

HOUSE BILL NO. 1448

100TH GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVE MILLER.

3149H.011

DANA RADEMAN MILLER, Chief Clerk

AN ACT

To amend chapter 351, RSMo, by adding thereto twelve new sections relating to benefit corporations.

Be it enacted by the General Assembly of the state of Missouri, as follows:

Section A. Chapter 351, RSMo, is amended by adding thereto twelve new sections, to be known as sections 351.1400, 351.1403, 351.1409, 351.1412, 351.1415, 351.1418, 351.1421, 351.1424, 351.1427, 351.1430, 351.1433, and 351.1435, to read as follows:

351.1400. As used in sections 351.1400 to 351.1435, the following terms mean:

(1) "Benefit corporation", a corporation:

(a) That has elected to become subject to sections 351.1400 to 351.1435;

(b) That has not terminated its status as a benefit corporation under section 351.1412; and

(c) That is a general corporation formed under the provisions of sections 351.010 to 351.720;

(2) "Benefit director", the director designated by the benefit corporation under section 351.1421;

(3) "Benefit enforcement proceeding", any claim, action, or proceeding for:

(a) Failure of a benefit corporation to pursue or create a 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 sections 351.1400 to 351.1435;

(4) "Benefit officer", the individual designated as the benefit officer of a benefit corporation under section 351.1427;

EXPLANATION — Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted from the law. Matter in **bold-face** type in the above bill is proposed language.

17 (5) "General public benefit", a material positive impact on society and the
18 environment, taken as a whole, from the business and operations of a benefit corporation,
19 assessed taking into account the impacts of the benefit corporation as reported against a
20 third-party standard;

21 (6) "Independent", having no material relationship with a benefit corporation or
22 a subsidiary of the benefit corporation, provided that serving as benefit director or benefit
23 officer of a benefit corporation shall not constitute a material relationship. A material
24 relationship between an individual and a benefit corporation or any of its subsidiaries shall
25 be conclusively presumed to exist if:

26 (a) The individual is, or has been within the last three years, an employee other
27 than a benefit officer of the benefit corporation or its subsidiary;

28 (b) An immediate family member of the individual is, or has been within the last
29 three years, an executive officer other than a benefit officer of the benefit corporation or
30 its subsidiary; or

31 (c) There is beneficial or record ownership of five percent or more of the
32 outstanding shares of the benefit corporation, calculated as if all outstanding rights to
33 acquire equity interests in the benefit corporation had been exercised, by:

34 a. The individual; or

35 b. An entity:

36 (i) Of which the individual is a director, an officer, or a manager; or

37 (ii) In which the individual owns beneficially or of record five percent or more of
38 the outstanding equity interests, calculated as if all outstanding rights to acquire equity
39 interests in the entity had been exercised;

40 (7) "Minimum status vote", a vote that satisfies the following conditions:

41 (a) If a business corporation, in addition to any other approval or vote required by
42 the articles of incorporation or bylaws of the benefit corporation:

43 a. The shareholders of every class or series are entitled to vote on the corporate
44 action, regardless of a limitation stated in the articles of incorporation or bylaws on the
45 voting rights of any class or series; and

46 b. The corporate action is approved by vote of the shareholders of each class or
47 series entitled to cast at least two-thirds of the votes that all shareholders of the class or
48 series are entitled to cast on the action; or

49 (b) If a domestic entity other than a business corporation, in addition to any other
50 required approval, vote, or consent:

51 a. The holders of every class or series of equity interest in the entity that are
52 entitled to receive a distribution of any kind from the entity are entitled to vote on the

53 action, regardless of any otherwise applicable limitation on the voting or consent rights of
54 any class or series; and

55 b. The action is approved by the affirmative vote of the holders entitled to cast at
56 least two-thirds of the votes or consents that all of those holders are entitled to cast on the
57 action;

58 (8) "Specific public benefit", includes:

59 (a) Providing low-income or underserved individuals or communities with
60 beneficial products or services;

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

63 (c) Protecting or restoring the environment;

64 (d) Improving human health;

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

66 (f) Increasing the flow of capital to entities with a purpose to benefit society or the
67 environment; and

68 (g) Conferring any other particular benefit on society or the environment;

69 (9) "Subsidiary", in relation to a person, an entity in which the person owns
70 beneficially or of record fifty percent or more of the outstanding equity interests;

71 (10) "Third-party standard", a recognized standard for defining, reporting, and
72 assessing corporate social and environmental performance. Such standard shall:

73 (a) Assess the effect of the business and its operations upon the interests listed in
74 paragraphs (b), (c), (d), and (e) of subdivision (1) of subsection 1 of section 351.1418;

75 (b) Be developed by an entity that is not controlled by the benefit corporation;

76 (c) Be developed by an entity that both:

77 a. Has access to necessary expertise to assess overall corporate social and
78 environmental performance; and

79 b. Uses a balanced multistakeholder approach to develop the standard, including
80 a reasonable public comment period; and

81 (d) Keep the following information publicly available:

82 a. The criteria considered when measuring the overall social and environmental
83 performance of a business;

84 b. The relative weightings, if any, of those criteria;

85 c. The identity of the directors, officers, material owners, and the governing body
86 of the entity that developed, and controls revisions to, the standard;

87 d. The process by which revisions to the standard and changes to the membership
88 of the governing body are made; and

89 e. An accounting of the revenue and sources of financial support for the entity, with
90 sufficient detail to disclose any relationships that could reasonably be considered to present
91 a potential conflict of interest.

351.1403. 1. Sections 351.1400 to 351.1435 shall be applicable to all benefit
2 corporations.

3 2. All provisions of sections 351.010 to 351.720 relating to the administration,
4 enforcement, interpretation, or amendment of such sections shall be applicable to sections
5 351.1400 to 351.1435, provided that in all cases in which the provisions of sections 351.1400
6 to 351.1435 are contrary to or inconsistent with the provisions of 351.010 to 351.720, the
7 provisions of sections 351.1400 to 351.1435 shall take precedence over the provisions of
8 sections 351.010 to 351.720.

9 3. A provision of the articles of incorporation or bylaws of a benefit corporation
10 shall not limit, be inconsistent with, or supersede any provision of sections 351.1400 to
11 351.1435.

351.1409. 1. Any existing corporation formed under the provisions of sections
2 351.010 to 351.720 may become a benefit corporation by amending its articles of
3 incorporation to include a statement that the corporation is a benefit corporation. Such
4 amendment shall be adopted by at least the minimum status vote.

5 2. For any entity that is a party to a merger or consolidation or is the exchanging
6 entity in a share exchange, if the surviving, new, or resulting entity in the merger,
7 consolidation, or share exchange is intended to be a benefit corporation, such plan of
8 merger, consolidation, or share exchange shall be adopted by at least the minimum status
9 vote in order to be effective.

351.1412. 1. A benefit corporation may terminate its status as such and cease to be
2 subject to sections 351.1400 to 351.1435 by amending its articles of incorporation to remove
3 the statement that the corporation is a benefit corporation. Such amendment shall be
4 adopted by at least the minimum status vote.

5 2. If a plan of merger, conversion, or share exchange would have the effect of
6 terminating the status of a business corporation as a benefit corporation, the plan shall not
7 be effective unless adopted by at least the minimum status vote.

8 3. Any sale, lease, exchange, or other disposition of all or substantially all of the
9 assets of a benefit corporation, unless the transaction is in the usual and regular course of
10 business, shall not be effective unless the transaction is approved by at least the minimum
11 status vote.

351.1415. 1. A benefit corporation shall create a general public benefit that shall be in addition to its purpose under sections 351.010 to 351.720 and any specific purpose set forth in the articles of incorporation in accordance with subsection 2 of this section.

2. The articles of incorporation of a benefit corporation may identify one or more specific public benefit purposes in addition to its purposes under sections 351.010 to 351.720 and subsection 1 of this section.

3. A benefit corporation may amend its articles of incorporation to add, amend, or delete the identification of a specific public benefit. Such amendment shall be adopted by at least the minimum status vote.

351.1418. 1. 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 or inaction upon:

(a) The shareholders of the benefit corporation;

(b) The employees and workforce 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 deemed appropriate; and

(3) Shall not be required to give priority to the interests of a particular person or group 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 specific public benefit purpose.

2. A director shall not be personally liable for monetary damages for:

27 (1) Any action or inaction in the course of performing the duties of a director under
28 subsection 1 of this section if the director was not interested with respect to the action or
29 inaction; or

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

32 3. A director shall not have a duty to any person that is a beneficiary of the general
33 public benefit purpose or a specific public benefit purpose of a benefit corporation arising
34 from the status of the person as a beneficiary.

35 4. A director who makes a business judgment in good faith fulfills the duty under
36 this section if the director:

37 (1) Is not interested in the subject of the business judgment;

38 (2) Is informed with respect to the subject of the business judgment to the extent
39 the director reasonably believes to be appropriate under the circumstances; and

40 (3) Rationally believes that the business judgment is in the best interests of the
41 benefit corporation.

351.1421. 1. The board of directors of a benefit corporation may include a director,
2 who:

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

4 (2) Shall have, in addition to the powers, duties, rights, and immunities of the other
5 directors of the benefit corporation, the powers, duties, rights, and immunities provided
6 in this section.

7 2. The benefit director shall be elected, and may be removed, in the same manner
8 that directors of any board of directors for a corporation are elected and removed under
9 sections 351.010 to 351.526 and shall be an individual who is independent. The benefit
10 director may serve as the benefit officer at the same time as serving as the benefit director.
11 The articles of incorporation or bylaws of a benefit corporation may prescribe additional
12 qualifications of the benefit director consistent with this subsection.

13 3. The benefit corporation shall include in its annual benefit report to shareholders
14 a report that shall address all of the following:

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

18 (2) Whether the directors and officers complied with subsection 1 of section
19 351.1418 and subsection 1 of section 351.1424, respectively; and

20 (3) Whether the benefit corporation or its directors or officers failed to act or
21 comply in the manner described in subdivisions (1) and (2) of this subsection and, if so, a

22 description of the ways in which the benefit corporation or its directors or officers failed
23 to act or comply.

24 4. The act or inaction of an individual in the capacity of a benefit director shall
25 constitute for all purposes an act or inaction of that individual in the capacity of a director
26 of the benefit corporation.

27 5. Regardless if the articles of incorporation or bylaws of a benefit corporation
28 include a provision eliminating or limiting the personal liability of directors authorized by
29 section 351.055, a benefit director shall not be personally liable for an act or inaction in his
30 or her capacity as a benefit director unless the act or inaction constitutes self-dealing,
31 willful misconduct, or a knowing violation of law.

351.1424. 1. Each officer of a benefit corporation shall consider the interests and
2 factors described in subsection 1 of section 351.1418 in the manner provided in subsection
3 1 of section 351.1418 if:

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

5 (2) It reasonably appears to the officer that the matter may have a material effect
6 on the creation by the benefit corporation of a general public benefit or a specific public
7 benefit identified in the articles of incorporation of the benefit corporation.

8 2. Except as provided in the articles of incorporation, an officer is not personally
9 liable for monetary damages for:

10 (1) Any action or inaction in the course of performing the duties of an officer under
11 subsection 1 of this section if the officer was not interested with respect to the action or
12 inaction; or

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

15 3. An officer does not have a duty to a person that is a beneficiary of the general
16 public benefit purpose or a specific public benefit purpose of a benefit corporation arising
17 from the status of the person as a beneficiary.

18 4. An officer who makes a business judgment in good faith fulfills the duty under
19 this section if the officer:

20 (1) Is not interested in the subject of the business judgment;

21 (2) Is informed with respect to the subject of the business judgment to the extent
22 the officer reasonably believes to be appropriate under the circumstances; and

23 (3) Rationally believes that the business judgment is in the best interests of the
24 benefit corporation.

351.1427. 1. A benefit corporation may have an officer designated as the benefit
2 officer.

3 **2. A benefit officer shall have:**

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

6 **(a) By the bylaws; or**

7 **(b) Absent controlling provisions in the bylaws, by resolutions or orders of the**
8 **board of directors; and**

9 **(2) The duty to prepare the benefit report required by section 351.1433.**

351.1430. 1. A benefit corporation shall prepare an annual benefit report including
2 **all of the following:**

3 **(1) A narrative description of:**

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

6 **(b) Both:**

7 **a. The ways in which the benefit corporation pursued a specific public benefit that**
8 **the articles of incorporation state is the purpose of the benefit corporation to create; and**

9 **b. The extent to which that specific public benefit was created;**

10 **(c) Any circumstances that have hindered the creation by the benefit corporation**
11 **of a general public benefit or specific public benefit; and**

12 **(d) The process and rationale for selecting or changing the third-party standard**
13 **used to prepare the benefit report;**

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

16 **(a) Applied consistently with any application of that standard in prior benefit**
17 **reports; or**

18 **(b) Accompanied by an explanation of the reasons for:**

19 **a. Any inconsistent application; or**

20 **b. The change to that standard from the one used in the immediately prior report;**

21 **(3) The name of the benefit director and the benefit officer, if any, and the address**
22 **to which correspondence to each of them may be directed;**

23 **(4) The compensation paid by the benefit corporation during the year to each**
24 **director in the capacity of a director;**

25 **(5) The statement of the benefit director described in subsection 3 of section**
26 **351.1424;**

27 **(6) A statement of any connection between the organization that established the**
28 **third-party standard, or its directors, officers, or any holder of five percent or more of the**
29 **governance interests in the organization, and the benefit corporation or its directors,**

30 officers, or any holder of five percent or more of the outstanding shares of the benefit
31 corporation, including any financial or governance relationship that might materially
32 affect the credibility of the use of the third-party standard; and

33 (7) If the benefit corporation has dispensed with or restricted the discretion or
34 powers of the board of directors, a description of the persons who exercise the powers,
35 duties, and rights and who have the immunities of the board of directors.

36 2. If, during the year covered by a benefit report, a benefit director resigned from
37 or refused to stand for reelection to the position of benefit director, or was removed from
38 the position of benefit director, and the benefit director furnished the benefit corporation
39 with any written correspondence concerning the circumstances surrounding the
40 resignation, refusal, or removal, the benefit report shall include that correspondence as an
41 exhibit.

42 3. Neither the benefit report nor the assessment of the performance of the benefit
43 corporation in the benefit report required by subdivision (2) of subsection 1 of this section
44 needs to be audited or certified by a third-party standards provider.

351.1433. 1. A benefit corporation shall send its annual benefit report to each
2 shareholder:

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

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

7 2. A benefit corporation shall post all of its benefit reports on the public portion of
8 its website, if any, but the compensation paid to directors and financial or proprietary
9 information included in the benefit reports may be omitted from the benefit reports as
10 posted.

11 3. If a benefit corporation does not have a website, the benefit corporation shall
12 provide a copy of its most recent benefit report, without charge, to any person that requests
13 a copy, but the compensation paid to directors and financial or proprietary information
14 included in the benefit report may be omitted from the copy of the benefit report provided.

15 4. (1) Concurrently with the delivery of the benefit report to shareholders under
16 subsection 3 of this section, the benefit corporation shall deliver a copy of the benefit report
17 to the secretary of state for filing, but the compensation paid to directors and financial or
18 proprietary information included in the benefit report may be omitted from the benefit
19 report as delivered to the secretary of state.

20 (2) The secretary of state shall charge a fee of forty-five dollars for filing a benefit
21 report.

351.1435. 1. (1) 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:

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

(b) Violation of an obligation, duty, or standard of conduct under sections 351.1400 to 351.1435.

(2) A benefit corporation shall not be liable for monetary damages under sections 351.1400 to 351.1435 for any failure of the benefit corporation to pursue or create a general public benefit or a specific public benefit.

2. A benefit enforcement proceeding may be commenced or maintained only:

(1) Directly by the benefit corporation; or

(2) Derivatively by:

(a) A person or group of persons that owned beneficially or of record at least two percent of the total number of shares of a class or series outstanding at the time of the act or inaction;

(b) A director;

(c) A person or group of persons that owned beneficially or of record five percent or more of the outstanding equity interests in an entity of which the benefit corporation is a subsidiary at the time of the act or inaction; or

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

3. For purposes of this section, a person is the beneficial owner of shares or equity interests if the shares or equity interests are held in a voting trust or by a nominee on behalf of the beneficial owner.

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