

1 **FLORIDA BENEFIT CORPORATION LEGISLATION**

2
3 **Chapter 611**
4 **Benefit Corporations**

5
6
7
8 **§ 611.01. Short Title.**
9

10 This act shall be known and may be cited as the “Florida Benefit Corporation Act.”
11

12 **§ 611.02. Application and effect of chapter.**
13

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

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

21 (3) Except as otherwise provided in this chapter, chapter 607 shall be generally applicable
22 to all benefit corporations. The specific provisions of this chapter shall control over the general
23 provisions of chapter 607.
24

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

29 (5) A provision of the articles of incorporation or bylaws of a benefit corporation may not
30 limit, be inconsistent with, or supersede a provision of this chapter.
31

32 **§ 611.02. Definitions.**
33

34 As used in this chapter, unless the context otherwise requires, the term:

35
36 (1) **“Benefit corporation”** means a business corporation:

- 37
38 (a) which has elected to become subject to this chapter; and
39
40 (b) the status of which as a benefit corporation has not been terminated.
41

42 (2) **“Benefit director”** means either:

- 43
44 (a) the director designated as the benefit director of a benefit corporation under
45 section 611.08; or
46
47 (b) a person with one or more of the powers, duties or rights of a benefit director to

48 the extent provided in the bylaws under section 611.08(6).

49
50 (3) **“Benefit enforcement proceeding”** means any claim or action for:

51
52 (a) failure of a benefit corporation to pursue or create general public benefit or a
53 specific public benefit purpose set forth in its articles of incorporation; or

54
55 (b) violation of any obligation, duty, or standard of conduct under this chapter.

56
57 (4) **“Benefit officer”** means the individual designated as the benefit officer of a benefit
58 corporation under section 611.10.

59
60 (5) **“General public benefit”** means a material positive impact on society and the
61 environment, taken as a whole, assessed against a third-party standard, from the business and
62 operations of a benefit corporation.

63
64 (6) **“Independent”** means having no material relationship with a benefit corporation or a
65 subsidiary of the benefit corporation. Serving as benefit director or benefit officer does not make
66 an individual not independent. A material relationship between an individual and a benefit
67 corporation or any of its subsidiaries will be conclusively presumed to exist if any of the following
68 apply:

69
70 (a) The individual is, or has been within the last three years, an employee other than
71 a benefit officer of the benefit corporation or a subsidiary.

72
73 (b) An immediate family member of the individual is, or has been within the last
74 three years, an executive officer other than a benefit officer of the benefit corporation or a
75 subsidiary.

76
77 (c) There is beneficial or record ownership of 5% or more of the outstanding shares
78 of the benefit corporation, calculated as if all outstanding rights to acquire equity interests in the
79 benefit corporation had been exercised, by:

80
81 1. the individual; or

82
83 2. an entity:

84
85 (A) of which the individual is a director, an officer, or a manager; or

86
87 (B) in which the individual owns beneficially or of record 5% or more of
88 the outstanding equity interests, calculated as if all outstanding rights to acquire equity interests in
89 the entity had been exercised.

90
91 (7) **“Minimum status vote”** means:

92
93 (a) In the case of a business corporation, in addition to any other required approval
94 or vote, the satisfaction of the following conditions:

95
96 1. The shareholders of every class or series shall be entitled to vote as a
97 separate voting group on the corporate action regardless of a limitation stated in the articles of

98 incorporation or bylaws on the voting rights of any class or series.

99
100 2. The corporate action must be approved by vote of the shareholders of each
101 class or series entitled to cast at least two-thirds of the votes that all shareholders of the class or
102 series are entitled to cast on the action.

103
104 (b) In the case of a domestic entity other than a business corporation, in addition to
105 any other required approval, vote, or consent, the satisfaction of the following conditions:

106
107 1. The holders of every class or series of equity interest in the entity that are
108 entitled to receive a distribution of any kind from the entity shall be entitled to vote on or consent
109 to the action regardless of any otherwise applicable limitation on the voting or consent rights of any
110 class or series.

111
112 2. The action must be approved by vote or consent of the holders described in
113 subparagraph 1 entitled to cast at least two-thirds of the votes or consents that all of those holders
114 are entitled to cast on the action.

115
116 **(8) “Publicly traded corporation”** means a business corporation that has shares listed on a
117 national securities exchange or traded in a market maintained by one or more members of a
118 national securities association.

119
120 **(9) “Specific public benefit”** includes:

121
122 (a) providing low-income or underserved individuals or communities with beneficial
123 products or services;

124
125 (b) promoting economic opportunity for individuals or communities beyond the
126 creation of jobs in the normal course of business;

127
128 (c) protecting or restoring the environment;

129
130 (d) improving human health;

131
132 (e) promoting the arts, sciences, or advancement of knowledge;

133
134 (f) increasing the flow of capital to entities with a purpose to benefit society or the
135 environment; and

136
137 (g) conferring any other particular benefit on society or the environment.

138
139 **(10) “Subsidiary”** means, in relation to a person, an entity in which the person owns
140 beneficially or of record 50% or more of the outstanding equity interests.

141
142 **(11) “Third-party standard”** means a recognized standard for defining, reporting, and
143 assessing corporate social and environmental performance that is:

144
145 (a) Comprehensive because it assesses the effect of the business and its operations
146 upon the interests listed in section 611.07(1)(a)2, 3, 4 and 5.

147

- 148 (b) Developed by an entity that is not controlled by the benefit corporation.
149
150 (c) Credible because it is developed by an entity that both:
151
152 1. has access to necessary expertise to assess overall corporate social and
153 environmental performance; and
154
155 2. uses a balanced multistakeholder approach to develop the standard,
156 including a reasonable public comment period.
157
158 (d) Transparent because the following information is publicly available:
159
160 1. About the standard:
161
162 (A) The criteria considered when measuring the overall social and
163 environmental performance of a business.
164
165 (B) The relative weightings, if any, of those criteria.
166
167 2. About the development and revision of the standard:
168
169 (A) The identity of the directors, officers, material owners, and the
170 governing body of the entity that developed and controls revisions to the standard.
171
172 (B) The process by which revisions to the standard and changes to the
173 membership of the governing body are made.
174
175 (C) An accounting of the revenue and sources of financial support for
176 the entity, with sufficient detail to disclose any relationships that could reasonably be considered to
177 present a potential conflict of interest.
178

179 **§ 611.03. Incorporation of benefit corporation.**
180

181 A benefit corporation shall be incorporated in accordance with chapter 607, but its articles of
182 incorporation must also state that it is a benefit corporation.
183

184 **§ 611.04. Election of benefit corporation status.**
185

186 (1) An existing business corporation may become a benefit corporation under this chapter
187 by amending its articles of incorporation so that they contain, in addition to the requirements of
188 section 607.0202, a statement that the corporation is a benefit corporation. In order to be effective,
189 the amendment must be adopted by at least the minimum status vote.
190

191 (2) Subsection (3) applies if both of the following subparagraphs apply:
192

193 (a) An entity that is not a benefit corporation is:

- 194 1. a party to a merger or conversion; or
195
196 2. the exchanging entity in a share exchange.
197

198
199 (b) The surviving, new, or resulting entity in the merger, conversion or share
200 exchange is to be a benefit corporation.

201
202 (3) In order to be effective, a plan of merger, conversion, or share exchange subject to this
203 subsection must be adopted by at least the minimum status vote.

204
205 **§ 611.05. Termination of benefit corporation status.**

206
207 (1) A benefit corporation may terminate its status as such and cease to be subject to this
208 chapter by amending its articles of incorporation to delete the provision required by section 611.03
209 or 611.04 to be stated in the articles of a benefit corporation. In order to be effective, the
210 amendment must be adopted by at least the minimum status vote.

211
212 (2) If a plan of merger, conversion, or share exchange would have the effect of terminating
213 the status of a business corporation as a benefit corporation, the plan must be adopted by at least
214 the minimum status vote in order to be effective. Any sale, lease, exchange, or other disposition of
215 all or substantially all of the assets of a benefit corporation, unless the transaction is in the usual
216 and regular course of business, shall not be effective unless the transaction is approved by at least
217 the minimum status vote.

218
219 **§ 611.06. Corporate purposes.**

220
221 (1) A benefit corporation shall have a purpose of creating general public benefit. This
222 purpose is in addition to its purpose under section 607.0301.

223
224 (2) The articles of incorporation of a benefit corporation may identify one or more specific
225 public benefits that it is the purpose of the benefit corporation to create in addition to its purposes
226 under section 607.0301 and subsection (1). The identification of a specific public benefit under
227 this subsection does not limit the obligation of a benefit corporation under subsection (1).

228
229 (3) The creation of general public benefit and specific public benefit under subsections (1)
230 and (2) is in the best interests of the benefit corporation.

231
232 (4) A benefit corporation may amend its articles of incorporation to add, amend, or delete
233 the identification of a specific public benefit that it is the purpose of the benefit corporation to
234 create. In order to be effective, the amendment must be adopted by at least the minimum status
235 vote.

236
237 (5) A professional corporation that is a benefit corporation does not violate section 621.08
238 by having the purpose to create general public benefit or a specific public benefit.

239
240 **§ 611.07. Standard of conduct for director**

241
242 (1) In discharging the duties of their respective positions and in considering the best
243 interests of the benefit corporation, the board of directors, committees of the board, and individual
244 directors of a benefit corporation:

245
246 (a) shall consider the effects of any action or inaction upon:
247

- 248 1. the shareholders of the benefit corporation;
249
250 2. the employees and work force of the benefit corporation, its subsidiaries,
251 and its suppliers;
252
253 3. the interests of customers as beneficiaries of the general public benefit or
254 specific public benefit purposes of the benefit corporation;
255
256 4. community and societal factors, including those of each community in
257 which offices or facilities of the benefit corporation, its subsidiaries, or its suppliers are located;
258
259 5. the local and global environment;
260
261 6. the short-term and long-term interests of the benefit corporation, including
262 benefits that may accrue to the benefit corporation from its long-term plans and the possibility that
263 these interests may be best served by the continued independence of the benefit corporation; and
264
265 7. the ability of the benefit corporation to accomplish its general public
266 benefit purpose and any specific public benefit purpose; and
267
268 (b) may consider:
269
270 1. the interests referred to in section 607.0830(3); and
271
272 2. other pertinent factors or the interests of any other group that they deem
273 appropriate; but
274
275 (c) need not give priority to the interests of a particular person or group referred to
276 in paragraph (a) or (b) over the interests of any other person or group unless the benefit corporation
277 has stated in its articles of incorporation its intention to give priority to certain interests related to
278 its accomplishment of its general public benefit purpose or of a specific public benefit purpose
279 identified in its articles.
280
281 (2) The consideration of interests and factors in the manner required by subsection (1):
282
283 (a) does not constitute a violation section 607.0830; and
284
285 (b) is in addition to the ability of directors to consider interests and factors as
286 provided in section 607.0830(3).
287
288 (3) Except as provided in the articles of incorporation or bylaws, a director is not
289 personally liable for monetary damages for:
290
291 (a) any action or inaction in the course of performing the duties of a director under
292 subsection (a) if the director performed the duties of office in compliance with section 607.0830; or
293
294 (b) failure of the benefit corporation to pursue or create general public benefit or
295 specific public benefit.
296
297 (4) A director does not have a duty to a person that is a beneficiary of the general public

298 benefit purpose or a specific public benefit purpose of a benefit corporation arising from the status
299 of the person as a beneficiary.

300
301 (5) A director who makes a business judgment in good faith fulfills the duty under this
302 section if the director:

303
304 (a) is not interested in the subject of the business judgment;

305
306 (b) is informed with respect to the subject of the business judgment to the extent the
307 director reasonably believes to be appropriate under the circumstances; and

308
309 (c) rationally believes that the business judgment is in the best interests of the
310 benefit corporation.

311
312 **§ 611.08. Benefit director.**

313
314 (1) The board of directors of a benefit corporation that is a publicly traded corporation
315 shall, and the board of any other benefit corporation may, include a director, who:

316
317 (a) shall be designated the benefit director; and

318
319 (b) shall have, in addition to the powers, duties, rights, and immunities of the other
320 directors of the benefit corporation, the powers, duties, rights, and immunities provided in this
321 chapter.

322
323 (2) The benefit director shall be elected, and may be removed, in the manner provided by
324 chapter 607. Except as provided in subsections (6) and (7), the benefit director shall be an
325 individual who is independent. The benefit director may serve as the benefit officer at the same
326 time as serving as the benefit director. The articles of incorporation or bylaws of a benefit
327 corporation may prescribe additional qualifications of the benefit director not inconsistent with this
328 subsection.

329
330 (3) The benefit director shall prepare, and the benefit corporation shall include in the
331 annual benefit report to shareholders required by section 611.12, the opinion of the benefit director
332 on all of the following:

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

337
338 (b) Whether the directors and officers complied with sections 611.07(1) and
339 611.09(a), respectively.

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

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

348
349 (5) Regardless of whether the articles of incorporation or bylaws of a benefit corporation
350 include a provision eliminating or limiting the personal liability of directors authorized by section
351 607.0831, a benefit director shall not be personally liable for an act or omission in the capacity of a
352 benefit director unless the act or omission constitutes self-dealing, willful misconduct, or a
353 knowing violation of law.

354
355 (6) (a) The articles of incorporation or bylaws of a benefit corporation must provide that
356 the persons or shareholders who perform the duties of the board of directors include a person with
357 the powers, duties, rights and immunities of a benefit director if the articles of incorporation or
358 bylaws of the benefit corporation provide that the powers and duties conferred or imposed upon the
359 board of directors shall be exercised or performed by a person other than the directors under
360 607.0732.

361
362 (b) A person that exercises one or more of the powers, duties or rights of a benefit
363 director under this subsection:

- 364
365 1. does not need to be independent of the benefit corporation;
366
367 2. shall have the immunities of a benefit director;
368
369 3. may share the powers, duties, and rights of a benefit director with one or
370 more other persons; and
371
372 4. shall not be subject to the procedures for election or removal of directors
373 in chapter 607 unless:
374
375 (A) the person is also a director of the benefit corporation; or
376
377 (B) the articles or bylaws make those procedures applicable.
378

379 (7) The benefit director of a professional corporation does not need to be independent.
380

381
382 **§ 611.09. Standard of conduct for officers.**

383
384 (1) Each officer of a benefit corporation shall consider the interests and factors described
385 in section 611.07(1) in the manner provided in that subsection if:

- 386
387 (a) the officer has discretion to act with respect to a matter; and
388
389 (b) it reasonably appears to the officer that the matter may have a material effect on
390 the creation by the benefit corporation of general public benefit or a specific public benefit
391 identified in the articles of incorporation of the benefit corporation.
392

393 (2) The consideration of interests and factors in the manner described in subsection (1)
394 shall not constitute a violation of section 607.0841.

395
396 (3) Except as provided in the articles of incorporation or bylaws, an officer is not
397 personally liable for monetary damages for:

398
399
400
401
402
403
404
405
406
407
408
409
410
411
412
413
414
415
416
417
418
419
420
421
422
423
424
425
426
427
428
429
430
431
432
433
434
435
436
437
438
439
440
441
442
443
444
445
446
447

(a) an action or inaction as an officer in the course of performing the duties of an officer under subsection (1) if the officer performed the duties of the position in compliance with section 607.0841 and this section; or

(b) failure of the benefit corporation to pursue or create general public benefit or specific public benefit.

(4) 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.

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

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

(b) 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

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

§ 611.10. Benefit officer.

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

(2) A benefit officer shall have:

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

1. by the bylaws; or

2. absent controlling provisions in the bylaws, by resolutions or orders of the board of directors.

(b) the duty to prepare the benefit report required by section 611.12.

§ 611.11. Right of action.

(1) (a) 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:

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

2. violation of an obligation, duty, or standard of conduct under this chapter.

(b) A benefit corporation shall not be liable for monetary damages under this chapter

448 for any failure of the benefit corporation to pursue or create general public benefit or a specific
449 public benefit.

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

451 (a) directly by the benefit corporation; or

452 (b) derivatively by:

453 1. a person or group of persons that owns beneficially or of record at least 2%
454 of the total number of shares of all classes and series outstanding on the date the benefit
455 enforcement proceeding is commenced;

456 2. a director;

457 3. a person or group of persons that owns beneficially or of record 5% or
458 more of the outstanding equity interests in an entity of which the benefit corporation is a
459 subsidiary; or

460 4. other persons as specified in the articles of incorporation or bylaws of the
461 benefit corporation.

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

465
466
467
468
469
470
471
472
473
474
475 **§ 611.12. Preparation of annual benefit report.**

476 (1) A benefit corporation shall prepare an annual benefit report including all of the
477 following:

478 (a) A narrative description of:

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

481 2. Both:

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

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

486 3. Any circumstances that have hindered the creation by the benefit
487 corporation of general public benefit or specific public benefit.

488 4. The process and rationale for selecting or changing the third-party standard
489 used to prepare the benefit report.

498
499 (b) An assessment of the overall social and environmental performance of the
500 benefit corporation against a third-party standard:
501
502 1. applied consistently with any application of that standard in prior benefit
503 reports; or
504
505 2. accompanied by an explanation of the reasons for:
506
507 (A) any inconsistent application; or
508
509 (B) the change to that standard from the one used in the immediately
510 prior report.
511
512 (c) The name of the benefit director and the benefit officer, if any, and the address to
513 which correspondence to each of them may be directed.
514
515 (d) The compensation paid by the benefit corporation during the year to each
516 director in the capacity of a director.
517
518 (e) The name of each person that owns 5% or more of the outstanding shares of the
519 benefit corporation either:
520
521 1. beneficially, to the extent known to the benefit corporation without
522 investigation; or
523
524 2. of record.
525
526 (f) The statement of the benefit director described in section 611.08(3).
527
528 (g) A statement of any connection between the organization that established the
529 third-party standard, or its directors, officers or any holder of 5 percent or more of the governance
530 interests in the organization, and the benefit corporation or its directors, officers or any holder of 5
531 percent or more of the outstanding shares of the benefit corporation, including any financial or
532 governance relationship which might materially affect the credibility of the use of the third-party
533 standard.
534
535 (h) If the benefit corporation has dispensed with, or restricted the discretion or
536 powers of, the board of directors, a description of:
537
538 1. the persons that exercise the powers, duties, and rights and who have the
539 immunities of the board of directors; and
540
541 2. the benefit director, as required by section 611.08(6).
542
543 (2) If, during the year covered by a benefit report, a benefit director resigned from or
544 refused to stand for reelection to the position of benefit director, or was removed from the position
545 of benefit director, and the benefit director furnished the benefit corporation with any written
546 correspondence concerning the circumstances surrounding the resignation, refusal, or removal, the
547 benefit report shall include that correspondence as an exhibit.

548
549
550
551
552
553
554
555
556
557
558
559
560
561
562
563
564
565
566
567
568
569
570
571
572
573
574
575
576
577
578
579
580
581
582
583

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

§ 611.13. Availability of annual benefit report.

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

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

(b) 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) (a) Concurrently with the delivery of the benefit report to shareholders under subsection (3), the benefit corporation shall deliver a copy of the benefit report to the Department 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 Department of State.

(b) The Department of State shall charge a fee of \$__ for filing a benefit report.