



State of Wisconsin
2013 - 2014 LEGISLATURE



LRB-4016/1
ARG:eev:jf

2013 ASSEMBLY BILL 870

March 14, 2014 – Introduced by Representatives HESSELBEIN, WEININGER, GENRICH, HULSEY, SARGENT, DOYLE, PASCH, OHNSTAD, WRIGHT, KOLSTE, BERCEAU, BARCA, KAHL, GOYKE, THIESFELDT, VRUWINK and RICHARDS, cosponsored by Senators WIRCH and T. CULLEN. Referred to Committee on Financial Institutions.

1 **AN ACT** *to amend* 183.0103 (1) and 183.0202 (2); and *to create* 183.0202 (7),
2 subchapter XIV of chapter 183 [precedes 183.1401] and chapter 204 of the
3 statutes; **relating to:** creation of a category of business corporation identified
4 as a benefit corporation and a category of limited liability company identified
5 as a low-profit limited liability company.

Analysis by the Legislative Reference Bureau

Benefit corporations

This bill creates a category of business corporation identified as a benefit corporation. A benefit corporation may also fall within other categories of business corporations, such as service corporations or statutory close corporations.

Under the bill, a benefit corporation may be created by including in the articles of incorporation at the time of formation, or by later amending the articles of incorporation to include, a statement that the corporation is a benefit corporation. A business corporation's status as a benefit corporation may be terminated by amending the articles of incorporation to delete this statement.

A benefit corporation must have a purpose of creating general public benefit and the benefit corporation may also specify in its articles of incorporation additional specific public benefit purposes. A "general public benefit" is defined as a material positive impact on society and the environment by the operations of a benefit corporation taken as a whole, through activities that promote some combination of

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specific public benefits. Examples of “specific public benefit” include all of the following: 1) providing low-income or underserved individuals or communities with beneficial products or services; 2) promoting economic opportunity for individuals or communities beyond the creation of jobs in the normal course of business; 3) preserving the environment; 4) improving human health; 5) promoting the arts, sciences, or advancement of knowledge; 6) increasing the flow of capital to entities with a public benefit purpose; and 7) the accomplishment of any other particular benefit for society or the environment.

The board of directors of a benefit corporation must include one director designated as the “benefit director.” The benefit director must annually prepare and present to the board of directors a statement as to whether, in the opinion of the benefit director, the benefit corporation acted in accordance with its general public benefit purpose and any specific public benefit purpose in all material respects and whether the benefit corporation’s directors and officers complied with specified duties. Notwithstanding provisions of the business corporation law, the board of directors, committees of the board, and individual directors of a benefit corporation, in considering the best interests of the benefit corporation, must consider the effects of any action or inaction on all of the following: 1) the shareholders of the benefit corporation; 2) the employees and workforce of the benefit corporation and its subsidiaries and suppliers; 3) the interests of customers as beneficiaries of the general public benefit or specific public benefit purposes of the benefit corporation; 4) community and societal factors, including those of any community in which offices or facilities of the benefit corporation or its subsidiaries or suppliers are located; 5) the local and global environment; 6) 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 7) the ability of the benefit corporation to accomplish its general public benefit purpose and any specific public benefit purpose. In addition, the board, committees, and individual directors may consider the resources, intent, and conduct of any person seeking to acquire control of the benefit corporation and any other pertinent factors or the interests of any other group.

A benefit corporation may also designate a “benefit officer,” who has the powers and duties relating to the benefit corporation’s purpose of creating general public benefit or specific public benefit and is also responsible for preparing an annual benefit report (described below). Each officer of a benefit corporation must consider the same interests and factors applicable for directors, identified as 1) to 7) immediately above, when the officer has discretion to act with respect to a matter that may have a material effect on the creation of general or specific public benefit by the benefit corporation.

A benefit corporation must prepare an annual benefit report that contains certain information for the reporting year, including the following: 1) a narrative description of the ways in which the benefit corporation pursued general public benefit and any specific public benefit and the extent to which such public benefit was created; and 2) an assessment of the social and environmental performance of

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the benefit corporation. The bill also includes certain limitations on imposing personal liability on directors and officers of benefit corporations.

Low-profit limited liability companies

This bill allows an entity operated for profit and organized as a limited liability company (LLC) to become a low-profit LLC by stating in its articles of organization that it is a low-profit LLC. However, to qualify as a low-profit LLC, an LLC must significantly further the accomplishment of one or more charitable or educational purposes, cannot have the production of income or appreciation of property as its primary purpose, and cannot have any political or legislative purpose. In general, provisions of law applicable to LLCs also apply to low-profit LLCs, although one of the permissible identifiers in the name of a low-profit LLC is "L3C" instead of "LLC."

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

1 **SECTION 1.** 183.0103 (1) of the statutes is amended to read:

2 183.0103 (1) The Except as provided in s. 183.1402, the name of a limited
3 liability company as set forth in its articles of organization must contain the words
4 "limited liability company" or "limited liability co." or end with the abbreviation
5 "L.L.C." or "LLC". The name may not contain language stating or implying that the
6 limited liability company is organized for any purpose other than that permitted
7 under s. 183.0106 (1).

8 **SECTION 2.** 183.0202 (2) of the statutes is amended to read:

9 183.0202 (2) A name for the limited liability company that satisfies s. 183.0103
10 and, if applicable, s. 183.1402.

11 **SECTION 3.** 183.0202 (7) of the statutes is created to read:

12 183.0202 (7) If applicable, the statements under s. 183.1403 (2).

13 **SECTION 4.** Subchapter XIV of chapter 183 [precedes 183.1401] of the statutes
14 is created to read:

15 **CHAPTER 183**

SUBCHAPTER XIV

LOW-PROFIT LIMITED

LIABILITY COMPANIES

183.1401 Definition. In this subchapter, “low-profit limited liability company” means a limited liability company that is operated for profit and that satisfies the requirements under s. 183.1403.

183.1402 Name. The name of a low-profit limited liability company as set forth in its articles of organization must contain the words “low-profit limited liability company” or “low-profit limited liability co.” or end with the abbreviation “L3C”.

183.1403 Requirements. (1) To qualify as a low-profit limited liability company under this subchapter, a limited liability company shall at all times significantly further the accomplishment of one or more charitable or educational purposes within the meaning of section 170 (c) (2) (B) of the Internal Revenue Code.

(2) To qualify as a low-profit limited liability company under this subchapter, a limited liability company shall state in its articles of organization all of the following:

(a) That it is a low-profit limited liability company.

(b) That the production of income or appreciation of property is not its primary purpose.

(c) That it has no purpose to accomplish any political or legislative purpose within the meaning of section 170 (c) (2) (D) of the Internal Revenue Code.

(3) (a) Subject to par. (b), to qualify as a low-profit limited liability company under this subchapter, a limited liability company’s operations shall at all times be consistent with the statements in sub. (2) (b) and (c).

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1 (b) The fact that a limited liability company produces significant income or
2 capital appreciation is not, in the absence of other factors, conclusive evidence that
3 the limited liability company has as its primary purpose the production of income or
4 appreciation of property.

5 (c) The operating agreement of a low-profit limited liability company may not
6 eliminate or reduce the obligations or purposes of the low-profit limited liability
7 company under this section.

8 (4) Except as otherwise provided in this subchapter, all provisions of this
9 chapter applicable to domestic limited liability companies are applicable to
10 low-profit limited liability companies.

11 **183.1404 Additional duty.** (1) In addition to the duties under s. 183.0402,
12 a member or manager of a low-profit limited liability company shall discharge his
13 or her duties relating to the obligations and purposes of the low-profit limited
14 liability company under s. 183.1403 (2) (b) and (c) with the degree of diligence, care,
15 and skill that an ordinarily prudent person would exercise under similar
16 circumstances.

17 (2) The operating agreement of a low-profit limited liability company may not
18 eliminate or reduce the duty imposed under sub. (1).

19 **183.1405 Ceasing to operate as a low-profit limited liability company.**
20 A low-profit limited liability company that ceases to meet any of the requirements
21 under s. 183.1403 ceases to qualify as a low-profit limited liability company and
22 shall promptly amend its articles of organization to remove the statements specified
23 in s. 183.1403 (2) and amend its name consistent with s. 183.0103.

24 **SECTION 5.** Chapter 204 of the statutes is created to read:

25 **CHAPTER 204**

BENEFIT CORPORATIONS

SUBCHAPTER I

GENERAL PROVISIONS

204.101 Application and effect of chapter. (1) GENERAL RULE. This chapter shall be applicable to all benefit corporations.

(2) APPLICATION OF BUSINESS CORPORATION LAW GENERALLY. The existence of a provision of this chapter shall not of itself create an implication that a contrary or different rule of law is applicable to a business corporation that is not a benefit corporation. This chapter shall not affect any statute or rule that is applicable to a business corporation that is not a benefit corporation.

(3) LAWS APPLICABLE TO BENEFIT CORPORATIONS. Except as otherwise provided in this chapter, ch. 180 shall be generally applicable to all benefit corporations. The specific provisions of this chapter shall control over the general provisions of ch. 180. A benefit corporation may be simultaneously subject to this chapter and provisions of other chapters.

(4) ORGANIC RECORDS. A provision of the articles or bylaws of a benefit corporation may not relax, be inconsistent with, or supersede a provision of this chapter.

204.102 Definitions. Unless the context clearly indicates otherwise, in this chapter:

(1) "Benefit corporation" means a business corporation that has elected to become subject to this chapter and whose status as a benefit corporation has not been terminated under s. 204.105.

(2) "Benefit director" means the person designated as the benefit director of a benefit corporation as provided in s. 204.302.

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1 (3) “Benefit officer” means the officer of a benefit corporation, if any, designated
2 as the benefit officer as provided in s. 204.304.

3 (4) “Entity” has the meaning given in s. 180.0103 (8).

4 (5) “General public benefit” means a material positive impact on society and
5 the environment by the operations of a benefit corporation taken as a whole, through
6 activities that promote some combination of specific public benefits.

7 (6) “Service corporation” has the meaning given in s. 180.1901 (2).

8 (7) “Specific public benefit” includes all of the following:

9 (a) Providing low-income or underserved individuals or communities with
10 beneficial products or services.

11 (b) Promoting economic opportunity for individuals or communities beyond the
12 creation of jobs in the normal course of business.

13 (c) Preserving the environment.

14 (d) Improving human health.

15 (e) Promoting the arts, sciences, or advancement of knowledge.

16 (f) Increasing the flow of capital to entities with a public benefit purpose.

17 (g) The accomplishment of any other particular benefit for society or the
18 environment.

19 **204.103 Formation of benefit corporations.** A benefit corporation shall be
20 formed in accordance with ch. 180, except that its articles shall also state that it is
21 a benefit corporation.

22 **204.104 Election of an existing business corporation to become a**
23 **benefit corporation.** (1) AMENDMENT. An existing business corporation may
24 become a benefit corporation under this chapter by amending its articles so that they

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1 contain, in addition to the requirements of s. 180.0202, a statement that the
2 corporation is a benefit corporation.

3 (2) FUNDAMENTAL TRANSACTIONS. If a corporation that is not a benefit
4 corporation is a party to a merger, consolidation, or division or is the exchanging
5 corporation in a share exchange, and the surviving, new, or any resulting corporation
6 in the merger, consolidation, division, or share exchange is to be a benefit
7 corporation, then the plan of merger, consolidation, division, or share exchange shall
8 not be effective unless the articles of the surviving, new, or resulting corporation
9 contain a statement that the corporation is a benefit corporation.

10 **204.105 Termination of benefit corporation status.** A benefit corporation
11 may terminate its status as such and cease to be subject to this chapter by amending
12 its articles to delete the provision required by ss. 204.103 and 204.104 to be stated
13 in the articles of a benefit corporation.

14 SUBCHAPTER II

15 CORPORATE PURPOSES

16 **204.201 Corporate purposes. (1) GENERAL PUBLIC BENEFIT PURPOSE.** A
17 benefit corporation shall have a purpose of creating general public benefit. This
18 purpose is in addition to its purpose under s. 180.0301 and any specific purpose set
19 forth in its articles under sub. (2).

20 (2) OPTIONAL SPECIFIC PUBLIC BENEFIT PURPOSE. The articles of a benefit
21 corporation may identify one or more specific public benefits that it is the purpose
22 of the benefit corporation to create in addition to its purposes under s. 180.0301 and
23 sub. (1). The identification of a specific public benefit under this subsection does not
24 limit the obligation of a benefit corporation to create general public benefit.

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(3) EFFECT OF PURPOSES. The creation of general public benefit and specific public benefit as provided in subs. (1) and (2) shall be considered to be in the best interests of the benefit corporation.

(4) AMENDMENT. A benefit corporation may amend its articles to add, amend, or delete the identification of a specific public benefit that it is the purpose of the benefit corporation to create.

(5) SERVICE CORPORATIONS. A service corporation that is a benefit corporation is not limited by ss. 180.1903 and 180.1905 in its authority to create general public benefit or a specific public benefit.

SUBCHAPTER III

ACCOUNTABILITY

204.301 Standard of conduct for directors. (1) CONSIDERATION OF INTERESTS. (a) Notwithstanding ss. 180.0302 (15) and 180.0827, in discharging the duties of their respective positions, the board of directors, committees of the board, and individual directors of a benefit corporation, in considering the best interests of the benefit corporation, shall consider the effects of any action or inaction on all of the following:

1. The shareholders of the benefit corporation.

2. The employees and workforce of the benefit corporation and its subsidiaries and suppliers.

3. The interests of customers as beneficiaries of the general public benefit or specific public benefit purposes of the benefit corporation.

4. Community and societal factors, including those of any community in which offices or facilities of the benefit corporation or its subsidiaries or suppliers are located.

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1 5. The local and global environment.

2 6. The short-term and long-term interests of the benefit corporation, including
3 benefits that may accrue to the benefit corporation from its long-term plans and the
4 possibility that these interests may be best served by the continued corporate
5 independence of the benefit corporation.

6 7. The ability of the benefit corporation to accomplish its general public benefit
7 purpose and any specific public benefit purpose.

8 (b) Notwithstanding ss. 180.0302 (15) and 180.0827, in discharging the duties
9 of their respective positions, the board of directors, committees of the board, and
10 individual directors of a benefit corporation, in considering the best interests of the
11 benefit corporation, may consider any of the following:

12 1. The resources, intent, and conduct of any person seeking to acquire control
13 of the corporation.

14 2. Any other pertinent factors or the interests of any other group that is deemed
15 appropriate.

16 (c) Under pars. (a) and (b), the board of directors, committees of the board, and
17 individual directors of a benefit corporation are not required to give priority to the
18 interests of any particular person or group referred to in pars. (a) or (b) over the
19 interests of any other person or group unless the benefit corporation has stated in
20 its articles its intention to give such priority.

21 **(2) COORDINATION WITH OTHER PROVISIONS OF LAW.** The consideration of interests
22 and factors in the manner required by sub. (1) does not constitute a violation of s.
23 180.0801 or any other provision of ch. 180 and is in addition to the ability of directors
24 to consider interests and factors as provided in s. 180.0827.

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1 **(3) EXONERATION FROM PERSONAL LIABILITY.** A director of a benefit corporation
2 is not personally liable, as such, for monetary damages for any of the following:

3 (a) Any action taken as a director if the director performed the duties of his or
4 her office in compliance with this section and the provisions of ch. 180.

5 (b) Failure of the benefit corporation to pursue or create general public benefit
6 or specific public benefit.

7 **(4) LIMITATION ON STANDING.** A director does not have a duty to a person that
8 is a beneficiary of the general public benefit purpose or a specific public benefit
9 purpose of a benefit corporation arising from the status of the person as a beneficiary.

10 **204.302 Benefit director. (1) GENERAL RULE.** The board of directors of a
11 benefit corporation shall include one director who shall be designated the “benefit
12 director” and shall have, in addition to all of the powers, duties, rights, and
13 immunities of the other directors of the benefit corporation, the powers, duties,
14 rights, and immunities provided in this section.

15 **(2) ELECTION, REMOVAL, AND QUALIFICATIONS.** The benefit director shall be
16 elected, and may be removed, in the manner provided by subch. VIII of ch. 180. The
17 benefit director may serve as the benefit officer at the same time as serving as the
18 benefit director. The articles or bylaws of a benefit corporation may prescribe
19 additional qualifications of the benefit director not inconsistent with this subsection.

20 **(3) ANNUAL COMPLIANCE STATEMENT.** The benefit director shall annually prepare
21 a statement as to whether, in the opinion of the benefit director, the benefit
22 corporation acted in accordance with its general public benefit purpose and any
23 specific public benefit purpose in all material respects during the period covered by
24 the report and whether the directors and officers complied with ss. 204.301 (1) and
25 204.303 (1), respectively. This statement shall annually be presented to the board

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1 of directors except that, if the benefit corporation has elected under s. 180.1821 not
2 to have a board of directors, then the statement shall annually be presented to the
3 shareholders who perform the duties of a board of directors.

4 (4) STATUS OF ACTIONS. The acts of an individual in the capacity of a benefit
5 director shall constitute for all purposes acts of that individual in the capacity of a
6 director of the benefit corporation.

7 (5) ALTERNATIVE GOVERNANCE ARRANGEMENTS. If a benefit corporation has
8 elected under s. 180.1821 not to have a board of directors, then the bylaws of the
9 benefit corporation must provide that the shareholders who perform the duties of a
10 board of directors shall include a person with the powers, duties, rights, and
11 immunities of a benefit director.

12 (6) EXONERATION FROM PERSONAL LIABILITY. Notwithstanding s. 180.0828 and
13 any provision of a benefit corporation's bylaws, a benefit director shall not be
14 personally liable for any act or omission in the capacity of a benefit director unless
15 the act or omission constitutes self-dealing, willful misconduct, or a knowing
16 violation of law.

17 **204.303 Standard of conduct for officers.** (1) GENERAL RULE. Each officer
18 of a benefit corporation shall consider the interests and factors described in s.
19 204.301 (1) in the manner provided in that subsection when the officer has discretion
20 to act with respect to a matter and it reasonably appears to the officer that the matter
21 may have a material effect on the creation of general or specific public benefit by the
22 benefit corporation or on any of the interests or factors referred to in s. 204.301 (1).

23 (2) COORDINATION WITH OTHER PROVISIONS OF LAW. The consideration of interests
24 and factors in the manner described in sub. (1) shall not constitute a violation of s.
25 180.0841 or any other provision of ch. 180.

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(3) EXONERATION FROM PERSONAL LIABILITY. An officer of a benefit corporation is not personally liable, as such, for monetary damages for any action taken as an officer if the officer performed the duties of the position in compliance with this section and the provisions of ch. 180.

204.304 Benefit officer. (1) DESIGNATION. A benefit corporation may have an officer designated the “benefit officer.”

(2) FUNCTIONS. A benefit officer shall have the powers and duties, as provided in the bylaws and as determined by the board of directors, relating to the benefit corporation's purpose of creating general public benefit or specific public benefit. If a benefit corporation has a benefit officer, the duties of the benefit officer shall include preparing the benefit report required by s. 204.401.

SUBCHAPTER IV

TRANSPARENCY

204.401 Annual benefit report. A benefit corporation shall prepare an annual benefit report including all of the following:

(1) A narrative description of all of the following:

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

(b) The ways in which the benefit corporation pursued any specific public benefit that the articles state it is the purpose of the benefit corporation to create and the extent to which that specific public benefit was created.

(c) Any circumstances that have hindered the creation by the benefit corporation of general public benefit or specific public benefit.

(2) An assessment of the social and environmental performance of the benefit corporation.

1 **SECTION 6. Effective dates.** This act takes effect on the day after publication,
2 except as follows:

(1) The treatment of sections 183.0103 (1) and 183.0202 (2) and (7) and subchapter XIV of chapter 183 of the statutes takes effect on January 1, 2015.

5 (END)