AN ACT
RELATING TO CORPORATIONS; ENACTING THE BENEFIT CORPORATION ACT;
PROVIDING FOR A VOLUNTARY DESIGNATION AS A BENEFIT CORPORATION.

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

SECTION 1. [NEW MATERIAL] SHORT TITLE.--Sections 1
through 13 of this act may be cited as the "Benefit Corporation
Act".

SECTION 2. [NEW MATERIAL] DEFINITIONS.--As used in the
Benefit Corporation Act:
A. "beneficial owner" includes a person for whom
shares or equity interests are held in a voting trust or by a
nominee on behalf of the person;
B. "benefit corporation" means a business
corporation or a professional corporation that is subject to
the Benefit Corporation Act;
C. "general public benefit" means a material positive impact on society and the environment, taken as a whole, from the business and operations of a benefit corporation as assessed, taking into account the impacts of the benefit corporation as reported, against a third-party standard;

D. "independent" means having no material relationship with a benefit corporation or a subsidiary of a benefit corporation;

E. "material relationship" includes:
   (1) an individual who is, or has been within the last three years, an employee other than a benefit officer of the benefit corporation or a benefit corporation subsidiary;
   (2) an immediate family member of an individual who is, or has been within the last three years, an executive officer other than a benefit officer of the benefit corporation or a benefit corporation subsidiary; or
   (3) a beneficial owner or owner of record of five percent or more of the outstanding shares of the benefit corporation, calculated as if all outstanding rights to acquire equity interests in the benefit corporation had been exercised, held by:
      (a) the individual; or
      (b) an entity: 1) of which the individual is a director, an officer or a manager; or 2) in
which the individual is the beneficial owner or owner of record
of five percent or more of the outstanding equity interests,
calculated as if all outstanding rights to acquire equity
interests in the entity had been exercised;

F. "minimum status vote" means:

(1) in the case of a business corporation, in
addition to any other required approval or vote, that:

(a) the shareholders of every class or
series are entitled to vote as a class on the corporate action
regardless of a limitation stated in the articles of
incorporation or bylaws on the voting rights of any class or
series; and

(b) the corporate action is approved by
the affirmative vote of at least two-thirds of the shareholders
of each class or series entitled to vote as a class on the
corporate action; and

(2) in the case of a domestic entity other
than a business corporation, in addition to any other required
approval, vote or consent, that:

(a) the holders of every class or series
of equity interest in the entity that are entitled to receive a
distribution of any kind from the entity are entitled to vote
on or consent to the action regardless of any otherwise
applicable limitation on the voting or consent rights of any
class or series; and
(b) the action is approved by the affirmative vote or consent of at least two-thirds of the holders of every class or series of equity interest in the entity that are entitled to receive a distribution of any kind from the entity;

G. "specific public benefit" means a specific material positive impact on society or the environment and 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) protecting or restoring 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 purpose to benefit society or the environment; or

(7) conferring any other particular benefit on society or the environment; and

H. "third-party standard" means a recognized standard for assessing or reporting the overall social and environmental effects of a benefit corporation.
SECTION 3. [NEW MATERIAL] BENEFIT CORPORATION STATUS--

ELECTION--TERMINATION.--

A. A benefit corporation shall be incorporated pursuant to Section 53-6-4 NMSA 1978 as a professional corporation or pursuant to Sections 53-12-1 through 53-12-3 NMSA 1978 as a business corporation.

B. A benefit corporation shall include in its articles of incorporation a statement that it is a benefit corporation.

C. An existing business corporation or professional corporation may become a benefit corporation by amending its articles of incorporation in accordance with the procedures of Sections 53-13-1 through 53-13-8 NMSA 1978 so that the articles of incorporation contain a statement that the corporation is a benefit corporation; provided that to be effective, the amendment shall be adopted by at least the minimum status vote.

D. A corporation may terminate its status as a benefit corporation by amending its articles of incorporation in accordance with the procedures of Sections 53-13-1 through 53-13-8 NMSA 1978 to remove the statement that it is a benefit corporation; provided that the amendment shall be approved by at least the minimum status vote.

E. If a domestic entity that is not a benefit corporation is a party to a merger or consolidation and the surviving or new entity in the merger or consolidation is to be
a benefit corporation, the plan of merger or consolidation shall be approved by the domestic entity by at least the minimum status vote. This subsection shall not apply to a corporation that is a party to a merger if the shareholders of the corporation are not entitled to vote on the merger pursuant to Section 53-14-5 NMSA 1978.

SECTION 4. [NEW MATERIAL] CORPORATE PURPOSES--PUBLIC BENEFIT.--

A. In addition to any other purpose, a benefit corporation shall have a purpose of creating general public benefit.

B. The articles of incorporation of a benefit corporation may identify the creation of one or more specific public benefits as a purpose of the benefit corporation in addition to any other purpose. The identification of a specific public benefit shall not limit or restrict the benefit corporation in its creation of general public benefit.

C. The creation of general public benefit or a specific public benefit shall be considered to be in the best interests of the benefit corporation.

D. A benefit corporation may amend its articles of incorporation to add, amend or delete the identification of a specific public benefit as a purpose of the benefit corporation.

E. A professional corporation that is a benefit
corporation does not violate the requirement of a professional
corporation to render one specific type of professional service
and services ancillary thereto pursuant to Section 53-6-5 NMSA
1978 by having a purpose to create general public benefit or a
specific public benefit.

SECTION 5. [NEW MATERIAL] DIRECTORS--STANDARD OF
CONDUCT--BEST INTERESTS OF THE BENEFIT CORPORATION.--

A. In considering the best interests of the benefit
corporation, the board of directors, a committee of the board
or an individual director:

(1) shall consider the effects of any action
or inaction upon:

(a) the shareholders of the benefit
corporation;

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

(c) the interests of customers as
beneficiaries of the general public benefit or a specific
public benefit purpose of the benefit corporation;

(d) community and societal factors,
including those of each community in which offices or
facilities of the benefit corporation, its subsidiaries or its
suppliers are located;

(e) the local and global environment;

(f) 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 or the possibility that the benefit corporation's interests may be best served by the continued independence of the benefit corporation; and

    (g) the ability of the benefit corporation to accomplish its general public benefit purpose and any specific public benefit purpose;

    (2) may consider other pertinent factors or the interests of any other group deemed appropriate; but

    (3) need not give priority to a particular interest or factor referred to in Paragraph (1) or (2) of this subsection over any other interest or factor unless the benefit corporation has stated in its articles of incorporation an intention to give priority to certain interests or factors related to the accomplishment of its general public benefit purpose or of a specific public benefit purpose.

B. The consideration of interests and factors in the manner provided by Subsection A of this section shall be considered to be in the best interests of the benefit corporation and shall not constitute a violation of Section 53-11-35 NMSA 1978.

C. Except as provided in the articles of incorporation of a benefit corporation, a director is not personally liable for monetary damages for:
(1) any action or inaction in the course of performing the duties of a director under Subsection A of this section if the director was not interested with respect to the action or inaction; or

(2) a failure of the benefit corporation to pursue or create general public benefit or a specific public benefit.

D. A director shall not have a duty to a person who is a beneficiary of the general public benefit purpose or a specific public benefit purpose of a benefit corporation arising from the status of the person as a beneficiary.

E. A director who makes a business judgment in good faith fulfills the director's duty under this section if the director:

(1) is not interested in the subject of the business judgment;

(2) is informed with respect to the subject of the business judgment to the extent the director reasonably believes to be appropriate under the circumstances; and

(3) rationally believes that the business judgment is in the best interests of the benefit corporation.

SECTION 6. [NEW MATERIAL] BENEFIT DIRECTOR--DESIGNATION--DUTIES.--

A. The board of directors of a benefit corporation may include a director designated as the benefit director and
who shall have, in addition to the powers, duties, rights and
immunities of the other directors of the benefit corporation,
the powers, duties, rights and immunities provided in this
section.

B. A benefit director shall be elected in the
manner provided for the election of directors pursuant to
Section 53-11-36 NMSA 1978 and may be removed in the manner
provided for the removal of directors pursuant to Section

C. A benefit director of a business corporation
shall be an individual who is independent. The benefit
director of a professional corporation is not required to be
independent.

D. A benefit director may serve as the benefit
officer at the same time as serving as the benefit director.

E. The benefit director shall prepare, and the
benefit corporation shall include in the annual benefit report
to shareholders, a report on:

(1) whether the benefit corporation acted in
accordance with its general public benefit purpose and any
specific public benefit purpose in all material respects during
the period covered by the report, and if it did not, a
description of the ways in which it failed to act or comply;

(2) whether the directors or officers complied
with the standard of conduct for directors or officers pursuant
to Sections 5 and 7 of the Benefit Corporation Act, and if they
did not, a description of the ways in which they failed to act
or comply.

F. The act or inaction of a benefit director shall
be subject to the same standards as action or inaction of
directors generally.

G. A person shall not be personally liable for an
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.

SECTION 7. [NEW MATERIAL] OFFICERS--STANDARD OF
CONDUCT.--

A. An officer of a benefit corporation shall
consider the interests and factors described in Subsection A of
Section 5 of the Benefit Corporation Act if:

(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 the benefit
corporation's creation of general public benefit or a specific
public benefit identified in the articles of incorporation.

B. A person is not personally liable for monetary
damages for:

(1) action or inaction as an officer in the
course of performing the duties of an officer under Subsection A of this section if the person was not interested with respect to the action or inaction; or

(2) failure of the benefit corporation to pursue or create general public benefit or a specific public benefit.

C. An officer does not have a duty to a person that is a beneficiary of the general public benefit purpose or a specific public benefit purpose of a benefit corporation arising from the status of the person as a beneficiary.

D. An officer who makes a business judgment in good faith fulfills the duty under this section if the officer:

(1) is not interested in the subject of the business judgment;

(2) is informed with respect to the subject of the business judgment to the extent the officer reasonably believes to be appropriate under the circumstances; and

(3) rationally believes that the business judgment is in the best interests of the benefit corporation.

SECTION 8. [NEW MATERIAL] BENEFIT OFFICER--DESIGNATION--DUTIES.--

A. A benefit corporation may designate an officer as the benefit officer.

B. A benefit officer shall:

(1) have powers and duties relating to the
purpose of the corporation to create general public benefit or
a specific public benefit. The benefit officer's powers and
duties shall be provided by resolution or order of the board of
directors or in the benefit corporation's articles of
incorporation; and

(2) prepare the annual benefit report.

SECTION 9. [NEW MATERIAL] RIGHT OF ACTION--BENEFIT
ENFORCEMENT PROCEEDING.--

A. Except in a benefit enforcement proceeding, no
action or claim shall be maintained against a benefit
corporation, its officers or directors relating to:

(1) any failure of a benefit corporation to
pursue or create general public benefit or a specific public
benefit as set forth in the benefit corporation's articles of
incorporation; or

(2) a violation of an obligation, duty or
standard of conduct under the Benefit Corporation Act.

B. A benefit corporation shall not be liable for
monetary damages for any failure of the benefit corporation to
pursue or create general public benefit or a specific public
benefit.

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

(1) directly by the benefit corporation; or

(2) derivatively in accordance with the
procedures relating to the actions of shareholders pursuant to Section 53-11-47 NMSA 1978 by a:

(a) person or group of persons who are the beneficial owners or owners of record of at least two percent of the total number of shares of a class or series outstanding at the time of the act or omission complained of;

(b) director; or

(c) person or group of persons who were the beneficial owners or owners of record of five percent or more of the outstanding equity interests in an entity of which the benefit corporation is a subsidiary at the time of the act or omission complained of.

SECTION 10. [NEW MATERIAL] THIRD-PARTY STANDARD--REQUIREMENTS.--

A. A benefit corporation shall assess its annual performance in meeting its general public benefit purpose and any specific benefit purpose against a third-party standard.

B. The third-party standard shall assess the effects of a benefit corporation's business and operations upon:

(1) the shareholders of the benefit corporation;

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

(3) the interests of customers as

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beneficiaries of the general public benefit or a specific public benefit purpose of the benefit corporation;

   (4) community and society, including each community in which offices or facilities of the benefit corporation, its subsidiaries or its suppliers are located; and

   (5) the local and global environment.

C. The third-party standard shall:

   (1) be developed by an entity that:

       (a) is not controlled by the benefit corporation;

       (b) has access to the expertise necessary to assess overall corporate social and environmental performance; and

       (c) uses a balanced multi-stakeholder approach to develop the standard, including a reasonable public comment period; and

   (2) make the following information publicly available:

       (a) the criteria considered under the standard to measure the overall social and environmental performance of a benefit corporation and the relative weightings, if any, of the criteria;

       (b) the identity of the directors, officers, material owners and the governing body of the entity that developed and controls revisions to the standard;
(c) the process by which revisions to the standard and changes to the membership of the governing body are made; and

(d) an accounting of the revenue and sources of financial support for the entity, with sufficient detail to disclose any relationships that could reasonably be considered to present a potential conflict of interest.

SECTION 11. [NEW MATERIAL] ANNUAL BENEFIT REPORT--PREPARATION.--

A. A benefit corporation shall prepare an annual benefit report including:

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

(2) the ways in which the benefit corporation pursued a specific public benefit and the extent to which the specific public benefit was created;

(3) any circumstances that hindered the creation by the benefit corporation of general public benefit or a specific public benefit;

(4) the process and rationale for selecting or changing the third-party standard used to assess the benefit corporation's performance;

(5) an assessment of the overall social and
environmental effects of the performance of the benefit corporation, taking into account the effects of the benefit corporation as reported against the third-party standard. The third-party standard shall be applied consistently year to year, and the benefit report shall provide an explanation of any inconsistent application or a change to the third-party standard from the one used in the report immediately preceding the current year; and

(6) the report of the benefit director pursuant to Section 6 of the Benefit Corporation Act.

B. If during the year covered by a benefit report a benefit director resigned from or refused to stand for reelection to the position of benefit director or was removed from the position of benefit director and the benefit director furnished the benefit corporation with any written correspondence concerning the circumstances surrounding the resignation, refusal or removal, the benefit report shall include that correspondence as an exhibit in the benefit report.

SECTION 12. [NEW MATERIAL] ANNUAL BENEFIT REPORT--AVAILABILITY.--

A. A benefit corporation shall send the annual benefit report to each shareholder on the earlier of:

(1) one hundred twenty days following the end of the fiscal year of the benefit corporation; or

.211859.1

- 17 -
(2) the same time that the benefit corporation
sends any other annual report to shareholders.

B. A benefit corporation that is a business
corporation shall post all benefit reports to the public
portion of its internet website, if any; but financial or
proprietary information included in the benefit reports may be
omitted from the benefit reports as posted.

C. If a benefit corporation does not have an
internet website, the benefit corporation shall provide a copy
of its most recent benefit report, without charge, to any
person that requests a copy, but financial or proprietary
information included in the benefit report may be omitted from
the copy of the benefit report provided.

SECTION 13. [NEW MATERIAL] APPLICABILITY.--

A. Except as otherwise provided in the Benefit
Corporation Act, the Business Corporation Act shall be
generally applicable to all benefit corporations.

B. The Benefit Corporation Act shall not affect a
statute or rule of law that is applicable to a business
corporation or professional corporation that is not a benefit
corporation.

C. If provisions of the Benefit Corporation Act
conflict with provisions of the Business Corporation Act or the
Professional Corporation Act, the provisions of the Benefit
Corporation Act shall prevail.

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- 18 -
D. The articles of incorporation or bylaws of a benefit corporation shall not limit, be inconsistent with or supersede a provision of the Benefit Corporation Act.

SECTION 14. Section 53-6-5 NMSA 1978 (being Laws 1963, Chapter 16, Section 5) is amended to read:

"53-6-5. PURPOSES FOR WHICH INCORPORATED.--A professional corporation may be organized only for the purpose of rendering one specific type of professional service and services ancillary thereto and shall not engage in any business other than rendering the professional service [which] that it was organized to render and services ancillary thereto; provided, however, that a professional corporation may own real and personal property necessary or appropriate for rendering the type of professional service it was organized to render and may invest its funds in real estate, mortgages, stocks, bonds and any other type of investments. The requirements of this section shall not be interpreted to prohibit a professional corporation from having a purpose of creating general public benefit or a specific public benefit pursuant to the Benefit Corporation Act."

SECTION 15. Section 53-11-35 NMSA 1978 (being Laws 1967, Chapter 81, Section 34, as amended) is amended to read:

"53-11-35. BOARD OF DIRECTORS.--
A. All corporate powers shall be exercised by or under authority of, and the business and affairs of a
corporation shall be managed under the direction of, a board of directors, except as may be otherwise provided in the Business Corporation Act or the Benefit Corporation Act or the articles of incorporation. If any such provision is made in the articles of incorporation, the powers and duties conferred or imposed upon the board of directors by the Business Corporation Act or the Benefit Corporation Act shall be exercised or performed to such extent and by such person or persons as provided in the articles of incorporation. Directors need not be residents of this state or shareholders of the corporation unless the articles of incorporation or bylaws so require. The articles of incorporation or bylaws may prescribe other qualifications for directors. The board of directors may fix the compensation of directors unless otherwise provided in the articles of incorporation.

B. A director shall perform the duties of the director, including duties as a member of any committee of the board upon which the director may serve, in good faith, in a manner the director 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. In performing such duties, a director shall be entitled to rely on factual information, opinions, reports or statements, including financial statements and other financial data, in each case prepared or presented.
by:

(1) one or more officers or employees of the corporation whom the director reasonably believes to be reliable and competent in the matters presented;

(2) counsel, public accountants or other persons as to matters [which] that the director reasonably believes to be within such person's professional or expert competence; or

(3) a committee of the board upon which the director does not serve, duly designated in accordance with a provision of the articles of incorporation or the bylaws, as to matters within its designated authority, which committee the director reasonably believes to merit confidence, but the director shall not be considered to be acting in good faith if the director has knowledge concerning the matter in question that would cause such reliance to be unwarranted. A person who so performs such duties shall have no liability by reason of being or having been a director of the corporation.

C. A director of a corporation who is present at a meeting of its board of directors at which action on any corporate matter is taken shall be presumed to have assented to the action taken unless the director's dissent [shall be] is entered in the minutes of the meeting or unless the director [shall file] files written dissent to such action with the secretary of the meeting before the adjournment thereof or [shall forward] forwards such dissent by registered mail to the
secretary of the corporation immediately after the adjournment of the meeting. Such right to dissent shall not apply to a director who voted in favor of such action.

D. For purposes of Subsection B of this section, a director, in determining what he believes to be in or not opposed to the best interests of the corporation, shall consider the interests of the corporation's shareholders and, in his discretion, may consider any of the following:

(1) the interests of the corporation's employees, suppliers, creditors and customers;

(2) the economy of the state and nation;

(3) the impact of any action upon the communities in or near which the corporation's facilities or operations are located; and

(4) the long-term interests of the corporation and its shareholders, including the possibility that those interests may be best served by the continued independence of the corporation.

E. Subsection D of this section shall not limit the interests or factors allowed to be considered by a director of a benefit corporation in determining what is in or opposed to the best interests of the corporation pursuant to the Benefit Corporation Act."

SECTION 16. Section 53-13-1 NMSA 1978 (being Laws 1967, .211859.1
Chapter 81, Section 55, as amended) is amended to read:

"53-13-1. RIGHT TO AMEND ARTICLES OF INCORPORATION.--A corporation may amend its articles of incorporation from time to time in as many respects as may be desired, so long as its articles of incorporation, as amended, contain only such provisions as might be lawfully contained in original articles of incorporation at the time of making the amendment and, if a change in shares or the rights of shareholders, or an exchange, reclassification or cancellation of shares or rights of shareholders is to be made, provisions as may be necessary to effect the change, exchange, reclassification or cancellation. In particular, and without limitation upon the general power of amendment, a corporation may amend its articles of incorporation from time to time to:

A. change its corporate name;

B. change its period of duration;

C. change, enlarge or diminish its corporate purposes;

D. increase or decrease the aggregate number of shares or shares of any class [which] that the corporation has authority to issue;

E. provide or eliminate any provision with respect to the minimum consideration for any shares or class of shares;

F. exchange, classify, reclassify or cancel all or any part of its shares, whether issued or unissued;
G. change the designation of all or any part of its shares, whether issued or unissued, and to change the preferences, limitations and relative rights in respect of all or any part of its shares, whether issued or unissued;

H. change the shares of any class, whether issued or unissued, into a different number of shares of the same class or into the same or a different number of shares of other classes;

I. create new classes of shares having rights and preferences, either prior and superior or subordinate and inferior, to the shares of any class then authorized, whether issued or unissued;

J. cancel or otherwise affect the right of the holders of the shares of any class to receive dividends that have accrued but have not been declared;

K. divide any preferred or special class of shares, whether issued or unissued, into series and fix and determine the designation of the series and the variations in the relative rights and preferences as between the shares of the series;

L. authorize the board of directors to establish, out of authorized but unissued shares, series of any preferred or special class of shares and fix and determine the relative rights and preferences of the shares of any series so established;
M. authorize the board of directors to fix and determine the relative rights and preferences of the authorized but unissued shares of series theretofore established in respect of which either the relative rights and preferences have not been fixed and determined or the relative rights and preferences theretofore fixed and determined are to be changed;

N. revoke, diminish or enlarge the authority of the board of directors to establish series out of authorized but unissued shares of any preferred or special class and fix and determine the relative rights and preferences of the shares of any series so established; [or]

O. limit, deny or grant to shareholders of any class the preemptive right to acquire additional shares of the corporation, whether then or thereafter authorized; or

P. become a benefit corporation pursuant to the Benefit Corporation Act."

- 25 -