

SENATE BILL 908

C1
SB 978/14 – JPR

5lr2930

By: **Senators Klausmeier and Raskin**
Introduced and read first time: March 6, 2015
Assigned to: Rules

A BILL ENTITLED

1 AN ACT concerning

2 **Maryland Benefit Corporations – Purposes, Duties of Directors, and Liability**

3 FOR the purpose of altering the purpose of a Maryland benefit corporation; clarifying that
4 a director of a benefit corporation is required to perform the director's duties in
5 accordance with a certain standard; requiring a director to consider the effects of a
6 certain action or decision on certain interests of the benefit corporation and the
7 ability of the benefit corporation to accomplish a certain goal; providing that the
8 director may not be required to give priority to a certain interest or factor over any
9 other interest or factor; clarifying that a director does not have a duty to certain
10 persons; establishing that an act of a director is subject to a certain presumption;
11 clarifying that a director has no duty to the corporation or the stockholders other
12 than as set forth in certain provisions of law; prohibiting a person from bringing a
13 certain action against a benefit corporation or its directors or officers with respect to
14 certain matters; establishing that a benefit corporation or a director or an officer of
15 a benefit corporation is not liable for certain damages; providing that a certain action
16 or claim may be maintained only by certain individuals or entities; making certain
17 conforming changes; altering a certain definition; and generally relating to benefit
18 corporations.

19 BY repealing and reenacting, with amendments,
20 Article – Corporations and Associations
21 Section 5–6C–01, 5–6C–06, and 5–6C–07
22 Annotated Code of Maryland
23 (2014 Replacement Volume)

24 BY adding to
25 Article – Corporations and Associations
26 Section 5–6C–09
27 Annotated Code of Maryland
28 (2014 Replacement Volume)

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.
[Brackets] indicate matter deleted from existing law.



1 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND,
2 That the Laws of Maryland read as follows:

3 **Article – Corporations and Associations**

4 5–6C–01.

5 (a) In this subtitle the following words have the meanings indicated.

6 (b) “Benefit corporation” means a Maryland corporation that elects to be a benefit
7 corporation in accordance with § 5–6C–03 of this subtitle and has not ceased to be a benefit
8 corporation through the operation of § 5–6C–04 of this subtitle.

9 (c) “General public benefit” means a material, positive impact on society and the
10 environment[, as measured by a third–party standard, through activities that promote a
11 combination of specific public benefits] **THAT, TAKEN AS A WHOLE AND ASSESSED**
12 **AGAINST A THIRD–PARTY STANDARD, RESULTS FROM THE BUSINESS AND**
13 **OPERATIONS OF A BENEFIT CORPORATION.**

14 (d) “Specific public benefit” includes:

15 (1) Providing individuals or communities with beneficial products or
16 services;

17 (2) Promoting economic opportunity for individuals or communities beyond
18 the creation of jobs in the normal course of business;

19 (3) Preserving the environment;

20 (4) Improving human health;

21 (5) Promoting the arts, sciences, or advancement of knowledge;

22 (6) Increasing the flow of capital to entities with a public benefit purpose;
23 or

24 (7) The accomplishment of any other particular benefit for society or the
25 environment.

26 (e) “Third–party standard” means a standard for defining, reporting, and
27 assessing best practices in corporate social and environmental performance that:

28 (1) Is developed by a person or entity that is independent of the benefit
29 corporation; and

30 (2) Is transparent because the following information about the standard is
31 publicly available or accessible:

1 (i) The factors considered when measuring the performance of a
2 business;

3 (ii) The relative weightings of those factors; and

4 (iii) The identity of the persons who developed and control changes to
5 the standard and the process by which those changes were made.

6 5-6C-06.

7 (a) (1) Each benefit corporation shall have [the] A purpose of creating a
8 general public benefit.

9 (2) The purpose described in paragraph (1) of this subsection is in addition
10 to[, and may be a limitation on,] the purposes of the corporation under §
11 2-101 of this article.

12 (b) (1) In addition to its purposes under § 2-101 of this article and subsection
13 (a) of this section, the charter of a benefit corporation may identify as one of the purposes
14 of the benefit corporation the creation of one or more specific public benefits.

15 (2) The identification in its charter of a specific public benefit purpose
16 under paragraph (1) of this subsection does not limit the obligation of a benefit corporation
17 to create a general public benefit.

18 (c) The creation of a general public benefit or A specific public benefit as provided
19 in subsections (a) and (b) of this section is in the best interests of the benefit corporation.

20 5-6C-07.

21 (a) **[A] SUBJECT TO SUBSECTION (B) OF THIS SECTION, A** director of a benefit
22 corporation[, in performing] **SHALL PERFORM** the duties of a director, including the
23 director's duties as a member of a committee [and in addition to the duties described] **ON**
24 **WHICH THE DIRECTOR SERVES, IN ACCORDANCE WITH THE STANDARD PROVIDED** in
25 § 2-405.1 of this article[:].

26 **[(1)] (B) (1)** In determining what the director reasonably believes to be
27 in the best interests of the benefit corporation[, shall] **UNDER § 2-405.1(A)(2) OF THIS**
28 **ARTICLE, THE DIRECTOR:**

29 **(I) SUBJECT TO PARAGRAPH (2) OF THIS SUBSECTION, SHALL**
30 consider the effects of any action, or decision not to act, on:

31 **[(i)] 1.** The stockholders of the benefit corporation;

1 [(ii)] 2. The employees and workforce of the benefit corporation
2 and the subsidiaries and suppliers of the benefit corporation;

3 [(iii)] 3. The interests of customers as beneficiaries of the general
4 or specific public benefit purposes of the benefit corporation;

5 [(iv)] 4. Community and societal [considerations] INTERESTS,
6 including those of any community in which offices or facilities of the benefit corporation or
7 the subsidiaries or suppliers of the benefit corporation are located; [and]

8 5. **THE SHORT-TERM AND LONG-TERM INTERESTS OF**
9 **THE BENEFIT CORPORATION, INCLUDING BENEFITS THAT MAY ACCRUE TO THE**
10 **BENEFIT CORPORATION FROM ITS LONG-TERM PLANS AND THE POSSIBILITY THAT**
11 **THESE INTERESTS MAY BE BEST SERVED BY THE CONTINUED INDEPENDENCE OF**
12 **THE BENEFIT CORPORATION;**

13 6. **THE ABILITY OF THE BENEFIT CORPORATION TO**
14 **ACCOMPLISH ITS GENERAL PUBLIC BENEFIT PURPOSE AND ANY SPECIFIC PUBLIC**
15 **BENEFIT PURPOSE; AND**

16 [(v)] 7. The local and global environment; and

17 [(2)] (II) [May] **SUBJECT TO PARAGRAPH (2) OF THIS SUBSECTION,**
18 **MAY** consider any other pertinent factors or the interests of any other group that the
19 director determines are appropriate to consider.

20 (2) **THE DIRECTOR MAY NOT BE REQUIRED TO GIVE PRIORITY TO A**
21 **PARTICULAR INTEREST OR FACTOR REFERRED TO IN PARAGRAPH (1) OF THIS**
22 **SUBSECTION OVER ANY OTHER INTEREST OR FACTOR.**

23 [(b)] (C) A director of a benefit corporation, in the performance of duties in that
24 capacity, does not have any duty to a person that is [a]:

25 (1) A beneficiary of the public benefit purposes of the benefit corporation;

26 (2) **REFERRED TO IN SUBSECTION (B)(1)(I)2 THROUGH 4 OF THIS**
27 **SECTION; OR**

28 (3) **AFFECTED BY ANY OF THE INTERESTS REFERRED TO IN**
29 **SUBSECTION (B)(1)(I)2 THROUGH 7 OF THIS SECTION.**

30 [(c)] (D) A director of a benefit corporation[, in the reasonable performance of
31 duties] **WHO PERFORMS THE DUTIES OF A DIRECTOR** in accordance with the standard

1 provided in this subtitle[,] shall have the immunity from liability described in § 5–417 of
2 the Courts Article.

3 **(E) AN ACT OF A DIRECTOR OF A BENEFIT CORPORATION IS PRESUMED TO**
4 **SATISFY THE STANDARDS OF SUBSECTIONS (A) AND (B) OF THIS SECTION.**

5 **(F) A DIRECTOR OF A BENEFIT CORPORATION HAS NO DUTY TO THE**
6 **BENEFIT CORPORATION OR ITS STOCKHOLDERS OTHER THAN AS SET FORTH IN §**
7 **2–405.1 OF THIS ARTICLE AND THIS SUBTITLE.**

8 **5–6C–09.**

9 **(A) EXCEPT AS SET FORTH IN SUBSECTION (C) OF THIS SECTION, A PERSON**
10 **MAY NOT BRING AN ACTION OR ASSERT A CLAIM AGAINST A BENEFIT CORPORATION**
11 **OR ITS DIRECTORS OR OFFICERS WITH RESPECT TO:**

12 **(1) THE FAILURE TO PURSUE OR CREATE A GENERAL PUBLIC**
13 **BENEFIT OR A SPECIFIC PUBLIC BENEFIT SET FORTH IN ITS CHARTER; OR**

14 **(2) A VIOLATION OF AN OBLIGATION, A DUTY, OR A STANDARD OF**
15 **CONDUCT UNDER THIS SUBTITLE.**

16 **(B) A BENEFIT CORPORATION OR A DIRECTOR OR AN OFFICER OF A BENEFIT**
17 **CORPORATION IS NOT LIABLE FOR MONETARY DAMAGES FOR A FAILURE OF THE**
18 **BENEFIT CORPORATION TO PURSUE OR CREATE A GENERAL PUBLIC BENEFIT OR A**
19 **SPECIFIC PUBLIC BENEFIT.**

20 **(C) AN ACTION OR CLAIM UNDER THIS SUBTITLE MAY BE COMMENCED OR**
21 **MAINTAINED ONLY:**

22 **(1) DIRECTLY BY THE BENEFIT CORPORATION; OR**

23 **(2) DERIVATIVELY BY:**

24 **(I) A DIRECTOR;**

25 **(II) A PERSON OR GROUP OF PERSONS THAT OWNED**
26 **BENEFICIALLY OR OF RECORD 2% OR MORE OF THE TOTAL NUMBER OF SHARES OF**
27 **A CLASS OR SERIES OUTSTANDING AT THE TIME OF THE ACT OR OMISSION THAT IS**
28 **THE SUBJECT OF THE ACTION OR CLAIM; OR**

29 **(III) A PERSON OR GROUP OF PERSONS THAT OWNED**
30 **BENEFICIALLY OR OF RECORD 5% OR MORE OF THE OUTSTANDING EQUITY**
31 **INTERESTS IN AN ENTITY OF WHICH THE BENEFIT CORPORATION IS A**

1 MAJORITY-OWNED OR GREATER SUBSIDIARY AT THE TIME OF THE ACT OR OMISSION
2 THAT IS THE SUBJECT OF THE ACTION OR CLAIM.

3 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
4 October 1, 2015.