WEST VIRGINIA CODE CHAPTER 31F ARTICLE 4

WV Legislature

§31F-4-401. Standard of conduct for directors.

(a) Subject to article eight, chapter thirty-one-d of this code, in discharging the duties of their respective positions and in considering the best interests of the benefit corporation, the board of directors, committees of the board and individual directors of a benefit corporation:

(1) Shall consider the effects of any corporate action upon:

(A) The shareholders of the benefit corporation;

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

(C) The interests of customers as beneficiaries of the general or specific public benefit purposes of the benefit corporation;

(D) Community and societal considerations, including those of each community in which offices or facilities of the benefit corporation, its subsidiaries, or 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 and the possibility that these interests and the general and specific public benefit purposes of the benefit corporation may be best served by the continued independence of the benefit corporation; and

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

(2) May consider:

(A) The resources; intent; and past, stated and potential conduct of any person seeking to acquire control of the benefit corporation; and

(B) Other pertinent factors or the interests of any other person that they deem appropriate; and

(3) Need not give priority to the interests of a particular person referred to in subdivisions (1) and (2) of this section over the interests of any other person unless the benefit corporation has stated its intention to give priority to interests related to a specific public benefit purpose identified in its articles.

(b) The consideration of interests and factors in the manner required by subsection (a) of this section does not constitute a violation of section eight hundred thirty, article eight, chapter thirty-one-d of this code or a director conflict of interests under section eight hundred sixty, article eight, chapter thirty-one-d of this code.

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(c) In any proceeding brought by or in the right of a benefit corporation or brought by or on behalf of the shareholders of a benefit corporation, a director is not personally liable for monetary damages for:

(1) Any action taken as a director if the director performed the duties of office in compliance with section eight hundred thirty, article eight, chapter thirty-one-d of this code and this section; or

(2) Failure of the benefit corporation to create general public benefit or any specific public benefit specified in its articles of incorporation or bylaws or otherwise adopted by the board of directors.

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§31F-4-402. Limitation upon liability of officers.

An officer of a benefit corporation has no liability for actions taken that the officer believes, in his or her good faith business judgment, are consistent with: (i) The general public benefit or specific public benefit specified in the articles of incorporation or bylaws or otherwise adopted by the board of directors; and (ii) the requirements of any third-party standard then in effect for the corporation.

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§31F-4-403. Right of action.

(a) The duties of directors and officers under this chapter, the obligation of a benefit corporation to prepare and make available the annual benefit report required under section five hundred one, article five of this chapter and the general and any specific public benefit purpose of a benefit corporation may be enforced only in a benefit enforcement proceeding. No person may bring an action or assert a claim against a benefit corporation or its directors or officers with respect to the duties of directors and officers under this article and the general and any specific public benefit purpose of the benefit corporation except in a benefit enforcement proceeding.

(b) A benefit enforcement proceeding may be commenced or maintained only:

(1) Directly by the benefit corporation; or

(2) Derivatively by:

(A) A shareholder of the benefit corporation;

(B) A director of the benefit corporation; or

(C) Other persons as specified in the articles of incorporation or bylaws of the benefit corporation.

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