

HOUSE BILL NO. 6309

October 14, 2020, Introduced by Reps. Greig, Ellison, Sowerby, Hood, Koleszar, Bolden, Pohutsky, Kuppa, Chirkun, Vaupel, Brixie, Sheppard and Hoadley and referred to the Committee on Government Operations.

A bill to amend 1972 PA 284, entitled
"Business corporation act,"
(MCL 450.1101 to 450.2098) by adding chapter 9A.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

CHAPTER 9A

BENEFIT CORPORATIONS

Sec. 951. (1) As used in this chapter:

**(a) "Benefit enforcement proceeding" means a claim asserted or
action brought directly by a benefit corporation, or derivatively**



1 on behalf of a benefit corporation, against a director or officer
2 for either of the following:

3 (i) A failure to pursue the general public benefit purpose of a
4 benefit corporation or any specific public benefit purpose set
5 forth in the articles of incorporation of a benefit corporation.

6 (ii) A violation of a duty or standard of conduct under this
7 chapter.

8 (b) "General public benefit" means a material positive impact
9 on society and the environment, taken as a whole, as measured by a
10 third-party standard, from the business and operations of a benefit
11 corporation.

12 (c) "Minimum status vote" means an authorization or approval
13 of a corporate action by the shareholders of a benefit corporation
14 that meets all of the following:

15 (i) The shareholder approval or vote requirements of this act.

16 (ii) Subject to subparagraph (iii), any shareholder approval or
17 vote requirements included in any provisions of the articles of
18 incorporation.

19 (iii) The shareholders of every class or series are entitled to
20 vote on the corporate action regardless of a limitation stated in
21 the articles of incorporation or bylaws on the voting rights of any
22 class or series.

23 (iv) The corporate action is approved by vote of the
24 shareholders of each class or series entitled to cast at least 2/3
25 of the votes that all shareholders of the class or series are
26 entitled to cast on the action.

27 (d) "Specific public benefit" includes, but is not limited to,
28 any of the following:

29 (i) Providing low-income or underserved individuals or



1 communities with beneficial products or services.

2 (ii) Promoting economic opportunity for individuals or
3 communities beyond the creation of jobs in the normal course of
4 business.

5 (iii) Preserving the environment.

6 (iv) Improving human health.

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

8 (vi) Increasing the flow of capital to entities that have a
9 public benefit purpose.

10 (vii) Conferring any other particular benefit on society or the
11 environment.

12 (e) "Subsidiary" means an entity in which a person owns
13 beneficially or of record 50% or more of the outstanding equity
14 interests. For purposes of determining a person's ownership
15 percentage under this subdivision, any outstanding rights to
16 acquire equity interests in an entity are considered outstanding
17 equity interests in that entity.

18 (f) "Third-party standard" means a standard for defining,
19 reporting, and assessing overall corporate social and environmental
20 performance that is all of the following:

21 (i) Comprehensive, in that it assesses the effect of the
22 business and its operations on the interests listed in section
23 957(1)(a)(ii) to (v).

24 (ii) Developed by an organization that is independent of the
25 benefit corporation and satisfies the following requirements:

26 (A) Not more than 1/3 of the members of the governing body of
27 the organization are representatives of either of the following:

28 (I) An association of businesses operating in a specific



1 industry if the performance of the member businesses is measured by
2 the standard.

3 (II) Businesses whose performance is measured by the standard.

4 (B) The organization is not materially financed by an
5 association or business described in sub-subparagraph (A).

6 (iii) Credible, because the standard is developed by a person
7 that meets both of the following:

8 (A) The person has access to necessary expertise to assess
9 overall corporate social and environmental performance.

10 (B) The person uses a balanced multistakeholder approach that
11 includes a public comment period of at least 30 days to develop the
12 standard.

13 (iv) Transparent, because all of the following are publicly
14 available:

15 (A) The criteria considered in the standard when measuring the
16 overall social and environmental performance of a business, and the
17 relative weightings of those criteria.

18 (B) The following information about the development and
19 revision of the standard:

20 (I) The identity of the directors, officers, any material
21 owners, and the governing body of the organization that developed
22 and controls revisions to the standard.

23 (II) The process by which revisions to the standard and
24 changes to the membership of the governing body are made.

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

29 (2) This chapter does not apply to any corporation that is not



1 a benefit corporation or to a corporation that terminates its
2 status as a benefit corporation under section 953(4).

3 (3) If there is a conflict between a specific provision of
4 this chapter and a general provision of this act, the provision of
5 this chapter applies with respect to a benefit corporation.

6 Sec. 953. (1) A domestic corporation that meets all of the
7 following is a benefit corporation and subject to this chapter:

8 (a) The corporation is formed under this act.

9 (b) The articles of incorporation of the corporation state
10 that it is a benefit corporation. However, an amendment to the
11 articles of incorporation to include the statement described in
12 this subdivision is not effective unless it is adopted by a minimum
13 status vote. A shareholder that does not vote for or consent in
14 writing to the amendment may dissent under section 762 and receive
15 payment for the shares.

16 (2) In addition to the purposes described in section 202(b),
17 the purposes of a benefit corporation may also include 1 or more
18 specific public benefits identified in the articles of
19 incorporation, but the identification of a specific public benefit
20 under this subdivision does not limit the obligation of a benefit
21 corporation to create general public benefit.

22 (3) An amendment to the articles of incorporation of a benefit
23 corporation to change the purposes of the corporation by adding,
24 amending, or deleting 1 or more specific public benefits is not
25 effective unless it is adopted by a minimum status vote. A
26 shareholder that does not vote for or consent in writing to the
27 amendment may dissent under section 762 and receive payment for the
28 shares.

29 (4) A benefit corporation may terminate its status as a



1 benefit corporation by amending its articles of incorporation to
2 remove the provisions described in this section. However, each of
3 the following applies to an amendment to the articles of
4 incorporation described in this subsection:

5 (a) The amendment is not effective unless it is adopted by a
6 minimum status vote.

7 (b) A shareholder that does not vote for or consent in writing
8 to the amendment may dissent under section 762 and receive payment
9 for the shares.

10 Sec. 955. (1) In addition to the requirements of chapter 7, if
11 a domestic corporation that is not a benefit corporation is a
12 constituent corporation in a merger or an exchanging corporation in
13 a share exchange, and the surviving or acquiring corporation will
14 be a benefit corporation under the plan of merger or share
15 exchange, the plan must be approved by a minimum status vote of
16 that constituent or exchanging corporation.

17 (2) In addition to the requirements of chapter 7, a plan of
18 merger or share exchange that would have the effect of terminating
19 the status of a domestic corporation as a benefit corporation must
20 be approved by a minimum status vote of that corporation.

21 (3) A shareholder of a corporation that is not a benefit
22 corporation may dissent under section 762 and receive payment for
23 the shares if the shareholder did not vote for or consent in
24 writing to a plan of merger or share exchange under subsection (1)
25 and the shareholder held the shares immediately before the
26 effective time of the merger or share exchange.

27 Sec. 957. (1) All of the following apply to the board,
28 committees of the board, and individual directors of a benefit
29 corporation, and to any officer of a benefit corporation who has



1 discretion to act with respect to any matter if it reasonably
2 appears to the officer that the matter may have a material effect
3 on the creation of general public benefit or a specific public
4 benefit by the benefit corporation, in discharging the duties of
5 their respective positions and in considering the best interests of
6 the benefit corporation:

7 (a) They shall consider the effects of any action on all of
8 the following:

9 (i) The shareholders of the benefit corporation.

10 (ii) The employees and workforce of the benefit corporation and
11 its subsidiaries and suppliers.

12 (iii) The interests of customers as beneficiaries of the general
13 public benefit and any specific public benefit included in the
14 purpose of the benefit corporation.

15 (iv) Community and societal considerations, including those of
16 each community where offices or facilities of the benefit
17 corporation and its subsidiaries and suppliers are located.

18 (v) The local and global environment.

19 (vi) The short-term and long-term interests of the benefit
20 corporation, including benefits that may accrue to the benefit
21 corporation from its long-term plans and the possibility that these
22 interests and the general public benefit and any specific public
23 benefit included in the purpose of the benefit corporation may be
24 best served by the continued independence of the benefit
25 corporation.

26 (vii) The ability of the benefit corporation to accomplish
27 general public benefit and any specific public benefit included in
28 the purposes of the benefit corporation.

29 (b) In evaluating a person's proposed acquisition of control



1 of the benefit corporation, they may consider, in addition to the
2 effects of the proposed acquisition on the persons, interests, or
3 factors described in subdivision (a) (i) to (vii), the resources,
4 intent, and conduct of the person seeking to acquire control of the
5 benefit corporation.

6 (c) They may consider any other pertinent factors or the
7 interests of any other group that they consider appropriate.

8 (d) They are not required to give priority to the interests of
9 a particular person or group described in subdivision (a), (b), or
10 (c) over the interests of any other person or group unless the
11 benefit corporation has stated its intention in its articles of
12 incorporation to give priority to interests related to a specific
13 public benefit purpose identified in its articles of incorporation.

14 (2) The consideration of interests and factors by a director
15 or officer of a benefit corporation under subsection (1) in the
16 discharge of his or her duties does not constitute a violation of
17 section 541a.

18 (3) A director or officer who makes a business judgment in
19 good faith fulfills his or her duties under this section if the
20 director or officer meets all of the following:

21 (a) Is not interested in the subject of the business judgment.

22 (b) Is informed with respect to the subject of the business
23 judgment to the extent the director reasonably believes to be
24 appropriate under the circumstances.

25 (c) Rationally believes that the business judgment is in the
26 best interests of the benefit corporation.

27 (4) A director of a benefit corporation is not liable for
28 monetary damages to the corporation, the shareholders, or any
29 person that claims to be a beneficiary of a general or specific



1 public benefit for a failure to fulfill a duty arising under this
2 chapter or solely because he or she performed duties in compliance
3 with this section.

4 (5) A director or officer of a benefit corporation does not
5 have a duty to a person that is a beneficiary of the general or any
6 specific public benefit purposes of the benefit corporation arising
7 from the status of the person as a beneficiary.

8 (6) Any corporate action taken by a benefit corporation to
9 advance general public benefit or any specific public benefit
10 included in the purpose of the corporation under section 953(2) is
11 presumed to be in the best interests of the benefit corporation.

12 Sec. 959. (1) The duties of any directors and officers of a
13 benefit corporation arising under this chapter, or the general
14 public benefit purpose or any specific public benefit purpose of a
15 benefit corporation organized under this chapter, may be enforced
16 only in a benefit enforcement proceeding under this section. A
17 person shall not bring an action or assert a claim against a
18 benefit corporation or its directors or officers with respect to
19 the duties under this chapter of any directors or officers of the
20 benefit corporation or the general public benefit purpose or any
21 specific public benefit purpose of the benefit corporation
22 organized under this chapter except in a benefit enforcement
23 proceeding under this section.

24 (2) A benefit enforcement proceeding against a benefit
25 corporation may be commenced or maintained only by 1 of the
26 following:

27 (a) Directly, by the benefit corporation.

28 (b) Derivatively, by any of the following:

29 (i) A shareholder of the benefit corporation that owns



1 beneficially or of record, individually or collectively, as of the
2 date the benefit enforcement proceeding is instituted, either of
3 the following:

4 (A) At least 2% of the corporation's outstanding shares.

5 (B) If the shares of the benefit corporation are listed on a
6 national securities exchange, 2% of the corporation's outstanding
7 shares, or shares that have a market value of \$2,000,000.00,
8 whichever is less.

9 (ii) A director of the benefit corporation.

10 (iii) A person or group of persons that owns beneficially or of
11 record 5% or more of the outstanding voting power in the election
12 of directors of an entity of which the benefit corporation is a
13 subsidiary or the right to receive 5% or more of the distributions
14 to shareholders made by an entity of which the benefit corporation
15 is a subsidiary.

16 (iv) Any other person specified in the articles of
17 incorporation or bylaws of the benefit corporation.

18 (3) A benefit corporation is not liable for monetary damages
19 under this chapter for any failure of the benefit corporation to
20 pursue or create a general public benefit or a specific public
21 benefit.

22 (4) An action against a director or officer for failure to
23 perform any of the duties imposed under this section must be
24 commenced within 3 years after the cause of action has accrued, or
25 within 2 years after the time when the cause of action is
26 discovered or should reasonably have been discovered by the
27 complainant, whichever occurs first.

28 Enacting section 1. This amendatory act takes effect 90 days
29 after the date it is enacted into law.



1 Enacting section 2. This amendatory act does not take effect
2 unless all of the following bills of the 100th Legislature are
3 enacted into law:

4 (a) Senate Bill No. _____ or House Bill No. 6311 (request no.
5 00863'19).

6 (b) Senate Bill No. _____ or House Bill No. 6312 (request no.
7 00864'19).

8 (c) Senate Bill No. _____ or House Bill No. 6310 (request no.
9 00865'19).

