

# HOUSE BILL NO. 5387

November 14, 2023, Introduced by Reps. Breen, Koleszar, Steckloff, Rogers, Hoskins, Hope, Hood, Haadsma, Tyrone Carter, Tsernoglou, Andrews, Mentzer, Wozniak and Skaggs and referred to the Committee on Judiciary.

A bill to amend 1972 PA 284, entitled  
"Business corporation act,"  
(MCL 450.1101 to 450.2098) by adding chapter 9A.

**THE PEOPLE OF THE STATE OF MICHIGAN ENACT:**

- 1 **CHAPTER 9A**
- 2 **BENEFIT CORPORATIONS**
- 3 **Sec. 951. (1) As used in this chapter:**
- 4 (a) "Benefit enforcement proceeding" means a claim asserted or
- 5 action brought directly by a benefit corporation, or derivatively
- 6 on behalf of a benefit corporation, against a director for either
- 7 of the following:

1 (i) A failure to pursue a public benefit.

2 (ii) A violation of a duty or standard of conduct under this  
3 chapter.

4 (b) "Minimum status vote" means an authorization or approval  
5 of a corporate action that meets all of the following:

6 (i) The shareholder approval or vote requirements of this act.

7 (ii) Any shareholder approval or vote requirement that is  
8 included in a provision of the articles of incorporation.

9 (iii) The approval by at least 2/3 of the votes entitled to be  
10 cast on the corporate action, and, if a class or series of shares  
11 is entitled to a vote as a separate group on the corporate action,  
12 the corporate action is approved by at least 2/3 of the votes  
13 entitled to be cast by the voting group.

14 (c) "Public benefit" means any of the following purposes for  
15 which the corporation is formed, as identified in the articles of  
16 incorporation under section 953:

17 (i) Creating a positive effect, or reducing a negative effect,  
18 for at least 1 community or category of persons, other than  
19 shareholders solely in their capacity as shareholders, or on the  
20 environment. As used in this subparagraph, "effect" means an effect  
21 that is artistic, charitable, economic, educational, cultural,  
22 literary, medical, religious, social, ecological, or scientific in  
23 nature.

24 (ii) Acting in a responsible and sustainable manner.

25 (d) "Responsible and sustainable manner" means the corporation  
26 does both of the following:

27 (i) Pursues through the business of the corporation the  
28 creation of a positive effect, or a reduction of a negative effect,  
29 on society and the environment, that when taken as a whole, is

1 material in light of the corporation's size and the nature of the  
2 corporation's business.

3 (ii) Considers, in addition to the interests of the  
4 shareholders, the separate interests of stakeholders known to be  
5 affected by the conduct of the business of the corporation.

6 (2) If there is a conflict between a specific provision of  
7 this chapter and a general provision of this act, the provision of  
8 this chapter applies with respect to a benefit corporation.

9 Sec. 953. (1) A domestic corporation that meets both of the  
10 following is a benefit corporation and subject to this chapter:

11 (a) The corporation is formed under this act.

12 (b) The articles of incorporation of the corporation state  
13 that it is a benefit corporation. However, an amendment to the  
14 articles of incorporation to include the statement described in  
15 this subdivision is not effective unless it is adopted by a minimum  
16 status vote.

17 (2) In addition to the purposes described in section 202(b),  
18 the purposes of a benefit corporation must include 1 or more public  
19 benefits, which must be identified in 1 or more provisions in the  
20 articles of incorporation.

21 (3) An amendment to the articles of incorporation of a benefit  
22 corporation to change the purposes of the corporation by adding,  
23 amending, or deleting 1 or more public benefits is not effective  
24 unless it is adopted by a minimum status vote.

25 (4) A benefit corporation may terminate its status as a  
26 benefit corporation by amending its articles of incorporation to  
27 remove its public benefits. However, an amendment to the articles  
28 of incorporation described in this subsection is not effective  
29 unless it is adopted by a minimum status vote.

1           Sec. 955. (1) In addition to the requirements of chapter 7, if  
2 a domestic corporation that is not a benefit corporation is a  
3 constituent corporation in a merger or an exchanging corporation in  
4 a share exchange, and the surviving or acquiring corporation will  
5 be a benefit corporation under the plan of merger or share  
6 exchange, the plan must be approved by a minimum status vote of  
7 that constituent or exchanging corporation.

8           (2) In addition to the requirements of chapter 7, a plan of  
9 merger or share exchange that would have the effect of terminating  
10 the status of a domestic corporation as a benefit corporation must  
11 be approved by a minimum status vote of that corporation.

12           (3) In addition to the requirements of chapter 7, if a benefit  
13 corporation affects a conversion into a business organization with  
14 the result that the shares of a voting group of the benefit  
15 corporation would become, or would be converted into or exchanged  
16 for the right to receive, shares or interests in a business  
17 organization that is not subject to law that governs the internal  
18 affairs of the business organization that is analogous to those in  
19 this chapter, the conversion must be approved by a minimum status  
20 vote of the benefit corporation. However, if the shares of 1 or  
21 more, but not all, of the voting groups are affected by the  
22 conversion, a minimum status vote is required with respect to the  
23 shares in the voting group affected by the conversion.

24           (4) In addition to the requirements of chapter 7, if a benefit  
25 corporation affects a conversion into a business organization with  
26 the result that the shares of a voting group of the benefit  
27 corporation would become, or would be converted into or exchanged  
28 for the right to receive, shares or interests in a business  
29 organization that is subject to law that governs the internal

1 affairs of the business organization that is analogous to those in  
2 this chapter, the conversion does not require a minimum status  
3 vote.

4 (5) As used in this section, "business organization" means  
5 that term as defined in section 736.

6 Sec. 957. (1) The board shall consider all of the following:

7 (a) The interests of the shareholders.

8 (b) The separate interest of stakeholders known to be affected  
9 by the conduct of the business of the corporation.

10 (c) Any public benefit.

11 (2) A consideration made by a director of a benefit  
12 corporation under subsection (1) in the discharge of the director's  
13 duties does not constitute a violation of section 541a.

14 (3) A director who makes a business judgment in good faith  
15 fulfills the director's duties under this section if the director  
16 is not interested in the subject of the business judgment and is  
17 informed with respect to the subject of the business judgment to  
18 the extent that the director reasonably believes that it is  
19 appropriate under the circumstances.

20 (4) A director of a benefit corporation is not liable for  
21 monetary damages to the corporation, the shareholders, or any  
22 person that claims to be a beneficiary of a public benefit for a  
23 failure to fulfill a duty arising under this chapter or solely  
24 because the director performed duties in compliance with this  
25 section.

26 (5) A director of a benefit corporation does not have a duty  
27 to a person that is a beneficiary of a public benefit arising from  
28 the status of the person as a beneficiary.

29 Sec. 959. (1) The duties of any director of a benefit

1 corporation arising under this chapter or any public benefit may be  
2 enforced only in a benefit enforcement proceeding under this  
3 section. A person shall not bring an action or assert a claim  
4 against a benefit corporation or its directors with respect to the  
5 duties under this chapter of any directors of the benefit  
6 corporation or any public benefit except in a benefit enforcement  
7 proceeding under this section.

8 (2) A benefit enforcement proceeding may be commenced or  
9 maintained only by 1 of the following:

10 (a) Directly, by the benefit corporation.

11 (b) Derivatively, by any of the following:

12 (i) A shareholder of the benefit corporation that owns  
13 beneficially or of record, individually or collectively, as of the  
14 date the benefit enforcement proceeding is instituted, either of  
15 the following:

16 (A) At least 5% of the corporation's outstanding shares.

17 (B) If the shares of the benefit corporation are listed on a  
18 national securities exchange, 5% of the corporation's outstanding  
19 shares, or shares that have a market value of \$5,000,000.00,  
20 whichever is less.

21 (ii) Any other person specified in the articles of  
22 incorporation or bylaws of the benefit corporation.

23 (3) A benefit corporation and its directors are not liable for  
24 monetary damages under this chapter for any failure of the benefit  
25 corporation to pursue or create a public benefit.

26 (4) An action against a director for failure to perform a duty  
27 imposed under this chapter must be commenced within 3 years after  
28 the cause of action has accrued, or within 2 years after the time  
29 when the cause of action is discovered or should reasonably have

1 been discovered by the complainant, whichever occurs first.

2       Sec. 961. (1) A benefit corporation shall prepare an annual  
3 benefit report that includes all of the following:

4       (a) A summary addressing the efforts of the benefit  
5 corporation during the preceding year to pursue its public  
6 benefits.

7       (b) The objectives that the board have established for the  
8 corporation to pursue its public benefits.

9       (c) The standards that the board have adopted to measure the  
10 corporation's progress in pursuing its public benefits.

11       (d) If the articles of incorporation or bylaws require that  
12 the corporation use an independent third-party standard in  
13 reporting on the corporation's progress in pursuing its public  
14 benefits, or if the board has chosen to use a third-party standard,  
15 a summary of the third-party standard.

16       (e) An assessment of the corporation's success in meeting the  
17 objectives and standards under subdivisions (b) and (c), and  
18 subdivision (d), as applicable, and the basis of the assessment.

19       (2) Subject to subsection (3), a benefit corporation shall,  
20 not later than 4 months after the end of the fiscal year of the  
21 benefit corporation, deliver to each shareholder, or make available  
22 and provide written notice of the availability to each shareholder,  
23 a copy of the annual benefit report described in subsection (1).

24       (3) The benefit corporation may distribute the annual benefit  
25 report described in subsection (1) by electronic transmission or by  
26 making the annual benefit report available for electronic  
27 transmission. If the annual benefit report is distributed  
28 electronically under this subsection, the corporation must provide  
29 the annual benefit report in written form, if requested by a

1 shareholder.

2 (4) A shareholder that has not received or been given access  
3 to an annual benefit report in the time described in subsection (2)  
4 may make a written request that the corporation deliver or make the  
5 annual benefit report available to the shareholder.

6 (5) If a benefit corporation subject to a request under  
7 subsection (4) does not deliver or make the annual benefit report  
8 available to the shareholders within 5 business days of receiving  
9 the request under subsection (4), the requesting shareholder may  
10 petition the circuit court of the county in which the corporation's  
11 principal place of business or registered office is located for an  
12 order requiring the delivery of, or access to, the annual benefit  
13 report.

14 (6) Except as otherwise provided in subsection (7), a benefit  
15 corporation shall post its 3 most recent annual benefit reports on  
16 the public portion of its website.

17 (7) If a benefit corporation does not have a website, the  
18 benefit corporation must provide a copy of its most recent annual  
19 benefit report, without charge, to a person that submits a written  
20 request to the benefit corporation for a copy of its most recent  
21 annual benefit report.

22 (8) A benefit corporation shall include a copy of its annual  
23 benefit report with the report it is required to file with the  
24 administrator under section 911. A benefit corporation shall pay a  
25 fee of \$25.00 when the annual benefit report is delivered to the  
26 administrator. The administrator's filing of a benefit report does  
27 not relate to the validity or invalidity of the information  
28 contained in the annual benefit report.

29 Enacting section 1. This amendatory act does not take effect



- 1 unless Senate Bill No.\_\_\_\_ or House Bill No. 5388 (request no.
- 2 03023'23) of the 102nd Legislature is enacted into law.