

1 **FLORIDA BENEFIT CORPORATION LEGISLATION**

2
3 **Sections 607.1801 et seq.**

4
5 **Benefit Corporations**

6
7
8
9 **§ 607.1801. Short Title.**

10
11 This section and ss. 607.1802 through 607.1814 shall be known and may be cited as the “Benefit
12 Corporation Supplement” and is referred to in such sections as “this supplement”.

13
14 **§ 607.1802. Application and effect of chapter.**

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

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

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

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

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

34
35 **§ 607.1803. Definitions.**

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

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

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

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

- 46
47 (a) the director designated as the benefit director of a benefit corporation under s.
48 607.1809; or

49
50 (b) a person with one or more of the powers, duties or rights of a benefit director to
51 the extent provided in the articles of incorporation or bylaws under s. 607.1809.
52

53 (3) **“Benefit enforcement proceeding”** means any claim or action for:
54

55 (a) failure of a benefit corporation to pursue or create general public benefit or a
56 specific public benefit purpose set forth in its articles of incorporation; or
57

58 (b) violation of any obligation, duty, or standard of conduct under this supplement.
59

60 (4) **“Benefit officer”** means the individual designated as the benefit officer of a benefit
61 corporation under s. 607.1811.
62

63 (5) **“Business corporation”** means a domestic corporation which is not a benefit corporation
64 or a social purpose corporation.
65

66 (6) **“General public benefit”** means a material positive impact on society and the
67 environment, taken as a whole, assessed against a third-party standard, from the business and
68 operations of a benefit corporation.
69

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

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

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

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

87 1. the individual; or
88

89 2. an entity:
90

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

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

97 (8) **“Minimum status vote”** means:
98

99 (a) In the case of (i) a business corporation that is to become a benefit corporation,
100 (ii) a benefit corporation whose articles of incorporation are to be amended pursuant to subsection
101 607.1807(4), or (iii) a benefit corporation that is to cease being a benefit corporation, in addition to
102 any other required approval or vote, the satisfaction of the following conditions:
103

104 1. The shareholders of every class or series shall be entitled to vote as a
105 separate voting group on the corporate action regardless of any limitation stated in the articles of
106 incorporation or bylaws on the voting rights of any class or series.
107

108 2. The corporate action must be approved by vote of the shareholders of each
109 class or series entitled to cast at least two-thirds of the votes that all shareholders of the class or
110 series are entitled to cast on the action.
111

112 (b) In the case of a domestic entity, other than a business corporation, that
113 simultaneously is to be converted to a corporation and become a benefit corporation, in addition to
114 any other required approval, vote, or consent, the satisfaction of the following conditions:
115

116 1. The holders of each class or series of equity interest in the entity that are
117 entitled to receive a distribution of any kind from the entity shall be entitled, as a separate voting
118 group, to vote on or consent to the action regardless of any otherwise applicable limitation on the
119 voting or consent rights of any class or series.
120

121 2. The action must be approved by vote or consent of the holders of each
122 class and each series described in subparagraph 1 entitled to cast at least two-thirds of the votes or
123 consents of the class or series that all of those holders are entitled to cast on the action.
124

125 **(9)** [Reserved].
126

127 **(10)** “**Specific public benefit**” includes:
128

129 (a) providing low-income or underserved individuals or communities with beneficial
130 products or services;
131

132 (b) promoting economic opportunity for individuals or communities beyond the
133 creation of jobs in the normal course of business;
134

135 (c) protecting or restoring the environment;
136

137 (d) improving human health;
138

139 (e) promoting the arts, sciences, or advancement of knowledge;
140

141 (f) increasing the flow of capital to entities with a purpose to benefit society or the
142 environment; and
143

144 (g) any more specific or focused public benefit.
145

146 **(11)** “**Subsidiary**” means, in relation to a person, other than an individual, an entity in which
147 the person owns beneficially or of record 50% or more of the outstanding equity interests.
148

149 **(12) “Third-party standard”** means a recognized standard for defining, reporting, and
150 assessing the societal and environmental performance of a business that is:

151
152 (a) Comprehensive because the standard assesses the effect of the business and its
153 operations upon the interests listed in subsections 607.1808(1)(a)2, 3, 4 and 5.

154
155 (b) Developed by an entity that is not controlled by the benefit corporation.

156
157 (c) Credible because it is developed by an entity that both:

158
159 1. has access to necessary expertise to assess the overall societal and
160 environmental performance of a business; and

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

164
165 (d) Transparent because the following information is publicly available:

166
167 1. About the standard:

168 (A) The criteria considered when measuring the overall societal and
169 environmental performance of a business.

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

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

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

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

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

184
185
186 **§ 607.1804. Incorporation of benefit corporation.**

187
188 In order for a corporation to be formed as a benefit corporation, the corporation shall be
189 incorporated in accordance with this chapter, but the articles of incorporation filed to incorporate
190 the corporation must state that the corporation is to be a benefit corporation.

191
192 **§ 607.1805. Election of benefit corporation status.**

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

198

199 (2) Subsection (3) applies if both of the following subparagraphs apply:
200

201 (a) An entity that is not a benefit corporation is:
202

- 203 1. a party to a merger or conversion; or
- 204 2. the exchanging entity in a share exchange.

205 (b) The surviving, new, or resulting entity in the merger, conversion or share
206 exchange is to be a benefit corporation.
207

208 (3) In order to be effective, a plan of merger, conversion, or share exchange subject to this
209 subsection must be adopted by the minimum status vote.
210

211 (4) In the event of an election to become a benefit corporation by amendment of the
212 articles of incorporation or by a merger, conversion or share exchange, shareholders of the entity
213 becoming a benefit corporation shall be entitled to the appraisal rights in ss. 607.1301-.1333 to the
214 extent of, and in accordance with, such appraisal rights provisions
215

216 § 607.1806. Termination of benefit corporation status. 217

218 (1) A benefit corporation may terminate its status as such and cease to be subject to this
219 supplement by amending its articles of incorporation to delete the provision required by s.
220 607.1804 or s. 607.1805 to be stated in the articles of incorporation of a benefit corporation. In
221 order to be effective, the amendment must be adopted by the minimum status vote.
222

223 (2) If a plan of merger, conversion, or share exchange would have the effect of terminating
224 the status of a business corporation as a benefit corporation, the plan must be adopted by the
225 minimum status vote in order to be effective.¹
226

227 (3) If a corporation's status as a benefit corporation is terminated pursuant to subsections
228 (1) or (2), shareholders of the corporation shall be entitled to the appraisal rights in ss. 607.1301-
229 1333 to the extent of, and in accordance with, such appraisal rights provisions.
230

231 § 607.1807. Corporate purposes. 232

233 (1) A benefit corporation shall have a purpose of creating general public benefit. This
234 purpose is in addition to its purpose under s. 607.0301.
235

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

239 5_____

¹ We deleted the sentence "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." which we view as unnecessary because a sale will produce consideration that may be used to invest in new assets of the benefit corporation that can in turn be deployed for creating general public benefit and any specific public benefit purpose identified in its articles of incorporation.

240 under s. 607.0301 and subsection (1). The identification of a specific public benefit under this
241 subsection does not limit the obligation of a benefit corporation under subsection (1).
242

243 (3) The creation of general public benefit and one or more specific public benefits under
244 subsections (1) and (2) is deemed to be in the best interests of the benefit corporation.
245

246 (4) A benefit corporation may amend its articles of incorporation to add, amend, or delete
247 the identification of any specific public benefit that it is the purpose of the benefit corporation to
248 create. In order to be effective, the amendment must be adopted by the minimum status vote.
249

250 (5) A professional corporation that is a benefit corporation does not violate s. 621.08 by
251 having the purpose to create general public benefit or a specific public benefit.
252

253 **§ 607.1808. Standard of conduct for director**
254

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

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

- 258 1. the shareholders of the benefit corporation;
- 259 2. the employees and work force of the benefit corporation, its subsidiaries,
260 and its suppliers;
- 261 3. the interests of customers and suppliers as beneficiaries of the general
262 public benefit and as beneficiaries of each of its specific public benefit purposes, if any, of the
263 benefit corporation;
- 264 4. community and societal factors, including those of each community in
265 which offices or facilities of the benefit corporation, its subsidiaries, or its suppliers are located;
- 266 5. the local and global environment;
- 267 6. the short-term and long-term interests of the benefit corporation, including
268 benefits that may accrue to the benefit corporation from its long-term plans and the possibility that
269 these interests may be best served by the continued independence of the benefit corporation; and
270 7. the ability of the benefit corporation to accomplish its general public
271 benefit purpose and each of its specific public benefit purposes, if any; and
272

273 (b) may consider other pertinent factors or the interests of any other group that they
274 deem appropriate; but
275

276 (c) need not give priority to the interests of a particular person or group referred to
277 in paragraphs (a) or (b) over the interests of any other person or group unless the benefit
278 corporation has stated in its articles of incorporation its intention to give priority to certain interests
279 related to its accomplishment of its general public benefit purpose or of any one or more of the
280 specific public benefit purposes, if any, identified in its articles of incorporation; and
281
282
283
284
285
286
287
288
289

290 (d) need not give equal weight to the interests of a particular person or group
291 referred to in paragraphs (a) or (b) unless the benefit corporation has stated in its articles of
292 incorporation its intention to give such equal weight related to its accomplishment of its general
293 public benefit purpose or of any one or more of the specific public benefit purposes, if any,
294 identified in its articles of incorporation.
295

296 (2) Except as otherwise provided in the articles of incorporation or bylaws, a director is
297 not personally liable for monetary damages for the failure of the benefit corporation to pursue or
298 create general public benefit or any one or more specific public benefits identified in its articles of
299 incorporation.
300

301 (3) Except as provided in the articles of incorporation or bylaws, a director does not have a
302 duty to a person that is a beneficiary of the general public benefit purpose or any one or more
303 specific public benefit purposes of the benefit corporation arising from the status of the person as a
304 beneficiary.
305

306 (4) A director who makes a business judgment in good faith fulfills the duty under this
307 section if the director:
308

309 (a) is not interested in the subject of the business judgment;
310

311 (b) is informed with respect to the subject of the business judgment to the extent
312 reasonably believed by the director to be appropriate under the circumstances; and
313

314 (c) rationally believes that the business judgment is in the best interests of the
315 benefit corporation.
316

317 **§ 607.1809. Benefit director.**
318

319 (1) If the articles of incorporation so provide, the board of directors of a benefit
320 corporation may include a director who shall be designated as the benefit director and who shall
321 have, in addition to the powers, duties, rights, and immunities of the other directors of the benefit
322 corporation, the powers, duties, rights, and immunities provided in this supplement.
323

324 (2) The benefit director shall be elected, and may be removed, in the manner provided by
325 this chapter. The benefit director shall be an individual who is independent. The benefit director
326 may serve as the benefit officer at the same time as serving as the benefit director. The articles of
327 incorporation or bylaws may prescribe additional qualifications of the benefit director.
328

329 (3) Unless the articles of incorporation or bylaws provide otherwise, the benefit director
330 shall prepare, and the benefit corporation shall include in the annual benefit report to shareholders
331 required by s. 607.1813, the opinion of the benefit director on all of the following:
332

333 (a) Whether the benefit corporation acted in accordance with its general public
334 benefit purpose and any specific public benefit purpose in all material respects during the period
335 covered by the report.
336

337 (b) Whether the directors and officers complied with ss. 607.1808(1) and
338 607.1810(1), respectively.
339

340 (c) If, in the opinion of the benefit director, the benefit corporation or its directors or
341 officers failed to comply with paragraph (a) or ss. 607.1808(1) or 607.1810(1), a description of the
342 ways in which the benefit corporation or its directors or officers failed to comply.
343

344 (4) The act or inaction of an individual in the capacity of a benefit director shall constitute
345 for all purposes an act or inaction of that individual in the capacity of a director of the benefit
346 corporation.
347

348 (5) The benefit director of a corporation formed under chapter 621 does not need to be
349 independent.
350

351 **§ 607.1810. Standard of conduct for officers.**
352

353 (1) Each officer of a benefit corporation shall consider the interests and factors described
354 in s. 607.1808(1) in the manner provided in that subsection if:
355

356 (a) the officer has discretion to act with respect to a matter; and
357

358 (b) it reasonably appears to the officer that the matter may have a material effect on
359 the creation by the benefit corporation of general public benefit or any one or more of the specific
360 public benefits identified in the articles of incorporation.
361

362 (2) The consideration of interests and factors in the manner described in subsection (1)
363 shall not constitute a violation of s. 607.0841.
364

365 (3) Except as provided in the articles of incorporation or bylaws, an officer is not
366 personally liable for monetary damages to the corporation or to any other person for the failure of
367 the benefit corporation to pursue or create general public benefit or any of its specific public
368 benefits.
369

370 (4) An officer does not have a duty to a person that is a beneficiary of the general public
371 benefit purpose or a beneficiary of any of the specific public benefit purposes of the benefit
372 corporation arising from the status of the person as a beneficiary.
373

374 (5) An officer who makes a business judgment in good faith fulfills the duty under this
375 section if the officer:
376

377 (a) is not interested in the subject of the business judgment;
378

379 (b) is informed with respect to the subject of the business judgment to the extent
380 reasonably believed by the officer to be appropriate under the circumstances; and
381

382 (c) rationally believes that the business judgment is in the best interests of the
383 benefit corporation.
384

385 **§ 607.1811. Benefit officer.**
386

387 (1) A benefit corporation may have an officer designated the benefit officer.
388

389 (2) A benefit officer shall have the powers and duties set forth in the bylaws or determined

390 by the board of directors, which may include but not be limited to:

391

392 (a) the powers and duties relating to the purpose of the corporation to create general
393 public benefit or any one or more specific public benefits; and

394

395 (b) the duty to prepare the annual benefit report required by s. 607.1813.

396

397 **§ 607.1812. Right of action.**

398

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

401

402 1. failure to pursue or create general public benefit or any specific public
403 benefit set forth in its articles of incorporation; or

404

405 2. violation of an obligation, duty, or standard of conduct under this
406 supplement.

407

408 (b) A benefit corporation shall not be liable for monetary damages under this
409 supplement for any failure of the benefit corporation to pursue or create general public benefit or
410 any specific public benefit.

411

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

413

414 (a) directly by the benefit corporation; or

415

416 (b) derivatively by:

417

418 1. a shareholder of record on the date of the action complained of in the
419 benefit enforcement proceeding;

420

421 2. a director;

422

423 3. a person or group of persons that owns beneficially or of record 5% or
424 more of the outstanding equity interests in an entity of which the benefit corporation is a subsidiary
425 on the date of the action complained of in the benefit enforcement proceeding; or

426

427 4. other persons as specified in the articles of incorporation or bylaws of the
428 benefit corporation.

429

430 **§ 607.1813. Preparation of annual benefit report.**

431

432 (1) An annual benefit report shall be prepared by the board of directors unless prepared by
433 a benefit director, if any, or a benefit officer, if any. The report shall include the following:

434

435 (a) A narrative description of:

436

437 1. The ways in which the benefit corporation pursued general public benefit
438 during the year and the extent to which general public benefit was created.

439

440 2. Both:
441
442 (A) the ways in which the benefit corporation pursued each of the
443 specific public benefits, if any, that the articles of incorporation state it is the purpose of the benefit
444 corporation to create; and
445
446 (B) the extent to which those specific public benefits were created.
447
448 3. Any circumstances that have hindered the creation by the benefit
449 corporation of general public benefit or any of its specific public benefits.
450
451 4. The process and rationale for selecting or changing the third-party standard
452 used to prepare the annual benefit report.
453
454 (b) An assessment of the overall societal and environmental performance of the
455 benefit corporation against a third-party standard:
456
457 1. applied consistently with any application of that standard in prior annual
458 benefit reports; or
459
460 2. accompanied by an explanation of the reasons for:
461
462 (A) any inconsistent application; or
463
464 (B) the change to that standard from the one used in the immediately
465 prior report.
466
467 (c) The name of the benefit director, if any, and the benefit officer, if any, and the
468 address to which correspondence to each of them may be directed.
469
470 (d) If the corporation has a benefit director, the statement of the benefit
471 director described in s. 607.1809(3).
472
473 (e) A statement of any connection between the organization that established the
474 third-party standard, or its directors, officers or any holder of 5 percent or more of the governance
475 interests in the organization, and the benefit corporation or its directors, officers or any holder of 5
476 percent or more of the outstanding shares of the benefit corporation, including any financial or
477 governance relationship which might materially affect the credibility of the use of the third-party
478 standard.
479
480 (2) If, during the year covered by an annual benefit report, a benefit director resigned from
481 or refused to stand for reelection to the position of benefit director, or was removed from the
482 position of benefit director, and the benefit director furnished the benefit corporation with any
483 written correspondence concerning the circumstances surrounding the resignation, refusal, or
484 removal, the annual benefit report shall include that correspondence as an exhibit.
485
486 (3) Neither the annual benefit report nor the assessment of the performance of the benefit
487 corporation in the annual benefit report required by paragraph(b) of subsection (1) needs to be
488 audited or certified by a third-party standards provider.
489

490 § 607.1814. Availability of annual benefit report.

491

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

493

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

495

496 (b) at the same time that the benefit corporation delivers any other annual report to
497 its shareholders.

498

499 (2) A benefit corporation shall post all of its annual benefit reports on the public portion of
500 its Internet website, if any.

501

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

505

506 (4) If a benefit corporation does not comply with the annual benefit report delivery
507 requirement, the circuit court in the county in which the benefit corporation's principal office (or, if
508 none in this state, its registered office) is located may, upon application of a shareholder of the
509 benefit corporation, summarily order the corporation to furnish the report. If the court orders the
510 report to be furnished, the court may also order the benefit corporation to pay the shareholder's
511 costs, including reasonable attorney's fees, reasonably incurred to obtain the order and otherwise
512 enforce its rights under this section.

513

514

515

* * * * *

516

517 Amendment to Section 607.1302 Relating to Appraisal Rights

518

519 § 607.1302. Right of shareholders to appraisal

520

521 Add to § 607.1302 new subsections (1)(g) through (j) to read as follows:

522

523 (g) An amendment of the articles of incorporation of a social purpose
524 corporation to which s. 607.1706 applies;

525

526 (h) An amendment of the articles of incorporation of a benefit corporation to
527 which s. 607.1806 applies;

528

529 (i) A merger, conversion or share exchange of a social purpose corporation
530 to which s. 607.1705 applies; or

531

532 (j) A merger, conversion or share exchange of a benefit corporation to
533 which s. 608.1805 applies.

534

535 Delete "or" at the end of § 607.1302(e) and delete the period and add a semicolon at the end of §
536 607.1302(f).