

HOUSE BILL NO. 534

INTRODUCED BY K. WILLIAMS

1
2
3
4 A BILL FOR AN ACT ENTITLED: "AN ACT CREATING THE MONTANA BENEFIT CORPORATION ACT;
5 AUTHORIZING AND REGULATING THE FORMATION AND GOVERNANCE OF BENEFIT CORPORATIONS;
6 ALLOWING AN EXISTING CORPORATION TO BECOME A BENEFIT CORPORATION; PROVIDING THAT A
7 BENEFIT CORPORATION MAY BE FORMED FOR THE PURPOSE OF CREATING GENERAL PUBLIC
8 BENEFIT OR SPECIFIC PUBLIC BENEFITS; REQUIRING DIRECTORS TO CONSIDER THE IMPACTS OF
9 ANY ACTION OR PROPOSED ACTION UPON SPECIFIED CONSIDERATIONS; REQUIRING THE BOARD OF
10 DIRECTORS TO PREPARE A STATEMENT RELATING TO THE PUBLIC BENEFIT PURPOSES OF THE
11 CORPORATION; REQUIRING THE BENEFIT CORPORATION TO ANNUALLY PREPARE AND DISSEMINATE
12 A BENEFIT REPORT; DESCRIBING THE LIMITED FIDUCIARY DUTY AND LIABILITY OF AN OFFICER OR
13 DIRECTOR OF A BENEFIT CORPORATION; AND PROVIDING THAT THE DUTIES OF A DIRECTOR OR
14 OFFICER AND THE PUBLIC BENEFIT PURPOSE OF A BENEFIT CORPORATION MAY BE ENFORCED ONLY
15 IN A BENEFIT ENFORCEMENT PROCEEDING."

16
17 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

18
19 NEW SECTION. Section 1. Short title. [Sections 1 through 12] may be known and may be cited as the
20 "Montana Benefit Corporation Act".

21
22 NEW SECTION. Section 2. Definitions. As used in [sections 1 through 12], the following definitions
23 apply:

24 (1) "Benefit corporation" means a corporation organized in this state that has elected to become subject
25 to [sections 1 through 12] and whose status as a benefit corporation has not been terminated as provided in
26 [section 8].

27 (2) "Benefit enforcement proceeding" means a claim or action relating to:

28 (a) failure to pursue the general public benefit purpose of the benefit corporation or any specific public
29 benefit purpose set forth in its articles of incorporation;

30 (b) violation of a duty or standard of conduct imposed on a director pursuant to [sections 1 through 12];

1 or

2 (c) failure of the benefit corporation to deliver, provide, or post an annual benefit report as required in
3 [section 10].

4 (3) "Director" means an individual elected to or otherwise serving on the board of directors of a benefit
5 corporation.

6 (4) "General public benefit" means a material, positive impact on society and the environment, taken as
7 a whole, as assessed against a third-party standard, from the business and operations of a benefit corporation.

8 (5) "Independent" means having no material relationship with a benefit corporation or a subsidiary of a
9 benefit corporation.

10 (6) "Minimum status vote" means:

11 (a) in the case of a corporation, that in addition to any other approval or vote required by law or by the
12 articles of incorporation:

13 (i) the shareholders of every class or series are entitled to vote on the corporate action regardless of any
14 limitation stated in the articles of incorporation; and

15 (ii) the corporate action must be approved by the outstanding shares of each class or series by at least
16 two-thirds of the votes that all shareholders of the class or series are entitled to cast on that action or by a greater
17 vote if required in the articles of incorporation; or

18 (b) in the case of a domestic business entity other than a corporation and in addition to any other
19 approval, vote, or consent required by law that principally governs the internal affairs of the domestic business
20 entity or any provision of the publicly filed record or document required to form the domestic business entity, if
21 any, or of any agreement binding some or all of the holders of equity interests in the entity:

22 (i) the holders of every class or series of interest in the entity that are entitled to receive a distribution
23 of any kind from the entity regardless of any otherwise applicable limitation on the voting rights of the interest;
24 and

25 (ii) the action must be approved by the vote or consent of the holders described in subsection (6)(b)(i)
26 by at least two-thirds of the votes of the holders or by a greater vote if required in the articles of incorporation.

27 (7) "Specific public benefit" means:

28 (a) providing low-income or underserved individuals or communities with beneficial products or services;

29 (b) promoting economic opportunity for individuals or communities beyond the creation of jobs in the
30 ordinary course of business;

- 1 (c) preserving the environment;
- 2 (d) improving human health;
- 3 (e) promoting the arts, sciences, or advancement of knowledge;
- 4 (f) increasing the flow of capital to entities with a public benefit purpose; or
- 5 (g) the accomplishment of any other particular benefit for society or the environment.
- 6 (8) "Subsidiary" means an entity in which a parent entity owns beneficially or of record 50% or more of
- 7 the outstanding equity interests of the subsidiary. For purposes of this definition, the percentage of ownership
- 8 held by a parent entity in a subsidiary must be calculated as if all outstanding rights to acquire equity interests
- 9 in the subsidiary have been exercised.
- 10 (9) "Third-party standard" means a standard for defining, reporting, and assessing overall corporate
- 11 social and environmental performance to which all of the following apply:
- 12 (a) the standard is a comprehensive assessment of the impact of the business and the business's
- 13 operations upon the considerations listed in [section 6(2)];
- 14 (b) the standard is developed by an entity that has no material financial relationship with the benefit
- 15 corporation or any of its subsidiaries and:
- 16 (i) not more than one-third of the members of the governing body of the entity are representatives of:
- 17 (A) associations of businesses operating in a specific industry for which the performance is measured
- 18 by the standard;
- 19 (B) businesses from a specific industry or an association of businesses in that industry; or
- 20 (C) businesses whose performance is assessed against the standard; and
- 21 (ii) the entity is not materially financed by an association or business described in subsection (9)(b)(i);
- 22 (c) the standard is developed by an entity that:
- 23 (i) accesses necessary and appropriate expertise to assess overall corporate social and environmental
- 24 performance; and
- 25 (ii) uses a balanced multistakeholder approach, including a public comment period of at least 30 days,
- 26 to develop the standard; and
- 27 (d) the following information regarding the standard is publicly available:
- 28 (i) the criteria considered when measuring the overall social and environmental performance of a
- 29 business;
- 30 (ii) the relative weightings assigned to the criteria described in subsection (9)(d)(i);

- 1 (iii) the identity of the directors, officers, any material owners, and the governing body of the entity that
 2 developed and controls revisions to the standard;
- 3 (iv) the process by which revisions to the standard and changes to the membership of the governing body
 4 of the entity described in subsection (9)(d)(iii) are made; and
- 5 (v) an accounting of the sources of financial support for the entity with sufficient detail to disclose any
 6 relationships that could reasonably be considered to present a potential conflict of interest.

7

8 **NEW SECTION. Section 3. Purpose.** (1) The purpose of a benefit corporation is to create general
 9 public benefit. This purpose is in addition to and may be a limitation on the corporation's purpose under [sections
 10 1 through 12] and any specific purpose set forth in the corporation's articles of incorporation in accordance with
 11 subsection (2).

12 (2) In addition to the applicable provisions required under [sections 1 through 12], the articles of
 13 incorporation of a benefit corporation must contain the following statement: "This corporation is a benefit
 14 corporation." The articles of incorporation of a benefit corporation may identify one or more specific public
 15 benefits as the purpose or purposes of the benefit corporation. The identification of a specific public benefit under
 16 this subsection does not limit the obligation of a benefit corporation to create general public benefit.

17 (3) The creation of general and specific public benefits as provided in subsections (1) and (2) is
 18 considered to be in the best interests of the benefit corporation.

19 (4) A benefit corporation may amend its articles of incorporation to add, amend, or delete the
 20 identification of a specific public benefit as a purpose of the benefit corporation to create. The amendment is
 21 effective only if the amendment is adopted by at least the minimum status vote.

22

23 **NEW SECTION. Section 4. Applicability.** (1) Unless otherwise provided in [sections 1 through 12], the
 24 provisions of Title 35, chapter 1, apply to all benefit corporations.

25 (2) The provisions of [sections 1 through 12] do not:

26 (a) imply that a contrary or different rule of law does or would apply to a business corporation that is not
 27 a benefit corporation; or

28 (b) affect any provision of [sections 1 through 12] that does or would apply to a corporation that is not
 29 a benefit corporation.

30

1 **NEW SECTION. Section 5. Benefit corporation -- formation.** A benefit corporation may be formed
2 in accordance with [sections 1 through 12]. The articles of incorporation must:

3 (1) state that the corporation is a benefit corporation; and

4 (2) identify any specific public benefit adopted pursuant to [section 3].

5
6 **NEW SECTION. Section 6. Benefit corporation governance -- liability.** (1) A director of a public
7 benefit corporation shall:

8 (a) perform the duties of a director in good faith and in a manner the director believes to be in the best
9 interests of the benefit corporation; and

10 (b) conduct reasonable inquiry in the manner that a prudent person in a similar position would conduct
11 under similar circumstances.

12 (2) In discharging their respective duties and in considering the best interests of the benefit corporation,
13 the board of directors, committees of the board, and individual directors of a benefit corporation:

14 (a) shall consider the impacts of every action or proposed action upon:

15 (i) the shareholders of the benefit corporation;

16 (ii) the employees and workforce of the benefit corporation and its subsidiaries and suppliers;

17 (iii) the interests of customers of the benefit corporation as beneficiaries of the general purpose or any
18 specific public benefit purpose of the benefit corporation;

19 (iv) community and societal considerations, including those of a community in which offices or facilities
20 of the benefit corporation or its subsidiaries or suppliers are located;

21 (v) the local and global environment;

22 (vi) the short-term and long-term interests of the benefit corporation, including benefits that may accrue
23 to the benefit corporation from its long-term plans and the possibility that the interests may be best served by
24 retaining control of the benefit corporation rather than selling or transferring control to another entity; and

25 (vii) the ability of the benefit corporation to accomplish its general purpose and any specific public benefit
26 purpose;

27 (b) may consider:

28 (i) the resources, intent, and conduct, including past, stated, and potential conduct, of any person
29 seeking to acquire control of the benefit corporation; and

30 (ii) any other pertinent factors or the interests of any other person or group; and

1 (c) are not required to give priority to any particular factor or the interests of any particular person or
2 group referred to in this subsection (2) over any other factor or the interests of any other person or group unless
3 the benefit corporation has stated its intention to give priority to a specific public benefit purpose identified in the
4 articles of incorporation.

5 (3) In performing the duties of a director, a director may rely on information, opinions, reports, or
6 statements, including financial statements and other financial data, in each case prepared or presented by:

7 (a) one or more officers or employees of the benefit corporation whom the director believes to be reliable
8 and competent in the matters presented;

9 (b) counsel, independent accountants, or other persons as to matters that the director believes to be
10 within those persons' professional or expert competence; or

11 (c) a committee of the board upon which the director does not serve if the director believes the committee
12 merits confidence and if the director acts in good faith and without knowledge that would cause the director's
13 confidence in the committee to be unwarranted.

14 (4) A person who performs the duties of a director in accordance with [sections 1 through 12] is not liable
15 for monetary damages for any alleged failure to discharge the person's obligations as a director.

16 (5) In addition to the limitations provided in subsection (4), the liability of a director for monetary damages
17 may be eliminated or limited in a benefit corporation's articles of incorporation to the extent provided for in
18 [sections 1 through 12] or elsewhere in this chapter.

19 (6) A director of a foreign corporation is subject to this section if the director of the foreign corporation
20 is subject to duties under its articles of incorporation or bylaws or the law of its jurisdiction of incorporation that
21 are similar to the duties of directors under this section.

22
23 **NEW SECTION. Section 7. Conversion to benefit corporation through merger, exchange, or**
24 **acquisition.** (1) A corporation may become a benefit corporation under [sections 1 through 12] by amending the
25 corporation's articles of incorporation to include a statement that the corporation is a benefit corporation. The
26 amendment is effective only if it is adopted by at least the minimum status vote. If the amendment is adopted,
27 a shareholder of the corporation may require the corporation to purchase at fair market value some or all of the
28 shares owned by the shareholder as provided for in 35-1-827.

29 (2) If a corporation or other entity that is not a benefit corporation is a constituent corporation or entity
30 in a merger reorganization or is the acquired corporation or entity in an exchange reorganization and the surviving

1 corporation in the merger or exchange reorganization is to be a benefit corporation or the articles of incorporation
2 of the acquired corporation or entity are to be amended in the merger or exchange reorganization to provide that
3 the newly formed corporation will be a benefit corporation, the reorganization is effective only if it is approved by
4 the newly formed corporation or other entity by at least the minimum status vote.

5 (3) If any other entity is a party to a merger reorganization and the surviving corporation in the
6 reorganization is to be a benefit corporation, the reorganization is effective only if the reorganization is approved
7 by the other entity by at least the minimum status vote.

8 (4) If another entity is the converting entity in a conversion in which the converted corporation is a benefit
9 corporation, the conversion is effective only if the conversion is approved by the other entity by at least the
10 minimum status vote.

11
12 **NEW SECTION. Section 8. Termination -- reorganization -- other actions affecting benefit**
13 **corporation.** (1) A benefit corporation may terminate its status as a benefit corporation and cease to be subject
14 to [sections 1 through 12] by deleting from the benefit corporation's articles of incorporation the statement and
15 identification of public benefits required under [section 5]. The amendment is effective only if the amendment is
16 adopted by at least the minimum status vote. If the amendment is adopted, a shareholder of the corporation may
17 require the corporation to purchase at fair market value the shares owned by the shareholder as provided for in
18 35-1-827.

19 (2) If a reorganization of a benefit corporation would have the effect of terminating the status of the
20 corporation as a benefit corporation, the reorganization is effective only if the reorganization is approved by at
21 least the minimum status vote.

22 (3) If a benefit corporation is the converting corporation in a conversion, the conversion is effective only
23 if the conversion is approved by at least the minimum status vote.

24 (4) A sale, lease, conveyance, exchange, transfer, or other disposition of all or substantially all of the
25 assets of a benefit corporation, unless the transaction is in the usual and ordinary course of business of the
26 benefit corporation, is effective only if the transaction is approved by at least the minimum status vote. If a
27 transaction described in this subsection is not in the usual and ordinary course of business and is approved, a
28 shareholder of the corporation may require the corporation to purchase at fair market value all or some of the
29 shares owned by the shareholder as provided in 35-1-827.

30

1 NEW SECTION. Section 9. Officers -- duty -- limits. (1) Each officer of a benefit corporation shall
2 consider the interests and factors described in [section 6] in the manner provided in [section 6] whenever:

3 (a) the officer has discretion to act with respect to a matter; or

4 (b) it reasonably appears to the officer that the matter may have a material effect on:

5 (i) the creation of a general or specific public benefit by the benefit corporation; or

6 (ii) any of the interests or factors referred to in [section 6(2)].

7 (2) The consideration by an officer of interests and factors in the manner described in subsection (1)
8 does not constitute a violation of the duties of the officer.

9 (3) An officer is not liable for monetary damages under [sections 1 through 12] for:

10 (a) any action taken as an officer if the officer performed the duties of the position in compliance with this
11 section; or

12 (b) any failure of the benefit corporation to create a general or specific public benefit.

13 (4) An officer does not have a fiduciary duty to a person that is a beneficiary of the general purpose or
14 a specific public benefit purpose of a benefit corporation arising from the status of the person as a beneficiary.

15
16 NEW SECTION. Section 10. Report. (1) Each year, the board of directors of a benefit corporation shall
17 have prepared and delivered to each shareholder an annual benefit report that must include:

18 (a) a narrative description of:

19 (i) the process used and rationale for selecting the third-party standard used to prepare the benefit
20 report;

21 (ii) the ways in which the benefit corporation pursued a general public benefit during the applicable year
22 and the extent to which that general public benefit was created;

23 (iii) the ways in which the benefit corporation pursued any specific public benefit that the articles of
24 incorporation state it is the purpose of the benefit corporation to create and the extent to which the specific public
25 benefit was created; and

26 (iv) any circumstances that may have hindered the creation by the benefit corporation of a general or
27 specific public benefit;

28 (b) an assessment of the overall social and environmental performance of the benefit corporation
29 prepared in accordance with a third-party standard applied consistently with any application of that standard in
30 prior benefit reports or accompanied by an explanation of the reasons for any inconsistent application;

1 (c) a statement indicating whether the benefit corporation failed to pursue its general purpose or any
2 specific public benefit purpose in all material respects during the period covered by the report;

3 (d) the name of each person that owns 5% or more of the outstanding shares of the benefit corporation,
4 either beneficially, to the extent known to the benefit corporation without independent investigation, or of record;

5 (e) the same statement required by [section 11] to be printed on ownership certificates; and

6 (f) a statement of any connection between the entity that established the third-party standard or the
7 entity's directors, officers, or material owners and the benefit corporation or the benefit corporation's directors,
8 officers, and material owners, including any financial or governance relationship that might materially affect the
9 credibility of the objective assessment reached by using the third-party standard.

10 (2) If the statement required under subsection (1)(c) indicates that the benefit corporation failed to pursue
11 its general purpose or any specific public benefit purpose, the annual benefit report must include a description
12 of the ways in which the benefit corporation failed to pursue the general purpose or specific public benefit
13 purpose.

14 (3) The report must be provided to each shareholder within 120 days following the end of each fiscal year
15 of the benefit corporation or at the same time that the benefit corporation delivers any other annual report to its
16 shareholders. The report may be provided electronically or by other means.

17 (4) (a) Except as provided in subsection (4)(c), a benefit corporation shall post all of its benefit reports
18 on the public portion of its internet website, if any.

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

21 (c) The benefit corporation may omit the compensation paid to directors or any proprietary or financial
22 information from the copy of a benefit report posted pursuant to subsection (5)(a) or provided pursuant to
23 subsection (5)(b).

24
25 **NEW SECTION. Section 11. Ownership certificates.** In addition to all other legal requirements, each
26 certificate representing shares of a benefit corporation must have conspicuously printed on the face of the
27 certificate: "This entity is a benefit corporation organized under [section 1] through [section 12] of the Montana
28 Code Annotated."
29

30 **NEW SECTION. Section 12. Enforcement.** (1) A person may bring an action or assert a claim against

1 a benefit corporation or its directors or officers only through a benefit enforcement proceeding under this section.

2 (2) A benefit enforcement proceeding may be commenced or maintained:

3 (a) directly by the benefit corporation; or

4 (b) derivatively by:

5 (i) a shareholder;

6 (ii) a director;

7 (iii) a person or group of persons that owns beneficially or of record 5% or more of the equity interests

8 in an entity of which the benefit corporation is a subsidiary; or

9 (iv) any other person that may be specified in the articles of incorporation of the benefit corporation.

10 (3) A benefit corporation is not liable for monetary damages for any failure of the benefit corporation to
11 create a general or specific public benefit.

12 (4) If the court in a benefit enforcement proceeding finds that a failure to comply with [sections 1 through
13 12] was without justification, the court may award an amount sufficient to reimburse the plaintiff for the reasonable
14 expenses incurred by the plaintiff, including attorney fees and expenses, in connection with the benefit
15 enforcement proceeding.

16

17 **NEW SECTION. Section 13. Saving clause.** [This act] does not affect rights and duties that matured,
18 penalties that were incurred, or proceedings that were begun before [the effective date of this act].

19

20 **NEW SECTION. Section 14. Codification instruction.** [Sections 1 through 12] are intended to be
21 codified as an integral part of Title 35, chapter 1, and the provisions of Title 35, chapter 1, apply to [sections 1
22 through 12].

23

- END -