

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.