

1 S.217

2 Introduced by Senator Miller

3 Referred to Committee on Finance

4 Date: January 3, 2012

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

6 Statement of purpose: This bill proposes to amend the requirements of a
7 closely held corporation that elects to become a benefit corporation.

8 An act relating to closely held benefit corporations

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

10 ~~Sec. 1. 11A V.S.A. chapter 21 is amended to read:~~

11 CHAPTER 21. BENEFIT CORPORATIONS

12 * * *

13 § 21.03. DEFINITIONS

14 (a) As used in this chapter:

15 (1) "Benefit corporation" means a corporation as defined in section 1.40
16 of this title whose articles of incorporation include the statement "This
17 corporation is a benefit corporation."

18 (2) "Benefit director" means:

19 (A) a director designated as a benefit director of a benefit corporation
20 ~~as provided in section 21.10 of this title; or~~

1 ~~(B) a person with one or more of the powers, duties, or rights of a~~
2 ~~benefit director to the extent provided in the articles of incorporation or~~
3 ~~shareholder agreement of a close corporation pursuant to section 21.10(e) of~~
4 ~~this title.~~

5 * * *

6 § 21.09. STANDARD OF CONDUCT FOR DIRECTORS

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

9 * * *

10 (3) shall not be required ~~by this chapter~~ to give priority to the interests
11 of any particular person or group referred to in subdivisions (1) or (2) of this
12 subsection over the interests of any other person or group unless the benefit
13 corporation has stated in its articles of incorporation its intention to give
14 priority to certain interests related to the accomplishment of its general or
15 specific public benefit in its articles of incorporation purposes; and

16 (4) shall not be subject to a different or higher standard of care when an
17 action or inaction might affect control of the benefit corporation.

18 * * *

19 (e) A director of a benefit corporation shall have a fiduciary duty only to
20 ~~those persons entitled to bring a benefit enforcement proceeding against the~~
21 ~~benefit corporation under section 21.13 of this title.~~ A director of a benefit

1 ~~corporation shall not have any fiduciary duty to a person who is a beneficiary~~
2 of the general or specific public benefit purposes of the benefit corporation
3 arising only from the person's status as a beneficiary.

4 § 21.10. BENEFIT DIRECTOR

5 (a) ~~The~~ Except as provided in subsection (e) of this section, the board of
6 directors of a benefit corporation shall include at least one director who shall
7 be designated a "benefit director" and shall have, in addition to all of the
8 powers, duties, rights, and immunities of the other directors of the benefit
9 corporation, the powers, duties, rights, and immunities provided in this section.

10 * * *

11 (e) If the articles of incorporation of a benefit corporation that is a close
12 corporation dispense with or restrict the discretion or powers of a board of
13 directors pursuant to sections 20.08 and 20.09 of this title, then the articles of
14 incorporation ~~shall provide that~~ or the shareholder agreement of the close
15 corporation shall specify the persons who ~~perform the duties of a board of~~
16 ~~directors shall include at least one person with~~ shall exercise the powers,
17 duties, ~~and rights, and immunities of a benefit director of the board of directors~~
18 and the benefit director. A person who exercises one or more powers, duties,
19 or rights of a benefit director pursuant to this subsection:

20 (1) shall not be required to be independent of the benefit corporation;

21 (2) shall have the immunities of a benefit director;

1 ~~(3) may share the powers, duties, and rights of a benefit director with~~
2 ~~one or more other persons; and~~

3 ~~(4) shall not be subject to the procedures for election or removal of~~
4 ~~directors in chapter 8, subchapter 1 of this title, unless the person is also a~~
5 ~~director of the benefit corporation or unless the articles of incorporation or~~
6 ~~shareholders' agreement make those procedures applicable.~~

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

15 * * *

16 § 21.14. ANNUAL BENEFIT REPORT

17 * * *

18 ~~(e) If the benefit corporation is a close corporation that has dispensed with~~
19 ~~or restricted the discretion or powers of the board of directors, its annual~~
20 ~~benefit report shall describe the persons who exercise the powers, duties, and~~

1 ~~rights and have the immunities of the board of directors and the benefit~~
2 ~~director.~~

3 Sec. 2. EFFECTIVE DATE

4 ~~This act shall take effect on passage.~~

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

CHAPTER 21. BENEFIT CORPORATIONS

* * *

§ 21.03. DEFINITIONS

(a) As used in this chapter:

* * *

(2) "Benefit director" means:

(A) a director designated as a benefit director of a benefit corporation as provided in section 21.10 of this title; or

(B) a person with one or more of the powers, duties, or rights of a benefit director to the extent provided in the articles of incorporation or shareholder agreement of a close corporation pursuant to subsection 21.10(e) of this title.

* * *

§ 21.09. STANDARD OF CONDUCT FOR DIRECTORS

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

(1) shall, in determining what the director reasonably believes to be in the best interests of the benefit corporation, consider the effects of any action or inaction upon:

(A) the shareholders of the benefit corporation;

(B) the employees and workforce of the benefit corporation and its subsidiaries and suppliers;

(C) the interests of customers to the extent they are beneficiaries of the general or specific public benefit purposes of the benefit corporation;

(D) community and societal considerations, including those of any community in which offices or facilities of the benefit corporation or its subsidiaries or suppliers are located;

(E) *the local and global environment; and*

(F) *the long-term and short-term interests of the benefit corporation, including the possibility that those interests may be best served by the continued independence of the benefit corporation;*

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

(3) *shall not be required to give priority to the interests of any particular person or group referred to in subdivisions (1) or (2) of this subsection over the interests of any other person or group unless the benefit corporation has stated in its articles of incorporation its intention to give priority to interests related to the accomplishment of its general or specific public benefit purposes in its articles of incorporation purposes; and*

(4) *shall not be subject to a different or higher standard of care when an action or inaction might affect control of the benefit corporation.*

* * *

~~(e) A director of a benefit corporation shall have a fiduciary duty only to those persons entitled to bring a benefit enforcement proceeding against the benefit corporation under section 21.13 of this title. A director of a benefit corporation shall not have any fiduciary duty to a person who is a beneficiary of the general or specific public benefit purposes of the benefit corporation arising only from the person's status as a beneficiary. If a benefit corporation has adopted a provision in its articles of incorporation authorized by subdivision 2.02(b)(4) of this title, the provision shall also apply to a failure by a director to discharge his or her duties in accordance with this chapter.~~

§ 21.10. BENEFIT DIRECTOR

(a) ~~The~~ Except as provided in subsection (e) of this section, the board of directors of a benefit corporation shall include at least one director who shall be designated a "benefit director" and shall have, in addition to all of the powers, duties, rights, and immunities of the other directors of the benefit corporation, the powers, duties, rights, and immunities provided in this section.

* * *

(e) *If the articles of incorporation of a benefit corporation that is a close corporation dispense with ~~a~~ or restrict the discretion or powers of the board of directors pursuant to sections 20.08 and 20.09 of this title, then the articles of incorporation shall provide that or the shareholder agreement shall specify the persons who perform the duties of a board of directors shall include at least one person with shall exercise the powers, duties, and rights, and immunities*

~~of a~~ of the board of directors and the benefit director, as provided in this chapter. A person who exercises one or more of the powers, duties, or rights of a benefit director pursuant to this subsection:

(1) except in the case of a corporation with annual gross revenue of five million dollars or more in each of the two years preceding his or her appointment, is not required to be independent of the benefit corporation;

(2) shall have the immunities of a benefit director;

(3) may share the powers, duties, and rights of a benefit director with one or more other persons; and

(4) shall not be subject to the procedures for election or removal of directors provided in subchapter 1 of chapter 8 of this title unless the person is also a director of the benefit corporation or the articles of incorporation or shareholder agreement makes those procedures applicable.

* * *

§ 21.11. STANDARD OF CONDUCT FOR OFFICERS

* * *

~~(e) An officer of a benefit corporation shall have a fiduciary duty only to those persons entitled to bring a benefit enforcement proceeding against the benefit corporation under section 21.13 of this title. An officer of a benefit corporation shall not have any fiduciary duty to a person that is a beneficiary of the general or specific public benefit purposes of the benefit corporation arising only from the person's status as a beneficiary.~~

(f) The articles of incorporation of a benefit corporation may set forth a provision eliminating or limiting the liability of an officer to the benefit corporation or its shareholders for money damages for any action taken, or any failure to take any action, solely as an officer, based on a failure to discharge his or her own duties in accordance with this chapter, except liability for:

(1) the amount of a financial benefit received by an officer to which the officer is not entitled;

(2) an intentional or reckless infliction of harm on the benefit corporation or its shareholders; or

(3) an intentional or reckless criminal act.

* * *

§ 21.14. ANNUAL BENEFIT REPORT

* * *

(e) If a benefit corporation is a close corporation that has dispensed with or restricted the discretion or powers of the board of directors, the annual

benefit report shall describe the person or persons who exercise the powers, duties, and rights and have the immunities of the board of directors and the benefit director.

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