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SENATE BILL 96

**52ND LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2015**

INTRODUCED BY

Cisco McSorley

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:

"[NEW MATERIAL] 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

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1 this section. A corporation that elects the designation of a  
2 benefit corporation shall:

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

6 (2) in addition to the purpose for which the  
7 corporation is organized pursuant to Paragraph (3) of  
8 Subsection A of Section 53-12-2 NMSA 1978, have the purpose to  
9 create the general public benefit of achieving a material  
10 positive impact on society and the environment as assessed  
11 against a third-party standard and may identify a specific  
12 public benefit in the corporation's articles of incorporation;

13 (3) prepare a benefit report that:

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

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

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

24 (d) identifies each member of the board  
25 of directors and the duties and compensation as a director;

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1 provided, however, that the benefit corporation may omit  
2 information regarding director compensation and financial or  
3 proprietary information from the benefit report that is made  
4 public; and

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

8 (4) provide the benefit report to each  
9 shareholder at the time the annual report is due; and

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

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

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

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1 public benefit;

2 (2) community and societal factors;

3 (3) local and global environment;

4 (4) short-term and long-term interests of the  
5 benefit corporation, including benefits that may accrue to the  
6 benefit corporation from its long-term plans and the  
7 possibility that these interests may be best served by the  
8 continued independence of the benefit corporation; and

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

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

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

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

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

5 E. The board of directors of a publicly traded  
6 corporation designated as a benefit corporation shall elect an  
7 independent director who shall prepare the benefit report. Any  
8 other corporation may designate a director or officer who shall  
9 prepare the benefit report.

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

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

25 (2) a director;

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

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

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

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

25 I. Nothing in this section shall be construed to

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1 apply to a corporation that does not elect the designation of a  
2 benefit corporation."

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

5 "53-15-3. RIGHT OF SHAREHOLDERS TO DISSENT AND OBTAIN  
6 PAYMENT FOR SHARES.--

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

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

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

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

25 (4) any amendment of the articles of

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1 incorporation [~~which~~] that materially and adversely affects the  
2 rights appurtenant to the shares of the dissenting shareholder  
3 in that it:

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

6 (b) creates, alters or abolishes a  
7 right in respect of the redemption of such shares, including  
8 a provision respecting a sinking fund for the redemption or  
9 repurchase of such shares;

10 (c) alters or abolishes an existing  
11 preemptive right of the holder of such shares to acquire  
12 shares or other securities; [~~or~~]

13 (d) designates as a benefit  
14 corporation; or

15 [~~(d)~~] (e) excludes or limits the  
16 right of the holder of such shares to vote on any matter, or  
17 to cumulate [~~his~~] the holder's votes, except as such right  
18 may be limited by dilution through the issuance of shares or  
19 other securities with similar voting rights; or

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

25 B. [~~(1)~~] A record holder of shares may assert

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1 dissenters' rights as to less than all of the shares  
2 registered in [~~his~~] the holder's name only if the holder  
3 dissents with respect to all the shares beneficially owned  
4 by any one person and discloses the name and address of the  
5 person or persons on whose behalf the holder dissents. In  
6 that event, [~~his~~] the holder's rights shall be determined as  
7 if the shares as to which [~~he~~] the holder has dissented and  
8 [~~his~~] the holder's other shares were registered in the names  
9 of different shareholders. [~~(2)~~] A beneficial owner of  
10 shares who is not the record holder may assert dissenters'  
11 rights with respect to shares held on [~~his~~] the beneficial  
12 owner's behalf and shall be treated as a dissenting  
13 shareholder under the terms of this section and Section  
14 53-15-4 NMSA 1978 if [~~he~~] the beneficial owner submits to  
15 the corporation at the time of or before the assertion of  
16 these rights a written consent of the record holder.

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

21 D. A shareholder of a corporation who has a right  
22 under this section to obtain payment for [~~his~~] shares shall  
23 have no right at law or in equity to attack the validity of  
24 the corporate action that gives rise to [~~his~~] the  
25 shareholder's right to obtain payment nor to have the action

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1 set aside or rescinded, except when the corporate action is  
2 unlawful or fraudulent with regard to the complaining  
3 shareholder or to the corporation."

4 SECTION 3. EFFECTIVE DATE.--The effective date of the  
5 provisions of this act is July 1, 2015.

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