

The House Committee on Judiciary offers the following substitute to HB 1052:

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) State that the corporation is a benefit corporation in its articles of incorporation;

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

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

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

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

- 89 (2) Unless otherwise provided in the articles of incorporation, directors of a benefit
 90 corporation have no monetary liability to any person for any failure to comply with any
 91 duty created by this Code section or any failure of the benefit corporation to pursue or
 92 create a public benefit or benefits as specified in its articles of incorporation.
- 93 14-2-1807.
- 94 (a) A benefit corporation shall include in every notice of a meeting of shareholders a
 95 conspicuous statement to the effect that it is a benefit corporation.
- 96 (b) A benefit corporation shall, no less than annually, provide to its shareholders of record,
 97 and to any other person who may request a copy in writing, a written report addressing the
 98 benefit corporation's performance with respect to its pursuit of the public benefit or benefits
 99 specified in its articles of incorporation. The report shall include:
- 100 (1) The objectives the board of directors has established in connection with the pursuit
 101 of such public benefit or benefits;
- 102 (2) The standard or standards the board of directors has adopted to measure the benefit
 103 corporation's progress in pursuing such public benefit or benefits;
- 104 (3) Factual information responsive to those standards regarding the benefit corporation's
 105 success or failure in meeting the objectives for pursuing such public benefit or benefits;
 106 and
- 107 (4) An assessment of the benefit corporation's success or failure in meeting the objectives
 108 and accomplishing such public benefit or benefits.
- 109 (c) In addition to complying with subsection (b) of this Code section, a benefit corporation
 110 may include in its articles of incorporation or bylaws provisions imposing upon the benefit
 111 corporation any or all of the following additional requirements:
- 112 (1) That the benefit corporation provide its report more frequently than annually;
 113 (2) That the benefit corporation make the report generally available to the public via the
 114 internet or other readily accessible means;
- 115 (3) That the benefit corporation use a third-party standard in connection with measuring
 116 the benefit corporation's progress in accomplishing its stated public benefit or benefits;
 117 (4) That the benefit corporation provide with its report a periodic third-party certification
 118 with respect to the benefit corporation's progress in accomplishing its stated public
 119 benefit or benefits; or
- 120 (5) That the report comply with any additional requirements as the board of directors
 121 may determine."

PART II

SECTION 2-1.

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

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

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

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

137 (5) Consummation of an action described in subsection (a) or (b) of Code Section
138 14-2-1805; or

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

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

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

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

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

155

PART III

156

SECTION 3-1.

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