S T A T E O F N E W Y O R K

4692--A

2011-2012 Regular Sessions

I N A S S E M B L Y

February 4, 2011

Introduced by M. of A. SILVER, BRENNAN, KAVANAGH, ROSENTHAL, GALEF, LIFTON, NOLAN, CORWIN -- read once and referred to the Committee on Corporations, Authorities and Commissions -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the general construction law and 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 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:

Section 1. Paragraphs 3 and 4 of subdivision d of section 65 of the general construction law, as added by chapter 451 of the laws of 1973 are amended and a new paragraph 5 is added to read as follows:

3. A railroad corporation, [or]

4. A transportation corporation[.], OR

5. A BENEFIT CORPORATION.

S 2. Section 66 of the general construction law is amended by adding a new subdivision 4-a to read as follows:

4-A. A "BENEFIT CORPORATION" MEANS A BUSINESS CORPORATION INCORPORATED UNDER ARTICLE SEVENTEEN OF THE BUSINESS CORPORATION LAW AND WHOSE STATUS AS A BENEFIT CORPORATION HAS NOT BEEN TERMINATED AS PROVIDED IN ARTICLE SEVENTEEN OF THE BUSINESS CORPORATION LAW.

S 3. The business corporation law is amended by adding a new article 17 to read as follows:

ARTICLE 17

BENEFIT CORPORATIONS

SECTION 1701. APPLICATION AND EFFECT OF ARTICLE.

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

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1702. DEFINITIONS.
1703. FORMATION OF BENEFIT CORPORATIONS.
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1708. ANNUAL BENEFIT REPORT.
1709. CONSPICUOUS LANGUAGE ON THE FACE OF CERTIFICATES.

S 1701. APPLICATION AND EFFECT OF ARTICLE.

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

(B) THE EXISTENCE OF A PROVISION OF THIS ARTICLE SHALL NOT OF ITSELF CREATE ANY IMPLICATION THAT A CONTRARY OR DIFFERENT RULE OF LAW IS OR WOULD BE APPLICABLE TO A BUSINESS CORPORATION THAT IS NOT A BENEFIT CORPORATION. THIS ARTICLE SHALL NOT AFFECT ANY STATUTE OR RULE OF LAW THAT IS OR WOULD BE APPLICABLE TO A BUSINESS CORPORATION THAT IS NOT A BENEFIT CORPORATION.

(C) EXCEPT AS OTHERWISE PROVIDED IN THIS ARTICLE, THIS CHAPTER SHALL BE APPLICABLE TO ALL BENEFIT CORPORATIONS. THE SPECIFIC PROVISIONS OF THIS ARTICLE SHALL CONTROL OVER THE GENERAL PROVISIONS OF THIS CHAPTER.

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

S 1702. DEFINITIONS.

AS USED IN THIS ARTICLE, UNLESS THE CONTEXT OTHERWISE REQUIRES, THE TERM:

(A) "BENEFIT CORPORATION" MEANS A BUSINESS CORPORATION INCORPORATED UNDER THIS ARTICLE AND WHOSE STATUS AS A BENEFIT CORPORATION HAS NOT BEEN TERMINATED AS PROVIDED IN THIS ARTICLE.

(B) "GENERAL PUBLIC BENEFIT" MEANS A MATERIAL POSITIVE IMPACT ON SOCIETY AND THE ENVIRONMENT, TAKEN AS A WHOLE, ASSESSED AGAINST A THIRD-PARTY STANDARD, FROM THE BUSINESS AND OPERATIONS OF A BENEFIT CORPORATION.

(C) "INDEPENDENT" MEANS THAT A PERSON HAS NO MATERIAL RELATIONSHIP WITH A BENEFIT CORPORATION OR ANY OF ITS SUBSIDIARIES. A MATERIAL RELATIONSHIP BETWEEN A PERSON AND A BENEFIT CORPORATION OR ANY OF ITS SUBSIDIARIES WILL BE CONCLUSIVELY PRESUMED TO EXIST IF:

(1) THE PERSON IS, OR HAS BEEN WITHIN THE LAST THREE YEARS, AN EMPLOYEE OF THE BENEFIT CORPORATION OR ANY OF ITS SUBSIDIARIES;

(2) AN IMMEDIATE FAMILY MEMBER OF THE PERSON IS, OR HAS BEEN WITHIN THE LAST THREE YEARS, AN EXECUTIVE OFFICER OF THE BENEFIT CORPORATION OR ANY OF ITS SUBSIDIARIES; OR

(3) THE PERSON, OR AN ENTITY OF WHICH THE PERSON IS A DIRECTOR, OFFICER OR OTHER MANAGER OR IN WHICH THE PERSON OWNS BENEFICIALLY OR OF RECORD FIVE PERCENT OR MORE OF THE EQUITY INTERESTS, OWNS BENEFICIALLY OR OF RECORD FIVE PERCENT OR MORE OF THE SHARES OF THE BENEFIT CORPORATION. A PERCENTAGE OF OWNERSHIP IN AN ENTITY SHALL BE CALCULATED AS IF ALL OUTSTANDING RIGHTS TO ACQUIRE EQUITY INTERESTS IN THE ENTITY HAD BEEN EXERCISED.

(D) "MINIMUM STATUS VOTE" MEANS THAT, IN ADDITION TO ANY OTHER APPROVAL OR VOTE REQUIRED BY THIS CHAPTER, THE CERTIFICATE OF INCORPORATION OR A BYLAW ADOPTED BY THE SHAREHOLDERS:

(1) THE HOLDERS OF SHARES OF EVERY CLASS OR SERIES THAT ARE ENTITLED TO VOTE ON THE CORPORATE ACTION SHALL BE ENTITLED TO VOTE AS A CLASS ON THE CORPORATE ACTION; AND

(2) THE CORPORATE ACTION MUST BE APPROVED BY VOTE OF THE SHAREHOLDERS OF EACH CLASS OR SERIES ENTITLED TO CAST AT LEAST THREE-QUARTERS OF THE

VOTES THAT ALL SHAREHOLDERS OF THE CLASS OR SERIES ARE ENTITLED TO CAST THEREON.

(E) "SPECIFIC PUBLIC BENEFIT," INCLUDES:

(1) PROVIDING LOW-INCOME OR UNDERSERVED INDIVIDUALS OR COMMUNITIES WITH BENEFICIAL PRODUCTS OR SERVICES;

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

(3) PRESERVING THE ENVIRONMENT;

(4) IMPROVING HUMAN HEALTH;

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

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

(7) THE ACCOMPLISHMENT OF ANY OTHER PARTICULAR BENEFIT FOR SOCIETY OR THE ENVIRONMENT.

(F) "SUBSIDIARY" MEANS AN ENTITY IN WHICH A PERSON OWNS BENEFICIALLY OR OF RECORD FIFTY PERCENT OR MORE OF THE EQUITY INTERESTS. A PERCENTAGE OF OWNERSHIP IN AN ENTITY SHALL BE CALCULATED AS IF ALL OUTSTANDING RIGHTS TO ACQUIRE EQUITY INTERESTS IN THE ENTITY HAD BEEN EXERCISED.

(G) "THIRD-PARTY STANDARD" MEANS A RECOGNIZED STANDARD FOR DEFINING, REPORTING AND ASSESSING GENERAL PUBLIC BENEFIT THAT IS:

(1) DEVELOPED BY A PERSON THAT IS INDEPENDENT OF THE BENEFIT CORPORATION; AND

(2) TRANSPARENT BECAUSE THE FOLLOWING INFORMATION ABOUT THE STANDARD IS PUBLICLY AVAILABLE:

(A) THE FACTORS CONSIDERED WHEN MEASURING THE PERFORMANCE OF A BUSINESS;

(B) THE RELATIVE WEIGHTINGS OF THOSE FACTORS; AND

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

S 1703. FORMATION OF BENEFIT CORPORATIONS.

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

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

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

(B) ANY CORPORATION THAT IS NOT A BENEFIT CORPORATION THAT IS A PARTY TO A MERGER OR CONSOLIDATION IN WHICH THE SURVIVING OR CONSOLIDATED CORPORATION WILL BE A BENEFIT CORPORATION MUST APPROVE THE PLAN OF MERGER OR CONSOLIDATION BY AT LEAST THE MINIMUM STATUS VOTE IN ADDITION TO ANY OTHER VOTE REQUIRED BY THIS CHAPTER, THE CERTIFICATE OF INCORPORATION OR THE BYLAWS.

(C) ANY CORPORATION THAT IS NOT A BENEFIT CORPORATION THAT IS PARTY TO A MERGER OR CONSOLIDATION IN WHICH SHARES OF STOCK OF SUCH CORPORATION WILL BE CONVERTED INTO A RIGHT TO RECEIVE SHARES OF STOCK OF A BENEFIT CORPORATION MUST APPROVE THE PLAN OF MERGER OR CONSOLIDATION BY AT LEAST THE MINIMUM STATUS VOTE IN ADDITION TO ANY OTHER VOTE REQUIRED BY THIS CHAPTER, THE CERTIFICATE OF INCORPORATION OR THE BYLAWS.

S 1705. TERMINATION OF BENEFIT CORPORATION STATUS.

(A) A BENEFIT CORPORATION MAY TERMINATE ITS STATUS AS SUCH AND CEASE TO BE SUBJECT TO THIS ARTICLE BY AMENDING ITS CERTIFICATE OF INCORPORATION TO DELETE THE STATEMENT THAT THE CORPORATION IS A BENEFIT CORPO-

RATION. THE AMENDMENT SHALL NOT BE EFFECTIVE UNLESS IT IS ADOPTED BY AT LEAST THE MINIMUM STATUS VOTE.

(B) IF A BENEFIT CORPORATION IS A PARTY TO A MERGER OR CONSOLIDATION IN WHICH THE SURVIVING OR NEW CORPORATION WILL NOT BE A BENEFIT CORPORATION, THE PLAN OF MERGER OR CONSOLIDATION SHALL NOT BE EFFECTIVE UNLESS IT IS ADOPTED BY AT LEAST THE MINIMUM STATUS VOTE IN ADDITION TO ANY OTHER VOTE REQUIRED BY THIS CHAPTER, THE CERTIFICATE OF INCORPORATION OR THE BYLAWS.

(C) ANY BENEFIT CORPORATION THAT IS PARTY TO A MERGER OR CONSOLIDATION IN WHICH SHARES OF STOCK OF SUCH BENEFIT CORPORATION WILL BE CONVERTED INTO A RIGHT TO RECEIVE SHARES OF STOCK OF A CORPORATION THAT IS NOT A BENEFIT CORPORATION MUST APPROVE THE PLAN OF MERGER OR CONSOLIDATION BY AT LEAST THE MINIMUM STATUS VOTE IN ADDITION TO ANY OTHER VOTE REQUIRED BY THIS CHAPTER, THE CERTIFICATE OF INCORPORATION OR THE BYLAWS.

(D) A SALE, LEASE, CONVEYANCE, EXCHANGE, TRANSFER, OR OTHER DISPOSITION OF ALL OR SUBSTANTIALLY ALL OF THE ASSETS OF A BENEFIT CORPORATION, UNLESS THE TRANSACTION IS IN THE USUAL AND REGULAR COURSE OF BUSINESS OF THE BENEFIT CORPORATION, SHALL NOT BE EFFECTIVE UNLESS THE TRANSACTION IS APPROVED BY AT LEAST THE MINIMUM STATUS VOTE IN ADDITION TO ANY OTHER VOTE REQUIRED BY THIS CHAPTER, THE CERTIFICATE OF INCORPORATION OR THE BYLAWS.

S 1706. CORPORATE PURPOSES.

(A) EVERY BENEFIT CORPORATION SHALL HAVE A PURPOSE OF CREATING GENERAL PUBLIC BENEFIT. THIS PURPOSE IS IN ADDITION TO ITS PURPOSES UNDER SECTION TWO HUNDRED ONE OF THIS CHAPTER AND ANY SPECIFIC PURPOSE SET FORTH IN ITS CERTIFICATE OF INCORPORATION UNDER PARAGRAPH (B) OF THIS SECTION. THE PURPOSE TO CREATE GENERAL PUBLIC BENEFIT SHALL BE A LIMITATION ON THE OTHER PURPOSES OF THE BENEFIT CORPORATION, AND SHALL CONTROL OVER ANY INCONSISTENT PURPOSE OF THE BENEFIT CORPORATION.

(B) THE CERTIFICATE OF INCORPORATION OF A BENEFIT CORPORATION MAY IDENTIFY ONE OR MORE SPECIFIC PUBLIC BENEFITS THAT IT IS THE PURPOSE OF THE BENEFIT CORPORATION TO CREATE IN ADDITION TO ITS PURPOSES UNDER SECTION TWO HUNDRED ONE OF THIS CHAPTER AND PARAGRAPH (A) OF THIS SECTION. THE IDENTIFICATION OF A SPECIFIC PUBLIC BENEFIT UNDER THIS PARAGRAPH DOES NOT LIMIT THE OBLIGATION OF A BENEFIT CORPORATION TO CREATE GENERAL PUBLIC BENEFIT.

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

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

S 1707. STANDARD OF CONDUCT FOR DIRECTORS AND OFFICERS.

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

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

(A) THE ABILITY FOR THE BENEFIT CORPORATION TO ACCOMPLISH ITS GENERAL AND ANY SPECIFIC PUBLIC BENEFIT PURPOSE;

(B) THE SHAREHOLDERS OF THE BENEFIT CORPORATION;

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

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

(E) COMMUNITY AND SOCIETAL CONSIDERATIONS, INCLUDING THOSE OF ANY COMMUNITY IN WHICH OFFICES OR FACILITIES OF THE BENEFIT CORPORATION OR ITS SUBSIDIARIES OR SUPPLIERS ARE LOCATED;
(F) THE LOCAL AND GLOBAL ENVIRONMENT; AND
(G) THE SHORT-TERM AND LONG-TERM INTERESTS OF THE BENEFIT CORPORATION, INCLUDING BENEFITS THAT MAY ACCRUE TO THE BENEFIT CORPORATION FROM ITS LONG-TERM PLANS AND THE POSSIBILITY THAT THESE INTERESTS MAY BE BEST SERVED BY THE CONTINUED INDEPENDENCE OF THE BENEFIT CORPORATION;
(2) MAY CONSIDER:
(A) THE RESOURCES, INTENT AND CONDUCT (PAST, STATED AND POTENTIAL) OF ANY PERSON SEEKING TO ACQUIRE CONTROL OF THE CORPORATION; AND
(B) ANY OTHER PERTINENT FACTORS OR THE INTERESTS OF ANY OTHER GROUP THAT THEY DEEM APPROPRIATE; AND
(3) SHALL NOT BE REQUIRED TO GIVE PRIORITY TO THE INTERESTS OF ANY PARTICULAR PERSON OR GROUP REFERRED TO IN SUBPARAGRAPHS ONE AND TWO OF THIS PARAGRAPH OVER THE INTERESTS OF ANY OTHER PERSON OR GROUP UNLESS THE BENEFIT CORPORATION HAS STATED ITS INTENTION TO GIVE PRIORITY TO INTERESTS RELATED TO A SPECIFIC PUBLIC BENEFIT PURPOSE IDENTIFIED IN ITS CERTIFICATE OF INCORPORATION.
(B) THE CONSIDERATION OF INTERESTS AND FACTORS IN THE MANNER REQUIRED BY PARAGRAPH (A) OF THIS SECTION:
(1) SHALL NOT CONSTITUTE A VIOLATION OF THE PROVISIONS OF SECTIONS SEVEN HUNDRED FIFTEEN OR SEVEN HUNDRED SEVENTEEN OF THIS CHAPTER; AND
(2) IS IN ADDITION TO THE ABILITY OF DIRECTORS TO CONSIDER INTERESTS AND FACTORS AS PROVIDED IN SECTION SEVEN HUNDRED SEVENTEEN OF THIS CHAPTER.
(C) A DIRECTOR DOES NOT HAVE A FIDUCIARY DUTY TO A PERSON THAT IS A BENEFICIARY OF THE GENERAL OR SPECIFIC PUBLIC BENEFIT PURPOSES OF A BENEFIT CORPORATION ARISING FROM THE STATUS OF THE PERSON AS A BENEFICIARY, UNLESS OTHERWISE STATED IN THE CERTIFICATE OF INCORPORATION OR THE BYLAWS OF THE BENEFIT CORPORATION.
S 1708. ANNUAL BENEFIT REPORT.
(A) A BENEFIT CORPORATION MUST DELIVER TO EACH SHAREHOLDER AN ANNUAL BENEFIT REPORT INCLUDING:
(1) A NARRATIVE DESCRIPTION OF:
(A) THE PROCESS AND RATIONALE FOR SELECTING THE THIRD PARTY STANDARD USED TO PREPARE THE BENEFIT REPORT;
(B) THE WAYS IN WHICH THE BENEFIT CORPORATION PURSUED GENERAL PUBLIC BENEFIT DURING THE YEAR AND THE EXTENT TO WHICH GENERAL PUBLIC BENEFIT WAS CREATED;
(C) THE WAYS IN WHICH THE BENEFIT CORPORATION PURSUED ANY SPECIFIC PUBLIC BENEFIT THAT THE CERTIFICATE OF INCORPORATION STATES IT IS THE PURPOSE OF THE BENEFIT CORPORATION TO CREATE AND THE EXTENT TO WHICH THAT SPECIFIC PUBLIC BENEFIT WAS CREATED; AND
(D) ANY CIRCUMSTANCES THAT HAVE HINDERED THE CREATION BY THE BENEFIT CORPORATION OF GENERAL OR SPECIFIC PUBLIC BENEFIT;
(2) AN ASSESSMENT OF THE PERFORMANCE OF THE BENEFIT CORPORATION, RELATIVE TO ITS GENERAL PUBLIC BENEFIT PURPOSE ASSESSED AGAINST A THIRD-PARTY STANDARD APPLIED CONSISTENTLY WITH ANY APPLICATION OF THAT STANDARD IN PRIOR BENEFIT REPORTS OR ACCOMPANIED BY AN EXPLANATION OF THE REASONS FOR ANY INCONSISTENT APPLICATION AND, IF APPLICABLE, ASSESSMENT OF THE PERFORMANCE OF THE BENEFIT CORPORATION, RELATIVE TO ITS SPECIFIC PUBLIC BENEFIT PURPOSE OR PURPOSES;
(3) THE COMPENSATION PAID BY THE BENEFIT CORPORATION DURING THE YEAR TO EACH DIRECTOR IN THAT CAPACITY; AND

(4) THE NAME OF EACH PERSON THAT OWNS BENEFICIALLY OR OF RECORD FIVE PERCENT OR MORE OF THE OUTSTANDING SHARES OF THE BENEFIT CORPORATION.

(B) THE BENEFIT REPORT MUST BE SENT ANNUALLY TO EACH SHAREHOLDER WITHIN ONE HUNDRED TWENTY DAYS FOLLOWING THE END OF THE FISCAL YEAR OF THE BENEFIT CORPORATION. DELIVERY OF A BENEFIT REPORT TO SHAREHOLDERS IS IN ADDITION TO ANY OTHER REQUIREMENT TO DELIVER AN ANNUAL REPORT TO SHAREHOLDERS.

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

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

(E) THE ANNUAL BENEFIT REPORT SHALL BE IN ADDITION TO ALL OTHER REPORTING REQUIREMENTS UNDER THIS CHAPTER.

S 1709. CONSPICUOUS LANGUAGE ON THE FACE OF CERTIFICATES.

ALL CERTIFICATES REPRESENTING SHARES OF A BENEFIT CORPORATION SHALL CONTAIN, IN ADDITION TO ANY OTHER STATEMENTS REQUIRED BY THE BUSINESS CORPORATION LAW, THE FOLLOWING CONSPICUOUS LANGUAGE ON THE FACE OF THE CERTIFICATE:

"THIS ENTITY IS A BENEFIT CORPORATION ORGANIZED UNDER ARTICLE SEVENTEEN OF THE NEW YORK BUSINESS CORPORATION LAW."

S 4. Subparagraph 1 of paragraph (a) of section 720 of the business corporation law is amended by adding a new clause (C) to read as follows:

(C) IN THE CASE OF DIRECTORS OR OFFICERS OF A BENEFIT CORPORATION ORGANIZED UNDER ARTICLE SEVENTEEN OF THIS CHAPTER: (I) THE FAILURE TO PURSUE THE GENERAL PUBLIC BENEFIT PURPOSE OF A BENEFIT CORPORATION OR ANY SPECIFIC PUBLIC BENEFIT SET FORTH IN ITS CERTIFICATE OF INCORPORATION; (II) THE FAILURE BY A BENEFIT CORPORATION TO DELIVER OR POST AN ANNUAL REPORT AS REQUIRED BY SECTION SEVENTEEN HUNDRED EIGHT OF ARTICLE SEVENTEEN OF THIS CHAPTER; OR (III) THE NEGLECT OF, OR FAILURE TO PERFORM, OR OTHER VIOLATION OF HIS OR HER DUTIES OR STANDARD OF CONDUCT UNDER ARTICLE SEVENTEEN OF THIS CHAPTER.

S 5. This act shall take effect on the sixtieth day after it shall have become a law.