

**SUBSTITUTE FOR
HOUSE BILL NO. 5387**

A bill to amend 1972 PA 284, entitled
"Business corporation act,"
(MCL 450.1101 to 450.2098) by adding chapter 9A.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

CHAPTER 9A

BENEFIT CORPORATIONS

Sec. 951. (1) As used in this chapter:

(a) "Benefit enforcement proceeding" means a claim asserted or
action brought directly by a benefit corporation, or derivatively
on behalf of a benefit corporation, against a director for either
of the following:

(i) A failure to pursue a public benefit.

(ii) A violation of a duty or standard of conduct under this



1 chapter.

2 (b) "Minimum status vote" means an authorization or approval
3 of a corporate action that meets all of the following:

4 (i) The shareholder approval or vote requirements of this act.

5 (ii) Any shareholder approval or vote requirement that is
6 included in a provision of the articles of incorporation.

7 (iii) The approval by at least 2/3 of the votes entitled to be
8 cast on the corporate action, and, if a class or series of shares
9 is entitled to a vote as a separate group on the corporate action,
10 the corporate action is approved by at least 2/3 of the votes
11 entitled to be cast by the voting group.

12 (c) "Public benefit" includes any of the following purposes
13 for which the corporation is formed, as identified in the articles
14 of incorporation under section 953:

15 (i) Creating a positive effect, or reducing a negative effect,
16 for at least 1 community or category of persons, other than
17 shareholders solely in their capacity as shareholders, or on the
18 environment. As used in this subparagraph, "effect" includes an
19 effect that is artistic, charitable, economic, educational,
20 cultural, literary, medical, religious, social, ecological, or
21 scientific in nature.

22 (ii) Acting in a responsible and sustainable manner.

23 (d) "Responsible and sustainable manner" means the corporation
24 does both of the following:

25 (i) Pursues through the business of the corporation the
26 creation of a positive effect, or a reduction of a negative effect,
27 on society and the environment, that when taken as a whole, is
28 material in light of the corporation's size and the nature of the
29 corporation's business.



1 (ii) Considers, in addition to the interests of the
2 shareholders, the separate interests of stakeholders known to be
3 affected by the conduct of the business of the corporation.

4 (2) If there is a conflict between a specific provision of
5 this chapter and a general provision of this act, the provision of
6 this chapter applies with respect to a benefit corporation.

7 Sec. 953. (1) A domestic corporation that meets both of the
8 following is a benefit corporation and subject to this chapter:

9 (a) The corporation is formed under this act.

10 (b) The articles of incorporation of the corporation state
11 that it is a benefit corporation. However, an amendment to the
12 articles of incorporation to include the statement described in
13 this subdivision is not effective unless it is adopted by a minimum
14 status vote.

15 (2) In addition to the purposes described in section 202(b),
16 the purposes of a benefit corporation must include 1 or more public
17 benefits, which must be identified in 1 or more provisions in the
18 articles of incorporation.

19 (3) An amendment to the articles of incorporation of a benefit
20 corporation to change the purposes of the corporation by adding,
21 amending, or deleting 1 or more public benefits is not effective
22 unless it is adopted by a minimum status vote.

23 (4) A benefit corporation may terminate its status as a
24 benefit corporation by amending its articles of incorporation to
25 remove its public benefits. However, an amendment to the articles
26 of incorporation described in this subsection is not effective
27 unless it is adopted by a minimum status vote.

28 Sec. 955. (1) In addition to the requirements of chapter 7, if
29 a domestic corporation that is not a benefit corporation is a



1 constituent corporation in a merger or an exchanging corporation in
2 a share exchange, and the surviving or acquiring corporation will
3 be a benefit corporation under the plan of merger or share
4 exchange, the plan must be approved by a minimum status vote of
5 that constituent or exchanging corporation.

6 (2) In addition to the requirements of chapter 7, a plan of
7 merger or share exchange that would have the effect of terminating
8 the status of a domestic corporation as a benefit corporation must
9 be approved by a minimum status vote of that corporation.

10 (3) In addition to the requirements of chapter 7, if the
11 conversion of a domestic corporation that is not a benefit
12 corporation into a business organization would result in the shares
13 of any voting group becoming, or being converted into or exchanged
14 for the right to receive, shares or interests in a business
15 organization that is subject to law that governs the internal
16 affairs of the business organization that is analogous to those in
17 this chapter, the conversion must be approved by a minimum status
18 vote of the domestic corporation. However, if the conversion would
19 affect the shares of 1 or more, but not all, of the voting groups,
20 a minimum status vote is required only with respect to the shares
21 in the voting groups affected by the conversion.

22 (4) In addition to the requirements of chapter 7, if the
23 conversion of a benefit corporation into a business organization
24 would result in the shares of a voting group of the benefit
25 corporation becoming, or being converted into or exchanged for the
26 right to receive, shares or interests in a business organization
27 that is not subject to law that governs the internal affairs of the
28 business organization that is analogous to those in this chapter,
29 the conversion must be approved by a minimum status vote of the



1 benefit corporation. However, if the conversion would affect the
2 shares of 1 or more, but not all, of the voting groups, a minimum
3 status vote is required only with respect to the shares in the
4 voting group affected by the conversion.

5 (5) In addition to the requirements of chapter 7, if the
6 conversion of a benefit corporation into a business organization
7 would result in the shares of a voting group of the benefit
8 corporation becoming, or being converted into or exchanged for the
9 right to receive, shares or interests in a business organization
10 that is subject to law that governs the internal affairs of the
11 business organization that is analogous to those in this chapter,
12 the conversion does not require a minimum status vote.

13 (6) As used in this section, "business organization" means
14 that term as defined in section 736.

15 Sec. 957. (1) The board shall consider all of the following:

16 (a) The interests of the shareholders.

17 (b) The separate interest of stakeholders known to be affected
18 by the conduct of the business of the corporation.

19 (c) Each public benefit.

20 (2) A consideration made by a director of a benefit
21 corporation under subsection (1) in the discharge of the director's
22 duties does not constitute a violation of section 541a.

23 (3) A director who makes a business judgment in good faith
24 fulfills the director's duties under this section if the director
25 is not interested in the subject of the business judgment and is
26 informed with respect to the subject of the business judgment to
27 the extent that the director reasonably believes appropriate under
28 the circumstances.

29 (4) A director of a benefit corporation is not liable for



1 monetary damages to the corporation, the shareholders, or any
2 person that claims to be a beneficiary of a public benefit for a
3 failure to fulfill a duty arising under this chapter or solely
4 because the director performed duties in compliance with this
5 section.

6 (5) A director of a benefit corporation does not have a duty
7 to a person that is a beneficiary of a public benefit arising from
8 the status of the person as a beneficiary.

9 Sec. 959. (1) The duties of any director of a benefit
10 corporation arising under this chapter or any public benefit may be
11 enforced only in a benefit enforcement proceeding under this
12 section. A person shall not bring an action or assert a claim
13 against a benefit corporation or its directors with respect to the
14 duties under this chapter of any directors of the benefit
15 corporation or any public benefit except in a benefit enforcement
16 proceeding under this section.

17 (2) A benefit enforcement proceeding may be commenced or
18 maintained only by 1 of the following:

19 (a) Directly, by the benefit corporation.

20 (b) Derivatively, by any of the following:

21 (i) A shareholder of the benefit corporation that owns
22 beneficially or of record, individually or collectively, as of the
23 date the benefit enforcement proceeding is instituted, either of
24 the following:

25 (A) At least 5% of the corporation's outstanding shares.

26 (B) If the shares of the benefit corporation are listed on a
27 national securities exchange, 5% of the corporation's outstanding
28 shares, or shares that have a market value of \$5,000,000.00,
29 whichever is less.



1 (ii) Any other person specified in the articles of
2 incorporation or bylaws of the benefit corporation.

3 (3) A benefit corporation and its directors are not liable for
4 monetary damages under this chapter for any failure of the benefit
5 corporation to pursue or create a public benefit.

6 (4) An action against a director for failure to perform a duty
7 imposed under this chapter must be commenced within 3 years after
8 the cause of action has accrued, or within 2 years after the time
9 when the cause of action is discovered or should reasonably have
10 been discovered by the complainant, whichever occurs first.

11 Sec. 961. (1) A benefit corporation shall prepare an annual
12 benefit report that includes all of the following:

13 (a) A summary addressing the efforts of the benefit
14 corporation during the preceding year to pursue its public
15 benefits.

16 (b) The objectives that the board has established for the
17 corporation to pursue its public benefits.

18 (c) The standards that the board has adopted to measure the
19 corporation's progress in pursuing its public benefits.

20 (d) If the articles of incorporation or bylaws require that
21 the corporation use an independent third-party standard in
22 reporting on the corporation's progress in pursuing its public
23 benefits, or if the board has chosen to use a third-party standard,
24 a summary of the third-party standard.

25 (e) An assessment of the corporation's success in meeting the
26 objectives and standards under subdivisions (b) and (c), and
27 subdivision (d), as applicable, and the basis of the assessment.

28 (2) Subject to subsection (3), a benefit corporation shall,
29 not later than 4 months after the end of the fiscal year of the



1 benefit corporation, deliver to each shareholder, or make available
2 and provide written notice of the availability to each shareholder,
3 a copy of the annual benefit report described in subsection (1).

4 (3) The benefit corporation may distribute the annual benefit
5 report described in subsection (1) by electronic transmission or by
6 making the annual benefit report available for electronic
7 transmission. If the annual benefit report is distributed
8 electronically under this subsection, the corporation must provide
9 the annual benefit report in written form, if requested by a
10 shareholder.

11 (4) A shareholder that has not received or been given access
12 to an annual benefit report in the time described in subsection (2)
13 may make a written request that the corporation deliver or make the
14 annual benefit report available to the shareholder.

15 (5) If a benefit corporation subject to a request under
16 subsection (4) does not deliver or make the annual benefit report
17 available to the shareholders within 5 business days of receiving
18 the request under subsection (4), the requesting shareholder may
19 petition the circuit court of the county in which the corporation's
20 principal place of business or registered office is located for an
21 order requiring the delivery of, or access to, the annual benefit
22 report.

23 (6) Except as otherwise provided in subsection (7), a benefit
24 corporation shall post its 3 most recent annual benefit reports on
25 the public portion of its website.

26 (7) If a benefit corporation does not have a website, the
27 benefit corporation must provide a copy of its most recent annual
28 benefit report, without charge, to a person that submits a written
29 request to the benefit corporation for a copy of its most recent



1 annual benefit report.

2 (8) A benefit corporation shall include a copy of its annual
3 benefit report with the report it is required to file with the
4 administrator under section 911. A benefit corporation shall pay a
5 fee of \$25.00 when the annual benefit report is delivered to the
6 administrator. The administrator's filing of a benefit report does
7 not relate to the validity or invalidity of the information
8 contained in the annual benefit report.

9 Enacting section 1. This amendatory act does not take effect
10 unless House Bill No. 5388 of the 102nd Legislature is enacted into
11 law.

