



State of Wisconsin  
2017 - 2018 LEGISLATURE

LRB-3657/1  
CMH:amn

## 2017 SENATE BILL 298

1     **AN ACT** *to create* 180.1302 (3m) and chapter 204 of the statutes; **relating to:**  
2             creation of a category of business corporation identified as a benefit  
3             corporation.

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*Analysis by the Legislative Reference Bureau*

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

4             **SECTION 1g.** 180.1302 (3m) of the statutes is created to read:  
5             180.1302 (**3m**) Notwithstanding any other provision of this section, if the  
6             issuer corporation has become a benefit corporation under s. 204.104 (1) or (2), a  
7             shareholder of the benefit corporation may dissent from the amendment of the  
8             articles or the fundamental transaction to become a benefit corporation and obtain  
9             payment of the fair value of his or her shares, as provided in s. 204.104 (3). “Fair  
10            value” as used in this subsection means the value of the shares immediately before

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1 the effectuation of the corporate action to which the dissenter objects, excluding any  
2 appreciation or depreciation in anticipation of the corporate action unless exclusion  
3 would be inequitable and not reduced by lack of marketability or minority discounts.

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

5 **CHAPTER 204**

6 **BENEFIT CORPORATIONS**

7 **SUBCHAPTER I**

8 **GENERAL PROVISIONS**

9 **204.101 Application and effect of chapter. (1) GENERAL RULE.** This chapter  
10 shall be applicable to all benefit corporations.

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

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

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

24 **204.102 Definitions.** Unless the context clearly indicates otherwise, in this  
25 chapter:

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

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

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

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

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

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

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

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

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

18           (c) Preserving the environment.

19           (d) Improving human health.

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

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

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

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1           **204.103 Formation of benefit corporations.** A benefit corporation shall be  
2 formed in accordance with ch. 180, except that its articles shall also state that it is  
3 a benefit corporation.

4           **204.104 Election of an existing business corporation to become a**  
5 **benefit corporation.** (1) AMENDMENT. An existing business corporation may  
6 become a benefit corporation under this chapter by amending its articles so that they  
7 contain, in addition to the requirements of s. 180.0202, a statement that the  
8 corporation is a benefit corporation.

9           (2) FUNDAMENTAL TRANSACTIONS. If a corporation that is not a benefit  
10 corporation is a party to a merger, consolidation, or division or is the exchanging  
11 corporation in a share exchange, and the surviving, new, or any resulting corporation  
12 in the merger, consolidation, division, or share exchange is to be a benefit  
13 corporation, then the plan of merger, consolidation, division, or share exchange shall  
14 not be effective unless the articles of the surviving, new, or resulting corporation  
15 contain a statement that the corporation is a benefit corporation.

16           (3) SHAREHOLDER VOTE. Notwithstanding any provision to the contrary in the  
17 corporation's articles of incorporation, bylaws, or shareholder agreements, the  
18 amendment of a corporation's articles or its entry into a fundamental transaction  
19 under this chapter requires approval by the affirmative vote of the holders of at least  
20 two-thirds of the shares entitled to vote on the matter. If the amendment or  
21 fundamental transaction is approved, a shareholder who did not vote in favor of the  
22 amendment or fundamental transaction is entitled to assert dissenters' rights under  
23 ss. 180.1301 to 180.1331.

24           **204.105 Termination of benefit corporation status.** A benefit corporation  
25 may terminate its status as such and cease to be subject to this chapter by amending

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1 its articles to delete the provision required by ss. 204.103 and 204.104 to be stated  
2 in the articles of a benefit corporation. Once terminated, the corporation's status as  
3 a benefit corporation may not be revived for a period of one year from the most recent  
4 date of termination of the corporation's status as a benefit corporation.

**SUBCHAPTER II****CORPORATE PURPOSES**

7 **204.201 Corporate purposes. (1) GENERAL PUBLIC BENEFIT PURPOSE.** A  
8 benefit corporation shall have a purpose of creating general public benefit. This  
9 purpose is in addition to its purpose under s. 180.0301 and any specific purpose set  
10 forth in its articles under sub. (2).

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

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

19 **(4) AMENDMENT.** A benefit corporation may amend its articles to add, amend,  
20 or delete the identification of a specific public benefit that it is the purpose of the  
21 benefit corporation to create.

22 **(5) SERVICE CORPORATIONS.** A service corporation that is a benefit corporation  
23 is not limited by ss. 180.1903 and 180.1905 in its authority to create general public  
24 benefit or a specific public benefit.

**SUBCHAPTER III**

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## ACCOUNTABILITY

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2           **204.301 Standard of conduct for directors.** (1) CONSIDERATION OF  
3 INTERESTS. (a) Notwithstanding ss. 180.0302 (15) and 180.0827, in discharging the  
4 duties of their respective positions, the board of directors, committees of the board,  
5 and individual directors of a benefit corporation, in considering the best interests of  
6 the benefit corporation, shall consider the effects of any action or inaction on all of  
7 the following:

8           1. The shareholders of the benefit corporation.

9           2. The employees and workforce of the benefit corporation and its subsidiaries  
10 and suppliers.

11           3. The interests of customers as beneficiaries of the general public benefit or  
12 specific public benefit purposes of the benefit corporation.

13           4. Community and societal factors, including those of any community in which  
14 offices or facilities of the benefit corporation or its subsidiaries or suppliers are  
15 located.

16           5. The local and global environment.

17           6. The short-term and long-term interests of the benefit corporation, including  
18 benefits that may accrue to the benefit corporation from its long-term plans and the  
19 possibility that these interests may be best served by the continued corporate  
20 independence of the benefit corporation.

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

23           (b) Notwithstanding ss. 180.0302 (15) and 180.0827, in discharging the duties  
24 of their respective positions, the board of directors, committees of the board, and

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1 individual directors of a benefit corporation, in considering the best interests of the  
2 benefit corporation, may consider any of the following:

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

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

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

12 **(2) COORDINATION WITH OTHER PROVISIONS OF LAW.** The consideration of interests  
13 and factors in the manner required by sub. (1) does not constitute a violation of s.  
14 180.0801 or any other provision of ch. 180 and is in addition to the ability of directors  
15 to consider interests and factors as provided in s. 180.0827.

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

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

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

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

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

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

11           **(3) STATUS OF ACTIONS.** The acts of an individual in the capacity of a benefit  
12 director shall constitute for all purposes acts of that individual in the capacity of a  
13 director of the benefit corporation.

14           **(4) ALTERNATIVE GOVERNANCE ARRANGEMENTS.** If a benefit corporation has  
15 elected under s. 180.1821 not to have a board of directors, then the bylaws of the  
16 benefit corporation must provide that the shareholders who perform the duties of a  
17 board of directors shall include a person with the powers, duties, rights, and  
18 immunities of a benefit director.

19           **(5) EXONERATION FROM PERSONAL LIABILITY.** Notwithstanding s. 180.0828 and  
20 any provision of a benefit corporation’s bylaws, a benefit director shall not be  
21 personally liable for any act or omission in the capacity of a benefit director unless  
22 the act or omission constitutes self-dealing, willful misconduct, or a knowing  
23 violation of law.

24           **204.303 Standard of conduct for officers. (1) GENERAL RULE.** Each officer  
25 of a benefit corporation shall consider the interests and factors described in s.



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1 204.301 (1) in the manner provided in that subsection when the officer has discretion  
2 to act with respect to a matter and it reasonably appears to the officer that the matter  
3 may have a material effect on the creation of general or specific public benefit by the  
4 benefit corporation or on any of the interests or factors referred to in s. 204.301 (1).

5 (2) COORDINATION WITH OTHER PROVISIONS OF LAW. The consideration of interests  
6 and factors in the manner described in sub. (1) shall not constitute a violation of s.  
7 180.0841 or any other provision of ch. 180.

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

12 **204.304 Benefit officer. (1) DESIGNATION.** A benefit corporation may have  
13 an officer designated the “benefit officer.”

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

17 SUBCHAPTER IV

18 TRANSPARENCY

19 **204.401 Annual benefit statement. (1)** A benefit corporation shall annually  
20 provide its shareholders, within 30 days of the end of the benefit corporation’s fiscal  
21 year, with a statement as to the benefit corporation’s promotion of general public  
22 benefit or any specific public benefit identified in its articles. The statement shall  
23 include all of the following:

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

