



2017 SENATE BILL 298

June 15, 2017 - Introduced by Senators TESTIN, JOHNSON, DARLING, RINGHAND, WIRCH and HARS DORF, cosponsored by Representatives SKOWRONSKI, HESSELBEIN, GENRICH, HORLACHER, OHNSTAD, CROWLEY, SUBECK, C. TAYLOR, KULP, QUINN, SANFELIPPO, SPREITZER, HINTZ and KOOYENGA. Referred to Committee on Economic Development, Commerce and Local Government.

- 1 **AN ACT** *to create* chapter 204 of the statutes; **relating to:** creation of a category
2 of business corporation identified as a benefit corporation.

Analysis by the Legislative Reference Bureau

This bill creates a category of business corporation identified as a benefit corporation. A benefit corporation may also fall within other categories of business corporations, such as service corporations or statutory close corporations.

Under the bill, a benefit corporation may be created by including in the articles of incorporation at the time of formation, or by later amending the articles of incorporation to include, a statement that the corporation is a benefit corporation. A business corporation's status as a benefit corporation may be terminated by amending the articles of incorporation to delete this statement.

A benefit corporation must have a purpose of creating general public benefit and the benefit corporation may also specify in its articles of incorporation additional specific public benefit purposes. A "general public benefit" is defined as a material positive impact on society and the environment by the operations of a benefit corporation taken as a whole, through activities that promote some combination of specific public benefits. Examples of "specific public benefit" include all of the following: 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 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) the accomplishment of any other particular benefit for society or the environment.

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The board of directors of a benefit corporation must include one director designated as the “benefit director.” Notwithstanding provisions of the business corporation law, the board of directors, committees of the board, and individual directors of a benefit corporation, in considering the best interests of the benefit corporation, must consider the effects of any action or inaction on all of the following: 1) the shareholders of the benefit corporation; 2) the employees and workforce of the benefit corporation and its subsidiaries and suppliers; 3) the interests of customers as beneficiaries of the general public benefit or specific public benefit purposes of the benefit corporation; 4) community and societal factors, including those of any community in which offices or facilities of the benefit corporation or its subsidiaries or suppliers are located; 5) the local and global environment; 6) 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 7) the ability of the benefit corporation to accomplish its general public benefit purpose and any specific public benefit purpose. In addition, the board, committees, and individual directors may consider the resources, intent, and conduct of any person seeking to acquire control of the benefit corporation and any other pertinent factors or the interests of any other group.

A benefit corporation may also designate a “benefit officer,” who has the powers and duties relating to the benefit corporation’s purpose of creating general public benefit or specific public benefit. Each officer of a benefit corporation must consider the same interests and factors applicable for directors, identified as items 1 to 7 immediately above, when the officer has discretion to act with respect to a matter that may have a material effect on the creation of general or specific public benefit by the benefit corporation.

A benefit corporation must annually provide its shareholders with a statement as to the benefit corporation’s promotion of general public benefit or any specific public benefit identified in its articles of incorporation, which statement includes specified information.

The bill also includes certain limitations on imposing personal liability on directors and officers of benefit corporations.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

1 **SECTION 1.** Chapter 204 of the statutes is created to read:

2 **CHAPTER 204**

3 **BENEFIT CORPORATIONS**

4 **SUBCHAPTER I**

5 **GENERAL PROVISIONS**

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1 **204.101 Application and effect of chapter. (1) GENERAL RULE.** This chapter
2 shall be applicable to all benefit corporations.

3 **(2) APPLICATION OF BUSINESS CORPORATION LAW GENERALLY.** The existence of a
4 provision of this chapter shall not of itself create an implication that a contrary or
5 different rule of law is applicable to a business corporation that is not a benefit
6 corporation. This chapter shall not affect any statute or rule that is applicable to a
7 business corporation that is not a benefit corporation.

8 **(3) LAWS APPLICABLE TO BENEFIT CORPORATIONS.** Except as otherwise provided in
9 this chapter, ch. 180 shall be generally applicable to all benefit corporations. The
10 specific provisions of this chapter shall control over the general provisions of ch. 180.
11 A benefit corporation may be simultaneously subject to this chapter and provisions
12 of other chapters.

13 **(4) ORGANIC RECORDS.** A provision of the articles or bylaws of a benefit
14 corporation may not relax, be inconsistent with, or supersede a provision of this
15 chapter.

16 **204.102 Definitions.** Unless the context clearly indicates otherwise, in this
17 chapter:

18 **(1) “Benefit corporation”** means a business corporation that has elected to
19 become subject to this chapter and whose status as a benefit corporation has not been
20 terminated under s. 204.105.

21 **(2) “Benefit director”** means the person designated as the benefit director of a
22 benefit corporation as provided in s. 204.302.

23 **(3) “Benefit officer”** means the officer of a benefit corporation, if any, designated
24 as the benefit officer as provided in s. 204.304.

25 **(4) “Entity”** has the meaning given in s. 180.0103 (8).

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1 (5) “General public benefit” means a material positive impact on society and
2 the environment by the operations of a benefit corporation taken as a whole, through
3 activities that promote some combination of specific public benefits.

4 (6) “Service corporation” has the meaning given in s. 180.1901 (2).

5 (7) “Specific public benefit” includes all of the following:

6 (a) Providing low-income or underserved individuals or communities with
7 beneficial products or services.

8 (b) Promoting economic opportunity for individuals or communities beyond the
9 creation of jobs in the normal course of business.

10 (c) Preserving the environment.

11 (d) Improving human health.

12 (e) Promoting the arts, sciences, or advancement of knowledge.

13 (f) Increasing the flow of capital to entities with a public benefit purpose.

14 (g) The accomplishment of any other particular benefit for society or the
15 environment.

16 **204.103 Formation of benefit corporations.** A benefit corporation shall be
17 formed in accordance with ch. 180, except that its articles shall also state that it is
18 a benefit corporation.

19 **204.104 Election of an existing business corporation to become a**
20 **benefit corporation.** (1) AMENDMENT. An existing business corporation may
21 become a benefit corporation under this chapter by amending its articles so that they
22 contain, in addition to the requirements of s. 180.0202, a statement that the
23 corporation is a benefit corporation.

24 (2) FUNDAMENTAL TRANSACTIONS. If a corporation that is not a benefit
25 corporation is a party to a merger, consolidation, or division or is the exchanging

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1 corporation in a share exchange, and the surviving, new, or any resulting corporation
2 in the merger, consolidation, division, or share exchange is to be a benefit
3 corporation, then the plan of merger, consolidation, division, or share exchange shall
4 not be effective unless the articles of the surviving, new, or resulting corporation
5 contain a statement that the corporation is a benefit corporation.

6 **204.105 Termination of benefit corporation status.** A benefit corporation
7 may terminate its status as such and cease to be subject to this chapter by amending
8 its articles to delete the provision required by ss. 204.103 and 204.104 to be stated
9 in the articles of a benefit corporation.

10 SUBCHAPTER II

11 CORPORATE PURPOSES

12 **204.201 Corporate purposes. (1) GENERAL PUBLIC BENEFIT PURPOSE.** A
13 benefit corporation shall have a purpose of creating general public benefit. This
14 purpose is in addition to its purpose under s. 180.0301 and any specific purpose set
15 forth in its articles under sub. (2).

16 **(2) OPTIONAL SPECIFIC PUBLIC BENEFIT PURPOSE.** The articles of a benefit
17 corporation may identify one or more specific public benefits that it is the purpose
18 of the benefit corporation to create in addition to its purposes under s. 180.0301 and
19 sub. (1). The identification of a specific public benefit under this subsection does not
20 limit the obligation of a benefit corporation to create general public benefit.

21 **(3) EFFECT OF PURPOSES.** The creation of general public benefit and specific
22 public benefit as provided in subs. (1) and (2) shall be considered to be in the best
23 interests of the benefit corporation.

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1 possibility that these interests may be best served by the continued corporate
2 independence of the benefit corporation.

3 7. The ability of the benefit corporation to accomplish its general public benefit
4 purpose and any specific public benefit purpose.

5 (b) Notwithstanding ss. 180.0302 (15) and 180.0827, in discharging the duties
6 of their respective positions, the board of directors, committees of the board, and
7 individual directors of a benefit corporation, in considering the best interests of the
8 benefit corporation, may consider any of the following:

9 1. The resources, intent, and conduct of any person seeking to acquire control
10 of the corporation.

11 2. Any other pertinent factors or the interests of any other group that is deemed
12 appropriate.

13 (c) Under pars. (a) and (b), the board of directors, committees of the board, and
14 individual directors of a benefit corporation are not required to give priority to the
15 interests of any particular person or group referred to in par. (a) or (b) over the
16 interests of any other person or group unless the benefit corporation has stated in
17 its articles its intention to give such priority.

18 **(2) COORDINATION WITH OTHER PROVISIONS OF LAW.** The consideration of interests
19 and factors in the manner required by sub. (1) does not constitute a violation of s.
20 180.0801 or any other provision of ch. 180 and is in addition to the ability of directors
21 to consider interests and factors as provided in s. 180.0827.

22 **(3) EXONERATION FROM PERSONAL LIABILITY.** A director of a benefit corporation
23 is not personally liable, as such, for monetary damages for any of the following:

24 (a) Any action taken as a director if the director performed the duties of his or
25 her office in compliance with this section and the provisions of ch. 180.

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1 (b) Failure of the benefit corporation to pursue or create general public benefit
2 or specific public benefit.

3 (4) LIMITATION ON STANDING. A director does not have a duty to a person that
4 is a beneficiary of the general public benefit purpose or a specific public benefit
5 purpose of a benefit corporation arising from the status of the person as a beneficiary.

6 **204.302 Benefit director. (1) GENERAL RULE.** The board of directors of a
7 benefit corporation shall include one director who shall be designated the “benefit
8 director” and shall have, in addition to all of the powers, duties, rights, and
9 immunities of the other directors of the benefit corporation, the powers, duties,
10 rights, and immunities provided in this section.

11 (2) ELECTION, REMOVAL, AND QUALIFICATIONS. The benefit director shall be
12 elected, and may be removed, in the manner provided by subch. VIII of ch. 180. The
13 benefit director may serve as the benefit officer at the same time as serving as the
14 benefit director. The articles or bylaws of a benefit corporation may prescribe
15 additional qualifications of the benefit director not inconsistent with this subsection.

16 (3) STATUS OF ACTIONS. The acts of an individual in the capacity of a benefit
17 director shall constitute for all purposes acts of that individual in the capacity of a
18 director of the benefit corporation.

19 (4) ALTERNATIVE GOVERNANCE ARRANGEMENTS. If a benefit corporation has
20 elected under s. 180.1821 not to have a board of directors, then the bylaws of the
21 benefit corporation must provide that the shareholders who perform the duties of a
22 board of directors shall include a person with the powers, duties, rights, and
23 immunities of a benefit director.

24 (5) EXONERATION FROM PERSONAL LIABILITY. Notwithstanding s. 180.0828 and
25 any provision of a benefit corporation’s bylaws, a benefit director shall not be

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1 personally liable for any act or omission in the capacity of a benefit director unless
2 the act or omission constitutes self-dealing, willful misconduct, or a knowing
3 violation of law.

4 **204.303 Standard of conduct for officers. (1) GENERAL RULE.** Each officer
5 of a benefit corporation shall consider the interests and factors described in s.
6 204.301 (1) in the manner provided in that subsection when the officer has discretion
7 to act with respect to a matter and it reasonably appears to the officer that the matter
8 may have a material effect on the creation of general or specific public benefit by the
9 benefit corporation or on any of the interests or factors referred to in s. 204.301 (1).

10 **(2) COORDINATION WITH OTHER PROVISIONS OF LAW.** The consideration of interests
11 and factors in the manner described in sub. (1) shall not constitute a violation of s.
12 180.0841 or any other provision of ch. 180.

13 **(3) EXONERATION FROM PERSONAL LIABILITY.** An officer of a benefit corporation
14 is not personally liable, as such, for monetary damages for any action taken as an
15 officer if the officer performed the duties of the position in compliance with this
16 section and the provisions of ch. 180.

17 **204.304 Benefit officer. (1) DESIGNATION.** A benefit corporation may have
18 an officer designated the “benefit officer.”

19 **(2) FUNCTIONS.** A benefit officer shall have the powers and duties, as provided
20 in the bylaws and as determined by the board of directors, relating to the benefit
21 corporation’s purpose of creating general public benefit or specific public benefit.

22 SUBCHAPTER IV

23 TRANSPARENCY

24 **204.401 Annual benefit statement. (1)** A benefit corporation shall annually
25 provide its shareholders with a statement as to the benefit corporation’s promotion

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1 of general public benefit or any specific public benefit identified in its articles. The
2 statement shall include all of the following:

3 (a) The objectives the board of directors has established to promote general
4 public benefit or any specific public benefit.

5 (b) The standards the board of directors has adopted to measure the
6 corporation's progress in promoting general public benefit or any specific public
7 benefit.

8 (c) Objective, factual information based on the standards under par. (b)
9 regarding the benefit corporation's success in meeting the objectives under par. (a)
10 and in promoting public benefits and interests.

11 (d) An assessment of the corporation's success in meeting the objectives under
12 par. (a) and in promoting general public benefit or any specific public benefit.

13 **(2)** The articles or bylaws of a benefit corporation may require that the benefit
14 corporation do any of the following:

15 (a) Make the statement described in sub. (1) available to the public.

16 (b) Use a 3rd-party standard in connection with or attain a periodic 3rd-party
17 certification addressing the corporation's promotion of general public benefit or any
18 specific public benefit identified in its articles.

19 **SECTION 2. Effective date.**

20 (1) This act takes effect on the 90th day after the day of publication.

21 (END)