

State of Wisconsin



2017 Senate Bill 298

Date of enactment: **November 27, 2017**

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2017 WISCONSIN ACT 77

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

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

SECTION 1g. 180.1302 (3m) of the statutes is created to read:

180.1302 (3m) Notwithstanding any other provision of this section, if the issuer corporation has become a benefit corporation under s. 204.104 (1) or (2), a shareholder of the benefit corporation may dissent from the amendment of the articles or the fundamental transaction to become a benefit corporation and obtain payment of the fair value of his or her shares, as provided in s. 204.104 (3). "Fair value" as used in this subsection means the value of the shares immediately before the effectuation of the corporate action to which the dissenter objects, excluding any appreciation or depreciation in anticipation of the corporate action unless exclusion would be inequitable and not reduced by lack of marketability or minority discounts.

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

CHAPTER 204
BENEFIT CORPORATIONS
SUBCHAPTER I
GENERAL PROVISIONS

204.101 Application and effect of chapter. (1)

GENERAL RULE. This chapter shall be applicable to all benefit corporations.

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

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

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

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

(1) "Benefit corporation" means a business corporation that has elected to become subject to this chapter and

* Section 991.11, WISCONSIN STATUTES: Effective date of acts. "Every act and every portion of an act enacted by the legislature over the governor's partial veto which does not expressly prescribe the time when it takes effect shall take effect on the day after its date of publication."

whose status as a benefit corporation has not been terminated under s. 204.105.

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

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

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

(5) “General public benefit” means 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.

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

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

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

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

(c) Preserving the environment.

(d) Improving human health.

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

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

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

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

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

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

(3) SHAREHOLDER VOTE. Notwithstanding any provision to the contrary in the corporation’s articles of incorporation, bylaws, or shareholder agreements, the amendment of a corporation’s articles or its entry into a

fundamental transaction under this chapter requires approval by the affirmative vote of the holders of at least two-thirds of the shares entitled to vote on the matter. If the amendment or fundamental transaction is approved, a shareholder who did not vote in favor of the amendment or fundamental transaction is entitled to assert dissenters’ rights under ss. 180.1301 to 180.1331.

204.105 Termination of benefit corporation 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 ss. 204.103 and 204.104 to be stated in the articles of a benefit corporation. Once terminated, the corporation’s status as a benefit corporation may not be revived for a period of one year from the most recent date of termination of the corporation’s status as a benefit corporation.

SUBCHAPTER II CORPORATE PURPOSES

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

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

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

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

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

SUBCHAPTER III ACCOUNTABILITY

204.301 Standard of conduct for directors. (1) CONSIDERATION OF INTERESTS. (a) Notwithstanding ss. 180.0302 (15) and 180.0827, in discharging the duties of their respective positions, the board of directors, committees of the board, and individual directors of a benefit corporation, in considering the best interests of the benefit corporation, shall 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 corporate independence of the benefit corporation.

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

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

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

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

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

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

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

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

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

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

204.302 Benefit director. (1) **GENERAL RULE.** The board of directors of a benefit corporation shall include one director who shall be designated the “benefit direc-

tor” and shall have, in addition to all of the powers, duties, rights, and immunities of the other directors of the benefit corporation, the powers, duties, rights, and immunities provided in this section.

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

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

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

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

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

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

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

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

(2) **FUNCTIONS.** A benefit officer shall have the powers and duties, as provided in the bylaws and as determined by the board of directors, relating to the benefit

corporation's purpose of creating general public benefit or specific public benefit.

SUBCHAPTER IV
TRANSPARENCY

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

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

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

(c) Objective, factual information based on the stan-

dards under par. (b) regarding the benefit corporation's success in meeting the objectives under par. (a) and in promoting public benefits and interests.

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

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

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

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

SECTION 2. Effective date.

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