House Bill 230
By: Representatives Holcomb of the 81st, Gambill of the 15th, Oliver of the 82nd, Wilensky of the 79th, Wilson of the 80th, and others

A BILL TO BE ENTITLED
AN ACT

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

BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

PART I
SECTION 1-1.

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

"ARTICLE 18

14-2-1801.
(a) This chapter shall apply to benefit corporations to the extent not inconsistent with the provisions of this article.
(b) Except as expressly provided in this article, this article shall not repeal or modify any statute or rule of law applicable to a corporation that is not a benefit corporation.

14-2-1802.
As used in this article, the term:
(1) 'Benefit corporation' means a corporation whose articles of incorporation contain a public benefit provision and a statement that the corporation is a benefit corporation.

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

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

14-2-1803.
The name of a benefit corporation shall satisfy the requirements of Code Section 14-2-401; provided, however, that in lieu of the use of a word or abbreviation as required under paragraph (1) of subsection (a) of Code Section 14-2-401, the phrase 'benefit corporation' or 'public benefit corporation' or the abbreviation 'BC' or 'PBC' may be used.

14-2-1804.
Any stock certificate issued by a benefit corporation shall state conspicuously that the corporation is a benefit corporation.

14-2-1805.
(a) In addition to any other requirements provided for under this chapter, without approval by the shareholders of at least two-thirds of the votes of each class or series of shares of the corporation, voting as separate voting groups, whether or not otherwise entitled to vote, a corporation that is not a benefit corporation shall not take any of the following actions:

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

(2) Transfer property as described in paragraph (3) of subsection (b) of Code Section 14-2-1201 if the transferee is a domestic or foreign benefit corporation, social purpose corporation incorporated under a law other than the law of this state, or substantially similar entity; or

(3) Engage in any transaction or series of transactions subject to Part 1 of Article 11 of this chapter, Code Section 14-2-1202, or Part 1 of Article 14 of this chapter if, as a result of such transaction or series of transactions, the shareholders of the corporation would own shares or interests in a domestic or foreign benefit corporation, social purpose corporation incorporated under a law other than the law of this state, or substantially similar entity in lieu of all or any part of their shares of the corporation.
In addition to any other requirements provided for under this chapter, without approval by the shareholders of at least two-thirds of the votes of each class or series of shares of the corporation, voting as separate voting groups, whether or not otherwise entitled to vote, a benefit corporation shall not take any of the following actions:

1. Amend its articles of incorporation to delete or substantively modify its public benefit provision;

2. Transfer property as described in paragraph (3) of subsection (b) of Code Section 14-2-1201 if the transferee is not a domestic or foreign benefit corporation, social purpose corporation incorporated under a law other than the law of this state, or substantially similar entity with a public benefit provision in its articles of incorporation that is substantially similar to the benefit corporation's public benefit provision; or

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

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

1. Pursuant to its incorporation, state that the corporation is a benefit corporation in its articles of incorporation;

2. Consider the public benefit or benefits specified in the benefit corporation's articles of incorporation when managing or directing the business and affairs of the benefit corporation; and

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

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

1. Directors of a benefit corporation have no duty to any person on account of such person having any interest in the public benefit or benefits specified in the articles of incorporation; and
(2) Unless otherwise provided in the articles of incorporation, directors of a benefit corporation have no monetary liability to any person for any failure to comply with any duty created by this Code section or any failure of the benefit corporation to pursue a public benefit or benefits as specified in its articles of incorporation.

14-2-1807.

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

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

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

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

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

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

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

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

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

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

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

(5) That the report comply with any additional requirements as the board of directors may determine.
PART II

SECTION 2-1.

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

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

SECTION 2-2.

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

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

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

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

SECTION 2-3.

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

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

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

(2) May use a fictitious or trade name to transact business in this state if its real name is unavailable and it delivers to the Secretary of State for filing a copy of the resolution of its board of directors, certified by its secretary, adopting the fictitious or trade name."
All laws and parts of laws in conflict with this Act are repealed.