WEST VIRGINIA CODE CHAPTER 31F

WV Legislature

§31F-1-101. Short title.

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

WV Legislature

§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

WVLegislature

(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.

WV Legislature

§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.

WV Legislature

§31F-2-201. Formation of benefit corporations.

A benefit corporation shall be formed in accordance with article two, chapter thirty-one-d of this code, and its articles as initially filed with the Secretary of State or as amended, shall state that it is a benefit corporation.

WV Legislature

§31F-2-202. Election of status after formation.

A corporation that was not formed as a benefit corporation may become a benefit corporation by amending its articles so that they contain, in addition to matters required by section two hundred two, article two, chapter thirty-one-d of this code, a statement that the corporation is a benefit corporation. Any such amendment to the articles of incorporation shall be adopted in accordance with the procedures set forth in article ten, chapter thirty-one-d of this code.

WV Legislature

§31F-2-203. Termination of status.

A benefit corporation may terminate its status as such and cease to be subject to this chapter by amending its articles to delete the provision required by section two hundred one of this article to be set forth in the articles of incorporation, which amendment shall be adopted in accordance with the procedures set forth in article ten, chapter thirty-one-d of this code.

WV Legislature

§31F-3-301. Corporate purposes.

(a) A benefit corporation shall have as one of its purposes the purpose of creating a general public benefit. The articles of incorporation of a benefit corporation may identify one or more specific public benefits that it is the purpose of the benefit corporation to create. A specific public benefit may also be specified in the bylaws or otherwise adopted by the board of directors. This purpose is in addition to its purpose under section three hundred two, article three, chapter thirty-one-d of this code.

(b) The creation of a general public benefit and one or more specific public benefits, if any, under subsection (a) of this section is in the best interests of the benefit corporation.

(c) A benefit corporation may amend its articles of incorporation to add, amend or delete the identification of a specific public benefit that it is the purpose of the benefit corporation to create, which amendment shall be adopted in accordance with the procedures set forth in article ten, chapter thirty-one-d of this code.

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.

WV Legislature

(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.

WV Legislature

§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.

WV Legislature

§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.

WV Legislature

§31F-5-501. Annual benefit report.

(a) A benefit corporation shall prepare an annual benefit report that includes all of the following:

(1) A narrative description of:

(A) The ways in which the benefit corporation pursued the general public benefit during the year and the extent to which the general public benefit was created; and

(B) Both:

(i) The ways in which the benefit corporation pursued any specific public benefit that the articles of incorporation or bylaws, or other action taken by the board of directors, state it is the purpose of the benefit corporation to create; and

(ii) The extent to which that specific public benefit was created; and

(C) Any circumstances that have hindered the creation by the benefit corporation of the general or any specific public benefit;

(2) An assessment of the social and environmental performance of the benefit corporation. The assessment shall be:

(A) Prepared in accordance with a third-party standard specified in the articles of incorporation, the bylaws, or otherwise adopted by the board of directors and applied consistently with any application of that standard in prior benefit reports; or

(B) Accompanied by an explanation of the reasons for any inconsistent application; and

(3) Any other information or disclosures that may be required under any third-party standard adopted by the directors of the benefit corporation.

(b) The benefit report shall be made available annually to each shareholder of the benefit corporation:

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

(2) At the same time that the benefit corporation delivers any other annual report to its shareholders.

(c) A benefit corporation shall post its most recent benefit report on a publicly accessible portion of its Internet website, if any. If a benefit corporation does not have an Internet website, it shall make a written or electronic copy of its most recent benefit report available upon written request from any person. A benefit corporation is not required to publically

WV Legislature

disclose to persons other than its shareholders any proprietary, confidential, or individual compensation information contained in its benefit report to the extent that any third-party standard adopted by the directors of the benefit corporation permits the omission of such information from public disclosure.

WV Legislature