

House Bill 1052

By: Representatives Holcomb of the 81<sup>st</sup>, Willard of the 51<sup>st</sup>, Weldon of the 3<sup>rd</sup>, Evans of the 42<sup>nd</sup>, Beskin of the 54<sup>th</sup>, and others

A BILL TO BE ENTITLED  
AN ACT

1 To amend Chapter 2 of Title 14 of the Official Code of Georgia Annotated, relating to  
2 business corporations, so as to provide for benefit corporations; to provide for definitions;  
3 to provide for the application of the business corporation Code; to provide for naming; to  
4 provide for stock certificates; to provide for amendments and transactions; to provide for  
5 duties and limitations of liability of directors of benefit corporations; to provide for annual  
6 benefit reports; to change provisions relating to definitions for foreign corporation; to change  
7 provisions relating to the right to dissent; to change provisions relating to the corporate name  
8 of a foreign corporation; to provide for related matters; to repeal conflicting laws; and for  
9 other purposes.

10 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

11 PART I  
12 SECTION 1-1.

13 Chapter 2 of Title 14 of the Official Code of Georgia Annotated, relating to business  
14 corporations, is amended by adding a new article to read as follows:

15 "ARTICLE 18

16 14-2-1801.

17 (a) This chapter shall apply to benefit corporations to the extent not inconsistent with the  
18 provisions of this article.

19 (b) Except as expressly provided in this article, this article shall not repeal or modify any  
20 statute or rule of law applicable to a corporation that is not a benefit corporation.

21 14-2-1802.

22 (a) A benefit corporation is a corporation whose articles of incorporation contain a public  
23 benefit provision.

24 (b) As used in this article, the term:

25 (1) 'Public benefit' means a positive effect, or reduction of negative effects, on society,  
26 on the environment, or on one or more communities or categories of persons, entities, or  
27 interests, other than shareholders in their capacity as shareholders, including effects of  
28 an artistic, charitable, cultural, economic, ecological, educational, environmental, literary,  
29 medical, religious, scientific, social, or technological nature.

30 (2) 'Public benefit provision' means a provision stating that a purpose of the corporation  
31 is to pursue a public benefit or benefits.

32 14-2-1803.

33 The name of a benefit corporation shall satisfy the requirements of Code Section 14-2-401;  
34 however, in lieu of the use of a word or abbreviation as required by paragraph (1) of  
35 subsection (a) of Code Section 14-2-401, the phrase 'benefit corporation' or the  
36 abbreviation 'BC,' or the phrase 'public benefit corporation' or the abbreviation 'PBC,' may  
37 be used.

38 14-2-1804.

39 Any stock certificate issued by a benefit corporation shall state conspicuously that the  
40 corporation is a benefit corporation.

41 14-2-1805.

42 (a) In addition to any other requirements of this chapter, without the approval of the  
43 shareholders of at least two-thirds of the votes of each class or series of shares of the  
44 corporation, voting as separate voting groups, whether or not otherwise entitled to vote, a  
45 corporation that is not a benefit corporation shall not take any of the following actions:

46 (1) Amend its articles of incorporation to include a public benefit provision;

47 (2) Transfer property as described in paragraph (3) of subsection (b) of Code Section  
48 14-2-1201 if the transferee is a domestic or foreign benefit corporation, social purpose  
49 corporation, or substantially similar entity; or

50 (3) Engage in any transaction or series of transactions subject to Part 1 of Article 11 of  
51 this chapter, Code Section 14-2-1202, or Part 1 of Article 14 of this chapter if, as a result  
52 of such transaction or series of transactions, the shareholders of the corporation would  
53 own shares or interests in a domestic or foreign benefit corporation, social purpose

54 corporation, or substantially similar entity in lieu of all or any part of their shares of the  
 55 corporation.

56 (b) In addition to any other requirements of this chapter, without the approval of the  
 57 shareholders of at least two-thirds of the votes of each class or series of shares of the  
 58 corporation, voting as separate voting groups, whether or not otherwise entitled to vote, a  
 59 corporation that is a benefit corporation shall not take any of the following actions:

60 (1) Amend its articles of incorporation to delete or substantively modify its public benefit  
 61 provision;

62 (2) Transfer property as described in paragraph (3) of subsection (b) of Code Section  
 63 14-2-1201 if the transferee is not a domestic or foreign benefit corporation, social purpose  
 64 corporation, or substantially similar entity with a public benefit provision in its governing  
 65 documents substantially similar to the benefit corporation's public benefit provision; or

66 (3) Engage in any transaction or series of transactions subject to Part 1 of Article 11 of  
 67 this chapter, Code Section 14-2-1202, or Part 1 of Article 14 of this chapter if, as a result  
 68 of such transaction or series of transactions, the shareholders of the benefit corporation  
 69 would own, in lieu of all or any part of their shares of the benefit corporation, shares or  
 70 interests in a domestic or foreign corporation or other entity that is not a benefit  
 71 corporation, social purpose corporation, or substantially similar entity with a public  
 72 benefit provision in its governing documents substantially similar to the benefit  
 73 corporation's public benefit provision.

74 14-2-1806.

75 (a) In addition to any other duties imposed by this chapter, the board of directors of a  
 76 benefit corporation shall:

77 (1) Consider the public benefit or benefits specified in the benefit corporation's articles  
 78 of incorporation in connection with managing or directing the business and affairs of the  
 79 benefit corporation; and

80 (2) Adopt a standard or standards by which to measure the benefit corporation's  
 81 performance in pursuing the public benefit or benefits specified in the benefit  
 82 corporation's articles of incorporation.

83 (b) Notwithstanding subsection (a) of this Code section and any other provision of this  
 84 chapter:

85 (1) Directors of a benefit corporation have no duty to a person on account of any interest  
 86 of such person in the public benefit or benefits specified in the articles of incorporation;  
 87 and

88 (2) Unless otherwise provided in the articles of incorporation, directors of a benefit  
 89 corporation have no monetary liability to any person for any failure to comply with any

90 duty created by this Code section or any failure of the benefit corporation to pursue or  
91 create a public benefit or benefits as specified in its articles of incorporation.

92 14-2-1807.

93 (a) A benefit corporation shall include in every notice of a meeting of shareholders a  
94 conspicuous statement to the effect that it is a benefit corporation.

95 (b) A benefit corporation shall, no less than annually, provide to its shareholders of record,  
96 and to any other person who may request a copy in writing, a written report addressing the  
97 benefit corporation's performance with respect to its pursuit of the public benefit or benefits  
98 specified in its articles of incorporation. The report shall include:

99 (1) The objectives the board of directors has established in connection with the pursuit  
100 of such public benefit or benefits;

101 (2) The standard or standards the board of directors has adopted to measure the benefit  
102 corporation's progress in pursuing such public benefit or benefits;

103 (3) Factual information responsive to those standards regarding the benefit corporation's  
104 success or failure in meeting the objectives for pursuing such public benefit or benefits;  
105 and

106 (4) An assessment of the benefit corporation's success or failure in meeting the objectives  
107 and accomplishing such public benefit or benefits.

108 (c) In addition to complying with subsection (b) of this Code section, a benefit corporation  
109 may include in its articles of incorporation or bylaws provisions imposed upon the benefit  
110 corporation any or all of the following additional requirements:

111 (1) That the benefit corporation provide its report more frequently than annually;

112 (2) That the benefit corporation make the report generally available to the public via the  
113 internet or other readily accessible means;

114 (3) That the benefit corporation use a third-party standard in connection with measuring  
115 the benefit corporation's progress in accomplishing its stated public benefit or benefits;

116 (4) That the benefit corporation provide with its report a periodic third-party certification  
117 with respect to the benefit corporation's progress in accomplishing its stated public  
118 benefit or benefits; or

119 (5) That the report comply with any additional requirements as the board of directors  
120 may determine."

121

## PART II

122

**SECTION 2-1.**

123 Said chapter is further amended by revising paragraph (13) of Code Section 14-2-140,  
124 relating to definitions for the business corporations chapter, as follows:

125 "(13) 'Foreign corporation' means a corporation for profit, including a benefit  
126 corporation, social purpose corporation, or similar corporation, incorporated under a law  
127 other than the law of this state."

128

**SECTION 2-2.**

129 Said chapter is further amended by revising paragraphs (4) and (5) of and adding a new  
130 paragraph to subsection (a) of Code Section 14-2-1302, relating to right to dissent, as  
131 follows:

132 "(4) An amendment of the articles of incorporation with respect to a class or series of  
133 shares that reduces the number of shares of a class or series owned by the shareholder to  
134 a fraction of a share if the fractional share so created is to be acquired for cash under  
135 Code Section 14-2-604; ~~or~~

136 (5) Consummation of an action described in subsection (a) or (b) of Code Section  
137 14-2-1805; or

138 ~~(5)~~(6) Any corporate action taken pursuant to a shareholder vote to the extent that Article  
139 9 of this chapter, the articles of incorporation, bylaws, or a resolution of the board of  
140 directors provides that voting or nonvoting shareholders are entitled to dissent and obtain  
141 payment for their shares."

142

**SECTION 2-3.**

143 Said chapter is further amended by revising subsection (a) of Code Section 14-2-1506,  
144 relating to corporate name of foreign corporation, as follows:

145 "(a) If the corporate name of a foreign corporation does not satisfy the requirements of  
146 Code Section 14-2-401 or 14-2-1803, the foreign corporation to obtain or maintain a  
147 certificate of authority to transact business in this state:

148 (1) May add the word 'corporation,' 'incorporated,' 'company,' or 'limited,' or the  
149 abbreviation 'corp.,' 'inc.,' 'co.,' or 'ltd.,' or the name of its state of incorporation to its  
150 corporate name for use in this state; or

151 (2) May use a fictitious or trade name to transact business in this state if its real name is  
152 unavailable and it delivers to the Secretary of State for filing a copy of the resolution of  
153 its board of directors, certified by its secretary, adopting the fictitious or trade name."

154

PART III

155

**SECTION 3-1.**

156 All laws and parts of laws in conflict with this Act are repealed.