

## CHAPTER 30

AN ACT concerning benefit corporations and supplementing Title 14A of the New Jersey Statutes.

**BE IT ENACTED** *by the Senate and General Assembly of the State of New Jersey:*

C.14A:18-1 Definitions relative to benefit corporations.

1. For purposes of this act:

“Benefit corporation” means a corporation organized under provisions of the “New Jersey Business Corporation Act,” N.J.S.14A:1-1 et seq., that has elected to become subject to this act and whose status as a benefit corporation has not been terminated as provided in this act.

“Benefit director” means the director designated as the benefit director of a benefit corporation as provided in section 7 of this act.

“Benefit enforcement proceeding” means a claim or action brought directly by a benefit corporation, or derivatively on behalf of a benefit corporation, against a director or officer for:

(1) Failure to pursue the general public benefit purpose of the benefit corporation or any specific public benefit purpose set forth in its certificate of incorporation; or

(2) Violation of a duty or standard of conduct under this act.

“Benefit officer” means the officer of a benefit corporation, if any, designated as the benefit officer as provided in section 9 of this act.

“General public benefit” means a material positive impact on society and the environment by the operations of a benefit corporation through activities that promote some combination of specific public benefits.

“Independent” means that a person has no material relationship with a benefit corporation or any of its subsidiaries (other than the relationship of serving as the benefit director or benefit officer), either directly or as a shareholder, partner, member or other owner or a director, officer or other manager of an entity that has a material relationship with the benefit corporation or any of its subsidiaries. A material relationship between an individual 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, other than as a benefit officer;

(2) An immediate family member of the person is, or has been within the last three years, an executive officer, other than a benefit 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 5% or more of the outstanding equity interests, owns beneficially or of record 5% or more of the outstanding 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.

“Minimum status vote” means that, in addition to any other approval or vote required by Title 14A of the New Jersey Statutes or the certificate of incorporation:

(1) The holders of shares of every class or series shall be entitled to vote on the corporate action regardless of any limitation stated in the certificate of incorporation on the voting rights of any class or series; and

(2) The corporate action must be approved by vote of the shareholders of each class or series entitled to cast at least two-thirds of the votes that all shareholders of the class or series are entitled to cast thereon.

“Specific public benefit” includes:

- (1) Providing low-income 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.

“Subsidiary” of a person means an entity in which the person owns beneficially or of record 50% or more of the outstanding 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.

“Third-party standard” means a recognized standard for defining, reporting and assessing corporate social and environmental performance 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.

C.14A:18-2 Formation of benefit corporation.

2. A benefit corporation shall be formed in accordance with chapter 2 of Title 14A of the New Jersey Statutes, except that its certificate of incorporation shall also state that it is a benefit corporation.

C.14A:18-3 Certain corporations may become benefit corporations.

3. a. A corporation organized under the provisions of the “New Jersey Business Corporation Act,” N.J.S.14A:1-1 et seq., may become a benefit corporation under this act 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. If a corporation that is not a benefit corporation is a party to a merger or consolidation or is the exchanging corporation in a share exchange, and the surviving or new corporation in the merger, consolidation, or share exchange is to be a benefit corporation, then the plan of merger, consolidation, or share exchange shall not be effective unless it is adopted by the corporation by at least the minimum status vote.

C.14A:18-4 Termination of status as benefit corporation.

4. a. A benefit corporation may terminate its status as a benefit corporation and cease to be subject to this act by amending its certificate of incorporation to delete the provision required by section 2 or subsection a. of section 3 of this act. The amendment shall not be effective unless it is adopted by at least the minimum status vote.

b. If a plan of merger, consolidation or exchange would have the effect of terminating the status of a corporation as a benefit corporation, the plan shall not be effective unless it is adopted by at least the minimum status vote.

C.14A:18-5 Purpose of benefit corporation.

5. a. Every benefit corporation shall have the purpose of creating a general public benefit. This purpose is in addition to, and may be a limitation on, its purpose under its certificate of incorporation and any specific purpose set forth in its certificate of incorporation.

b. The certificate of incorporation of a benefit corporation may identify one or more specific public benefits that is the purpose of the benefit corporation to create in addition to its purposes under its certificate of incorporation and subsection a. of this section. The identification of a specific public benefit under this subsection 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 subsections a. and b. of this section, shall be in the best interests of the benefit corporation.

d. A benefit corporation may amend its certificate of incorporation to add, amend or delete a specific public benefit that 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.

C.14A:18-6 Consideration of effects of action.

6. a. The board of directors, committees of the board and individual directors of a benefit corporation, in considering the best interests of the benefit corporation shall consider the effects of any action upon:

(1) the shareholders of the benefit corporation;

(2) the employees and workforce of the benefit corporation and its subsidiaries and suppliers;

(3) the interests of customers as beneficiaries of the general or specific public benefit purposes of the benefit corporation;

(4) 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;

(5) the local and global environment; and

(6) 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;

b. The board of directors, committees of the board and individual directors of a benefit corporation, in considering the best interests of the benefit corporation may consider:

(1) matters listed in subsection (2) of N.J.S.14A:6-1; and

(2) any other pertinent factors or the interests of any other group that they deem appropriate; and

c. The board of directors, committees of the board and individual directors of a benefit corporation shall not be required to give priority to the interests of any particular person or group referred to in subsection a. or subsection b. of this section 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.

d. A director is not personally liable for monetary damages for failure of the benefit corporation to create general or specific public benefits.

C.14A:18-7 “Benefit director.”

7. a. The board of directors of a benefit corporation shall include one director who shall be designated the “benefit director” and shall have, in addition to all of the powers, duties, rights and immunities of the other directors of the benefit corporation, the powers, duties, rights and immunities provided in this act.

b. The benefit director shall be elected, and may be removed, in the manner provided by chapter 6 of Title 14A of the New Jersey Statutes, and shall be an individual who is independent. The benefit director may serve as the benefit officer, designated pursuant to section 9 of this act, at the same time as serving as the benefit director. The certificate of incorporation or bylaws of a benefit corporation may prescribe additional qualifications of the benefit director not inconsistent with this subsection.

c. The benefit director shall prepare, and the benefit corporation shall include in the annual benefit report to shareholders required by section 11 of this act, a statement whether, in the opinion of the benefit director, the benefit corporation acted in accordance with its general, and any specific, public benefit purpose in all material respects during the period covered by the report and whether the directors and officers complied with subsection a. of section 6 of this act and subsection a. of section 8 of this act. If in the opinion of the benefit director the benefit corporation or its directors or officers failed to act in accordance with its public benefit purpose, then the statement of the benefit director shall include a description of the ways in which the benefit corporation or its directors or officers failed to act.

d. If the by-laws of a benefit corporation provide that the powers and duties conferred or imposed upon the board of directors shall be exercised or performed by a person other than the directors pursuant to N.J.S.14A:6-1, then the bylaws of the benefit corporation must provide that the person or shareholders who perform the duties of a board of directors shall include a person with the powers, duties, rights and immunities of a benefit director.

e. Regardless of whether the certificate of incorporation of a benefit corporation includes a provision eliminating or limiting the personal liability of directors authorized by subsection (3) of N.J.S.14A:2-7, a benefit director shall not be personally liable for any act or omission in the capacity of a benefit director unless the act or omission constitutes self-dealing, willful misconduct or a knowing violation of law.

C.14A:18-8 Actions of officers.

8. a. Each officer of a benefit corporation shall consider the interests and factors described in subsection a. of section 6 of this act when:

- (1) The officer has discretion to act with respect to a matter; and
- (2) It reasonably appears to the officer that the matter may have a material effect on:
  - (a) the creation of general or specific public benefits by the benefit corporation; or
  - (b) any of the interests or factors referred to in subsection a. of section 6 of this act.

b. The consideration of interests and factors in the manner described in subsection c. of section 6 of this act.

c. An officer is not personally liable for monetary damages for failure of the benefit corporation to create general or specific public benefit.

C.14A:18-9 “Benefit officer.”

9. A benefit corporation may have an officer designated the “benefit officer” who shall have authority and shall perform duties in the management of the benefit corporation relating to the purpose of the corporation to create general or specific public benefits as may be provided by or pursuant to the by-laws or, in the absence of controlling provisions in the by-

laws, as may be determined by or pursuant to resolutions or orders of the board of directors. If a benefit corporation has a benefit officer, the duties of the benefit officer shall include preparing the benefit report required by section 11 of this act.

C.14A:18-10 Enforcement of duties of directors and officers.

10. a. The duties of directors and officers under this act, and the general and any specific public benefit purpose of a benefit corporation, may be enforced only in a benefit enforcement proceeding. No person may bring an action or assert a claim against a benefit corporation or its directors or officers with respect to the duties of directors and officers under this act and the general and any specific public benefit purpose of the benefit corporation except in a benefit enforcement proceeding.

b. A benefit enforcement proceeding may be commenced or maintained only:

(1) Directly by the benefit corporation; or

(2) Derivatively by:

(a) a shareholder;

(b) a director;

(c) a person or group of persons that owns beneficially or of record 10% or more of the equity interests in an entity of which the benefit corporation is a subsidiary; or

(d) such other persons as may be specified in the certificate of incorporation or by-laws of the benefit corporation.

C.14A:18-11 Annual benefit report.

11. a. A benefit corporation shall deliver to each shareholder an annual benefit report including:

(1) A narrative description of:

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

(b) The ways in which the benefit corporation pursued any specific public benefit that the certificate of incorporation states is the purpose of the benefit corporation to create and the extent to which that specific public benefit was created; and

(c) Any circumstances that have hindered the creation by the benefit corporation of general or specific public benefits;

(2) An assessment of the social and environmental performance of the benefit corporation, prepared in accordance with 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;

(3) The name of the benefit director and the benefit officer, if any, and the address to which correspondence to each of them may be directed;

(4) The compensation paid by the benefit corporation during the year to each director in that capacity;

(5) The name of each person that owns 5% or more of the outstanding shares of the benefit corporation either beneficially, to the extent known to the benefit corporation without independent investigation, or of record; and

(6) The statement of the benefit director described in section 7 of this act.

b. The benefit report must be sent annually to each shareholder within 120 days following the end of the fiscal year of the benefit corporation or at the same time that the benefit corporation delivers any other annual report to its 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. (1) With the delivery of the benefit report to shareholders pursuant to subsection b. of this section, the benefit corporation must deliver a copy of the benefit report to the Department of the Treasury 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. The State Treasurer shall charge a fee of \$70 for filing a benefit report.

(2) If a benefit corporation has not delivered a benefit report to the department for a period of two years, the department may prepare and file a statement that the corporation has forfeited its status as a benefit corporation and is no longer subject to this act. If the corporation subsequently delivers a benefit report to the department for filing, the status of the corporation as a benefit corporation shall be automatically reinstated upon the filing of the benefit report by the department and the corporation shall again be subject to this act.

12. This act shall take effect immediately.

Approved March 1, 2011.