

SECOND REGULAR SESSION

HOUSE BILL NO. 1956

97TH GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVES SCHUPP (Sponsor), BURNS, OTTO, CARPENTER, ELLINGER,
HUMMEL, MORGAN, MCNEIL, NORR, KIRKTON, MCCANN BEATTY,
WALTON GRAY AND KELLY (45) (Co-sponsors).

4914L.011

D. ADAM CRUMBLISS, Chief Clerk

AN ACT

To amend chapter 351, RSMo, by adding thereto thirteen new sections relating to public 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 thirteen new sections, to
2 be known as sections 351.1400, 351.1403, 351.1406, 351.1409, 351.1412, 351.1415, 351.1418,
3 351.1421, 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:

2 **(1) "Benefit corporation", a business corporation:**

3 **(a) Which has elected to become subject to sections 351.1400 to 351.1435; and**

4 **(b) The status of which as a benefit corporation has not been terminated;**

5 **(2) "Benefit director", the director designated as the benefit director of a benefit**
6 **corporation under section 351.1421;**

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

8 **(a) Failure of a benefit corporation to pursue or create general public benefit or a**
9 **specific public benefit purpose set forth in its articles; or**

10 **(b) Violation of any obligation, duty, or standard of conduct under sections**
11 **351.1400 to 351.1435;**

12 **(4) "Benefit officer", the individual designated as the benefit officer of a benefit**
13 **corporation under sections 351.1400 to 351.1435;**

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.

14 (5) "General public benefit", a material positive impact on society and the
15 environment, taken as a whole, assessed against a third-party standard, from the business
16 and operations of a benefit corporation;

17 (6) "Independent", having no material relationship with a benefit corporation or
18 a subsidiary of the benefit corporation. Serving as benefit director or benefit officer does
19 not make an individual not independent. A material relationship between an individual
20 and a benefit corporation or any of its subsidiaries will be conclusively presumed to exist
21 if any of the following apply:

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

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

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

30 a. The individual; or

31 b. An entity:

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

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

36 (7) "Minimum status vote":

37 (a) In the case of a business corporation, in addition to any other required approval
38 or vote, the satisfaction of the following conditions:

39 a. The shareholders of every class or series shall be entitled to vote on the corporate
40 action regardless of a limitation stated in the articles of incorporation or bylaws on the
41 voting rights of any class or series;

42 b. The corporate action shall be approved by vote of the shareholders of each class
43 or series entitled to cast at least two-thirds of the votes that all shareholders of the class or
44 series are entitled to cast on the action;

45 (b) In the case of a domestic entity other than a business corporation, in addition
46 to any other required approval, vote, or consent, the satisfaction of the following
47 conditions:

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

50 consent to the action regardless of any otherwise applicable limitation on the voting or
51 consent rights of any class or series;

52 b. The action shall be approved by vote or consent of the holders described in
53 paragraph (a) of this subdivision entitled to cast at least two-thirds of the votes or consents
54 that all of those holders are entitled to cast on the action;

55 (8) "Publicly traded corporation", a business corporation that has shares listed on
56 a national securities exchange or traded in a market maintained by one or more members
57 of a national securities association;

58 (9) "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;

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

69 (10) "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 (11) "Third-party standard", a recognized standard for defining, reporting, and
72 assessing corporate social and environmental performance that is:

73 (a) Comprehensive because it assesses the effect of the business and its operations
74 upon the interests listed in paragraphs (b), (c), (d), and (e) of subdivision (1) of subsection
75 1 of section 351.1418;

76 (b) Developed by an entity that is not controlled by the benefit corporation;

77 (c) Credible because it is developed by an entity that both:

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

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

82 (d) Transparent because the following information is publicly available:

83 a. About the standard:

84 (i) The criteria considered when measuring the overall social and environmental
85 performance of a business;

- 86 (ii) The relative weightings, if any, of those criteria;
87 b. About the development and revision of the standard:
88 (i) The identity of the directors, officers, material owners, and the governing body
89 of the entity that developed and controls revisions to the standard;
90 (ii) The process by which revisions to the standard and changes to the membership
91 of the governing body are made;
92 (iii) An accounting of the revenue and sources of financial support for the entity,
93 with sufficient detail to disclose any relationships that could reasonably be considered to
94 present a potential conflict of interest.

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

3 2. The existence of a provision of sections 351.1400 to 351.1435 shall not of itself
4 create an implication that a contrary or different rule of law is applicable to a business
5 corporation that is not a benefit corporation. Sections 351.1400 to 351.1435 shall not affect
6 a statute or rule of law that is applicable to a business corporation that is not a benefit
7 corporation.

8 3. Except as otherwise provided in sections 351.1400 to 351.1435, sections 351.010
9 to 351.1228 shall be generally applicable to all benefit corporations. The specific provisions
10 of sections 351.1400 to 351.1435 shall control over the general provisions of sections
11 351.010 to 351.1228. A benefit corporation may be subject simultaneously to sections
12 351.1400 to 351.1435 and one or more other corporations under this chapter or chapter
13 349, 350, 353, 354, 355, or 356.

14 4. A provision of the articles of incorporation or bylaws of a benefit corporation
15 shall not limit, be inconsistent with, or supersede a provision of sections 351.1400 to
16 351.1435.

 351.1406. A benefit corporation shall be incorporated in accordance with sections
2 351.010 to 351.1228, but its articles of incorporation shall also state that it is a benefit
3 corporation.

 351.1409. 1. An existing corporation may become a benefit corporation under
2 sections 351.1400 to 351.1435 by amending its articles of incorporation so that they contain
3 a statement that the corporation is a benefit corporation. In order to be effective, the
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, where 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 provision that the corporation is a benefit corporation. In order to be effective, the
4 amendment shall be 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 be
7 adopted by at least the minimum status vote in order to be effective.

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 have a purpose of creating general public
2 benefit. This purpose is in addition to its purpose under sections 351.010 to 351.1228 and
3 any specific purpose set forth in the articles of incorporation in accordance with subsection
4 2 of this section.

5 2. The articles of incorporation of a benefit corporation may identify one or more
6 specific public benefits that it is the purpose of the benefit corporation to create in addition
7 to its purposes under sections 351.010 to 351.1228 and subsection 1 of this section. The
8 identification of a specific public benefit under this subsection does not limit the purpose
9 of a benefit corporation to create general public benefit under subsection 1 of this section.

10 3. The creation of general public benefit and specific public benefit under
11 subsections 1 and 2 of this section is in the best interests of the benefit corporation.

12 4. A benefit corporation may amend its articles of incorporation to add, amend, or
13 delete the identification of a specific public benefit that it is the purpose of the benefit
14 corporation to create. In order to be effective, the amendment shall be adopted by at least
15 the minimum status vote.

16 5. A professional corporation that is a benefit corporation does not violate chapter
17 356 by having the purpose to create general public benefit or a specific public benefit.

351.1418. 1. In discharging the duties of their respective positions and in
2 considering the best interests of the benefit corporation, the board of directors, committees
3 of the board, and individual directors of a benefit corporation:

4 (1) Shall consider the effects of any action or inaction upon:

5 (a) The shareholders of the benefit corporation;

6 (b) The employees and work force of the benefit corporation, its subsidiaries, and
7 its suppliers;

8 (c) The interests of customers as beneficiaries of the general public benefit or
9 specific public benefit purposes of the benefit corporation;

10 (d) Community and societal factors, including those of each community in which
11 offices or facilities of the benefit corporation, its subsidiaries, or its suppliers are located;

12 (e) The local and global environment;

13 (f) The short-term and long-term interests of the benefit corporation, including
14 benefits that may accrue to the benefit corporation from its long-term plans and the
15 possibility that these interests may be best served by the continued independence of the
16 benefit corporation; and

17 (g) The ability of the benefit corporation to accomplish its general public benefit
18 purpose and any specific public benefit purpose; and

19 (2) May consider other pertinent factors or the interests of any other group that
20 they deem appropriate; but

21 (3) Need not give priority to the interests of a particular person or group referred
22 to in subdivision (1) or (2) of this subsection over the interests of any other person or group
23 unless the benefit corporation has stated in its articles of incorporation its intention to give
24 priority to certain interests related to its accomplishment of its general public benefit
25 purpose or of a specific public benefit purpose identified in its articles.

26 2. The consideration of interests and factors in the manner required by subsection
27 1 of this section does not constitute a violation of the duties of the directors under this
28 chapter.

29 3. A director is not personally liable for monetary damages for:

30 (1) Any action or inaction in the course of performing the duties of a director under
31 subsection 1 of this section if the director performed the duties of office in compliance with
32 sections 351.010 to 351.1228 and this section; or

33 (2) Failure of the benefit corporation to pursue or create general public benefit or
34 specific public benefit.

35 4. A director does not have a duty to a person that is a beneficiary of the general
36 public benefit purpose or a specific public benefit purpose of a benefit corporation arising
37 from the status of the person as a beneficiary.

38 5. A director who makes a business judgment in good faith fulfills the duty under
39 this section if the director:

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

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

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

 351.1421. 1. The board of directors of a benefit corporation that is a publicly
2 traded corporation shall, and the board of any other benefit corporation may, include a
3 director, who:

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

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

8 2. The benefit director shall be elected, and may be removed, in the manner
9 provided by sections 351.010 to 351.526 and shall be an individual who is independent.
10 The benefit director may serve as the benefit officer at the same time as serving as the
11 benefit director. The articles of incorporation or bylaws of a benefit corporation may
12 prescribe additional qualifications of the benefit director not inconsistent with this
13 subsection.

14 3. The benefit director shall prepare, and the benefit corporation shall include in
15 the annual benefit report to shareholders required by section 351.1433, the opinion of the
16 benefit director on all of the following:

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

20 (2) Whether the directors and officers complied with subsection 1 of section
21 351.1418 and subsection 1 of section 351.1424, respectively;

22 (3) If, in the opinion of the benefit director, the benefit corporation or its directors
23 or officers failed to act or comply in the manner described in subdivisions (1) and (2) of this
24 subsection, a description of the ways in which the benefit corporation or its directors or
25 officers failed to act or comply.

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

29 5. Regardless of whether the articles of incorporation or bylaws of a benefit
30 corporation include a provision eliminating or limiting the personal liability of directors
31 authorized by section 351.055, a benefit director shall not be personally liable for an act

32 or omission in the capacity of a benefit director unless the act or omission constitutes
33 self-dealing, 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 general public benefit or a specific public
7 benefit identified in the articles of incorporation of the benefit corporation.

8 2. The consideration of interests and factors in the manner described in subsection
9 1 of this section shall not constitute a violation of section 351.360.

10 3. Except as provided in the articles of incorporation, an officer is not personally
11 liable for monetary damages for:

12 (1) An action or inaction as an officer in the course of performing the duties of an
13 officer under subsection 1 of this section if the officer performed the duties of the position
14 in compliance with section 351.360 and this section; or

15 (2) Failure of the benefit corporation to pursue or create general public benefit or
16 specific public benefit.

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

20 5. An officer who makes a business judgment in good faith fulfills the duty under
21 this section if the officer:

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

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

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

351.1427. 1. A benefit corporation may have an officer designated 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
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;

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

351.1430. 1. (1) Except in a benefit enforcement proceeding, no person may bring
2 **an action or assert a claim against a benefit corporation or its directors or officers with**
3 **respect to:**

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

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

8 **(2) A benefit corporation shall not be liable for monetary damages under sections**
9 **351.1400 to 351.1435 for any failure of the benefit corporation to pursue or create general**
10 **public benefit or a specific public benefit.**

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

12 **(1) Directly by the benefit corporation; or**

13 **(2) Derivatively by:**

14 **(a) A person or group of persons that owned beneficially or of record at least two**
15 **percent of the total number of shares of a class or series outstanding at the time of the act**
16 **or omission complained of;**

17 **(b) A director;**

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

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

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

351.1433. 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 general public benefit**
5 **during the year and the extent to which 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 it 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 general public benefit or specific public benefit;
- 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 which might materially
32 affect the credibility of the use of the third-party standard;
- 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 that 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.

2 **351.1435. 1. A benefit corporation shall send its annual benefit report to each**
3 **shareholder:**

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

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

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

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

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

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

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