or a
41 manager; or

42 (ii) In which the person owns beneficially five percent or
43 more of the outstanding equity interests, which percentage
44 shall be calculated as if all outstanding rights to acquire
45 equity interests in the entity had been exercised.

46 (e) “Specific public benefit” means a benefit that serves
47 one or more public welfare, religious, charitable, scientific,

48 literary or educational purposes, or other purpose or benefit
49 beyond the strict interest of the shareholders of the benefit
50 corporation, including:

51 (1) Providing low-income or underserved individuals or
52 communities with beneficial products or services;

53 (2) Promoting economic opportunity for individuals or
54 communities beyond the creation of jobs in the normal course
55 of business;

56 (3) Preserving or improving the environment;

57 (4) Improving human health;

58 (5) Promoting the arts, sciences or advancement of
59 knowledge;

60 (6) Increasing the flow of capital to entities with a public
61 benefit purpose; and

62 (7) Conferring any other particular benefit on society or
63 the environment.

64 (f) “Subsidiary” means, in relation to an individual, an
65 entity in which the individual either: (i) Owns directly or
66 indirectly equity interests entitled to cast a majority of the
67 votes entitled to be cast generally in an election of directors
68 or members of the governing body of the entity; or (ii)
69 otherwise owns or controls voting or contractual power to
70 exercise effective governing control of the entity. The
71 percentage of ownership of equity interests or ownership or
72 control of power to exercise control shall be calculated as if
73 all outstanding rights to acquire equity interests in the entity
74 had been exercised.

75 (g) “Third-party standard” means a recognized standard
76 for defining, reporting, and assessing corporate social and
77 environmental performance that:

78 (1) Is developed by a person that is independent of the
79 benefit corporation; and

80 (2) Is transparent because the following information
81 about the standard is publicly available:

82 (A) The factors considered when measuring the
83 performance of a business;

84 (B) The relative weightings of those factors; and

85 (C) The identity of the persons that develop and control
86 changes to the standard and the process by which those
87 changes are made.

§31F-1-103. Construction of chapter.

1 (a) This chapter shall apply to all benefit corporations.

2 (b) The existence of a provision of this chapter does not
3 of itself create an implication that a contrary or different rule
4 of law applies to a corporation organized pursuant to the
5 provisions of this code that is not a benefit corporation. This
6 chapter does not affect a statute or rule of law that applies to
7 a corporation that is not a benefit corporation.

8 (c) The specific provisions of this chapter control over the
9 general provisions of other chapters of this code.

ARTICLE 2. INCORPORATION.

§31F-2-201. Formation of benefit corporations.

1 A benefit corporation shall be formed in accordance with
2 article two, chapter thirty-one-d of this code, and its articles
3 as initially filed with the Secretary of State or as amended,
4 shall state that it is a benefit corporation.

§31F-2-202. Election of status after formation.

1 A corporation that was not formed as a benefit
2 corporation may become a benefit corporation by amending
3 its articles so that they contain, in addition to matters required
4 by section two hundred two, article two, chapter thirty-one-d
5 of this code, a statement that the corporation is a benefit
6 corporation. Any such amendment to the articles of
7 incorporation shall be adopted in accordance with the
8 procedures set forth in article ten, chapter thirty-one-d of this
9 code.

§31F-2-203. Termination of status.

1 A benefit corporation may terminate its status as such and
2 cease to be subject to this chapter by amending its articles to
3 delete the provision required by section two hundred one of
4 this article to be set forth in the articles of incorporation,
5 which amendment shall be adopted in accordance with the
6 procedures set forth in article ten, chapter thirty-one-d of this
7 code.

ARTICLE 3. PURPOSES.

§31F-3-301. Corporate purposes.

1 (a) A benefit corporation shall have as one of its purposes
2 the purpose of creating a general public benefit. The articles
3 of incorporation of a benefit corporation may identify one or
4 more specific public benefits that it is the purpose of the
5 benefit corporation to create. A specific public benefit may

6 also be specified in the bylaws or otherwise adopted by the
7 board of directors. This purpose is in addition to its purpose
8 under section three hundred two, article three, chapter thirty-
9 one-d of this code.

10 (b) The creation of a general public benefit and one or
11 more specific public benefits, if any, under subsection (a) of
12 this section is in the best interests of the benefit corporation.

13 (c) A benefit corporation may amend its articles of
14 incorporation to add, amend or delete the identification of a
15 specific public benefit that it is the purpose of the benefit
16 corporation to create, which amendment shall be adopted in
17 accordance with the procedures set forth in article ten,
18 chapter thirty-one-d of this code.

ARTICLE 4. DIRECTORS AND OFFICERS.

§31F-4-401. Standard of conduct for directors.

1 (a) Subject to article eight, chapter thirty-one-d of this
2 code, in discharging the duties of their respective positions
3 and in considering the best interests of the benefit
4 corporation, the board of directors, committees of the board
5 and individual directors of a benefit corporation:

6 (1) Shall consider the effects of any corporate action
7 upon:

8 (A) The shareholders of the benefit corporation;

9 (B) The employees and workforce of the benefit
10 corporation, its subsidiaries, and suppliers;

11 (C) The interests of customers as beneficiaries of the
12 general or specific public benefit purposes of the benefit
13 corporation;

14 (D) Community and societal considerations, including
15 those of each community in which offices or facilities of the
16 benefit corporation, its subsidiaries, or suppliers are located;

17 (E) The local and global environment;

18 (F) The short-term and long-term interests of the benefit
19 corporation, including benefits that may accrue to the benefit
20 corporation from its long-term plans and the possibility that
21 these interests and the general and specific public benefit
22 purposes of the benefit corporation may be best served by the
23 continued independence of the benefit corporation; and

24 (G) The ability of the benefit corporation to accomplish
25 its general and any specific public benefit purpose;

26 (2) May consider:

27 (A) The resources; intent; and past, stated and potential
28 conduct of any person seeking to acquire control of the
29 benefit corporation; and

30 (B) Other pertinent factors or the interests of any other
31 person that they deem appropriate; and

32 (3) Need not give priority to the interests of a particular
33 person referred to in subdivisions (1) and (2) of this section
34 over the interests of any other person unless the benefit
35 corporation has stated its intention to give priority to interests
36 related to a specific public benefit purpose identified in its
37 articles.

38 (b) The consideration of interests and factors in the
39 manner required by subsection (a) of this section does not
40 constitute a violation of section eight hundred thirty, article
41 eight, chapter thirty-one-d of this code or a director conflict

42 of interests under section eight hundred sixty, article eight,
43 chapter thirty-one-d of this code.

44 (c) In any proceeding brought by or in the right of a
45 benefit corporation or brought by or on behalf of the
46 shareholders of a benefit corporation, a director is not
47 personally liable for monetary damages for:

48 (1) Any action taken as a director if the director
49 performed the duties of office in compliance with section
50 eight hundred thirty, article eight, chapter thirty-one-d of this
51 code and this section; or

52 (2) Failure of the benefit corporation to create general
53 public benefit or any specific public benefit specified in its
54 articles of incorporation or bylaws or otherwise adopted by
55 the board of directors.

§31F-4-402. Limitation upon liability of officers.

1 An officer of a benefit corporation has no liability for
2 actions taken that the officer believes, in his or her good faith
3 business judgment, are consistent with: (i) The general public
4 benefit or specific public benefit specified in the articles of
5 incorporation or bylaws or otherwise adopted by the board of
6 directors; and (ii) the requirements of any third-party
7 standard then in effect for the corporation.

§31F-4-403. Right of action.

1 (a) The duties of directors and officers under this chapter,
2 the obligation of a benefit corporation to prepare and make
3 available the annual benefit report required under section five
4 hundred one, article five of this chapter and the general and
5 any specific public benefit purpose of a benefit corporation
6 may be enforced only in a benefit enforcement proceeding.

7 No person may bring an action or assert a claim against a
8 benefit corporation or its directors or officers with respect to
9 the duties of directors and officers under this article and the
10 general and any specific public benefit purpose of the benefit
11 corporation except in a benefit enforcement proceeding.

12 (b) A benefit enforcement proceeding may be
13 commenced or maintained only:

14 (1) Directly by the benefit corporation; or

15 (2) Derivatively by:

16 (A) A shareholder of the benefit corporation;

17 (B) A director of the benefit corporation; or

18 (C) Other persons as specified in the articles of
19 incorporation or bylaws of the benefit corporation.

ARTICLE 5. REPORT.

§31F-5-501. Annual benefit report.

1 (a) A benefit corporation shall prepare an annual benefit
2 report that includes all of the following:

3 (1) A narrative description of:

4 (A) The ways in which the benefit corporation pursued
5 the general public benefit during the year and the extent to
6 which the general public benefit was created; and

7 (B) Both:

8 (i) The ways in which the benefit corporation pursued
9 any specific public benefit that the articles of incorporation

10 or bylaws, or other action taken by the board of directors,
11 state it is the purpose of the benefit corporation to create; and

12 (ii) The extent to which that specific public benefit was
13 created; and

14 (C) Any circumstances that have hindered the creation by
15 the benefit corporation of the general or any specific public
16 benefit;

17 (2) An assessment of the social and environmental
18 performance of the benefit corporation. The assessment shall
19 be:

20 (A) Prepared in accordance with a third-party standard
21 specified in the articles of incorporation, the bylaws, or
22 otherwise adopted by the board of directors and applied
23 consistently with any application of that standard in prior
24 benefit reports; or

25 (B) Accompanied by an explanation of the reasons for
26 any inconsistent application; and

27 (3) Any other information or disclosures that may be
28 required under any third-party standard adopted by the
29 directors of the benefit corporation.

30 (b) The benefit report shall be made available annually to
31 each shareholder of the benefit corporation:

32 (1) Within one hundred twenty days following the end of
33 the fiscal year of the benefit corporation; or

34 (2) At the same time that the benefit corporation delivers
35 any other annual report to its shareholders.

36 (c) A benefit corporation shall post its most recent benefit
37 report on a publicly accessible portion of its Internet website,
38 if any. If a benefit corporation does not have an Internet
39 website, it shall make a written or electronic copy of its most
40 recent benefit report available upon written request from any
41 person. A benefit corporation is not required to publically
42 disclose to persons other than its shareholders any
43 proprietary, confidential, or individual compensation
44 information contained in its benefit report to the extent that
45 any third-party standard adopted by the directors of the
46 benefit corporation permits the omission of such information
47 from public disclosure.

The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

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Chairman Senate Committee

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Chairman House Committee

Originated in the Senate.

To take effect July 1, 2014.

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Clerk of the Senate

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Clerk of the House of Delegates

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President of the Senate

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Speaker of the House of Delegates

The within this
the Day of, 2014.

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Governor