

11498

I N A S S E M B L Y

June 17, 2010

Introduced by COMMITTEE ON RULES -- (at request of M. of A. Brodsky, Kavanagh) -- read once and referred to the Committee on Corporations, Authorities and Commissions

AN ACT to amend the business corporation law, in relation to authorizing the incorporation of benefit corporations, providing for the public benefit to be created by benefit corporations, for the election and termination of the status of a benefit corporation, for the standards of conduct for directors and officers of a benefit corporation, for a right of action to enforce the duties of directors and officers of a benefit corporation, and for the preparation and distribution of an annual benefit report by a benefit corporation

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

1 Section 1. The business corporation law is amended by adding a new
2 article 17 to read as follows:

3 ARTICLE 17

4 BENEFIT CORPORATIONS

5 SECTION 1701. APPLICATION AND EFFECT OF ARTICLE.

6 1702. DEFINITIONS.

7 1703. FORMATION OF BENEFIT CORPORATIONS.

8 1704. ELECTION OF AN EXISTING BUSINESS CORPORATION TO BECOME A
9 BENEFIT CORPORATION.

10 1705. TERMINATION OF BENEFIT CORPORATION STATUS.

11 1706. CORPORATE PURPOSES.

12 1707. STANDARD OF CONDUCT FOR DIRECTORS.

13 1708. BENEFIT DIRECTOR.

14 1709. STANDARD OF CONDUCT FOR OFFICERS.

15 1710. BENEFIT OFFICER.

16 1711. RIGHT OF ACTION.

17 1712. ANNUAL BENEFIT REPORT.

18 S 1701. APPLICATION AND EFFECT OF ARTICLE.

19 (A) THIS ARTICLE SHALL BE APPLICABLE TO ALL BENEFIT CORPORATIONS.

20 (B) THE EXISTENCE OF A PROVISION OF THIS ARTICLE SHALL NOT OF ITSELF
21 CREATE ANY IMPLICATION THAT A CONTRARY OR DIFFERENT RULE OF LAW IS OR

EXPLANATION--Matter in ITALICS (underscored) is new; matter in brackets
[] is old law to be omitted.

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1 WOULD BE APPLICABLE TO A BUSINESS CORPORATION THAT IS NOT A BENEFIT
2 CORPORATION. THIS ARTICLE SHALL NOT AFFECT ANY STATUTE OR RULE OF LAW
3 THAT IS OR WOULD BE APPLICABLE TO A BUSINESS CORPORATION THAT IS NOT A
4 BENEFIT CORPORATION.

5 (C) EXCEPT AS OTHERWISE PROVIDED IN THIS ARTICLE, THIS CHAPTER SHALL
6 BE GENERALLY APPLICABLE TO ALL BENEFIT CORPORATIONS. THE SPECIFIC
7 PROVISIONS OF THIS ARTICLE SHALL CONTROL OVER THE GENERAL PROVISIONS OF
8 THIS CHAPTER. A BENEFIT CORPORATION MAY BE SIMULTANEOUSLY SUBJECT TO
9 THIS ARTICLE AND ONE OR MORE OTHER ARTICLES OF THIS CHAPTER.

10 (D) A PROVISION OF THE CERTIFICATE OF INCORPORATION OR BYLAWS OF A
11 BENEFIT CORPORATION MAY NOT RELAX, BE INCONSISTENT WITH OR SUPERSEDE ANY
12 PROVISION OF THIS ARTICLE.

13 S 1702. DEFINITIONS.

14 (A) AS USED IN THIS ARTICLE, UNLESS THE CONTEXT OTHERWISE REQUIRES,
15 THE TERM:

16 (1) "BENEFIT CORPORATION" MEANS A BUSINESS CORPORATION THAT HAS
17 ELECTED TO BECOME SUBJECT TO THIS ARTICLE AND WHOSE STATUS AS A BENEFIT
18 CORPORATION HAS NOT BEEN TERMINATED AS PROVIDED IN THIS ARTICLE.

19 (2) "BENEFIT DIRECTOR" MEANS THE DIRECTOR DESIGNATED AS THE BENEFIT
20 DIRECTOR OF A BENEFIT CORPORATION AS PROVIDED IN SECTION SEVENTEEN
21 HUNDRED EIGHT OF THIS ARTICLE.

22 (3) "BENEFIT ENFORCEMENT PROCEEDING" MEANS A CLAIM OR ACTION BROUGHT
23 DIRECTLY BY A BENEFIT CORPORATION, OR DERIVATIVELY ON BEHALF OF A BENE-
24 FIT CORPORATION, AGAINST A DIRECTOR OR OFFICER FOR:

25 (A) FAILURE TO PURSUE THE GENERAL PUBLIC BENEFIT PURPOSE OF THE BENE-
26 FIT CORPORATION OR ANY SPECIFIC PUBLIC BENEFIT PURPOSE SET FORTH IN ITS
27 CERTIFICATE OF INCORPORATION; OR

28 (B) VIOLATION OF A DUTY OR STANDARD OF CONDUCT UNDER THIS ARTICLE.

29 (4) "BENEFIT OFFICER" MEANS THE OFFICER OF A BENEFIT CORPORATION, IF
30 ANY, DESIGNATED AS THE BENEFIT OFFICER AS PROVIDED IN SECTION SEVENTEEN
31 HUNDRED TEN OF THIS ARTICLE.

32 (5) "GENERAL PUBLIC BENEFIT" MEANS A MATERIAL POSITIVE IMPACT ON SOCI-
33 ETY AND THE ENVIRONMENT, AS MEASURED BY A THIRD-PARTY STANDARD.

34 (6) "INDEPENDENT" MEANS THAT A PERSON HAS NO MATERIAL RELATIONSHIP
35 WITH A BENEFIT CORPORATION OR ANY OF ITS SUBSIDIARIES (OTHER THAN THE
36 RELATIONSHIP OF SERVING AS THE BENEFIT DIRECTOR OR BENEFIT OFFICER),
37 EITHER DIRECTLY OR AS A SHAREHOLDER, PARTNER, MEMBER OR OTHER OWNER OR A
38 DIRECTOR, OFFICER OR OTHER MANAGER OF AN ENTITY THAT HAS A MATERIAL
39 RELATIONSHIP WITH THE BENEFIT CORPORATION OR ANY OF ITS SUBSIDIARIES. A
40 MATERIAL RELATIONSHIP BETWEEN AN INDIVIDUAL AND A BENEFIT CORPORATION OR
41 ANY OF ITS SUBSIDIARIES WILL BE CONCLUSIVELY PRESUMED TO EXIST IF:

42 (A) THE PERSON IS, OR HAS BEEN WITHIN THE LAST THREE YEARS, AN EMPLOY-
43 EE OF THE BENEFIT CORPORATION OR ANY OF ITS SUBSIDIARIES, OTHER THAN AS
44 A BENEFIT OFFICER;

45 (B) AN IMMEDIATE FAMILY MEMBER OF THE PERSON IS, OR HAS BEEN WITHIN
46 THE LAST THREE YEARS, AN EXECUTIVE OFFICER, OTHER THAN A BENEFIT OFFI-
47 CER, OF THE BENEFIT CORPORATION OR ANY OF ITS SUBSIDIARIES; OR

48 (C) THE PERSON, OR AN ENTITY OF WHICH THE PERSON IS A DIRECTOR, OFFI-
49 CER OR OTHER MANAGER OR IN WHICH THE PERSON OWNS BENEFICIALLY OR OF
50 RECORD FIVE PERCENT OR MORE OF THE EQUITY INTERESTS, OWNS BENEFICIALLY
51 OR OF RECORD FIVE PERCENT OR MORE OF THE SHARES OF THE BENEFIT CORPO-
52 RATION.

53 (7) "MINIMUM STATUS VOTE" MEANS THAT, IN ADDITION TO ANY OTHER
54 APPROVAL OR VOTE REQUIRED BY THIS CHAPTER, THE CERTIFICATE OF INCORPO-
55 RATION OR A BYLAW ADOPTED BY THE SHAREHOLDERS:

1 (A) THE HOLDERS OF SHARES OF EVERY CLASS OR SERIES SHALL BE ENTITLED
2 TO VOTE ON THE CORPORATE ACTION REGARDLESS OF ANY LIMITATION STATED IN
3 THE CERTIFICATE OF INCORPORATION OR BYLAWS ON THE VOTING RIGHTS OF ANY
4 CLASS OR SERIES.

5 (B) THE CORPORATE ACTION MUST BE APPROVED BY VOTE OF THE SHAREHOLDERS
6 OF EACH CLASS OR SERIES ENTITLED TO CAST AT LEAST TWO-THIRDS OF THE
7 VOTES THAT ALL SHAREHOLDERS OF THE CLASS OR SERIES ARE ENTITLED TO CAST
8 THEREON.

9 (8) "SPECIFIC PUBLIC BENEFIT," AS MEASURED BY A THIRD-PARTY STANDARD,
10 INCLUDES:

11 (A) PROVIDING LOW-INCOME OR UNDERSERVED INDIVIDUALS OR COMMUNITIES
12 WITH BENEFICIAL PRODUCTS OR SERVICES;

13 (B) PROMOTING ECONOMIC OPPORTUNITY FOR INDIVIDUALS OR COMMUNITIES
14 BEYOND THE CREATION OF JOBS IN THE NORMAL COURSE OF BUSINESS;

15 (C) PRESERVING THE ENVIRONMENT;

16 (D) IMPROVING HUMAN HEALTH;

17 (E) PROMOTING THE ARTS, SCIENCES OR ADVANCEMENT OF KNOWLEDGE;

18 (F) INCREASING THE FLOW OF CAPITAL TO ENTITIES WITH A PUBLIC BENEFIT
19 PURPOSE; AND

20 (G) THE ACCOMPLISHMENT OF ANY OTHER PARTICULAR BENEFIT FOR SOCIETY OR
21 THE ENVIRONMENT.

22 (9) "SUBSIDIARY" OF A PERSON MEANS AN ENTITY IN WHICH THE PERSON OWNS
23 BENEFICIALLY OR OF RECORD FIFTY PERCENT OR MORE OF THE EQUITY INTERESTS.

24 (10) "THIRD-PARTY STANDARD" MEANS A STANDARD RECOGNIZED BY THE SECRE-
25 TARY OF STATE OR ITS DESIGNEE OR DESIGNEES FOR DEFINING, REPORTING AND
26 ASSESSING CORPORATE SOCIAL AND ENVIRONMENTAL PERFORMANCE THAT IS:

27 (A) DEVELOPED BY A PERSON THAT IS INDEPENDENT OF THE BENEFIT CORPO-
28 RATION; AND

29 (B) TRANSPARENT BECAUSE THE FOLLOWING INFORMATION ABOUT THE STANDARD
30 IS PUBLICLY AVAILABLE:

31 (I) THE FACTORS CONSIDERED WHEN MEASURING THE PERFORMANCE OF A BUSI-
32 NESS;

33 (II) THE RELATIVE WEIGHTINGS OF THOSE FACTORS; AND

34 (III) THE IDENTITY OF THE PERSONS WHO DEVELOPED AND CONTROL CHANGES TO
35 THE STANDARD AND THE PROCESS BY WHICH THOSE CHANGES ARE MADE.

36 (B) FOR PURPOSES OF THE DEFINITIONS OF "INDEPENDENT" AND "SUBSIDIARY"
37 IN PARAGRAPH (A) OF THIS SECTION, A PERCENTAGE OF OWNERSHIP IN AN ENTITY
38 SHALL BE CALCULATED AS IF ALL OUTSTANDING RIGHTS TO ACQUIRE EQUITY
39 INTERESTS IN THE ENTITY HAD BEEN EXERCISED.

40 S 1703. FORMATION OF BENEFIT CORPORATIONS.

41 A BENEFIT CORPORATION SHALL BE FORMED IN ACCORDANCE WITH THIS CHAPTER
42 EXCEPT THAT ITS CERTIFICATE OF INCORPORATION SHALL ALSO STATE THAT IT IS
43 A BENEFIT CORPORATION.

44 S 1704. ELECTION OF AN EXISTING BUSINESS CORPORATION TO BECOME A BENEFIT
45 CORPORATION.

46 (A) A BUSINESS CORPORATION MAY BECOME A BENEFIT CORPORATION UNDER THIS
47 ARTICLE BY AMENDING ITS CERTIFICATE OF INCORPORATION SO THAT IT CONTAINS
48 A STATEMENT THAT THE CORPORATION IS A BENEFIT CORPORATION. THE AMENDMENT
49 SHALL NOT BE EFFECTIVE UNLESS IT IS ADOPTED BY AT LEAST THE MINIMUM
50 STATUS VOTE.

51 (B) IF A CORPORATION THAT IS NOT A BENEFIT CORPORATION IS A PARTY TO A
52 MERGER OR CONSOLIDATION, AND THE SURVIVING OR CONSOLIDATED CORPORATION
53 IS TO BE A BENEFIT CORPORATION, THE PLAN OF MERGER OR CONSOLIDATION
54 SHALL NOT BE EFFECTIVE UNLESS IT IS ADOPTED BY THE CORPORATION BY AT
55 LEAST THE MINIMUM STATUS VOTE.

56 S 1705. TERMINATION OF BENEFIT CORPORATION STATUS.

1 (A) A BENEFIT CORPORATION MAY TERMINATE ITS STATUS AS SUCH AND CEASE
2 TO BE SUBJECT TO THIS ARTICLE BY AMENDING ITS CERTIFICATE OF INCORPO-
3 RATION TO DELETE THE STATEMENT THAT THE CORPORATION IS A BENEFIT CORPO-
4 RATION. THE AMENDMENT SHALL NOT BE EFFECTIVE UNLESS IT IS ADOPTED BY AT
5 LEAST THE MINIMUM STATUS VOTE.

6 (B) IF A PLAN OR MERGER OR CONSOLIDATION WOULD HAVE THE EFFECT OF
7 TERMINATING THE STATUS OF A BUSINESS CORPORATION AS A BENEFIT CORPO-
8 RATION, THE PLAN SHALL NOT BE EFFECTIVE UNLESS IT IS ADOPTED BY AT LEAST
9 THE MINIMUM STATUS VOTE.

10 S 1706. CORPORATE PURPOSES.

11 (A) EVERY BENEFIT CORPORATION SHALL HAVE THE PURPOSE OF CREATING
12 GENERAL PUBLIC BENEFIT. THIS PURPOSE IS IN ADDITION TO, AND MAY BE A
13 LIMITATION ON, ITS PURPOSE UNDER SECTION TWO HUNDRED ONE OF THIS CHAPTER
14 AND ANY SPECIFIC PURPOSE SET FORTH IN ITS ARTICLES UNDER PARAGRAPH (B)
15 OF THIS SECTION.

16 (B) THE ARTICLES OF A BENEFIT CORPORATION MAY IDENTIFY ONE OR MORE
17 SPECIFIC PUBLIC BENEFITS THAT IT IS THE PURPOSE OF THE BENEFIT CORPO-
18 RATION TO CREATE IN ADDITION TO ITS PURPOSES UNDER SECTION TWO HUNDRED
19 ONE OF THIS CHAPTER AND PARAGRAPH (A) OF THIS SECTION. THE IDENTIFICA-
20 TION OF A SPECIFIC PUBLIC BENEFIT UNDER THIS PARAGRAPH DOES NOT LIMIT
21 THE OBLIGATION OF A BENEFIT CORPORATION TO CREATE GENERAL PUBLIC BENE-
22 FIT.

23 (C) THE CREATION OF GENERAL AND SPECIFIC PUBLIC BENEFITS AS PROVIDED
24 IN PARAGRAPHS (A) AND (B) OF THIS SECTION IS IN THE BEST INTERESTS OF
25 THE BENEFIT CORPORATION.

26 (D) A BENEFIT CORPORATION MAY AMEND ITS CERTIFICATE OF INCORPORATION
27 TO ADD, AMEND OR DELETE THE IDENTIFICATION OF A SPECIFIC PUBLIC BENEFIT
28 THAT IT IS THE PURPOSE OF THE BENEFIT CORPORATION TO CREATE. THE AMEND-
29 MENT SHALL NOT BE EFFECTIVE UNLESS IT IS ADOPTED BY AT LEAST THE MINIMUM
30 STATUS VOTE.

31 S 1707. STANDARD OF CONDUCT FOR DIRECTORS.

32 (A) IN DISCHARGING THE DUTIES OF THEIR RESPECTIVE POSITIONS, THE BOARD
33 OF DIRECTORS, COMMITTEES OF THE BOARD AND INDIVIDUAL DIRECTORS OF A
34 BENEFIT CORPORATION:

35 (1) SHALL CONSIDER THE EFFECTS OF ANY ACTION UPON:

36 (A) THE ABILITY FOR THE BENEFIT CORPORATION TO ACCOMPLISH ITS PUBLIC
37 BENEFIT PURPOSE;

38 (B) THE SHAREHOLDERS OF THE BENEFIT CORPORATION;

39 (C) THE EMPLOYEES AND WORKFORCE OF THE BENEFIT CORPORATION AND ITS
40 SUBSIDIARIES AND SUPPLIERS;

41 (D) THE INTERESTS OF CUSTOMERS AS BENEFICIARIES OF THE GENERAL OR
42 SPECIFIC PUBLIC BENEFIT PURPOSES OF THE BENEFIT CORPORATION;

43 (E) COMMUNITY AND SOCIETAL CONSIDERATIONS, INCLUDING THOSE OF ANY
44 COMMUNITY IN WHICH OFFICES OR FACILITIES OF THE BENEFIT CORPORATION OR
45 ITS SUBSIDIARIES OR SUPPLIERS ARE LOCATED;

46 (F) THE LOCAL AND GLOBAL ENVIRONMENT; AND

47 (G) THE SHORT-TERM AND LONG-TERM INTERESTS OF THE BENEFIT CORPORATION,
48 INCLUDING BENEFITS THAT MAY ACCRUE TO THE BENEFIT CORPORATION FROM ITS
49 LONG-TERM PLANS AND THE POSSIBILITY THAT THESE INTERESTS MAY BE BEST
50 SERVED BY THE CONTINUED INDEPENDENCE OF THE BENEFIT CORPORATION;

51 (2) MAY CONSIDER:

52 (A) THE RESOURCES, INTENT AND CONDUCT (PAST, STATED AND POTENTIAL) OF
53 ANY PERSON SEEKING TO ACQUIRE CONTROL OF THE CORPORATION; AND

54 (B) ANY OTHER PERTINENT FACTORS OR THE INTERESTS OF ANY OTHER GROUP
55 THAT THEY DEEM APPROPRIATE; AND

1 (3) SHALL NOT BE REQUIRED TO GIVE PRIORITY TO THE INTERESTS OF ANY
2 PARTICULAR PERSON OR GROUP REFERRED TO IN SUBPARAGRAPHS ONE AND TWO OF
3 THIS PARAGRAPH OVER THE INTERESTS OF ANY OTHER PERSON OR GROUP UNLESS
4 THE BENEFIT CORPORATION HAS STATED ITS INTENTION TO GIVE PRIORITY TO
5 INTERESTS RELATED TO A SPECIFIC PUBLIC BENEFIT PURPOSE IDENTIFIED IN ITS
6 CERTIFICATE OF INCORPORATION.

7 (B) THE CONSIDERATION OF INTERESTS AND FACTORS IN THE MANNER REQUIRED
8 BY PARAGRAPH (A) OF THIS SECTION:

9 (1) SHALL NOT CONSTITUTE A VIOLATION OF THE PROVISIONS OF SECTION
10 SEVEN HUNDRED SEVENTEEN OF THIS CHAPTER; AND

11 (2) IS IN ADDITION TO THE ABILITY OF DIRECTORS TO CONSIDER INTERESTS
12 AND FACTORS AS PROVIDED IN THIS PARAGRAPH OF THE PROVISIONS OF SECTION
13 SEVEN HUNDRED SEVENTEEN OF THIS CHAPTER.

14 (C) A DIRECTOR IS NOT PERSONALLY LIABLE, AS SUCH, FOR MONETARY DAMAGES
15 FOR ANY ACTION TAKEN AS A DIRECTOR IF THE DIRECTOR PERFORMED THE DUTIES
16 OF HIS OR HER OFFICE IN COMPLIANCE WITH THE PROVISIONS OF THIS SECTION
17 AND SECTION SEVEN HUNDRED SEVENTEEN OF THIS CHAPTER.

18 S 1708. BENEFIT DIRECTOR.

19 (A) THE BOARD OF DIRECTORS OF A BENEFIT CORPORATION SHALL INCLUDE ONE
20 DIRECTOR WHO SHALL BE DESIGNATED THE "BENEFIT DIRECTOR" AND SHALL HAVE,
21 IN ADDITION TO ALL OF THE POWERS, DUTIES, RIGHTS AND IMMUNITIES OF THE
22 OTHER DIRECTORS OF THE BENEFIT CORPORATION, THE POWERS, DUTIES, RIGHTS
23 AND IMMUNITIES PROVIDED IN THIS ARTICLE.

24 (B) THE BENEFIT DIRECTOR SHALL BE ELECTED, AND MAY BE REMOVED, IN THE
25 MANNER PROVIDED BY ARTICLE SEVEN OF THIS CHAPTER AND SHALL BE AN INDI-
26 VIDUAL WHO IS INDEPENDENT. THE BENEFIT DIRECTOR MAY SERVE AS THE BENEFIT
27 OFFICER AT THE SAME TIME AS SERVING AS THE BENEFIT DIRECTOR. THE CERTIF-
28 ICATE OF INCORPORATION OR BYLAWS OF A BENEFIT CORPORATION MAY PRESCRIBE
29 ADDITIONAL QUALIFICATIONS OF THE BENEFIT DIRECTOR NOT INCONSISTENT WITH
30 THIS PARAGRAPH.

31 (C) THE BENEFIT DIRECTOR SHALL PREPARE, AND THE BENEFIT CORPORATION
32 SHALL INCLUDE IN THE BENEFIT REPORT TO SHAREHOLDERS REQUIRED BY THE
33 PROVISIONS OF THIS SECTION AND SECTION SEVENTEEN HUNDRED TWELVE OF THIS
34 ARTICLE, A STATEMENT WHETHER, IN THE OPINION OF THE BENEFIT DIRECTOR,
35 THE BENEFIT CORPORATION ACTED IN ACCORDANCE WITH ITS GENERAL, AND ANY
36 SPECIFIC, PUBLIC BENEFIT PURPOSE IN ALL MATERIAL RESPECTS DURING THE
37 PERIOD COVERED BY THE REPORT AND WHETHER THE DIRECTORS AND OFFICERS
38 COMPLIED WITH PARAGRAPH (A) OF SECTION SEVENTEEN HUNDRED SEVEN OF THIS
39 ARTICLE AND PARAGRAPH (A) OF SECTION SEVENTEEN HUNDRED NINE OF THIS
40 ARTICLE, RESPECTIVELY. IF IN THE OPINION OF THE BENEFIT DIRECTOR THE
41 BENEFIT CORPORATION OR ITS DIRECTORS OR OFFICERS FAILED SO TO ACT, THEN
42 THE STATEMENT OF THE BENEFIT DIRECTOR SHALL INCLUDE A DESCRIPTION OF THE
43 WAYS IN WHICH THE BENEFIT CORPORATION OR ITS DIRECTORS OR OFFICERS
44 FAILED SO TO ACT.

45 (D) THE ACTS OF AN INDIVIDUAL IN THE CAPACITY OF A BENEFIT DIRECTOR
46 SHALL CONSTITUTE FOR ALL PURPOSES ACTS OF THAT INDIVIDUAL IN THE CAPACI-
47 TY OF A DIRECTOR OF THE BENEFIT CORPORATION.

48 (E) IF THE CERTIFICATE OF INCORPORATION OF A BENEFIT CORPORATION
49 PROVIDES THAT THE POWERS AND DUTIES CONFERRED OR IMPOSED UPON THE BOARD
50 OF DIRECTORS SHALL BE EXERCISED OR PERFORMED BY ONE OR MORE SHAREHOLDERS
51 OR OTHER PERSONS, THEN THE CERTIFICATE OF INCORPORATION OF THE BENEFIT
52 CORPORATION MUST PROVIDE THAT THE SHAREHOLDERS OR OTHER PERSONS WHO
53 PERFORM THE DUTIES OF A BOARD OF DIRECTORS SHALL INCLUDE A PERSON WITH
54 THE POWERS, DUTIES, RIGHTS AND IMMUNITIES OF A BENEFIT DIRECTOR.

55 (F) REGARDLESS OF WHETHER THE BYLAWS OF A BENEFIT CORPORATION INCLUDE
56 A PROVISION ELIMINATING OR LIMITING THE PERSONAL LIABILITY OF DIRECTORS

1 AUTHORIZED BY PARAGRAPH (B) OF SECTION FOUR HUNDRED TWO OF THIS CHAPTER,
2 A BENEFIT DIRECTOR SHALL NOT BE PERSONALLY LIABLE FOR ANY ACT OR OMIS-
3 SION IN THE CAPACITY OF A BENEFIT DIRECTOR UNLESS THE ACT OR OMISSION
4 CONSTITUTES SELF-DEALING, WILLFUL MISCONDUCT OR A KNOWING VIOLATION OF
5 LAW.

6 S 1709. STANDARD OF CONDUCT FOR OFFICERS.

7 (A) EACH OFFICER OF A BENEFIT CORPORATION SHALL CONSIDER THE INTERESTS
8 AND FACTORS DESCRIBED IN PARAGRAPH (A) OF SECTION SEVENTEEN HUNDRED
9 SEVEN OF THIS ARTICLE IN THE MANNER PROVIDED IN SUCH SECTION WHEN:

10 (1) THE OFFICER HAS DISCRETION TO ACT WITH RESPECT TO A MATTER; AND
11 (2) IT REASONABLY APPEARS TO THE OFFICER THAT THE MATTER MAY HAVE A
12 MATERIAL EFFECT ON:

13 (A) THE CREATION OF GENERAL OR SPECIFIC PUBLIC BENEFIT BY THE BENEFIT
14 CORPORATION; OR

15 (B) ANY OF THE INTERESTS OR FACTORS REFERRED TO IN PARAGRAPH (A) OF
16 SECTION SEVENTEEN HUNDRED SEVEN OF THIS ARTICLE.

17 (B) THE CONSIDERATION OF INTERESTS AND FACTORS BY AN OFFICER IN THE
18 MANNER DESCRIBED IN PARAGRAPH (A) OF SECTION SEVENTEEN HUNDRED SEVEN OF
19 THIS ARTICLE SHALL NOT CONSTITUTE A VIOLATION OF THE DUTIES OF THE OFFI-
20 CER.

21 (C) AN OFFICER IS NOT PERSONALLY LIABLE, AS SUCH, FOR MONETARY DAMAGES
22 FOR ANY ACTION TAKEN AS AN OFFICER IF THE OFFICER PERFORMED THE DUTIES
23 OF THE POSITION IN COMPLIANCE WITH THIS SECTION.

24 S 1710. BENEFIT OFFICER.

25 A BENEFIT CORPORATION MAY HAVE AN OFFICER DESIGNATED THE "BENEFIT
26 OFFICER" WHO SHALL HAVE SUCH AUTHORITY AND SHALL PERFORM SUCH DUTIES IN
27 THE MANAGEMENT OF THE BENEFIT CORPORATION RELATING TO THE PURPOSE OF THE
28 CORPORATION TO CREATE GENERAL OR SPECIFIC PUBLIC BENEFIT AS MAY BE
29 PROVIDED BY OR PURSUANT TO THE BYLAWS OR, IN THE ABSENCE OF CONTROLLING
30 PROVISIONS IN THE BYLAWS, AS MAY BE DETERMINED BY OR PURSUANT TO RESOL-
31 UTIONS OR ORDERS OF THE BOARD OF DIRECTORS. IF A BENEFIT CORPORATION
32 HAS A BENEFIT OFFICER, THE DUTIES OF THE BENEFIT OFFICER SHALL INCLUDE
33 PREPARING THE BENEFIT REPORT REQUIRED BY SECTION SEVENTEEN HUNDRED
34 TWELVE OF THIS ARTICLE.

35 S 1711. RIGHT OF ACTION.

36 (A) THE DUTIES OF DIRECTORS AND OFFICERS UNDER THIS CHAPTER, AND THE
37 GENERAL AND ANY SPECIFIC PUBLIC BENEFIT PURPOSE OF A BENEFIT CORPO-
38 RATION, MAY BE ENFORCED ONLY IN A BENEFIT ENFORCEMENT PROCEEDING. NO
39 PERSON MAY BRING AN ACTION OR ASSERT A CLAIM AGAINST A BENEFIT CORPO-
40 RATION OR ITS DIRECTORS OR OFFICERS WITH RESPECT TO THE DUTIES OF DIREC-
41 TORS AND OFFICERS UNDER THIS CHAPTER AND THE GENERAL AND ANY SPECIFIC
42 PUBLIC BENEFIT PURPOSE OF THE BENEFIT CORPORATION EXCEPT IN A BENEFIT
43 ENFORCEMENT PROCEEDING.

44 (B) A BENEFIT ENFORCEMENT PROCEEDING MAY BE COMMENCED OR MAINTAINED
45 ONLY:

46 (1) DIRECTLY BY THE BENEFIT CORPORATION; OR

47 (2) DERIVATIVELY BY:

48 (A) A SHAREHOLDER;

49 (B) A DIRECTOR;

50 (C) A PERSON OR GROUP OF PERSONS THAT OWNS BENEFICIALLY OR OF RECORD
51 TEN PERCENT OR MORE OF THE EQUITY INTERESTS IN AN ENTITY OF WHICH THE
52 BENEFIT CORPORATION IS A SUBSIDIARY; OR

53 (D) SUCH OTHER PERSONS AS MAY BE SPECIFIED IN THE CERTIFICATE OF
54 INCORPORATION OR BYLAWS OF THE BENEFIT CORPORATION.

55 S 1712. ANNUAL BENEFIT REPORT.

1 (A) A BENEFIT CORPORATION MUST DELIVER TO EACH SHAREHOLDER AN ANNUAL
2 BENEFIT REPORT INCLUDING:

3 (1) A NARRATIVE DESCRIPTION OF:

4 (A) THE WAYS IN WHICH THE BENEFIT CORPORATION PURSUED GENERAL PUBLIC
5 BENEFIT DURING THE YEAR AND THE EXTENT TO WHICH GENERAL PUBLIC BENEFIT
6 WAS CREATED;

7 (B) THE WAYS IN WHICH THE BENEFIT CORPORATION PURSUED ANY SPECIFIC
8 PUBLIC BENEFIT THAT THE CERTIFICATE OF INCORPORATION STATES IT IS THE
9 PURPOSE OF THE BENEFIT CORPORATION TO CREATE AND THE EXTENT TO WHICH
10 THAT SPECIFIC PUBLIC BENEFIT WAS CREATED; AND

11 (C) ANY CIRCUMSTANCES THAT HAVE HINDERED THE CREATION BY THE BENEFIT
12 CORPORATION OF GENERAL OR SPECIFIC PUBLIC BENEFIT;

13 (2) AN ASSESSMENT OF THE PERFORMANCE OF THE BENEFIT CORPORATION, RELA-
14 TIVE TO ITS GENERAL PUBLIC BENEFIT PURPOSE AND, IF APPLICABLE, ITS
15 SPECIFIC PUBLIC BENEFIT PURPOSE OR PURPOSES, PREPARED IN ACCORDANCE WITH
16 A THIRD-PARTY STANDARD APPLIED CONSISTENTLY WITH ANY APPLICATION OF THAT
17 STANDARD IN PRIOR BENEFIT REPORTS OR ACCOMPANIED BY AN EXPLANATION OF
18 THE REASONS FOR ANY INCONSISTENT APPLICATION;

19 (3) THE NAME OF THE BENEFIT DIRECTOR AND THE BENEFIT OFFICER, IF ANY,
20 AND THE ADDRESS TO WHICH CORRESPONDENCE TO EACH OF THEM MAY BE DIRECTED;

21 (4) THE COMPENSATION PAID BY THE BENEFIT CORPORATION DURING THE YEAR
22 TO EACH DIRECTOR IN THAT CAPACITY;

23 (5) THE NAME OF EACH PERSON THAT OWNS BENEFICIALLY OR OF RECORD FIVE
24 PERCENT OR MORE OF THE OUTSTANDING SHARES OF THE BENEFIT CORPORATION;
25 AND

26 (6) THE STATEMENT OF THE BENEFIT DIRECTOR DESCRIBED IN PARAGRAPH (C)
27 OF SECTION SEVENTEEN HUNDRED EIGHT OF THIS ARTICLE.

28 (B) THE BENEFIT REPORT MUST BE SENT ANNUALLY TO EACH SHAREHOLDER WITH-
29 IN ONE HUNDRED TWENTY DAYS FOLLOWING THE END OF THE FISCAL YEAR OF THE
30 BENEFIT CORPORATION OR AT THE SAME TIME THAT THE BENEFIT CORPORATION
31 DELIVERS ANY OTHER ANNUAL REPORT TO ITS SHAREHOLDERS.

32 (C) A BENEFIT CORPORATION MUST POST ITS MOST RECENT BENEFIT REPORT ON
33 THE PUBLIC PORTION OF ITS WEBSITE, IF ANY, EXCEPT THAT THE COMPENSATION
34 PAID TO DIRECTORS AND ANY FINANCIAL OR PROPRIETARY INFORMATION INCLUDED
35 IN THE BENEFIT REPORT MAY BE OMITTED FROM THE BENEFIT REPORT AS POSTED.

36 (D) CONCURRENTLY WITH THE DELIVERY OF THE BENEFIT REPORT TO SHAREHOLD-
37 ERS PURSUANT TO PARAGRAPH (B) OF THIS SECTION, THE BENEFIT CORPORATION
38 MUST DELIVER A COPY OF THE BENEFIT REPORT TO THE DEPARTMENT FOR FILING,
39 EXCEPT THAT THE COMPENSATION PAID TO DIRECTORS AND ANY FINANCIAL OR
40 PROPRIETARY INFORMATION INCLUDED IN THE BENEFIT REPORT MAY BE OMITTED
41 FROM THE BENEFIT REPORT AS FILED UNDER THIS SECTION.

42 (E) IF A BENEFIT CORPORATION HAS NOT DELIVERED A BENEFIT REPORT TO THE
43 SECRETARY OF STATE FOR A PERIOD OF TWO YEARS, THE SECRETARY OF STATE MAY
44 PREPARE AND FILE A STATEMENT THAT THE CORPORATION HAS FORFEITED ITS
45 STATUS AS A BENEFIT CORPORATION AND IS NO LONGER SUBJECT TO THIS ARTI-
46 CLE. IF THE CORPORATION SUBSEQUENTLY DELIVERS A BENEFIT REPORT TO THE
47 SECRETARY OF STATE FOR FILING, THE STATUS OF THE CORPORATION AS A BENE-
48 FIT CORPORATION SHALL BE AUTOMATICALLY REINSTATED UPON THE FILING OF THE
49 BENEFIT REPORT BY THE SECRETARY OF STATE AND THE CORPORATION SHALL AGAIN
50 BE SUBJECT TO THIS ARTICLE.

51 S 2. This act shall take effect on the sixtieth day after it shall
52 have become a law.