

# HOUSE BILL No. 5710

May 31, 2016, Introduced by Reps. Greig, LaGrand, Vaupel, Graves, Irwin, Yanez, Townsend, LaVoy, Lucido, Yonker, Plawecki, Chang, Garrett, Pagan, Wittenberg, Zemke, Cochran, Liberati, Brinks, Canfield, Pagel and Love and referred to the Committee on Commerce and Trade.

A bill to amend 1972 PA 284, entitled  
"Business corporation act,"  
(MCL 450.1101 to 450.2098) by adding chapter 9A.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

CHAPTER 9A

BENEFIT CORPORATIONS

SEC. 951. (1) AS USED IN THIS CHAPTER:

(A) "BENEFIT ENFORCEMENT PROCEEDING" MEANS A CLAIM ASSERTED OR ACTION BROUGHT DIRECTLY BY A BENEFIT CORPORATION, OR DERIVATIVELY ON BEHALF OF A BENEFIT CORPORATION, AGAINST A DIRECTOR OR OFFICER FOR ANY OF THE FOLLOWING:

(i) A FAILURE TO PURSUE THE GENERAL PUBLIC BENEFIT PURPOSE OF A BENEFIT CORPORATION OR ANY SPECIFIC PUBLIC BENEFIT PURPOSE SET FORTH IN THE ARTICLES OF A BENEFIT CORPORATION.

(ii) A VIOLATION OF A DUTY OR STANDARD OF CONDUCT UNDER THIS

1 CHAPTER.

2 (B) "GENERAL PUBLIC BENEFIT" MEANS A MATERIAL POSITIVE IMPACT  
3 ON SOCIETY AND THE ENVIRONMENT, TAKEN AS A WHOLE, AS MEASURED BY A  
4 THIRD-PARTY STANDARD, FROM THE BUSINESS AND OPERATIONS OF A BENEFIT  
5 CORPORATION.

6 (C) "MINIMUM STATUS VOTE" MEANS AN AUTHORIZATION OR APPROVAL  
7 OF A CORPORATE ACTION BY THE SHAREHOLDERS OF A BENEFIT CORPORATION  
8 THAT MEETS ALL OF THE FOLLOWING:

9 (i) IT MEETS THE SHAREHOLDER APPROVAL OR VOTE REQUIREMENTS OF  
10 THIS ACT.

11 (ii) IT MEETS ANY SHAREHOLDER APPROVAL OR VOTE REQUIREMENTS  
12 INCLUDED IN ANY PROVISIONS OF THE ARTICLES OF INCORPORATION OR THE  
13 BYLAWS OF THE BENEFIT CORPORATION ADOPTED BY THE SHAREHOLDERS.

14 (iii) THE SHAREHOLDERS OF EVERY CLASS OR SERIES ARE ENTITLED  
15 TO VOTE ON THE CORPORATE ACTION REGARDLESS OF A LIMITATION STATED  
16 IN THE ARTICLES OF INCORPORATION OR BYLAWS ON THE VOTING RIGHTS OF  
17 ANY CLASS OR SERIES.

18 (iv) THE CORPORATE ACTION IS APPROVED BY VOTE OF THE  
19 SHAREHOLDERS OF EACH CLASS OR SERIES ENTITLED TO CAST AT LEAST 2/3  
20 OF THE VOTES THAT ALL SHAREHOLDERS OF THE CLASS OR SERIES ARE  
21 ENTITLED TO CAST ON THE ACTION.

22 (D) "SPECIFIC PUBLIC BENEFIT" INCLUDES, BUT IS NOT LIMITED TO,  
23 ANY OF THE FOLLOWING:

24 (i) PROVIDING LOW-INCOME OR UNDERSERVED INDIVIDUALS OR  
25 COMMUNITIES WITH BENEFICIAL PRODUCTS OR SERVICES.

26 (ii) PROMOTING ECONOMIC OPPORTUNITY FOR INDIVIDUALS OR  
27 COMMUNITIES BEYOND THE CREATION OF JOBS IN THE NORMAL COURSE OF

1 BUSINESS.

2 (iii) PRESERVING THE ENVIRONMENT.

3 (iv) IMPROVING HUMAN HEALTH.

4 (v) PROMOTING THE ARTS, SCIENCES, OR ADVANCEMENT OF KNOWLEDGE.

5 (vi) INCREASING THE FLOW OF CAPITAL TO ENTITIES THAT HAVE A  
6 PUBLIC BENEFIT PURPOSE.

7 (vii) CONFERRING ANY OTHER PARTICULAR BENEFIT ON SOCIETY OR  
8 THE ENVIRONMENT.

9 (E) IN RELATION TO A PERSON, "SUBSIDIARY" MEANS AN ENTITY IN  
10 WHICH THE PERSON OWNS BENEFICIALLY OR OF RECORD 50% OR MORE OF THE  
11 OUTSTANDING EQUITY INTERESTS. FOR PURPOSES OF DETERMINING A  
12 PERSON'S OWNERSHIP PERCENTAGE UNDER THIS SUBDIVISION, ANY  
13 OUTSTANDING RIGHTS TO ACQUIRE EQUITY INTERESTS IN AN ENTITY ARE  
14 CONSIDERED OUTSTANDING EQUITY INTERESTS IN THAT ENTITY.

15 (F) "THIRD-PARTY STANDARD" MEANS A STANDARD FOR DEFINING,  
16 REPORTING, AND ASSESSING OVERALL CORPORATE SOCIAL AND ENVIRONMENTAL  
17 PERFORMANCE THAT IS ALL OF THE FOLLOWING:

18 (i) COMPREHENSIVE, IN THAT IT ASSESSES THE EFFECT OF THE  
19 BUSINESS AND ITS OPERATIONS ON THE INTERESTS LISTED IN SECTION  
20 957(1)(A)(ii) TO (v).

21 (ii) DEVELOPED BY AN ORGANIZATION THAT IS INDEPENDENT OF THE  
22 BENEFIT CORPORATION AND SATISFIES THE FOLLOWING REQUIREMENTS:

23 (A) NOT MORE THAN 1/3 OF THE MEMBERS OF THE GOVERNING BODY OF  
24 THE ORGANIZATION ARE REPRESENTATIVES OF EITHER OF THE FOLLOWING:

25 (I) AN ASSOCIATION OF BUSINESSES OPERATING IN A SPECIFIC  
26 INDUSTRY IF THE PERFORMANCE OF THE MEMBER BUSINESSES IS MEASURED BY  
27 THE STANDARDS.

1 (II) BUSINESSES WHOSE PERFORMANCE IS MEASURED BY THE STANDARD.

2 (B) THE ORGANIZATION IS NOT MATERIALLY FINANCED BY AN  
3 ASSOCIATION OR BUSINESS DESCRIBED IN SUB-SUBPARAGRAPH (A) .

4 (iii) CREDIBLE, BECAUSE THE STANDARD IS DEVELOPED BY A PERSON  
5 THAT MEETS BOTH OF THE FOLLOWING:

6 (A) THE PERSON HAS ACCESS TO NECESSARY EXPERTISE TO ASSESS  
7 OVERALL CORPORATE SOCIAL AND ENVIRONMENTAL PERFORMANCE.

8 (B) THE PERSON USES A BALANCED MULTISTAKEHOLDER APPROACH THAT  
9 INCLUDES A PUBLIC COMMENT PERIOD OF AT LEAST 30 DAYS TO DEVELOP THE  
10 STANDARD.

11 (iv) TRANSPARENT, BECAUSE ALL OF THE FOLLOWING ARE PUBLICLY  
12 AVAILABLE:

13 (A) THE CRITERIA CONSIDERED IN THE STANDARD WHEN MEASURING THE  
14 OVERALL SOCIAL AND ENVIRONMENTAL PERFORMANCE OF A BUSINESS, AND THE  
15 RELATIVE WEIGHTINGS OF THOSE CRITERIA.

16 (B) THE FOLLOWING INFORMATION ABOUT THE DEVELOPMENT AND  
17 REVISION OF THE STANDARD:

18 (I) THE IDENTITY OF THE DIRECTORS, OFFICERS, ANY MATERIAL  
19 OWNERS, AND THE GOVERNING BODY OF THE ORGANIZATION THAT DEVELOPED  
20 AND CONTROLS REVISIONS TO THE STANDARD.

21 (II) THE PROCESS BY WHICH REVISIONS TO THE STANDARD AND  
22 CHANGES TO THE MEMBERSHIP OF THE GOVERNING BODY ARE MADE.

23 (III) AN ACCOUNTING OF THE SOURCES OF FINANCIAL SUPPORT FOR  
24 THE ORGANIZATION, WITH SUFFICIENT DETAIL TO DISCLOSE ANY  
25 RELATIONSHIPS THAT COULD REASONABLY BE CONSIDERED TO PRESENT A  
26 POTENTIAL CONFLICT OF INTEREST.

27 (2) THIS CHAPTER DOES NOT APPLY TO ANY CORPORATION THAT IS NOT

1 A BENEFIT CORPORATION OR TO A CORPORATION THAT TERMINATES ITS  
2 STATUS AS A BENEFIT CORPORATION UNDER SECTION 953(4).

3 (3) IF THERE IS A CONFLICT BETWEEN A SPECIFIC PROVISION OF  
4 THIS CHAPTER AND A GENERAL PROVISION OF THIS ACT, THE PROVISION OF  
5 THIS CHAPTER APPLIES WITH RESPECT TO A BENEFIT CORPORATION.

6 SEC. 953. (1) A DOMESTIC CORPORATION THAT MEETS ALL OF THE  
7 FOLLOWING IS A BENEFIT CORPORATION AND SUBJECT TO THIS CHAPTER:

8 (A) THE CORPORATION IS FORMED UNDER THIS ACT.

9 (B) THE ARTICLES OF THE CORPORATION STATE THAT IT IS A BENEFIT  
10 CORPORATION. HOWEVER, AN AMENDMENT TO THE ARTICLES TO INCLUDE THE  
11 STATEMENT DESCRIBED IN THIS SUBDIVISION IS NOT EFFECTIVE UNLESS IT  
12 IS ADOPTED BY A MINIMUM STATUS VOTE.

13 (2) IN ADDITION TO THE PURPOSES DESCRIBED IN SECTION 202(B),  
14 THE PURPOSES INCLUDED IN THE ARTICLES OF A BENEFIT CORPORATION  
15 SHALL INCLUDE CREATING GENERAL PUBLIC BENEFIT. THE PURPOSES MAY  
16 ALSO INCLUDE 1 OR MORE SPECIFIC PUBLIC BENEFITS IDENTIFIED IN THE  
17 ARTICLES, BUT THE IDENTIFICATION OF A SPECIFIC PUBLIC BENEFIT UNDER  
18 THIS SUBDIVISION DOES NOT LIMIT THE OBLIGATION OF A BENEFIT  
19 CORPORATION TO CREATE GENERAL PUBLIC BENEFIT.

20 (3) AN AMENDMENT TO THE ARTICLES OF INCORPORATION OF A BENEFIT  
21 CORPORATION TO CHANGE THE PURPOSES OF THE CORPORATION BY ADDING,  
22 AMENDING, OR DELETING 1 OR MORE SPECIFIC PUBLIC BENEFITS IS NOT  
23 EFFECTIVE UNLESS IT IS ADOPTED BY A MINIMUM STATUS VOTE.

24 (4) A BENEFIT CORPORATION MAY TERMINATE ITS STATUS AS A  
25 BENEFIT CORPORATION BY AMENDING ITS ARTICLES TO REMOVE THE  
26 PROVISIONS DESCRIBED IN THIS SECTION. HOWEVER, EACH OF THE  
27 FOLLOWING APPLIES TO AN AMENDMENT TO THE ARTICLES DESCRIBED IN THIS

1 SUBSECTION:

2 (A) THE AMENDMENT IS NOT EFFECTIVE UNLESS IT IS ADOPTED BY A  
3 MINIMUM STATUS VOTE.

4 (B) A SHAREHOLDER THAT DOES NOT VOTE FOR OR CONSENT IN WRITING  
5 TO THE AMENDMENT MAY DISSENT UNDER SECTION 762 AND RECEIVE PAYMENT  
6 FOR THE SHARES.

7 SEC. 955. (1) IN ADDITION TO THE REQUIREMENTS OF CHAPTER 7, IF  
8 A DOMESTIC CORPORATION THAT IS NOT A BENEFIT CORPORATION IS A  
9 CONSTITUENT CORPORATION IN A MERGER OR AN EXCHANGING CORPORATION IN  
10 A SHARE EXCHANGE, AND THE SURVIVING OR ACQUIRING CORPORATION WILL  
11 BE A BENEFIT CORPORATION UNDER THE PLAN OF MERGER OR SHARE  
12 EXCHANGE, THE PLAN MUST BE APPROVED BY A MINIMUM STATUS VOTE OF  
13 THAT CONSTITUENT OR EXCHANGING CORPORATION.

14 (2) IN ADDITION TO THE REQUIREMENTS OF CHAPTER 7, A PLAN OF  
15 MERGER OR SHARE EXCHANGE THAT WOULD HAVE THE EFFECT OF TERMINATING  
16 THE STATUS OF A DOMESTIC CORPORATION AS A BENEFIT CORPORATION MUST  
17 BE APPROVED BY A MINIMUM STATUS VOTE OF THAT CORPORATION.

18 (3) A SHAREHOLDER OF A CORPORATION THAT IS NOT A BENEFIT  
19 CORPORATION MAY DISSENT UNDER SECTION 762 AND RECEIVE PAYMENT FOR  
20 THE SHARES IF THE SHAREHOLDER DID NOT VOTE FOR OR CONSENT IN  
21 WRITING TO A PLAN OF MERGER OR SHARE EXCHANGE UNDER SUBSECTION (1)  
22 AND THE SHAREHOLDER HELD THE SHARES IMMEDIATELY BEFORE THE  
23 EFFECTIVE TIME OF THE MERGER OR SHARE EXCHANGE.

24 SEC. 957. (1) ALL OF THE FOLLOWING APPLY TO THE BOARD,  
25 COMMITTEES OF THE BOARD, AND INDIVIDUAL DIRECTORS OF A BENEFIT  
26 CORPORATION, AND TO ANY OFFICER OF A BENEFIT CORPORATION WHO HAS  
27 DISCRETION TO ACT WITH RESPECT TO ANY MATTER IF IT REASONABLY

1 APPEARS TO THE OFFICER THAT THE MATTER MAY HAVE A MATERIAL EFFECT  
2 ON THE CREATION OF GENERAL PUBLIC BENEFIT OR A SPECIFIC PUBLIC  
3 BENEFIT BY THE BENEFIT CORPORATION, IN DISCHARGING THE DUTIES OF  
4 THEIR RESPECTIVE POSITIONS AND IN CONSIDERING THE BEST INTERESTS OF  
5 THE BENEFIT CORPORATION:

6 (A) THEY SHALL CONSIDER THE EFFECTS OF ANY ACTION ON ALL OF  
7 THE FOLLOWING:

8 (i) THE SHAREHOLDERS OF THE BENEFIT CORPORATION.

9 (ii) THE EMPLOYEES AND WORK FORCE OF THE BENEFIT CORPORATION  
10 AND ITS SUBSIDIARIES AND SUPPLIERS.

11 (iii) THE INTERESTS OF CUSTOMERS AS BENEFICIARIES OF THE  
12 GENERAL PUBLIC BENEFIT AND ANY SPECIFIC PUBLIC BENEFIT INCLUDED IN  
13 THE PURPOSE OF THE BENEFIT CORPORATION.

14 (iv) COMMUNITY AND SOCIETAL CONSIDERATIONS, INCLUDING THOSE OF  
15 EACH COMMUNITY IN WHICH OFFICES OR FACILITIES OF THE BENEFIT  
16 CORPORATION AND ITS SUBSIDIARIES AND SUPPLIERS ARE LOCATED.

17 (v) THE LOCAL AND GLOBAL ENVIRONMENT.

18 (vi) THE SHORT-TERM AND LONG-TERM INTERESTS OF THE BENEFIT  
19 CORPORATION, INCLUDING BENEFITS THAT MAY ACCRUE TO THE BENEFIT  
20 CORPORATION FROM ITS LONG-TERM PLANS AND THE POSSIBILITY THAT THESE  
21 INTERESTS AND THE GENERAL PUBLIC BENEFIT AND ANY SPECIFIC PUBLIC  
22 BENEFIT INCLUDED IN THE PURPOSE OF THE BENEFIT CORPORATION MAY BE  
23 BEST SERVED BY THE CONTINUED INDEPENDENCE OF THE BENEFIT  
24 CORPORATION.

25 (vii) THE ABILITY OF THE BENEFIT CORPORATION TO ACCOMPLISH  
26 GENERAL PUBLIC BENEFIT AND ANY SPECIFIC PUBLIC BENEFIT INCLUDED IN  
27 THE PURPOSES OF THE BENEFIT CORPORATION.

1 (B) IN EVALUATING A PERSON'S PROPOSED ACQUISITION OF CONTROL  
2 OF THE BENEFIT CORPORATION, THEY MAY CONSIDER THE RESOURCES,  
3 INTENT, AND CONDUCT OF THE PERSON SEEKING TO ACQUIRE CONTROL OF THE  
4 BENEFIT CORPORATION.

5 (C) THEY MAY CONSIDER ANY OTHER PERTINENT FACTORS OR THE  
6 INTERESTS OF ANY OTHER GROUP THAT THEY CONSIDER APPROPRIATE.

7 (D) THEY ARE NOT REQUIRED TO GIVE PRIORITY TO THE INTERESTS OF  
8 A PARTICULAR PERSON OR GROUP DESCRIBED IN SUBDIVISION (A), (B), OR  
9 (C) OVER THE INTERESTS OF ANY OTHER PERSON OR GROUP UNLESS THE  
10 BENEFIT CORPORATION HAS STATED ITS INTENTION TO GIVE PRIORITY TO  
11 INTERESTS RELATED TO A SPECIFIC PUBLIC BENEFIT PURPOSE IDENTIFIED  
12 IN ITS ARTICLES.

13 (2) THE CONSIDERATION OF INTERESTS AND FACTORS BY A DIRECTOR  
14 OR OFFICER OF A BENEFIT CORPORATION UNDER SUBSECTION (1) IN THE  
15 DISCHARGE OF HIS OR HER DUTIES DOES NOT CONSTITUTE A VIOLATION OF  
16 SECTION 541A.

17 (3) A DIRECTOR OR OFFICER OF A BENEFIT CORPORATION IS NOT  
18 PERSONALLY LIABLE FOR MONETARY DAMAGES FOR ANY OF THE FOLLOWING:

19 (A) ANY ACTION TAKEN AS A DIRECTOR OR OFFICER IF THE DIRECTOR  
20 OR OFFICER PERFORMED HIS OR HER DUTIES IN COMPLIANCE WITH SECTION  
21 541A AND THIS SECTION.

22 (B) THE FAILURE OF THE BENEFIT CORPORATION TO CREATE GENERAL  
23 PUBLIC BENEFIT OR ANY SPECIFIC PUBLIC BENEFIT.

24 (4) A DIRECTOR OR OFFICER OF A BENEFIT CORPORATION DOES NOT  
25 HAVE A FIDUCIARY DUTY TO A PERSON THAT IS A BENEFICIARY OF THE  
26 GENERAL OR ANY SPECIFIC PUBLIC BENEFIT PURPOSES OF THE BENEFIT  
27 CORPORATION ARISING FROM THE STATUS OF THE PERSON AS A BENEFICIARY.

1 (5) ANY CORPORATE ACTION TAKEN BY A BENEFIT CORPORATION TO  
2 ADVANCE GENERAL PUBLIC BENEFIT OR ANY SPECIFIC PUBLIC BENEFIT  
3 INCLUDED IN THE PURPOSE OF THE CORPORATION UNDER SECTION 953(2) IS  
4 PRESUMED TO BE IN THE BEST INTERESTS OF THE BENEFIT CORPORATION.

5 SEC. 959. (1) THE DUTIES OF ANY DIRECTORS AND OFFICERS OF A  
6 BENEFIT CORPORATION, OR THE GENERAL PUBLIC BENEFIT PURPOSE OR ANY  
7 SPECIFIC PUBLIC BENEFIT PURPOSE OF A BENEFIT CORPORATION, MAY BE  
8 ENFORCED ONLY IN A BENEFIT ENFORCEMENT PROCEEDING UNDER THIS  
9 SECTION. A PERSON SHALL NOT BRING AN ACTION OR ASSERT A CLAIM  
10 AGAINST A BENEFIT CORPORATION OR ITS DIRECTORS OR OFFICERS WITH  
11 RESPECT TO THE DUTIES OF ANY DIRECTORS OR OFFICERS OF THE BENEFIT  
12 CORPORATION OR THE GENERAL PUBLIC BENEFIT PURPOSE OR ANY SPECIFIC  
13 PUBLIC BENEFIT PURPOSE OF THE BENEFIT CORPORATION EXCEPT IN A  
14 BENEFIT ENFORCEMENT PROCEEDING UNDER THIS SECTION.

15 (2) A BENEFIT ENFORCEMENT PROCEEDING AGAINST A BENEFIT  
16 CORPORATION MAY BE COMMENCED OR MAINTAINED ONLY BY 1 OF THE  
17 FOLLOWING:

18 (A) DIRECTLY, BY THE BENEFIT CORPORATION.

19 (B) DERIVATIVELY, BY ANY OF THE FOLLOWING:

20 (i) A SHAREHOLDER OF THE BENEFIT CORPORATION THAT OWNS,  
21 INDIVIDUALLY OR COLLECTIVELY, AS OF THE DATE THE BENEFIT  
22 ENFORCEMENT PROCEEDING IS INSTITUTED, EITHER OF THE FOLLOWING:

23 (A) AT LEAST 2% OF THE CORPORATION'S OUTSTANDING SHARES.

24 (B) IF THE SHARES OF THE BENEFIT CORPORATION ARE LISTED ON A  
25 NATIONAL SECURITIES EXCHANGE, 2% OF THE CORPORATION'S OUTSTANDING  
26 SHARES, OR SHARES THAT HAVE A MARKET VALUE OF \$2,000,000.00,  
27 WHICHEVER IS LESS.

1           (ii) A DIRECTOR OF THE BENEFIT CORPORATION.

2           (iii) A PERSON OR GROUP OF PERSONS THAT OWNS BENEFICIALLY OR  
3 OF RECORD 5% OR MORE OF THE EQUITY INTERESTS IN AN ENTITY OF WHICH  
4 THE BENEFIT CORPORATION IS A SUBSIDIARY.

5           (iv) ANY OTHER PERSON SPECIFIED IN THE ARTICLES OR BYLAWS OF  
6 THE BENEFIT CORPORATION.

7           Enacting section 1. This amendatory act takes effect 90 days  
8 after the date it is enacted into law.

9           Enacting section 2. This amendatory act does not take effect  
10 unless all of the following bills of the 98th Legislature are  
11 enacted into law:

12           (a) Senate Bill No.\_\_\_\_ or House Bill No. 5712 (request no.  
13 03104'15).

14           (b) Senate Bill No.\_\_\_\_ or House Bill No. 5713 (request no.  
15 05392'16).

16           (c) Senate Bill No.\_\_\_\_ or House Bill No. 5711 (request no.  
17 05829'16).