WEST VIRGINIA CODE CHAPTER 31F ARTICLE 1

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§31F-1-101. Short title.

This chapter is and may be cited as the West Virginia Benefit Corporation Act.

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§31F-1-102. Definitions.

As used in this article:

(a) "Benefit corporation" means a corporation organized pursuant to the provisions of this chapter:

(1) That has elected to become subject to this article; and

(2) The status of which as a benefit corporation has not been terminated under section two hundred three, article two of this chapter.

(b) "Benefit enforcement proceeding" means any claim or action brought directly by a benefit corporation, or derivatively on behalf of a benefit corporation, against a director or officer for: (i) Failure to pursue the general public benefit purpose of the benefit corporation or any specific public benefit purpose set forth in its articles of incorporation or bylaws or otherwise adopted by its board of directors; or (ii) a violation of a duty or standard of conduct under this article.

(c) "General public benefit" means a material positive impact on society and the environment taken as a whole, as measured by a third-party standard, from the business and operations of a benefit corporation.

(d) "Independent" means having no material relationship with a benefit corporation or a subsidiary of the benefit corporation, either directly as a shareholder of the benefit corporation or as a partner, a member or an owner of a subsidiary of the benefit corporation or indirectly as a director, an officer, an owner, or a manager of an entity that has a material relationship with the benefit corporation or a subsidiary of the benefit corporation. A material relationship between a person and a benefit corporation or any of its subsidiaries will be conclusively presumed to exist if:

(1) The person is, or has been within the last three years, an employee of the benefit corporation or a subsidiary of the benefit corporation;

(2) An immediate family member of the person is, or has been within the last three years, an executive officer of the benefit corporation or its subsidiary; or

(3) There is beneficial ownership of five percent or more of the outstanding shares of the benefit corporation by:

(A) The person; or

(B) An entity:

(i) Of which the person is a director, an officer or a manager; or

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(ii) In which the person owns beneficially five percent or more of the outstanding equity interests, which percentage shall be calculated as if all outstanding rights to acquire equity interests in the entity had been exercised.

(e) "Specific public benefit" means a benefit that serves one or more public welfare, religious, charitable, scientific, literary or educational purposes, or other purpose or benefit beyond the strict interest of the shareholders of the benefit corporation, including:

(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) Preserving or improving 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 public benefit purpose; and

(7) Conferring any other particular benefit on society or the environment.

(f) "Subsidiary" means, in relation to an individual, an entity in which the individual either: (i) Owns directly or indirectly equity interests entitled to cast a majority of the votes entitled to be cast generally in an election of directors or members of the governing body of the entity; or (ii) otherwise owns or controls voting or contractual power to exercise effective governing control of the entity. The percentage of ownership of equity interests or ownership or control of power to exercise control shall be calculated as if all outstanding rights to acquire equity interests in the entity had been exercised.

(g) "Third-party standard" means a recognized standard for defining, reporting, and assessing corporate social and environmental performance that:

(1) Is developed by a person that is independent of the benefit corporation; and

(2) Is transparent because the following information about the standard is publicly available:

(A) The factors considered when measuring the performance of a business;

(B) The relative weightings of those factors; and

(C) The identity of the persons that develop and control changes to the standard and the process by which those changes are made.

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§31F-1-103. Construction of chapter.

(a) This chapter shall apply to all benefit corporations.

(b) The existence of a provision of this chapter does not of itself create an implication that a contrary or different rule of law applies to a corporation organized pursuant to the provisions of this code that is not a benefit corporation. This chapter does not affect a statute or rule of law that applies to a corporation that is not a benefit corporation.

(c) The specific provisions of this chapter control over the general provisions of other chapters of this code.

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