

House _____ Amendment NO. _____

Offered By

AMEND House Bill No. 535, Page 1, Section 351.127, Line 6, by inserting after said section and line the following:

"351.1400. As used in sections 351.1400 to 351.1435, the following terms mean:

(1) "Benefit corporation", a corporation that:

(a) Has elected to become subject to sections 351.1400 to 351.1435;

(b) Has not terminated its status as a benefit corporation under section 351.1412; and

(c) Is a general corporation formed under the provisions of sections 351.010 to 351.720;

(2) "Benefit director", the director designated by the benefit corporation under section 351.1421;

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

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

(b) A violation of any obligation, duty, or standard of conduct under sections 351.1400 to 351.1435;

(4) "Benefit officer", the individual designated as the benefit officer of a benefit corporation under section 351.1427;

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

(6) "Independent", having no material relationship with a benefit corporation or a subsidiary of the benefit corporation, provided that serving as benefit director or benefit officer of a benefit corporation shall not constitute a material relationship. A material relationship between an individual and a benefit corporation or any of its subsidiaries shall be conclusively presumed to exist if:

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

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

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

a. The individual; or

b. An entity:

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

(ii) In which the individual owns, beneficially or of record, five percent or more of the

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1 outstanding equity interests, calculated as if all outstanding rights to acquire equity interests in the
 2 entity had been exercised;

3 (7) "Minimum status vote", a vote that satisfies the following conditions:

4 (a) If a business corporation, in addition to any other approval or vote required by the
 5 articles of incorporation or bylaws of the benefit corporation:

6 a. The shareholders of every class or series are entitled to vote on the corporate action,
 7 regardless of a limitation stated in the articles of incorporation or bylaws on the voting rights of any
 8 class or series; and

9 b. The corporate action is approved by vote of the shareholders of each class or series
 10 entitled to cast at least two-thirds of the votes that all shareholders of the class or series are entitled
 11 to cast on the action; or

12 (b) If a domestic entity other than a business corporation, in addition to any other required
 13 approval, vote, or consent:

14 a. The holders of every class or series of equity interest in the entity that are entitled to
 15 receive a distribution of any kind from the entity are entitled to vote on the action, regardless of any
 16 otherwise applicable limitation on the voting or consent rights of any class or series; and

17 b. The action is approved by the affirmative vote of the holders entitled to cast at least two-
 18 thirds of the votes or consents that all of those holders are entitled to cast on the action;

19 (8) "Specific public benefit":

20 (a) Providing low-income or underserved individuals or communities with beneficial
 21 products or services;

22 (b) Promoting economic opportunity for individuals or communities beyond the creation of
 23 jobs in the normal course of business;

24 (c) Protecting or restoring the environment;

25 (d) Improving human health;

26 (e) Promoting the arts, sciences, or advancement of knowledge;

27 (f) Increasing the flow of capital to entities with a purpose to benefit society or the
 28 environment; or

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

30 (9) "Subsidiary", in relation to a person, an entity in which the person owns beneficially or
 31 of record fifty percent or more of the outstanding equity interests;

32 (10) "Third-party standard", a recognized standard for defining, reporting, and assessing
 33 corporate social and environmental performance. Such standard shall:

34 (a) Assess the effect of the business and its operations upon the interests listed in paragraphs
 35 (b), (c), (d), and (e) of subdivision (1) of subsection 1 of section 351.1418;

36 (b) Be developed by an entity that is not controlled by the benefit corporation;

37 (c) Be developed by an entity that both:

38 a. Has access to necessary expertise to assess overall corporate social and environmental
 39 performance; and

40 b. Uses a balanced multistakeholder approach to develop the standard, including a
 41 reasonable public comment period; and

42 (d) Keep the following information publicly available:

43 a. The criteria considered when measuring the overall social and environmental
 44 performance of a business;

45 b. The relative weightings, if any, of those criteria;

46 c. The identity of the directors, officers, material owners, and the governing body of the
 47 entity that developed, and controls revisions to, the standard;

48 d. The process by which revisions to the standard and changes to the membership of the
 49 governing body are made; and

1 e. An accounting of the revenue and sources of financial support for the entity, with
 2 sufficient detail to disclose any relationships that could reasonably be considered to present a
 3 potential conflict of interest.

4 351.1403. 1. Sections 351.1400 to 351.1435 shall be applicable to all benefit corporations.

5 2. All provisions of sections 351.010 to 351.720 relating to the administration, enforcement,
 6 interpretation, or amendment of such sections shall be applicable to sections 351.1400 to 351.1435,
 7 provided that in all cases in which the provisions of sections 351.1400 to 351.1435 are contrary to or
 8 inconsistent with the provisions of 351.010 to 351.720, the provisions of sections 351.1400 to
 9 351.1435 shall take precedence over the provisions of sections 351.010 to 351.720.

10 3. A provision of the articles of incorporation or bylaws of a benefit corporation shall not
 11 limit, be inconsistent with, or supersede any provision of sections 351.1400 to 351.1435.

12 351.1409. 1. Any existing corporation formed under the provisions of sections 351.010 to
 13 351.720 may become a benefit corporation by amending its articles of incorporation to include a
 14 statement that the corporation is a benefit corporation. Such amendment shall be adopted by at least
 15 the minimum status vote.

16 2. For any entity that is a party to a merger or consolidation or is the exchanging entity in a
 17 share exchange, if the surviving, new, or resulting entity in the merger, consolidation, or share
 18 exchange is intended to be a benefit corporation, such plan of merger, consolidation, or share
 19 exchange shall be adopted by at least the minimum status vote in order to be effective.

20 351.1412. 1. A benefit corporation may terminate its status as such and cease to be subject
 21 to sections 351.1400 to 351.1435 by amending its articles of incorporation to remove the statement
 22 that the corporation is a benefit corporation. Such amendment shall be adopted by at least the
 23 minimum status vote.

24 2. If a plan of merger, conversion, or share exchange would have the effect of terminating
 25 the status of a business corporation as a benefit corporation, the plan shall not be effective unless
 26 adopted by at least the minimum status vote.

27 3. Any sale, lease, exchange, or other disposition of all or substantially all of the assets of a
 28 benefit corporation, unless the transaction is in the usual and regular course of business, shall not be
 29 effective unless the transaction is approved by at least the minimum status vote.

30 351.1415. 1. A benefit corporation shall create a general public benefit that shall be in
 31 addition to its purpose under sections 351.010 to 351.720 and any specific purpose set forth in the
 32 articles of incorporation in accordance with subsection 2 of this section.

33 2. The articles of incorporation of a benefit corporation may identify one or more specific
 34 public benefit purposes in addition to its purposes under sections 351.010 to 351.720 and subsection
 35 1 of this section.

36 3. A benefit corporation may amend its articles of incorporation to add, amend, or delete the
 37 identification of a specific public benefit. Such amendment shall be adopted by at least the
 38 minimum status vote.

39 351.1418. 1. In discharging the duties of their respective positions and in considering the
 40 best interests of the benefit corporation, the board of directors, committees of the board, and
 41 individual directors of a benefit corporation:

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

43 (a) The shareholders of the benefit corporation;

44 (b) The employees and workforce of the benefit corporation, its subsidiaries, and its
 45 suppliers;

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

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

- 1 (e) The local and global environment;
 2 (f) The short-term and long-term interests of the benefit corporation, including benefits that
 3 may accrue to the benefit corporation from its long-term plans and the possibility that these interests
 4 may be best served by the continued independence of the benefit corporation; and
 5 (g) The ability of the benefit corporation to accomplish its general public benefit purpose
 6 and any specific public benefit purpose;
 7 (2) May consider other pertinent factors or the interests of any other group deemed
 8 appropriate; and
 9 (3) Shall not be required to give priority to the interests of a particular person or group over
 10 the interests of any other person or group unless the benefit corporation has stated in its articles of
 11 incorporation its intention to give priority to certain interests related to its accomplishment of its
 12 general public benefit purpose or specific public benefit purpose.
 13 2. A director shall not be personally liable for monetary damages for:
 14 (1) Any action or inaction in the course of performing the duties of a director under
 15 subsection 1 of this section if the director was not interested with respect to the action or inaction; or
 16 (2) Failure of the benefit corporation to pursue or create a general public benefit or specific
 17 public benefit.
 18 3. A director shall not have a duty to any person that is a beneficiary of the general public
 19 benefit purpose or a specific public benefit purpose of a benefit corporation arising from the status
 20 of the person as a beneficiary.
 21 4. A director who makes a business judgment in good faith fulfills the duty under this
 22 section if the director:
 23 (1) Is not interested in the subject of the business judgment;
 24 (2) Is informed with respect to the subject of the business judgment to the extent the director
 25 reasonably believes to be appropriate under the circumstances; and
 26 (3) Rationally believes that the business judgment is in the best interests of the benefit
 27 corporation.
 28 351.1421. 1. The board of directors of a benefit corporation may include a director, who:
 29 (1) Shall be designated the benefit director; and
 30 (2) Shall have, in addition to the powers, duties, rights, and immunities of the other directors
 31 of the benefit corporation, the powers, duties, rights, and immunities provided in this section.
 32 2. The benefit director shall be elected, and may be removed, in the same manner that
 33 directors of any board of directors for a corporation are removed under sections 351.010 to 351.526
 34 and shall be an individual who is independent. The benefit director may serve as the benefit officer
 35 at the same time as serving as the benefit director. The articles of incorporation or bylaws of a
 36 benefit corporation may prescribe additional qualifications of the benefit director consistent with
 37 this subsection.
 38 3. The benefit corporation shall include in its annual benefit report to shareholders a report
 39 that shall address all of the following:
 40 (1) Whether the benefit corporation acted in accordance with its general public benefit
 41 purpose and any specific public benefit purpose in all material respects during the period covered by
 42 the report;
 43 (2) Whether the directors and officers complied with subsection 1 of section 351.1418 and
 44 subsection 1 of section 351.1424, respectively; and
 45 (3) Whether the benefit corporation or its directors or officers failed to act or comply in the
 46 manner described in subdivisions (1) and (2) of this subsection and, if so, a description of the ways
 47 in which the benefit corporation or its directors or officers failed to act or comply.
 48 4. The action or inaction of an individual in the capacity of a benefit director shall constitute
 49 for all purposes an action or inaction of that individual in the capacity of a director of the benefit

1 corporation.

2 5. Regardless if the articles of incorporation or bylaws of a benefit corporation include a
 3 provision eliminating or limiting the personal liability of directors authorized by section 351.055, a
 4 benefit director shall not be personally liable for an action or inaction in his or her capacity as a
 5 benefit director unless the action or inaction constitutes self-dealing, willful misconduct, or a
 6 knowing violation of law.

7 351.1424. 1. Each officer of a benefit corporation shall consider the interests and factors
 8 described in subsection 1 of section 351.1418 in the manner provided therein if:

9 (1) The officer has discretion to act with respect to a matter; and

10 (2) It reasonably appears to the officer that the matter may have a material effect on the
 11 creation by the benefit corporation of a general public benefit or a specific public benefit identified
 12 in the articles of incorporation of the benefit corporation.

13 2. Except as provided in the articles of incorporation, an officer is not personally liable for
 14 monetary damages for:

15 (1) Any action or inaction in the course of performing the duties of an officer under
 16 subsection 1 of this section if the officer was not interested with respect to the action or inaction; or

17 (2) Failure of the benefit corporation to pursue or create a general public benefit or specific
 18 public benefit.

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

22 4. An officer who makes a business judgment in good faith fulfills the duty under this
 23 section if the officer:

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

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

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

29 351.1427. 1. A benefit corporation may have an officer designated as the benefit officer.

30 2. A benefit officer shall have:

31 (1) The powers and duties relating to the purpose of the corporation to create a general
 32 public benefit or specific public benefit provided:

33 (a) By the bylaws; or

34 (b) Absent controlling provisions in the bylaws, by resolutions or orders of the board of
 35 directors; and

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

37 351.1430. 1. A benefit corporation shall prepare an annual benefit report including all of
 38 the following:

39 (1) A narrative description of:

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

42 (b) Both:

43 a. The ways in which the benefit corporation pursued a specific public benefit that the
 44 articles of incorporation state is the purpose of the benefit corporation to create; and

45 b. The extent to which that specific public benefit was created;

46 (c) Any circumstances that have hindered the creation by the benefit corporation of a
 47 general public benefit or specific public benefit; and

48 (d) The process and rationale for selecting or changing the third-party standard used to
 49 prepare the benefit report;

1 (2) An assessment of the overall social and environmental performance of the benefit
 2 corporation against a third-party standard:

3 (a) Applied consistently with any application of that standard in prior benefit reports; or

4 (b) Accompanied by an explanation of the reasons for:

5 a. Any inconsistent application; or

6 b. The change to that standard from the one used in the immediately prior report;

7 (3) The name of the benefit director and the benefit officer, if any, and the address to which
 8 correspondence to each of them may be directed;

9 (4) The compensation paid by the benefit corporation during the year to each director in the
 10 capacity of a director;

11 (5) The statement of the benefit director described in subsection 3 of section 351.1424;

12 (6) A statement of any connection between the organization that established the third-party
 13 standard, or its directors, officers, or any holder of five percent or more of the governance interests
 14 in the organization, and the benefit corporation or its directors, officers, or any holder of five percent
 15 or more of the outstanding shares of the benefit corporation, including any financial or governance
 16 relationship that might materially affect the credibility of the use of the third-party standard; and

17 (7) If the benefit corporation has dispensed with or restricted the discretion or powers of the
 18 board of directors, a description of the persons who exercise the powers, duties, and rights and have
 19 the immunities of the board of directors.

20 2. If, during the year covered by a benefit report, a benefit director resigned from or refused
 21 to stand for reelection to the position of benefit director, or was removed from the position of benefit
 22 director, and the benefit director furnished the benefit corporation with any written correspondence
 23 concerning the circumstances surrounding the resignation, refusal, or removal, the benefit report
 24 shall include that correspondence as an exhibit.

25 3. Neither the benefit report nor the assessment of the performance of the benefit
 26 corporation in the benefit report required by subdivision (2) of subsection 1 of this section is
 27 required to be audited or certified by a third-party standards provider.

28 351.1433. 1. A benefit corporation shall send its annual benefit report to each shareholder:

29 (1) Within one hundred twenty days following the end of the fiscal year of the benefit
 30 corporation; or

31 (2) At the same time that the benefit corporation delivers any other annual report to its
 32 shareholders.

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

36 3. If a benefit corporation does not have a website, the benefit corporation shall provide a
 37 copy of its most recent benefit report, without charge, to any person that requests a copy, but the
 38 compensation paid to directors and financial or proprietary information included in the benefit
 39 report may be omitted from the copy of the benefit report provided.

40 351.1435. 1. (1) Except in a benefit enforcement proceeding, no person may bring an
 41 action or assert a claim against a benefit corporation or its directors or officers with respect to a:

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

44 (b) Violation of an obligation, duty, or standard of conduct under sections 351.1400 to
 45 351.1435.

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

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

- 1 (1) Directly by the benefit corporation; or
2 (2) Derivatively by:
3 (a) A person or group of persons that owned beneficially or of record at least two percent of
4 the total number of shares of a class or series outstanding at the time of the action or inaction;
5 (b) A director;
6 (c) A person or group of persons that owned beneficially or of record five percent or more
7 of the outstanding equity interests in an entity of which the benefit corporation is a subsidiary at the
8 time of the action or inaction; or
9 (d) Other persons as specified in the articles of incorporation or bylaws of the benefit
10 corporation.
11 3. For purposes of this section, a person is the beneficial owner of shares or equity interests
12 if the shares or equity interests are held in a voting trust or by a nominee on behalf of the beneficial
13 owner."; and
14

15 Further amend said bill by amending the title, enacting clause, and intersectional references
16 accordingly.