

1 **FLORIDA BENEFIT CORPORATION LEGISLATION**

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3 **Sections 607.1701 et seq.**

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5 **Benefit Corporation Supplement**

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8 **§ 607.1701. Short Title.**

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10 This Section and ss. 607.1702 through 607.1714 shall be known and may be cited as the “Benefit
11 Corporation Supplement” and is referred to in such sections as “this supplement”.

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13 **§ 607.1702. Application and effect of supplement.**

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15 (1) This supplement shall be applicable to all benefit corporations.

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17 (2) The existence of a provision of this supplement shall not of itself create an implication
18 that a contrary or different rule of law is applicable to a business corporation that is not a benefit
19 corporation. This supplement shall not affect a statute or rule of law that is applicable to a business
20 corporation that is not a benefit corporation.

21
22 (3) Except as otherwise provided in this supplement, all other provisions of this chapter
23 shall be generally applicable to all benefit corporations. The specific provisions of this supplement
24 shall control over the general provisions of this chapter.

25
26 (4) A benefit corporation may be subject simultaneously to this supplement and to chapter
27 621. In such event, the provisions and sections of this supplement shall take precedence with
28 respect to a benefit corporation.

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30 (5) Except as permitted in this supplement, a provision of the articles of incorporation or
31 bylaws of a benefit corporation may not limit, be inconsistent with, or supersede a provision of this
32 supplement.

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34 **§ 607.1703. Definitions.**

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36 As used in this supplement, unless the context otherwise requires, the term:

37
38 (1) **“Benefit corporation”** means a business corporation:

- 39
40 (a) which has elected to become subject to this supplement; and
41
42 (b) the status of which as a benefit corporation has not been terminated.

43
44 (2) **“Benefit director”** means either:

45
46 (a) the director designated as the benefit director of a benefit corporation under s.
47 607.1708; or

48
49 (b) a person with one or more of the powers, duties or rights of a benefit director to

50 the extent provided in the articles of incorporation or bylaws under s. 607.1709.

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52 (3) **“Benefit enforcement proceeding”** means any claim or action for:

53
54 (a) failure of a benefit corporation to pursue or create public benefit or a specific
55 public benefit purpose set forth in its articles of incorporation; or

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57 (b) violation of any obligation, duty, or standard of conduct under this supplement.

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59 (4) **“Benefit officer”** means the individual designated as the benefit officer of a benefit
60 corporation under s. 607.1711.

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62 (5) **“Business corporation”** means a corporation formed under this chapter which is not a
63 benefit corporation or a foreign corporation.

64
65 (6) **“Public benefit”** means a positive effect, or minimization of negative effects, taken as a
66 whole, assessed against a third-party standard, on the environment or on one or more categories of
67 persons or entities, other than shareholders in their capacity as shareholders, of an artistic,
68 charitable, economic, educational, cultural, literary, religious, social, ecological or scientific nature,
69 from the business and operations of a benefit corporation.

70
71 (7) **“Independent”** means having no material relationship with a benefit corporation or a
72 subsidiary of the benefit corporation. Serving as benefit director or benefit officer does not make
73 an individual not independent. A material relationship between an individual and a benefit
74 corporation or any of its subsidiaries will be conclusively presumed to exist, at the time
75 independence is to be determined, if any of the following apply:

76
77 (a) The individual is, or has been within the prior three years, an employee other
78 than a benefit officer of the benefit corporation or a subsidiary.

79
80 (b) An immediate family member of the individual is, or has been within the prior
81 three years, an executive officer other than a benefit officer of the benefit corporation or a
82 subsidiary.

83
84 (c) There is beneficial or record ownership of 5% or more of the outstanding shares
85 of the benefit corporation, calculated as if all outstanding rights to acquire equity interests in the
86 benefit corporation had been exercised, by:

87
88 1. the individual; or

89
90 2. an entity:

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92 (A) of which the individual is a director, an officer, or a manager; or

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94 (B) in which the individual owns beneficially or of record 5% or more of
95 the outstanding equity interests, calculated as if all outstanding rights to acquire equity interests in
96 the entity had been exercised.

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(8) “Minimum status vote” means:

(a) In the case of (i) a business corporation that is to become a benefit corporation, (ii) a benefit corporation whose articles of incorporation are to be amended pursuant to subs. 607.1707(4), or (iii) a benefit corporation that is to cease being a benefit corporation, in addition to any other required approval or vote, the satisfaction of the following conditions:

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

2. The corporate action must 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:

1. 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 or consent to the action regardless of any otherwise applicable limitation on the voting or consent rights of any class or series.

2. The action must be approved by vote or consent of the holders described in subparagraph 1 entitled to cast at least two-thirds of the votes or consents that all of those holders are entitled to cast on the action.

(9) “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; and

(g) conferring any other particular benefit on society or the environment.

(10) “Subsidiary” means, in relation to a person, an entity in which the person owns beneficially or of record 50% or more of the outstanding equity interests.

(11) “Third-party standard” means a recognized standard for defining, reporting, and

148 assessing corporate social and environmental performance that is:

149
150 (a) Comprehensive because it assesses the effect of the business and its operations
151 upon the interests listed in subss. 607.1708(1)(a).

152
153 (b) Developed by an entity that is not controlled by the benefit corporation.

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155 (c) Credible because it is developed by an entity that both:

156
157 1. has access to necessary expertise to assess overall corporate social and
158 environmental performance; and

159
160 2. uses a balanced multistakeholder approach to develop the standard,
161 including a reasonable public comment period.

162
163 (d) Transparent because the following information is publicly available:

164
165 1. About the standard:

166
167 (A) The criteria considered when measuring the overall social and
168 environmental performance of a business.

169
170 (B) The relative weightings, if any, of those criteria.

171
172 2. About the development and revision of the standard:

173
174 (A) The identity of the directors, officers, material owners, and the
175 governing body of the entity that developed and controls revisions to the standard.

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177 (B) The process by which revisions to the standard and changes to the
178 membership of the governing body are made.

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

183
184 **§ 607.1704. Incorporation of benefit corporation.**

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186 A benefit corporation shall be incorporated in accordance with this chapter, but its articles of
187 incorporation must also state that it is a benefit corporation.

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189 **§ 607.1705. Election of benefit corporation status.**

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191 (1) An business corporation may become a benefit corporation under this supplement by
192 amending its articles of incorporation so that they contain, in addition to the requirements of s.
193 607.0202, a statement that the corporation is a benefit corporation. In order to be effective, the
194 amendment must be adopted by the minimum status vote.

195
196 (2) Subsection (3) applies if both of the following subparagraphs apply:

- 198 (a) An entity that is not a benefit corporation is:
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200 1. a party to a merger or conversion; or
201
202 2. the exchanging entity in a share exchange.
203

204 (b) The surviving, new, or resulting entity in the merger, conversion or share
205 exchange is to be a benefit corporation.
206

207 (3) In order to be effective, a plan of merger, conversion, or share exchange subject to this
208 subsection must be adopted by the minimum status vote.
209

210 (4) In the event of an election to become a benefit corporation by amendment of the
211 articles of incorporation or by a merger, conversion or share exchange, shareholders of the entity
212 becoming a benefit corporation shall be entitled to appraisal rights to the extent of, and in
213 accordance with, the appraisal rights provisions of this chapter.
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215 **§ 607.1706. Termination of benefit corporation status.**
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217 (1) A benefit corporation may terminate its status as such and cease to be subject to this
218 supplement by amending its articles of incorporation to delete the provision required by s.
219 607.1704 or s. 607.1705 to be stated in the articles of a benefit corporation. In order to be
220 effective, the amendment must be adopted by the minimum status vote.
221

222 (2) If a plan of merger, conversion, or share exchange would have the effect of terminating
223 the status of a business corporation as a benefit corporation, the plan must be adopted by the
224 minimum status vote in order to be effective.
225

226 (3) If a corporation's status as a benefit corporation is terminated pursuant to subs. (1) or
227 (2), shareholders of the corporation shall be entitled to appraisal rights to the extent of, and in
228 accordance with, the appraisal rights provisions of this chapter.
229

230 **§ 607.1707. Corporate purposes.**
231

232 (1) A benefit corporation shall have a purpose of creating public benefit. This purpose is
233 in addition to its purposes under s. 607.0301.
234

235 (2) The articles of incorporation of a benefit corporation may identify one or more specific
236 public benefits that it is the purpose of the benefit corporation to create in addition to its purposes
237 under s. 607.0301 and subs. (1).
238

239 (3) The creation of public benefit and specific public benefit under subss. (1) and (2) is
240 deemed to be in the best interest of the benefit corporation.
241

242 (4) A benefit corporation may amend its articles of incorporation to add, amend, or delete
243 the identification of a specific public benefit that it is the purpose of the benefit corporation to
244 create. In order to be effective, the amendment must be adopted by the minimum status vote.
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246 (5) A professional corporation that is a benefit corporation does not violate s. 621.08 by
247 having the purpose to create public benefit or a specific public benefit.

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§ 607.1708. Standard of conduct for directors

(1) In discharging their duties and in considering the best interests of the benefit corporation, the directors of a benefit corporation:

(a) shall consider the effects of any action or inaction upon:

1. the shareholders of the benefit corporation;
2. the employees and work force of the benefit corporation, its subsidiaries, and its suppliers;
3. the interests of customers and suppliers as beneficiaries of the public benefit or specific public benefit purposes of the benefit corporation;
4. 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;
5. the local and global environment;
6. 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
7. the ability of the benefit corporation to accomplish its public benefit purpose and any specific public benefit purpose; and

(b) may consider other pertinent factors or the interests of any other group that they deem appropriate; but

(c) need not give priority or equal weight to the interests of a particular person or group referred to in paragraph (a) or (b) 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 public benefit purpose or of a specific public benefit purpose identified in its articles of incorporation.

(2) Except as otherwise provided in the articles of incorporation or bylaws, a director is not personally liable for monetary damages to the corporation or to any other person for the failure of the benefit corporation to pursue or create a public benefit or a specific public benefit.

(3) Except as otherwise provided in the articles of incorporation or bylaws, a director does not have a duty to a person that is a beneficiary of the public benefit purpose or a specific public benefit purpose of a benefit corporation arising from the status of the person as a beneficiary.

§ 607.1709. Benefit director.

(1) If the articles of incorporation so provide, the board of directors of a benefit corporation may include a director who shall be designated the benefit director and who shall have, in addition to the powers, duties, rights, and immunities of the other directors of the benefit

298 corporation, the powers, duties, rights, and immunities provided in this supplement.
299

300 (2) The benefit director shall be elected, and may be removed, in the manner provided by
301 this chapter. The benefit director shall be an individual who is independent. The benefit director
302 may serve as the benefit officer at the same time as serving as the benefit director. The articles of
303 incorporation or bylaws may prescribe additional qualifications of the benefit director.
304

305 (3) Unless the articles of incorporation or bylaws provide otherwise, the benefit director
306 shall prepare, and the benefit corporation shall include in the annual benefit report to shareholders
307 required by s. 607.1713, the opinion of the benefit director on all of the following:
308

309 (a) Whether the benefit corporation acted in accordance with its public benefit
310 purpose and any specific public benefit purpose in all material respects during the period covered
311 by the report.
312

313 (b) Whether the directors and officers complied with ss. 607.1708(1) and
314 607.1710(1), respectively.
315

316 (c) If, in the opinion of the benefit director, the benefit corporation or its directors or
317 officers failed to comply with paragraph (a) or ss. 607.1708(1) or 607.1710(1), a description of the
318 ways in which the benefit corporation or its directors or officers failed to comply.
319

320 (4) The act or inaction of an individual in the capacity of a benefit director shall constitute
321 for all purposes an act or inaction of that individual in the capacity of a director of the benefit
322 corporation.
323

324 **§ 607.1710. Standard of conduct for officers.**
325

326 (1) Each officer of a benefit corporation shall consider the interests and factors described
327 in s. 607.1708(1) in the manner provided in that subsection if:
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329 (a) the officer has discretion to act with respect to a matter; and
330

331 (b) it reasonably appears to the officer that the matter may have a material effect on
332 the creation by the benefit corporation of public benefit or a specific public benefit identified in the
333 articles of incorporation.
334

335 (2) The consideration of interests and factors in the manner described in subs. (1) shall not
336 constitute a violation of s. 607.0841.
337

338 (3) Except as provided in the articles of incorporation or bylaws, an officer is not
339 personally liable for monetary damages to the corporation or to any other person for the failure of
340 the benefit corporation to pursue or create a public benefit or a specific public benefit.
341

342 (4) An officer does not have a duty to a person that is a beneficiary of the public benefit
343 purpose or a specific public benefit purpose of a benefit corporation arising from the status of the
344 person as a beneficiary.
345

346 **§ 607.1711. Benefit officer.**

347

348 (1) A benefit corporation may have an officer designated the benefit officer.

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350 (2) A benefit officer shall have the powers and duties set forth in the bylaws or determined
351 by the board of directors, which may include but not be limited to:

352

353 (a) the powers and duties relating to the purpose of the corporation to create public
354 benefit or specific public benefit;

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356 (b) the duty to prepare the benefit report required by s. 607.1713.

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358 **§ 607.1712. Right of action.**

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

362

363 1. failure to pursue or create public benefit or a specific public benefit set
364 forth in its articles of incorporation; or

365

366 2. violation of an obligation, duty, or standard of conduct under this
367 supplement.

368

369 (b) A benefit corporation shall not be liable for monetary damages under this
370 supplement for any failure of the benefit corporation to pursue or create public benefit or a specific
371 public benefit.

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373 (2) A benefit enforcement proceeding may be commenced or maintained only:

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375 (a) directly by the benefit corporation;

376

377 (b) derivatively by a director or shareholder of the benefit corporation; or

378

379 (c) derivatively by other persons specified in the articles of incorporation or bylaws
380 of the benefit corporation.

381

382 **§ 607.1713. Preparation of annual benefit report.**

383

384 (1) An annual benefit report shall be prepared by the board of directors unless prepared by
385 a benefit director or benefit officer. The report shall include the following:

386

387 (a) A narrative description of:

388

389 1. The ways in which the benefit corporation pursued public benefit during
390 the year and the extent to which public benefit was created.

391

392 2. Both:

393

394 (A) the ways in which the benefit corporation pursued a specific public
395 benefit that the articles of incorporation state it is the purpose of the benefit corporation to create;

396 and

397

398 (B) the extent to which that specific public benefit was created.

399

400 3. Any circumstances that have hindered the creation by the benefit

401 corporation of public benefit or specific public benefit.

402

403 4. The process and rationale for selecting or changing the third-party standard

404 used to prepare the benefit report.

405

406 (b) An assessment of the overall social and environmental performance of the

407 benefit corporation against a third-party standard:

408

409 1. applied consistently with any application of that standard in prior benefit

410 reports; or

411

412 2. accompanied by an explanation of the reasons for:

413

414 (A) any inconsistent application; or

415

416 (B) the change to that standard from the one used in the immediately

417 prior report.

418

419 (c) The names of the benefit director and the benefit officer, if any, and the address

420 to which correspondence to each of them may be directed.

421

422 (d) If the corporation has a benefit director, the statement of the benefit director

423 described in s. 607.1709(3).

424

425 (e) A statement of any connection between the organization that established the

426 third-party standard, or its directors, officers or any holder of 5 percent or more of the governance

427 interests in the organization, and the benefit corporation or its directors, officers or any holder of 5

428 percent or more of the outstanding shares of the benefit corporation, including any financial or

429 governance relationship which might materially affect the credibility of the use of the third-party

430 standard.

431

432 (2) Neither the benefit report nor the assessment of the performance of the benefit

433 corporation in the benefit report required by subs. (1)(b) needs to be audited or certified by a third

434 party standards provider.

435

436 **§ 607.1714. Availability of annual benefit report.**

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438 (1) A benefit corporation shall send its annual benefit report to each shareholder:

439

440 (a) within 120 days following the end of the fiscal year of the benefit corporation; or

441

442 (b) at the same time that the benefit corporation delivers any other annual report to

443 its shareholders.

444

445 (2) A benefit corporation shall post all of its benefit reports on the public portion of its

446 Internet website, if any.

447

448 (3) If a benefit corporation does not have an Internet website, the benefit corporation shall
449 provide a copy of its most recent benefit report, without charge, to any person that requests a copy.

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Amendment to Section 607.1302 Relating to Appraisal Rights

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455 **§ 607.1302. Right of shareholders to appraisal**

456

457 Add to § 607.1302 new subsections (1)(g) and (1)(h) to read as follows:

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459 (g) An amendment of the articles of incorporation of a benefit corporation to
460 which s. 607.1706 applies; or

461

462 (h) A merger, conversion or share exchange of a benefit corporation to
463 which s. 607.1705 applies.

464

465 Delete “or” at the end of § 607.1302(e) and delete the period at the end of § 607.1302(f).