

AN ACT

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Codification  
District of Columbia  
Official Code  
2001 Edition

Summer 2013

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

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To amend Title 29 of the District of Columbia Official Code (Business Organizations) to provide for the incorporation of benefit corporations, for the rights, duties and obligations of benefit corporations and their shareholders, directors, and officers, and to impose powers and duties on the Mayor.

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this act may be cited as the "Benefit Corporation Act of 2012".

Sec. 2. Title 29 of the District of Columbia Official Code is amended as follows:

(a) The table of contents is amended by adding a new chapter designation to read as follows:

“13. Benefit Corporations.”.

(b) A new Chapter 13 is added to read as follows:

“CHAPTER 13. BENEFIT CORPORATIONS.

“Subchapter I. Preliminary Provisions.

Section

“29-1301.01. Short title.

“29-1301.02. Definitions.

“29-1301.03. Applicability; construction.

“29-1301.04. Formation of benefit corporations.

“29-1301.05. Election of status.

“29-1301.06. Termination of status.

“Subchapter II. Corporate Purposes.

“29-1302.01. Corporate purposes.

“Subchapter III. Accountability.

“29-1303.01. Standard of conduct for directors.

“29-1303.02. Benefit director.

“29-1303.03. Standard of conduct for officers.

“29-1303.04. Benefit officer.

“29-1303.05. Right of action.

“Subchapter IV. Transparency.

“29-1304.01. Annual benefit report.

“Subchapter I. Preliminary Provisions.

“§ 29-1301.01. Short title.

“This chapter may be cited as the "Benefit Corporation Act of 2012".

“§ 29-1301.02. Definitions.

“(a) For the purposes of this chapter, the term:

“(1) “Benefit corporation” means a business corporation:

“(A) That has elected to become subject to this chapter; and

“(B) The status of which as a benefit corporation has not been terminated

under § 29-1301.06.

“(2) “Benefit director” means either:

“(A) The director designated as the benefit director of a benefit corporation

under § 29-1303.02; or

“(B) A person with one or more of the powers, duties, or rights of a benefit director to the extent provided in the bylaws under § 29-1303.02.

“(3) “Benefit enforcement proceeding” means any claim or action for:

“(A) Failure of a benefit corporation to pursue or create general public benefit or a specific public benefit purpose set forth in its articles of incorporation; or

“(B) A violation of any obligation, duty, or standard of conduct under this chapter.

“(4) “Benefit officer” means the individual designated as the benefit officer of a benefit corporation under § 29-1303.04.

“(5) “General public benefit” means the material positive impact that the business and operations of a benefit corporation has on society and the environment, taken as a whole, assessed against a third-party standard.

“(6) “Independent”, subject to subsection (b) of this section, means having no material relationship with a benefit corporation or a subsidiary of the benefit corporation. A person who serves as a benefit director or benefit officer is not independent by virtue of such service. A material relationship between a person and a benefit corporation or any of its subsidiaries will be conclusively presumed to exist if any of the following apply:

“(A) The person is, or has been within the last 3 years, an employee other than a benefit officer of the benefit corporation or a subsidiary of the benefit corporation.

“(B) An immediate family member of the person is, or has been within the last 3 years, an executive officer other than a benefit officer of the benefit corporation or its subsidiary.

“(C) There is beneficial or record ownership of 5% or more of the outstanding shares of the benefit corporation by:

“(i) The person; or

“(ii) An entity of which the person is a director, an officer, or a manager or in which the person owns beneficially or of record 5% or more of the outstanding

equity interests.

“(7) “Minimum status vote” means:

“(A) In the case of a business corporation, in addition to any other required approval or vote, the satisfaction of the following conditions:

“(i) The shareholders of every class or series shall be entitled to vote as a separate voting group on the corporate action regardless of a limitation stated in the articles of incorporation or bylaws on the voting rights of any class or series.

“(ii) The corporate action must be approved by vote of the shareholders of each voting group entitled to cast at least 2/3 of the votes that all shareholders of the voting group are entitled to cast on the action.

“(B) In the case of an entity other than a business corporation, in addition to any other required approval, vote, or consent, the satisfaction of the following conditions:

“(i) The holders of each class or series of equity interest in the entity that are entitled to receive a distribution of any kind from the entity shall be entitled as a separate voting group to vote on or consent to the action regardless of any otherwise applicable limitation on the voting or consent rights of any class or series.

“(ii) The action must be approved by vote or consent of each voting group described in sub-subparagraph (i) of this subparagraph entitled to cast at least 2/3 of the votes or consents that all the members of the group are entitled to cast on the action.

“(8) “Specific public benefit” includes:

“(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;

and

“(G) The accomplishment of any other particular benefit on society or the environment.

“(9) “Subsidiary” means, subject to subsection (b) of this section, in relation to a person, an entity in which the person owns beneficially or of record 50% or more of the outstanding equity interests.

“(10) “Third-party standard” means a recognized standard for defining, reporting, and assessing corporate social and environmental performance that is:

“(A) Comprehensive in that it assesses the effect of the business and its operations upon the interests listed in § 29-1303.01(a)(1)(B), (C), (D), and (E);

“(B) Developed by an organization that is independent of the benefit corporation and satisfies the following requirements:

“(i) Not more than 1/3 of the members of the governing body of the organization are representatives of any of the following:

“(I) An association of businesses operating in a specific industry the performance of whose members is measured by the third-party standard;

“(II) Businesses from a specific industry or an association of businesses in that industry; or

“(III) Businesses whose performance is assessed against the standard.

“(ii) The organization is not materially financed by an association or business described in sub-subparagraph (i) of this subparagraph;

“(C) Credible because the standard is developed by a person that both:

“(i) Has access to necessary expertise to assess overall corporate social and environmental performance; and

“(ii) Uses a balanced multi-stakeholder approach, including a public comment period of at least 30 days to develop the standard; and

“(D) Transparent because the following information is publicly available:

“(i) About the standard:

“(I) The criteria considered when measuring the overall social and environmental performance of a business; and

“(II) The relative weightings of those criteria; and

“(ii) About the development and revision of the standard:

“(I) The identity of the directors, officers, material owners, and the governing body of the organization that developed and controls revisions to the standard;

“(II) The process by which revisions to the standard and changes to the membership of the governing body are made; and

“(III) An accounting of the sources of financial support for the organization, with sufficient detail to disclose any relationships that could reasonably be considered to present a potential conflict of interest.

“(b) For purposes of the definitions of the terms “independent” and “subsidiary” in subsection (a) of this section, a percentage of ownership in an entity shall be calculated as if all outstanding rights to acquire equity interests in the entity have been exercised.

“§ 29-1301.03. Applicability; construction.

“(a) This chapter shall be applicable to all benefit corporations.

“(b) This chapter shall not affect a statute or rule of law that is applicable to a business corporation that is not a benefit corporation, and shall not in and of itself create an implication that a contrary or different rule is applicable to a business corporation and not a benefit corporation.

“(c) Except as otherwise provided in this chapter, Chapters 1, 2, and 3 of this title shall apply to a benefit corporation organized under this chapter. A benefit corporation may simultaneously be subject to this chapter and one or more other chapters of this title.

“(d) A provision of the articles of incorporation or bylaws of a benefit corporation may not relax, be inconsistent with, or supersede a provision of this chapter.

“§ 29-1301.04. Formation of benefit corporations.

“A benefit corporation must be formed in accordance with Chapter 3 of this title, but its articles of incorporation must also state that it is a benefit corporation.

“§ 29-1301.05. Election of status.

“(a) An existing business corporation may become a benefit corporation under this chapter by amending its articles of incorporation so that they contain, in addition to the requirements of § 29-308.01, a statement that the corporation is a benefit corporation. To be effective, the amendment must be adopted by at least the minimum status vote.

“(b)(1) This subsection applies if all of the following apply:

“(A) An entity that is not a benefit corporation is:

“(i) A party to a merger or consolidation; or

“(ii) The exchanging entity in a share exchange; and

“(B) The surviving, new, or resulting entity in the merger, consolidation, or share exchange is to be a benefit corporation.

“(2) To be effective, a plan of merger, consolidation or share exchange subject to this subsection must be adopted by at least the minimum status vote.

“§ 29-1301.06. Termination of status.

“(a) A benefit corporation may terminate its status as a benefit corporation and cease to be subject to this chapter by amending its articles of incorporation and deleting the provision required by § 29-1301.05. To be effective, the amendment must be adopted by at least the minimum status vote.

“(b) If a plan would have the effect of terminating the status of a business corporation as a benefit corporation, to be effective, the plan must be adopted by at least the minimum status vote. Any sale, lease, exchange, or other disposition of all or substantially all of the assets of a benefit corporation, unless the transaction is in the usual and regular course of business, shall not be effective unless the transaction is approved by at least the minimum status vote.

“Subchapter II. Corporate Purposes.

“§ 29-1302.01. Corporate purposes.

“(a) A benefit corporation shall have a purpose of creating general public benefit. This purpose is in addition to its purpose under § 29-303.01.

“(b) 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 in addition to its purposes under § 29-303.01 and subsection (a) of this section. The identification of a specific public benefit under this subsection does not limit the obligation of a benefit corporation under subsection (a) of this section.

“(c) The creation of general public benefit and specific public benefit under subsections (a) and (b) of this section is in the best interests of the benefit corporation.

“(d) A benefit corporation may amend its articles of incorporation to add, amend, or

delete the identification of a specific public benefit for that benefit corporation. To be effective, the amendment must be adopted by at least the minimum status vote.

“(e) A professional corporation that is a benefit corporation does not violate § 29-505 by having its purpose be to create general public benefit or a specific public benefit.

“Subchapter III. Accountability.

“§ 29-1303.01. Standard of conduct for directors.

“(a) 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 action upon:

“(A) The shareholders of the benefit corporation;

“(B) The employees and work force of the benefit corporation, its subsidiaries, and its suppliers;

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

“(D) Community and societal factors, including those of each community in which offices or facilities of the benefit corporation, its subsidiaries, or its 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 may be best served by the continued independence of the benefit corporation; and

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

“(2) May consider other pertinent factors or the interests of any other group that they deem appropriate; and

“(3) Need not give priority to the interests of a particular person or group referenced in paragraph (1) or (2) of this subsection over the interests of any other person or group, unless the benefit corporation has stated in its articles of incorporation its intention to give priority to certain interests related to its accomplishment of its general public benefit purpose or of a specific public benefit purpose identified in its articles of incorporation.

“(b) The consideration of interests and factors in the manner required by subsection (a) of this section does not constitute a violation of § 29-306.30.

“(c) 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 § 29-306.30 and this section; or

“(2) Failure of the benefit corporation to create general public benefit or specific public benefit.

“(d) 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.

“§ 29-1303.02. Benefit director.

“(a) The board of directors of a benefit corporation shall include one director, who:

“(1) Shall be designated the benefit director; and

“(2) Shall have, in addition to the powers, duties, rights, and immunities of the other directors of the benefit corporation, the powers, duties, rights, and immunities provided in this subchapter.

“(b) The benefit director shall be elected, and may be removed, in the manner provided by subchapter VI of Chapter 3 of this title, and shall be an individual who is independent. The benefit director may serve as the benefit officer at the same time as serving as the benefit director. The articles of incorporation or bylaws of a benefit corporation may prescribe additional qualifications of the benefit director not inconsistent with this section.

“(c) The benefit director shall prepare, and the benefit corporation shall include in the annual benefit report to shareholders required by § 29-1304.01, the opinion of the benefit director on each of the following:

“(1) Whether the benefit corporation acted in accordance with its general public benefit purpose and any specific public benefit purpose in all material respects during the period covered by the report; and

“(2) Whether the directors and officers complied with §§ 29-1303.01(a) and 29-1303.03(a), respectively.

“(3) If, in the opinion of the benefit director, the benefit corporation or its directors or officers failed to comply with §§ 29-1303.01(a) and 29-1303.03(a), a description of the ways in which the benefit corporation or its directors or officers failed to comply.

“(d) 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.

“(e)(1) If an agreement among the shareholders of a benefit corporation under § 29-305.42 provides that the powers and duties conferred or imposed upon the board of directors shall be exercised or performed by a person other than the directors, the bylaws of a benefit corporation must provide that the persons or shareholders who perform the duties of the board of directors include a person with the powers, duties, rights, and immunities of a benefit director.

“(2) A person that exercises one or more of the powers, duties or rights of a benefit director under this subsection:

“(A) Does not need to be independent of the benefit corporation;

“(B) Shall have the immunities of a benefit director;

“(C) May share the powers, duties, and rights of a benefit director with one or more other persons; and

“(D) Shall not be subject to the procedures for election or removal of directors in § 29-306 unless:

“(i) The person is also a director of the benefit corporation; or

“(ii) The bylaws make those procedures applicable.

“(f) Regardless of whether the articles of incorporation of a benefit corporation include a provision eliminating or limiting the personal liability of directors authorized by § 29-302.02(b)(4), a benefit director shall not be personally liable for any action taken, or any failure to take any action, as a director, except liability for:

“(1) The amount of a financial benefit received by a director to which the director is not entitled;

“(2) An intentional infliction of harm on the corporation or the shareholders;

“(3) A violation of § 29-306.32; or

“(4) A violation of criminal law.

“§ 29-1303.03. Standard of conduct for officers.

“(a) Each officer of a benefit corporation shall consider the interests and factors described and in the manner provided in § 29-1303.01(a) if:

“(1) The officer has discretion to act with respect to a matter; and

“(2) It is reasonably apparent to the officer that the matter may have a material effect on the creation of general public benefit or a specific public benefit identified in the articles of incorporation of the benefit corporation.

“(b) The consideration of interests and factors as provided by subsection (a) of this section shall not constitute a violation of § 29-306.42.

“(c) An officer is not personally liable for monetary damages for:

“(1) Action taken as an officer if the officer performed the duties of the position in compliance with § 29-306.42 and this section; or

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

“(d) An officer does not have a duty to a beneficiary of the general public benefit purpose or a specific public benefit purpose of a benefit corporation arising from the beneficiary’s status.

“§ 29-1303.04. Benefit officer.

“(a) A benefit corporation may designate a benefit officer.

“(b) A benefit officer shall have:

“(1) The powers and duties relating to the purpose of the corporation to create general public benefit or specific public benefit provided:

“(A) By the bylaws; or

“(B) Absent controlling provisions in the bylaws, by resolutions or orders of the board of directors; and

“(2) The duty to prepare the benefit report required by § 29-1304.01.

“§ 29-1303.05. Right of action.

“(a) Except 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:

“(1) Failure to pursue or create general public benefit or a specific public benefit set forth in its articles of incorporation; or

“(2) Violation of a duty or standard of conduct under this chapter.



“(b) A benefit corporation shall not be liable for monetary damages under this chapter for any failure of the benefit corporation to pursue or create general public benefit or a specific public benefit.

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

“(1) Directly by the benefit corporation; or

“(2) Derivatively by:

“(A) A shareholder;

“(B) A director;

“(C) A person or group of persons that owns beneficially or of record 5% or more of the equity interests in an entity of which the benefit corporation is a subsidiary; or

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

“Subchapter IV. Transparency.

“§ 29-1304.01. Annual benefit report.

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

“(1) A narrative description of:

“(A) The process and rationale for selecting the third-party standard used to prepare the benefit report;

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

“(C)(i) The ways in which the benefit corporation pursued a specific public benefit that the articles of incorporation state it is the purpose of the benefit corporation to create; and

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

“(D) Any circumstances that have hindered the pursuit or creation of the general public benefit purpose and any specific public benefit purpose.

“(2) An assessment of the overall social and environmental performance of the benefit corporation against a third-party standard:

“(A) Applied consistently with the application of that standard in prior benefit reports; or

“(B) If the third-party standard was not applied consistently, an explanation of the reasons for any inconsistent application.

“(3) The name of the benefit director and the benefit officer, if any, and the address to which correspondence to each of them may be directed.

“(4) The compensation paid by the benefit corporation during the year to each director in the capacity of a director.

“(5) The name of each person that owns 5% or more of the outstanding shares of the benefit corporation either:

“(A) Beneficially, to the extent known to the benefit corporation without independent investigation; or

“(B) Of record.

“(6) The statement of the benefit director described in § 29-1303.02(c).

“(7) A statement of any connection between the organization that established the third-party standard, or its directors, officers, or material owners, and the benefit corporation or its directors, officers, or material shareholders, including any financial or governance relationship which might materially affect the credibility of the use of the third-party standard.

“(8) If the benefit corporation has dispensed with or restricted the discretion or powers of the board of directors, a description of:

“(A) The persons that exercise the powers, duties, and rights and have the immunities of the board of directors; and

“(B) The person with the powers, duties, and rights of a benefit director if required by § 29-1303.02(e).

“(b) A benefit corporation shall annually send a benefit report to each shareholder:

“(1) Within 120 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 all of its benefit reports on the public portion of its website, if any, but the compensation paid to directors and financial or proprietary information included in the benefit reports may be omitted from the benefit reports as posted.

“(d) If a benefit corporation does not have a website, the benefit corporation shall provide a copy of its most recent benefit report, without charge, to any person that requests a copy.

“(e) The benefit corporation shall deliver a copy of the benefit report to the Mayor for filing when filing the biennial report required by § 29-102.11, but the compensation paid to directors and financial or proprietary information included in the benefit report may be omitted from the copy of the benefit report that is delivered to the Mayor.”.

(c) Section 29-102.13(a) is amended as follows:

(1) Paragraph (1) is amended by striking the phrase “10 and 12” and inserting the phrase “10, 12, and 13” in its place.

(2) Paragraph (2) is amended by striking the phrase “10 and 12” and inserting the phrase “10, 12, and 13” in its place.

(d) Section 29-102.12(d) is amended by striking the phrase “deemed disapproved” and inserting the phrase “deemed approved” in its place.

### Sec. 3. Fiscal impact statement.

The Council adopts the fiscal impact statement in the committee report as the fiscal impact statement required by section 602(c)(3) of the District of Columbia Home Rule Act, approved December 24, 1973 (87 Stat. 813; D.C. Official Code § 1-206.02(c)(3)).

Sec. 4. Effective date.

This act shall take effect following approval by the Mayor (or in the event of veto by the Mayor, action by the Council to override the veto), a 30-day period of Congressional review as provided in section 602(c)(1) of the District of Columbia Home Rule Act, approved December 24, 1973 (87 Stat. 813; D.C. Official Code § 1-206.02(c)(1)), and publication in the District of Columbia Register.

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Chairman  
Council of the District of Columbia

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Mayor  
District of Columbia