

House Bill 278

By: Representatives Holcomb of the 81st, Willard of the 51st, Oliver of the 82nd, Kelley of the 16th, and Evans of the 42nd

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 the application
3 of the Georgia Business Corporation Code; to provide for definitions; to provide for naming;
4 to 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 public benefit reports; to change the definition of a foreign corporation; to change provisions
7 relating to the right to dissent; to change provisions relating to the corporate name of a
8 foreign corporation; to provide for related matters; to repeal conflicting laws; and for other
9 purposes.

10 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

11 style="text-align:center">**PART I**
12 style="text-align:center">**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 style="text-align:center">"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 As used in this article, the term:

23 (1) 'Benefit corporation' means a corporation whose articles of incorporation contain a
24 public benefit provision and a statement that the corporation is a benefit corporation.

25 (2) '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 (3) '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 provided, however, that in lieu of the use of a word or abbreviation as required under
35 paragraph (1) of subsection (a) of Code Section 14-2-401, the phrase 'benefit corporation'
36 or 'public benefit corporation' or the abbreviation 'BC' or 'PBC' may be used.

37 14-2-1804.

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

40 14-2-1805.

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

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

46 (2) Transfer property as described in paragraph (3) of subsection (b) of Code Section
47 14-2-1201 if the transferee is a domestic or foreign benefit corporation, social purpose
48 corporation incorporated under a law other than the law of this state, or substantially
49 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 incorporated under a law other than the law of this state, or substantially
55 similar entity in lieu of all or any part of their shares of the corporation.

56 (b) In addition to any other requirements provided for under this chapter, without approval
 57 by the 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 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 incorporated under a law other than the law of this state, or substantially
 65 similar entity with a public benefit provision in its articles of incorporation that is
 66 substantially similar to the benefit corporation's public benefit provision; or

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

76 14-2-1806.

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

79 (1) Pursuant to its incorporation, state that the corporation is a benefit corporation in its
 80 articles of incorporation;

81 (2) Consider the public benefit or benefits specified in the benefit corporation's articles
 82 of incorporation when managing or directing the business and affairs of the benefit
 83 corporation; and

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

87 (b) Notwithstanding subsection (a) of this Code section or any other provision of this
 88 chapter:

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

92 (2) Unless otherwise provided in the articles of incorporation, directors of a benefit
93 corporation have no monetary liability to any person for any failure to comply with any
94 duty created by this Code section or any failure of the benefit corporation to pursue a
95 public benefit or benefits as specified in its articles of incorporation.

96 14-2-1807.

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

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

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

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

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

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

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

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

116 (2) That the benefit corporation make the report generally available to the public via the
117 Internet or other readily accessible means;

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

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

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

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PART II

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SECTION 2-1.

127 Said chapter is further amended in Code Section 14-2-140, relating to code definitions, by
 128 revising paragraph (13) as follows:

129 "(13) 'Foreign corporation' means a corporation for profit, including, but not limited to,
 130 a benefit corporation, social purpose corporation, or a substantially similar entity,
 131 incorporated under a law other than the law of this state."

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SECTION 2-2.

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

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

140 (5) Consummation of an action described in subsection (a) or (b) of Code Section
 141 14-2-1805; or

142 ~~(5)~~(6) Any corporate action taken pursuant to a shareholder vote to the extent that Article
 143 9 of this chapter, the articles of incorporation, the bylaws, or a resolution of the board of
 144 directors provides that voting or nonvoting shareholders are entitled to dissent and obtain
 145 payment for their shares."

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SECTION 2-3.

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

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

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

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

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PART III

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SECTION 3-1.

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