

HOUSE BILL 118

54TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2020

INTRODUCED BY

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This document incorporates amendments that have been adopted during the current legislative session. The document is a tool to show the amendments in context and is not to be used for the purpose of amendments.

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

.216353.1AIC February 5, 2020 (8:36am)

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corporation. A professional corporation that elects to be designated 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 to be designated as a benefit corporation:

(1) shall 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, shall have a purpose to create through its business and operations the general public benefit of a positive impact on society and the environment, taken as a whole, that is material taking into consideration the corporation's size and the nature of its business;

(3) may identify in the corporation's articles of incorporation that it has a purpose to create a specific public benefit of a positive effect on one or more communities or categories of persons, other than shareholders solely in their capacity as shareholders, or on the environment, including effects of an artistic, charitable, economic, educational, cultural, literary, medical, religious, social,

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ecological or scientific nature;

(4) shall prepare HJC→and provide to
shareholders←HJC a benefit report HJC→annually←HJC that:

(a) describes the corporation's progress in achieving its general public benefit purpose and any specific public benefit purpose 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 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;

HJC→and←HJC

HJC→(5) shall provide the benefit report to
each shareholder at the time the annual report is due; and←HJC

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HJC→(6)←HJC HJC→(5)←HJC shall publish the benefit report on the public portion of its internet website, if any, or provide a copy free of charge to any person that requests the benefit report.

B. When performing and discharging the duties of a director set forth in Section 53-11-35 NMSA 1978, a 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:

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

(2) community and societal factors;

(3) the local and global environment;

(4) 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; and

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

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C. A director of a benefit corporation is not required to give priority to the interests of a particular person or group listed 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 listed in 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 corporation's general public benefit purpose or any specific public benefit purpose 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 to 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 general public benefit or a specific public

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benefit. HJC→~~This subsection does not apply to a claim for personal injuries caused by the negligence or willful misconduct of the benefit corporation or any of its directors, officers, employees or agents.~~←HJC

G. A claim or action against a benefit corporation for failure to pursue or create general public benefit or a specific public benefit 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 of the benefit corporation;

(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; or

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

H. The amendments to the articles of incorporation that relate to the designation or termination of the

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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.

I. 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."