

1 S.263

2 Introduced by Senators Shumlin and Miller

3 Referred to Committee on

4 Date:

5 Subject: Commerce and trade; business organizations; for-benefit corporations

6 Statement of purpose: This bill proposes to allow new and existing for-profit
7 corporations to elect status as a for-benefit corporation, with the purpose,
8 among other things, of creating public benefit.

9 An act relating to job creation and economic development

10 It is hereby enacted by the General Assembly of the State of Vermont:

11 Sec. 1. 11A V.S.A. chapter 21 is added to read:

12 CHAPTER 21. FOR-BENEFIT CORPORATIONS

13 § 21.01. SHORT TITLE

14 § 21.02. LAW APPLICABLE

15 § 21.03. DEFINITIONS

16 § 21.04. COMPUTATION OF OWNERSHIP

17 § 21.05. INCORPORATION OF A FOR-BENEFIT CORPORATION

18 § 21.06. ELECTION OF EXISTING CORPORATION TO BECOME A

19 FOR-BENEFIT CORPORATION

20 § 21.07. MERGER AND SHARE EXCHANGE

1 § 21.08. TERMINATION OF FOR-BENEFIT CORPORATION STATUS

2 BY AMENDMENT OF ARTICLES OF INCORPORATION;

3 VOTE REQUIRED

4 § 21.09. CORPORATE PURPOSE

5 § 21.10. STANDARD OF CONDUCT FOR DIRECTORS

6 § 21.11. FOR-BENEFIT DIRECTOR

7 § 21.12. STANDARD OF CONDUCT FOR OFFICERS

8 § 21.13. FOR-BENEFIT OFFICER

9 § 21.14. RIGHT OF ACTION

10 § 21.15. ANNUAL FOR-BENEFIT REPORT TO SHAREHOLDERS

11 § 21.16. ANNUAL REPORT FILED WITH SECRETARY OF STATE

12 § 21.01. SHORT TITLE

13 This chapter shall be known and may be cited as the “Vermont For-Benefit
14 Corporation Act.”

15 § 21.02. LAW APPLICABLE

16 (a) This chapter shall apply only to for-benefit corporations organized
17 under this chapter. The provisions of this title other than those set forth in this
18 chapter shall apply to for-benefit corporations in the absence of a contrary or
19 inconsistent provision in this chapter. A corporation whose status as a
20 for-benefit corporation terminates shall immediately become subject to the
21 obligations and rights of a general corporation as provided in this title.

1 (b) The existence of a provision of this chapter does not of itself create any
2 implication that a contrary or different rule of law is or would be applicable to
3 a corporation that is not a for-benefit corporation. This chapter does not affect
4 any statute or rule of law as it applies to a corporation that is not a for-benefit
5 corporation.

6 (c) A provision of the articles of incorporation or bylaws of a for-benefit
7 corporation may not be inconsistent with any provision of this chapter.

8 (d) The definitions provided in other chapters of this title apply to the use
9 in this chapter of the terms defined in those provisions.

10 § 21.03. DEFINITIONS

11 As used in this chapter:

12 (1) “For-benefit corporation” means a corporation organized under this
13 chapter whose articles of incorporation:

14 (A) include the following statement: “This corporation is a
15 for-benefit corporation;” and

16 (B) contain the provisions required by subsection 2.02(a) of this title.

17 (2) “For-benefit director” means the director designated as the
18 for-benefit director of a for-benefit corporation as provided in section 21.11 of
19 this title.

20 (3) “For-benefit officer” means the officer of a for-benefit corporation,
21 if any, designated as the for-benefit officer as provided in section 21.13 of this

1 title.

2 (4) "Independent" with respect to an individual means that the
3 individual has no material relationship with the for-benefit corporation or any
4 of its subsidiaries (other than the relationship of serving as the for-benefit
5 director or for-benefit officer), either directly or as an owner or manager of an
6 entity that has a material relationship with the for-benefit corporation or any of
7 its subsidiaries. A material relationship between an individual and the
8 for-benefit corporation or any of its subsidiaries will be conclusively presumed
9 to exist if:

10 (A) the individual is, or has been within the last three years, an
11 employee of the for-benefit corporation or any of its subsidiaries, other than as
12 a for-benefit officer;

13 (B) an immediate family member of the individual is, or has been
14 within the last three years, an executive officer, other than a for-benefit officer,
15 of the for-benefit corporation or any of its subsidiaries; or

16 (C) the individual, or an entity of which the individual is a manager
17 or in which the individual owns beneficially or of record five percent or more
18 of the equity interests, owns beneficially or of record five percent or more of
19 the shares of the for-benefit corporation.

20 (5) "Public benefit" means promoting economic opportunity for
21 individuals or communities beyond the creation of jobs in the normal course of

1 business, preserving the environment, improving human health, promoting the
2 arts, sciences, or advancement of knowledge, and increasing the flow of capital
3 to entities with a public benefit purpose.

4 (6) “Subsidiary” of a person means an entity in which the person owns
5 beneficially or of record 50 percent or more of the equity interests.

6 § 21.04. COMPUTATION OF OWNERSHIP

7 Whenever this chapter refers to a percentage of ownership in an entity, that
8 percentage shall be calculated as if all outstanding rights to acquire equity
9 interests in the entity had been exercised.

10 § 21.05. INCORPORATION OF A FOR-BENEFIT CORPORATION

11 A for-benefit corporation shall be formed in accordance with sections 2.01,
12 2.02, 2.03, and 2.05 of this title, except that its articles of incorporation shall
13 also contain the provision required by subdivision 21.03(1) of this title.

14 § 21.06. ELECTION OF EXISTING CORPORATION TO BECOME A
15 FOR-BENEFIT CORPORATION

16 Any corporation organized under this title may become a for-benefit
17 corporation by executing and filing, in accordance with sections 10.01–10.09
18 of this title, an article of amendment to its articles of incorporation, which shall
19 contain the provision required by subdivision 21.03(1) of this title.

20 § 21.07. MERGER AND SHARE EXCHANGE

21 A plan of merger or share exchange that if effected would terminate the

1 for-benefit corporation status of a corporation must be approved by a vote of at
2 least two-thirds of the votes entitled to be cast by the outstanding shares of the
3 corporation, provided that if any class of shares is entitled to vote as a group,
4 approval shall also require the affirmative vote of the holders of at least
5 two-thirds of the votes entitled to be cast by the outstanding shares of each
6 voting group.

7 § 21.08. TERMINATION OF FOR-BENEFIT CORPORATION STATUS

8 BY AMENDMENT OF ARTICLES OF INCORPORATION; VOTE

9 REQUIRED

10 (a) A corporation may terminate its status as a for-benefit corporation and
11 cease to be subject to this chapter by amending its articles of incorporation to
12 delete the provision required by subdivision 21.03(1) of this title in addition to
13 the provisions required by section 2.02 of this title to be stated in the articles of
14 incorporation of a for-benefit corporation. Any such amendment shall be
15 adopted and shall become effective in accordance with sections 10.01–10.09 of
16 this title and shall be approved by the highest of the vote required by the
17 articles of incorporation, the board of directors, or subsection (b) of this
18 section.

19 (b) An amendment to terminate the status of a for-benefit corporation shall
20 be approved by a vote of at least two-thirds of the votes entitled to be cast by
21 the outstanding shares of the corporation, provided that if any class of shares is

1 entitled to vote as a group, approval shall also require the affirmative vote of
2 the holders of at least two-thirds of the votes entitled to be cast by the
3 outstanding shares of each voting group.

4 § 21.09. CORPORATE PURPOSE

5 (a) Every for-benefit corporation shall have the purpose of creating public
6 benefit generally in addition to its purpose under subsection 3.01(a) of this title
7 and any specific purpose set forth in its articles of incorporation.

8 (b) The articles of incorporation of a for-benefit corporation may identify
9 one or more specific public benefits that it is the purpose of the for-benefit
10 corporation to create.

11 (c) The creation of public benefit as provided in subsections (a) and (b) of
12 this section is in the best interests of the for-benefit corporation.

13 (d) A for-benefit corporation may amend its articles of incorporation to
14 add, amend or delete the identification of a specific public benefit that it is the
15 purpose of the for-benefit corporation to create. Any such amendment shall be
16 adopted and shall become effective in accordance with sections 10.01–10.09 of
17 this title and shall be approved by the higher of the vote required by the articles
18 of incorporation or by subsection (e) of this section.

19 (e) An amendment of the articles of incorporation of a for-benefit
20 corporation to add, amend, or delete the identification of a specific public
21 benefit that it is the purpose of the for-benefit corporation to create shall be

1 adopted by a vote of at least two-thirds of the votes entitled to be cast by the
2 outstanding shares of the corporation, provided that if any class of shares is
3 entitled to vote as a group, approval shall also require the affirmative vote of
4 the holders of at least two-thirds of the votes entitled to be cast by the
5 outstanding shares of each voting group.

6 § 21.10. STANDARD OF CONDUCT FOR DIRECTORS

7 (a) Each director of a for-benefit corporation, in discharging his or her
8 duties as a director, including the director's duties as a member of a
9 committee:

10 (1) shall, in determining what the director reasonably believes to be in
11 the best interests of the for-benefit corporation, consider the effects of any
12 action or decision not to act on the shareholders, employees, suppliers, and
13 customers of the for-benefit corporation and its subsidiaries, the economy of
14 the state, region and nation, community, and societal considerations, including
15 those of any community in which offices or facilities of the for-benefit
16 corporation or its subsidiaries are located, and the local and global
17 environment;

18 (2) may consider any other pertinent factors or the interests of any other
19 group that the director determines are appropriate to consider;

1 (3) shall not be required to give priority to the interests of any particular
2 person or group referred to in subdivision (a)(1) or (2) of this section over the
3 interests of any other person or group;

4 (4) shall consider the long-term and short-term interests of the
5 corporation, including the possibility that those interests may be best served by
6 the continued independence of the for-benefit corporation; and

7 (5) shall not be subject to a different or higher standard when an action
8 or inaction might affect control of the for-benefit corporation.

9 (b) The consideration of interests and factors in the manner described in
10 subsection (a) of this section shall not constitute a violation of section 8.30 of
11 this title.

12 (c) A director is not liable as such to the for-benefit corporation or any
13 person entitled to bring a for-benefit enforcement proceeding under section
14 21.14 of this title for any action taken as a director, or any failure to take any
15 action, if the director performed the duties of his or her office in compliance
16 with section 8.30 of this title and this section.

17 § 21.11. FOR-BENEFIT DIRECTOR

18 (a) The board of directors of a for-benefit corporation shall at all times
19 include one director who shall be designated the “for-benefit director” and
20 shall have, in addition to all of the powers, duties, rights, and immunities of the
21 other directors of the for-benefit corporation, the powers, duties, rights, and

1 immunities provided in this section.

2 (b) The for-benefit director shall be elected in the manner provided by
3 subchapter 1 of chapter 8 of this title and shall be an individual who is
4 independent of the for-benefit corporation. The for-benefit director may serve
5 as the for-benefit officer at the same time as serving as the for-benefit director.
6 The articles of incorporation or bylaws of a for-benefit corporation may
7 prescribe additional qualifications of the for-benefit director not inconsistent
8 with this subsection.

9 (c) The for-benefit director shall prepare, and the for-benefit corporation
10 shall include in the for-benefit report to shareholders required by section 21.15
11 of this title, a statement whether, in the opinion of the for-benefit director, the
12 for-benefit corporation acted in accordance with its general and any specific
13 public benefit purpose in all material respects during the period covered by the
14 report and whether the directors and officers complied with sections 21.10(a)
15 and 21.12, respectively, of this title. If in the opinion of the for-benefit director
16 the corporation or its directors or officers failed so to act, then the statement of
17 the for-benefit director shall include a description of the ways in which the
18 corporation or its directors or officers failed so to act.

19 (d) The acts and omissions of an individual in the capacity of a for-benefit
20 director shall constitute for all purposes acts and omissions of that individual in
21 the capacity of a director of the for-benefit corporation.

1 (e) If the articles of incorporation of a for-benefit corporation that is a close
2 corporation dispense with a board of directors pursuant to sections 20.08 and
3 20.09 of this title, then the articles of incorporation must provide that the
4 persons who perform the duties of a board of directors shall include a person
5 with the powers, duties, rights, and immunities of a for-benefit director.

6 (f) Regardless of whether the articles of incorporation of a for-benefit
7 corporation include a provision eliminating or limiting the personal liability of
8 directors authorized by subdivision 2.02(b)(4) of this title, a for-benefit
9 director shall not be personally liable for any act or omission in the capacity of
10 a for-benefit director unless the act or omission is not in good faith, involves
11 intentional misconduct or a knowing violation of law, or involves a transaction
12 from which the director directly or indirectly derived an improper personal
13 benefit.

14 § 21.12. STANDARD OF CONDUCT FOR OFFICERS

15 (a) An officer of a for-benefit corporation with discretionary authority,
16 when discharging the officer's duties under that authority in connection with
17 an action or decision not to act that has a material effect on the creation of
18 general or specific public benefit by the for-benefit corporation, shall consider
19 the interests and factors described in subsection 21.10(a) of this title in the
20 manner provided in that subsection.

21 (b) The consideration of interests and factors in the manner described in

1 subsection (a) of this section shall not constitute a violation of the fiduciary
2 duty of an officer to the for-benefit corporation.

3 (c) An officer is not liable as such to the for-benefit corporation or any
4 person entitled to bring a for-benefit enforcement proceeding under section
5 21.14 of this title for any action the officer takes or omits to take as an officer
6 if, in connection with the action or omission, the officer performed the duties
7 of the position in compliance with section 8.41 of this title and this section.

8 § 21.13. FOR-BENEFIT OFFICER

9 A for-benefit corporation may have an officer designated the “for-benefit
10 officer” who shall have such authority and shall perform such duties relating to
11 the purpose of the corporation to create public benefit as shall be set forth with
12 respect to the office in the bylaws or, to the extent consistent with the bylaws,
13 prescribed with respect to the office by the board of directors or by direction of
14 an officer authorized by the board of directors to prescribe the duties of the
15 office. If a for-benefit corporation has a for-benefit officer, the duties of the
16 for-benefit officer shall include preparing the for-benefit report required by
17 section 21.15 of this title.

18 § 21.14. RIGHT OF ACTION

19 (a) The duties of directors and officers under this chapter and the general
20 and specific public benefit purposes of a for-benefit corporation may only be
21 enforced in a for-benefit enforcement proceeding, and no person may bring

1 such an action or claim against a for-benefit corporation or its directors or
2 officers except as provided in this section.

3 (b) A for-benefit enforcement proceeding may be commenced or
4 maintained only by:

5 (1) a shareholder that would otherwise be entitled to commence or
6 maintain a proceeding in the right of the for-benefit corporation on any basis;

7 (2) a director of the corporation;

8 (3) a person or group of persons that owns beneficially or of record five
9 percent or more of the owner's interests in an entity of which the for-benefit
10 corporation is a subsidiary; or

11 (4) such other persons as may be specified in the articles of
12 incorporation or bylaws of the for-benefit corporation.

13 (c) As used in this section, "for-benefit enforcement proceeding" means a
14 claim or action:

15 (1) against the corporation for violation of or failure to pursue the
16 general public benefit purpose of the for-benefit corporation or any specific
17 public benefit purpose set forth in its articles of incorporation; or

18 (2) against a director or officer for violation of a duty or standard of
19 conduct under this chapter.

20 § 21.15. ANNUAL FOR-BENEFIT REPORT TO SHAREHOLDERS

21 (a) A for-benefit corporation must deliver to each shareholder an annual

1 for-benefit report, including:

2 (1) a narrative description of:

3 (A) the ways in which the for-benefit corporation pursued public
4 benefit generally during the year and the extent to which general public benefit
5 was created;

6 (B) the ways in which the for-benefit corporation pursued any
7 specific public benefit that the articles of incorporation state it is the purpose of
8 the for-benefit corporation to create and the extent to which that specific public
9 benefit was created;

10 (C) the material deliberations of the board of directors under
11 subsection 21.10(a) of this title during the year; and

12 (D) any circumstances that have hindered the creation by the
13 for-benefit corporation of public benefit generally or any specific public
14 benefit;

15 (2) an assessment of the social and environmental performance of the
16 for-benefit corporation, prepared in accordance with recognized standards for
17 defining, reporting, and assessing corporate social and environmental
18 performance;

19 (3) the name of the for-benefit director and the for-benefit officer, if
20 any, and the address to which correspondence to each of them may be directed;

21 (4) the compensation paid to each director during the year; and

1 (5) the name of each person that owns beneficially or of record five
2 percent or more of the shares of the for-benefit corporation.

3 (b) The for-benefit report must be sent annually to each shareholder on or
4 before each anniversary of the date on which the for-benefit corporation
5 became subject to this chapter, or at the same time that the for-benefit
6 corporation delivers any other annual report to its shareholders.

7 (c) A for-benefit corporation shall post its most recent for-benefit report on
8 its website, if any, except that any financial or proprietary information included
9 in the for-benefit report may be omitted from the for-benefit report as posted.

10 § 21.16. ANNUAL REPORT FILED WITH SECRETARY OF STATE

11 The annual report that a for-benefit corporation is required to deliver to the
12 secretary of state pursuant to section 16.22 of this title must include the most
13 recent for-benefit report delivered to shareholders pursuant to section 21.15 of
14 this title, except that any financial or proprietary information included in the
15 for-benefit report may be omitted from the for-benefit report as delivered to the
16 secretary of state under this section.

17 Sec. 2. EFFECTIVE DATE

18 This act shall take effect upon passage.