

AN ACT

RELATING TO CORPORATIONS; PROVIDING FOR A VOLUNTARY  
DESIGNATION AS A BENEFIT CORPORATION.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

**SECTION 1.** A new section of the Business Corporation  
Act is enacted to read:

"DESIGNATION AS A BENEFIT CORPORATION--REQUIREMENTS--  
STANDARD OF CONDUCT.--

A. A corporation, including a professional  
corporation, may elect to be designated as a benefit  
corporation. A professional corporation that elects a  
designation as a benefit corporation does not violate the  
provisions of Section 53-6-5 NMSA 1978. A provision of the  
articles of incorporation or bylaws of a benefit corporation  
shall not limit, conflict with or supersede the provisions of  
this section. A corporation that elects the designation of a  
benefit corporation shall:

(1) include a statement in the corporation's  
articles of incorporation that the corporation is a benefit  
corporation;

(2) in addition to the purpose for which the  
corporation is organized pursuant to Paragraph (3) of  
Subsection A of Section 53-12-2 NMSA 1978, have the purpose to  
create the general public benefit of achieving a material

positive impact on society and the environment as assessed against a third-party standard and may identify a specific public benefit in the corporation's articles of incorporation;

(3) prepare a benefit report that:

(a) describes the progress or lack of progress in achieving the general public benefit or specific public benefit stated in the articles of incorporation;

(b) describes the process and rationale for selecting or changing the third-party standard used to measure achieving the general public benefit or a specific public benefit;

(c) assesses the overall social and environmental performance of the benefit corporation against a third-party standard;

(d) identifies each member of the board of directors and the duties and compensation as a director; provided, however, that the benefit corporation may omit information regarding director compensation and financial or proprietary information from the benefit report that is made public; and

(e) discloses any connection with the entity that established the third-party standard used to assess the general public benefit or a specific public benefit;

(4) provide the benefit report to each

shareholder at the time the annual report is due; and

(5) publish the benefit report on the public portion of its internet web site, if any, or provide a copy free of charge to any person that requests the benefit report.

B. In addition to performing and discharging duties in good faith, in a manner that the board of directors believes to be in, or not opposed to, the best interests of the corporation, and with such care as an ordinarily prudent person would use under similar circumstances in a like position pursuant to Section 53-11-35 NMSA 1978, the director of a benefit corporation, in determining what that director reasonably believes to be in, or not opposed to, the best interests of the benefit corporation, shall take into consideration the:

(1) interests of the benefit corporation's shareholders, employees, work force and customers, as beneficiaries of the general public benefit or a specific public benefit;

(2) community and societal factors;

(3) local and global environment;

(4) 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; and

(5) ability of the benefit corporation to accomplish the general public benefit and a specific public benefit stated in the benefit corporation's articles of incorporation.

C. A director of a benefit corporation is not required to give priority to the interests of a particular person or group referred to in Subsection B of this section over the interests of any other person or group unless the benefit corporation has stated in its articles of incorporation the intention to give priority to certain interests related to its accomplishment of the general public benefit or a specific public benefit.

D. An officer of a benefit corporation shall consider the interests and factors pursuant to Subsection B of this section if the officer:

(1) has the discretion to act with respect to a matter; and

(2) reasonably believes that the matter may have a material effect in achieving the general public benefit or a specific public benefit identified in the articles of incorporation.

E. The board of directors of a publicly traded corporation designated as a benefit corporation shall elect an independent director who shall prepare the benefit report.

Any other corporation may designate a director or officer who

shall prepare the benefit report.

F. A benefit corporation shall not be liable for monetary damages pursuant to this section for any failure to pursue or create the general public benefit or a specific public benefit. A claim or action against a benefit corporation for failure to pursue or create the general public benefit or a specific public benefit purpose as set forth in the articles of incorporation, or a violation of any obligation, duty or standard of conduct pursuant to this section, may only be commenced or maintained by the benefit corporation or on behalf of the corporation in a derivative lawsuit by:

(1) a person or group of persons that, at the time of the action or inaction that gave rise to the complaint, owned beneficially or of record at least two percent of the total number of shares or of a class of shares;

(2) a director;

(3) a person or group of persons that, at the time of the action or inaction that gave rise to the complaint, owned beneficially or of record five percent or more of the outstanding equity interests in an entity of which the benefit corporation is a subsidiary of; or

(4) other persons as specified in the articles of incorporation or bylaws of the benefit corporation.

G. The amendments to the articles of incorporation that relate to the designation or termination of the designation of the benefit corporation or the general public benefit or a specific public benefit of the corporation shall only be adopted upon receiving the affirmative vote of the holders of a two-thirds' majority of the shares entitled to vote, unless any class of shares is entitled to vote as a class, in which event, the proposed amendment shall be adopted upon receiving the affirmative vote of the holders of a two-thirds' majority of the shares of each class of shares entitled to vote as a class and of the total shares entitled to vote.

H. A benefit corporation may terminate its designation as a benefit corporation by amending its articles of incorporation to delete the requirements of Paragraphs (1) and (2) of Subsection A of this section. The termination of the designation shall be effective upon the adoption of the amendment.

I. Nothing in this section shall be construed to apply to a corporation that does not elect the designation of a benefit corporation."

**SECTION 2.** Section 53-15-3 NMSA 1978 (being Laws 1967, Chapter 81, Section 77, as amended) is amended to read:

"53-15-3. RIGHT OF SHAREHOLDERS TO DISSENT AND OBTAIN PAYMENT FOR SHARES.--

A. Any shareholder of a corporation may dissent from, and obtain payment for the shareholder's shares in the event of, any of the following corporate actions:

(1) any plan of merger or consolidation to which the corporation is a party, except as provided in Subsection C of this section;

(2) any sale or exchange of all or substantially all of the property and assets of the corporation not made in the usual and regular course of its business, including a sale in dissolution, but not including a sale pursuant to an order of a court having jurisdiction in the premises or a sale for cash on terms requiring that all or substantially all of the net proceeds of sale be distributed to the shareholders in accordance with their respective interests within one year after the date of sale;

(3) any plan of exchange to which the corporation is a party as the corporation the shares of which are to be acquired;

(4) any amendment of the articles of incorporation that materially and adversely affects the rights appurtenant to the shares of the dissenting shareholder in that it:

(a) alters or abolishes a preferential right of such shares;

(b) creates, alters or abolishes a

right in respect of the redemption of such shares, including a provision respecting a sinking fund for the redemption or repurchase of such shares;

(c) alters or abolishes an existing preemptive right of the holder of such shares to acquire shares or other securities;

(d) designates as a benefit corporation; or

(e) excludes or limits the right of the holder of such shares to vote on any matter, or to cumulate the holder's votes, except as such right may be limited by dilution through the issuance of shares or other securities with similar voting rights; or

(5) any other corporate action taken pursuant to a shareholder vote with respect to which the articles of incorporation, the bylaws or a resolution of the board of directors directs that dissenting shareholders shall have a right to obtain payment for their shares.

B. A record holder of shares may assert dissenters' rights as to less than all of the shares registered in the holder's name only if the holder dissents with respect to all the shares beneficially owned by any one person and discloses the name and address of the person or persons on whose behalf the holder dissents. In that event, the holder's rights shall be determined as if the shares as to

which the holder has dissented and the holder's other shares were registered in the names of different shareholders. A beneficial owner of shares who is not the record holder may assert dissenters' rights with respect to shares held on the beneficial owner's behalf and shall be treated as a dissenting shareholder under the terms of this section and Section 53-15-4 NMSA 1978 if the beneficial owner submits to the corporation at the time of or before the assertion of these rights a written consent of the record holder.

C. The right to obtain payment under this section shall not apply to the shareholders of the surviving corporation in a merger if a vote of the shareholders of such corporation is not necessary to authorize such merger.

D. A shareholder of a corporation who has a right under this section to obtain payment for shares shall have no right at law or in equity to attack the validity of the corporate action that gives rise to the shareholder's right to obtain payment nor to have the action set aside or rescinded, except when the corporate action is unlawful or fraudulent with regard to the complaining shareholder or to the corporation." \_\_\_\_\_