

SENATE COMMITTEE SUBSTITUTE

FOR

SENATE BILL NO. 105

AN ACT

To amend chapter 351, RSMo, by adding thereto thirteen new sections relating to benefit corporations.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF MISSOURI,
AS FOLLOWS:

Section A. Chapter 351, RSMo, is amended by adding thereto thirteen new sections, to be known as sections 351.1400, 351.1403, 351.1409, 351.1412, 351.1415, 351.1418, 351.1421, 351.1424, 351.1427, 351.1430, 351.1433, 351.1435, and 351.1440, to read as follows:

351.1400. As used in sections 351.1400 to 351.1435, the following terms mean:

(1) "Benefit corporation", a corporation:

(a) Which has elected to become subject to sections 351.1400 to 351.1435;

(b) Which has not terminated its status as a benefit corporation under section 351.1412; and

(c) Which is a general corporation formed under the provisions of sections 351.010 to 351.935;

(2) "Benefit director", the director elected by the benefit corporation under section 351.1421;

(3) "Benefit enforcement proceeding", any claim, action, or proceeding for:

(a) Failure of a benefit corporation to pursue or create

general public benefit or a specific public benefit purpose set forth in its articles of incorporation; or

(b) Violation of any obligation, duty, or standard of conduct under sections 351.1400 to 351.1435;

(4) "Benefit officer", the individual designated as the benefit officer of a benefit corporation under section 351.1427;

(5) "General public benefit", a material positive impact on society and the environment, taken as a whole, from the business and operations of a benefit corporation, assessed taking into account the impacts of the benefit corporation as reported against a third-party standard, provided that "general public benefit" shall not include abortion services, human cloning, or prohibited human research, as those terms are defined in section 196.1127;

(6) "Independent", having no material relationship with a benefit corporation or a subsidiary of the benefit corporation, provided that serving as benefit director or benefit officer of a benefit corporation shall not constitute a material relationship. A material relationship between an individual and a benefit corporation or any of its subsidiaries shall be conclusively presumed to exist if:

(a) The individual is, or has been within the last three years, an employee other than a benefit officer of the benefit corporation or a subsidiary;

(b) An immediate family member of the individual is, or has been within the last three years, an executive officer other than a benefit officer of the benefit corporation or a subsidiary; or

(c) There is beneficial or record ownership of five percent

or more of the outstanding shares of the benefit corporation,
calculated as if all outstanding rights to acquire equity
interests in the benefit corporation had been exercised, by:

a. The individual; or

b. An entity:

(i) Of which the individual is a director, an officer, or a
manager; or

(ii) In which the individual owns beneficially or of record
five percent or more of the outstanding equity interests,
calculated as if all outstanding rights to acquire equity
interests in the entity had been exercised;

(7) "Minimum status vote":

(a) In the case of a business corporation in addition to
any other approval or vote required by the articles of
incorporation or bylaws of the benefit corporation, the
satisfaction of the following conditions:

a. The shareholders of every class or series shall be
entitled to vote on the corporate action regardless of a
limitation stated in the articles of incorporation or bylaws on
the voting rights of any class or series;

b. The corporate action shall be approved by vote of the
shareholders of each class or series entitled to cast at least
two-thirds of the votes that all shareholders of the class or
series are entitled to cast on the action;

(b) In the case of a domestic entity other than a business
corporation, in addition to any other required approval, vote, or
consent, the satisfaction of the following conditions:

a. The holders of every class or series of equity interest

in the entity that are entitled to receive a distribution of any kind from the entity shall be entitled to vote on the action regardless of any otherwise applicable limitation on the voting or consent rights of any class or series;

b. The action must be approved by the affirmative vote of the holders entitled to cast at least two-thirds of the votes or consents that all of those holders are entitled to cast on the action;

(8) "Specific public benefit", includes:

(a) Providing low-income or underserved individuals or communities with beneficial products or services;

(b) Promoting economic opportunity for individuals or communities beyond the creation of jobs in the normal course of business;

(c) Protecting or restoring the environment;

(d) Improving human health;

(e) Promoting the arts, sciences, or advancement of knowledge;

(f) Increasing the flow of capital to entities with a purpose to benefit society or the environment;

(g) Conferring any other particular benefit on society or the environment;

"Specific public benefit" shall not include abortion services, human cloning, or prohibited human research, as those terms are defined in section 196.1127;

(9) "Subsidiary", in relation to a person, an entity in which the person owns beneficially or of record fifty percent or

more of the outstanding equity interests;

(10) "Third-party standard", a recognized standard for defining, reporting, and assessing corporate social and environmental performance. Such standard shall:

(a) Assess the effect of the business and its operations upon the interests listed in paragraphs (b), (c), (d), and (e) of subdivision (1) of subsection 1 of section 351.1418;

(b) Be developed by an entity that is not controlled by the benefit corporation;

(c) Be developed by an entity that both:

a. Has access to necessary expertise to assess overall corporate social and environmental performance; and

b. Uses a balanced multistakeholder approach to develop the standard, including a reasonable public comment period; and

(d) Keep the following information publicly available:

a. The criteria considered when measuring the overall social and environmental performance of a business;

b. The relative weightings, if any, of those criteria;

c. The identity of the directors, officers, material owners, and the governing body of the entity that developed and controls revisions to the standard;

d. The process by which revisions to the standard and changes to the membership of the governing body are made; and

e. An accounting of the revenue and sources of financial support for the entity, with sufficient detail to disclose any relationships that could reasonably be considered to present a potential conflict of interest.

351.1403. 1. Sections 351.1400 to 351.1435 shall be

applicable to all benefit corporations.

2. All provisions of sections 351.010 to 351.935 relating to the administration, enforcement, interpretation, or amendment of such sections shall be applicable to sections 351.1400 to 351.1435, provided that, in all cases in which the provisions of sections 351.1400 to 351.1435 are contrary or inconsistent with the provisions of 351.010 to 351.935, the provisions of sections 351.1400 to 351.1435 shall take precedence over the provisions of sections 351.010 to 351.935.

3. A provision of the articles of incorporation or bylaws of a benefit corporation shall not limit, be inconsistent with, or supersede any provision of sections 351.1400 to 351.1435.

351.1409. 1. Any existing corporation formed under the provisions of sections 351.010 to 351.935 may become a benefit corporation by amending its articles of incorporation to include a statement that the corporation is a benefit corporation. Such amendment shall be adopted by at least the minimum status vote.

2. For any entity that is a party to a merger or consolidation or is the exchanging entity in a share exchange, where the surviving, new, or resulting entity in the merger, consolidation, or share exchange is intended to be a benefit corporation, such plan of merger, consolidation, or share exchange shall be adopted by at least the minimum status vote in order to be effective.

351.1412. 1. A benefit corporation may terminate its status as such and cease to be subject to sections 351.1400 to 351.1435 by amending its articles of incorporation to remove the statement that the corporation is a benefit corporation. Such

amendment shall be adopted by at least the minimum status vote.

2. If a plan of merger, conversion, or share exchange would have the effect of terminating the status of a business corporation as a benefit corporation, the plan shall be adopted by at least the minimum status vote in order to be effective.

3. Any sale, lease, exchange, or other disposition of all or substantially all of the assets of a benefit corporation, unless the transaction is in the usual and regular course of business, shall not be effective unless the transaction is approved by at least the minimum status vote.

351.1415. 1. A benefit corporation shall create general public benefit which shall be in addition to its purpose under sections 351.010 to 351.935 and any specific purpose set forth in the articles of incorporation in accordance with subsection 2 of this section.

2. The articles of incorporation of a benefit corporation may identify one or more specific public benefit purposes in addition to its purposes under sections 351.010 to 351.935 and subsection 1 of this section.

3. A benefit corporation may amend its articles of incorporation to add, amend, or delete the identification of a specific public benefit. Such amendment shall be adopted by at least the minimum status vote.

351.1418. 1. In discharging the duties of their respective positions and in considering the best interests of the benefit corporation, the board of directors, committees of the board, and individual directors of a benefit corporation:

(1) Shall consider the effects of any action or inaction

upon:

- (a) The shareholders of the benefit corporation;
 - (b) The employees and work force of the benefit corporation, its subsidiaries, and its suppliers;
 - (c) The interests of customers as beneficiaries of the general public benefit or specific public benefit purposes of the benefit corporation;
 - (d) Community and societal factors, including those of each community in which offices or facilities of the benefit corporation, its subsidiaries, or its suppliers are located;
 - (e) The local and global environment;
 - (f) The short-term and long-term interests of the benefit corporation, including benefits that may accrue to the benefit corporation from its long-term plans and the possibility that these interests may be best served by the continued independence of the benefit corporation; and
 - (g) The ability of the benefit corporation to accomplish its general public benefit purpose and any specific public benefit purpose; and
- (2) May consider other pertinent factors or the interests of any other group deemed appropriate; and
 - (3) Shall not be required to give priority to the interests of a particular person or group over the interests of any other person or group unless the benefit corporation has stated in its articles of incorporation its intention to give priority to certain interests related to its accomplishment of its general public benefit purpose or specific public benefit purpose.

2. A director shall not be personally liable for monetary

damages for:

(1) Any action or inaction in the course of performing the duties of a director under subsection 1 of this section if the director was not interested with respect to the action or inaction; or

(2) Failure of the benefit corporation to pursue or create general public benefit or specific public benefit.

3. A director shall not have a duty to any person that is a beneficiary of the general public benefit purpose or a specific public benefit purpose of a benefit corporation arising from the status of the person as a beneficiary.

4. A director who makes a business judgment in good faith fulfills the duty under this section if the director:

(1) Is not interested in the subject of the business judgment;

(2) Is informed with respect to the subject of the business judgment to the extent the director reasonably believes to be appropriate under the circumstances; and

(3) Reasonably believes that the business judgment is in the best interests of the benefit corporation.

351.1421. 1. The board of directors of a benefit corporation may include a director, who:

(1) Shall be designated the benefit director; and

(2) Shall have, in addition to the powers, duties, rights, and immunities of the other directors of the benefit corporation, the powers, duties, rights, and immunities provided in this section.

2. The benefit director shall be elected, and may be

removed, in the same manner that directors of any board of directors for a corporation are removed provided by sections 351.010 to 351.526, and shall be an individual who is independent. The benefit director may serve as the benefit officer at the same time as serving as the benefit director. The articles of incorporation or bylaws of a benefit corporation may prescribe additional qualifications of the benefit director not inconsistent with this subsection.

3. The benefit corporation shall include in its annual benefit report to shareholders a report that shall address all of the following:

(1) Whether the benefit corporation acted in accordance with its general public benefit purpose and any specific public benefit purpose in all material respects during the period covered by the report;

(2) Whether the directors and officers complied with subsection 1 of section 351.1418 and subsection 1 of section 351.1424, respectively;

(3) Whether the benefit corporation or its directors or officers failed to act or comply in the manner described in subdivisions (1) and (2) of this subsection, and if so, a description of the ways in which the benefit corporation or its directors or officers failed to act or comply.

4. The act or inaction of an individual in the capacity of a benefit director shall constitute for all purposes an act or inaction of that individual in the capacity of a director of the benefit corporation.

5. Regardless of whether the articles of incorporation or

bylaws of a benefit corporation include a provision eliminating or limiting the personal liability of directors authorized by section 351.055, a benefit director shall not be personally liable for an act or inaction in his or her capacity as a benefit director unless the act or inaction constitutes self-dealing, willful misconduct, or a knowing violation of law.

351.1424. 1. Each officer of a benefit corporation shall consider the interests and factors described in subsection 1 of section 351.1418 in the manner provided in subsection 1 of section 351.1418 if:

(1) The officer has discretion to act with respect to a matter; and

(2) It reasonably appears to the officer that the matter may have a material effect on the creation by the benefit corporation of general public benefit or a specific public benefit identified in the articles of incorporation of the benefit corporation.

2. Except as provided in the articles of incorporation, an officer is not personally liable for monetary damages for:

(1) Any action or inaction in the course of performing the duties of an officer under subsection 1 of this section if the officer was not interested with respect to the action or inaction; or

(2) Failure of the benefit corporation to pursue or create general public benefit or specific public benefit.

3. An officer does not have a duty to a person that is a beneficiary of the general public benefit purpose or a specific public benefit purpose of a benefit corporation arising from the

status of the person as a beneficiary.

4. An officer who makes a business judgment in good faith fulfills the duty under this section if the officer:

(1) Is not interested in the subject of the business judgment;

(2) Is informed with respect to the subject of the business judgment to the extent the officer reasonably believes to be appropriate under the circumstances; and

(3) Reasonably believes that the business judgment is in the best interests of the benefit corporation.

351.1427. 1. A benefit corporation may have an officer designated as the benefit officer.

2. A benefit officer shall have:

(1) The powers and duties relating to the purpose of the corporation to create general public benefit or specific public benefit provided:

(a) By the bylaws; or

(b) Absent controlling provisions in the bylaws, by resolutions or orders of the board of directors; and

(2) The duty to prepare the benefit report required by section 351.1433.

351.1430. 1. A benefit corporation shall prepare an annual benefit report including all of the following:

(1) A narrative description of:

(a) The ways in which the benefit corporation pursued general public benefit during the year and the extent to which general public benefit was created;

(b) Both:

a. The ways in which the benefit corporation pursued a specific public benefit that the articles of incorporation state it is the purpose of the benefit corporation to create; and

b. The extent to which that specific public benefit was created;

(c) Any circumstances that have hindered the creation by the benefit corporation of general public benefit or specific public benefit;

(d) The process and rationale for selecting or changing the third-party standard used to prepare the benefit report;

(2) An assessment of the overall social and environmental performance of the benefit corporation against a third-party standard:

(a) Applied consistently with any application of that standard in prior benefit reports; or

(b) Accompanied by an explanation of the reasons for:

a. Any inconsistent application; or

b. The change to that standard from the one used in the immediately prior report;

(3) The name of the benefit director and the benefit officer, if any, and the address to which correspondence to each of them may be directed;

(4) The compensation paid by the benefit corporation during the year to each director in the capacity of a director;

(5) The statement of the benefit director described in subsection 3 of section 351.1424;

(6) A statement of any connection between the organization that established the third-party standard, or its directors,

officers or any holder of five percent or more of the governance interests in the organization, and the benefit corporation or its directors, officers or any holder of five percent or more of the outstanding shares of the benefit corporation, including any financial or governance relationship which might materially affect the credibility of the use of the third-party standard; and

(7) If the benefit corporation has dispensed with, or restricted the discretion or powers of, the board of directors, a description of the persons that exercise the powers, duties, and rights and who have the immunities of the board of directors.

2. If, during the year covered by a benefit report, a benefit director resigned from or refused to stand for reelection to the position of benefit director, or was removed from the position of benefit director, and the benefit director furnished the benefit corporation with any written correspondence concerning the circumstances surrounding the resignation, refusal, or removal, the benefit report shall include that correspondence as an exhibit.

3. Neither the benefit report nor the assessment of the performance of the benefit corporation in the benefit report required by subdivision (2) of subsection 1 of this section needs to be audited or certified by a third party standards provider.

351.1433. 1. A benefit corporation shall send its annual benefit report to each shareholder:

(1) Within one hundred twenty days following the end of the fiscal year of the benefit corporation; or

(2) At the same time that the benefit corporation delivers

any other annual report to its shareholders.

2. A benefit corporation shall post all of its benefit reports on the public portion of its internet website, if any, but the compensation paid to directors and financial or proprietary information included in the benefit reports may be omitted from the benefit reports as posted.

3. If a benefit corporation does not have an internet website, the benefit corporation shall provide a copy of its most recent benefit report, without charge, to any person that requests a copy, but the compensation paid to directors and financial or proprietary information included in the benefit report may be omitted from the copy of the benefit report provided.

4. (1) Concurrently with the delivery of the benefit report to shareholders under subsection 3 of this section, the benefit corporation shall deliver a copy of the benefit report to the secretary of state for filing, but the compensation paid to directors and financial or proprietary information included in the benefit report may be omitted from the benefit report as delivered to the secretary of state.

(2) The secretary of state shall charge a fee of forty-five dollars for filing a benefit report.

351.1435. 1. (1) Except in a benefit enforcement proceeding, no person may bring an action or assert a claim against a benefit corporation or its directors or officers with respect to:

(a) Failure to pursue or create general public benefit or a specific public benefit set forth in its articles of

incorporation; or

(b) Violation of an obligation, duty, or standard of conduct under sections 351.1400 to 351.1435.

(2) A benefit corporation shall not be liable for monetary damages under sections 351.1400 to 351.1435 for any failure of the benefit corporation to pursue or create general public benefit or a specific public benefit.

2. A benefit enforcement proceeding may be commenced or maintained only:

(1) Directly by the benefit corporation; or

(2) Derivatively by:

(a) A person or group of persons that owned beneficially or of record at least two percent of the total number of shares of a class or series outstanding at the time of the act or inaction;

(b) A director;

(c) A person or group of persons that owned beneficially or of record five percent or more of the outstanding equity interests in an entity of which the benefit corporation is a subsidiary at the time of the act or inaction; or

(d) Other persons as specified in the articles of incorporation or bylaws of the benefit corporation.

3. For purposes of this section, a person is the beneficial owner of shares or equity interests if the shares or equity interests are held in a voting trust or by a nominee on behalf of the beneficial owner.

351.1440. Nothing in sections 351.1400 to 351.1435 shall authorize public funds to be expended, paid, or granted to or on behalf of an existing or proposed research project that involves

abortion services, human cloning, or prohibited human research.