

FLORIDA SOCIAL PURPOSE CORPORATION LEGISLATION

Sections 607.1701 et seq.

Social Purpose Corporation Supplement

§ 607.1701. Short Title.

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

§ 607.1702. Application and effect of supplement.

(1) This supplement shall be applicable to all social purpose corporations.

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

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

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

(5) Except as permitted by this supplement, a provision of the articles of incorporation or bylaws of a social purpose corporation may not limit, be inconsistent with, or supersede a provision of this supplement.

§ 607.1703. Definitions.

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

(1) “**Social purpose corporation**” means a business corporation:

- (a) which has elected to become subject to this supplement; and
- (b) the status of which as a social purpose corporation has not been terminated.

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

(a) the director designated as the benefit director of a social purpose corporation under s. 607.1708; or

(b) a person with one or more of the powers, duties or rights of a benefit director to the extent provided in the articles of incorporation or bylaws under s. 607.1709.

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

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

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

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

(5) **“Business corporation”** means a domestic corporation which is not a social purpose corporation.

(6) **“Public benefit”** means a positive effect, or minimization of negative effects, taken as a whole, on the environment or on one or more categories of persons or entities, other than shareholders in their capacity as shareholders, of an artistic, charitable, economic, educational, cultural, literary, religious, social, ecological or scientific nature, from the business and operations of a social purpose corporation, including without limitation:

(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; and

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

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

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

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

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

1. the individual; or

2. an entity:

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

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

(8) “Minimum status vote” means:

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

1. The holders of each 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, as a separate voting group, 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 of each class and each series described in subparagraph 1 entitled to cast at least two-thirds of the votes or consents of the class or series that all of those holders are entitled to cast on the action.

(9) “Specific public benefit” means an indentified benefit goal of the social purpose corporation set forth in the articles of incorporation that is consistent with and within the definition of “public benefit” in this section.

(10) “Subsidiary” means, in relation to a person, other than an individual, 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 assessing the societal and environmental performance of a business that is:

(a) Comprehensive because the standard assesses the effect of the business and its operations upon the interests listed in subsection 607.1708(1)(a).

(b) Developed by an entity that is not controlled by the social purpose corporation.

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

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

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

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

1. About the standard:

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

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

2. About the development and revision of the standard:

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

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

(C) 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.

§ 607.1704. Incorporation of social purpose corporation.

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

§ 607.1705. Election of social purpose corporation status.

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

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

(a) An entity that is not a social purpose corporation is:

1. a party to a merger or conversion; or

2. the exchanging entity in a share exchange.

(b) The surviving, new, or resulting entity in the merger, conversion or share exchange is to be a social purpose corporation.

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

(4) In the event of an election to become a social purpose corporation by amendment of the articles of incorporation or by a merger, conversion or share exchange, shareholders of the entity becoming a social

purpose corporation shall be entitled to the appraisal rights in ss. 607.1301-1333 to the extent of, and in accordance with, such appraisal rights provisions.

§ 607.1706. Termination of social purpose corporation status.

(1) A social purpose corporation may terminate its status as such and cease to be subject to this supplement by amending its articles of incorporation to delete the provision required by s. 607.1704 or s. 607.1705 to be stated in the articles of incorporation of a social purpose corporation. In order to be effective, the amendment must be adopted by 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 social purpose corporation, the plan must be adopted by the minimum status vote in order to be effective.

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

§ 607.1707. Corporate purposes.

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

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

(3) The creation of public benefit and specific public benefit under subsections (1) and (2) is deemed to be in the best interest of the social purpose corporation.

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

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

§ 607.1708. Standard of conduct for directors

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

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

1. the shareholders of the social purpose corporation;
2. The ability of the social purpose corporation to accomplish its public benefit purpose; and

(b) may consider the effects of any action or inaction upon any or all of the following:

1. the employees and work force of the social purpose corporation, its subsidiaries, and its suppliers;

2. the interests of customers and suppliers as beneficiaries of the public benefit or specific public benefit purposes of the social purpose corporation;

3. community and societal factors, including those of each community in which offices or facilities of the social purpose corporation, its subsidiaries, or its suppliers are located;

4. the local and global environment; and

5. the short-term and long-term interests of the social purpose corporation, including benefits that may accrue to the social purpose corporation from its long-term plans and the possibility that these interests may be best served by the continued independence of the social purpose corporation;

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

(d) need not give priority to the interests of a particular person or group referred to in paragraphs (a), (b) or (c) over the interests of any other person or group unless the social purpose 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 any one or more specific public benefit purposes, if any, identified in its articles of incorporation; and

(3) need not give equal weight to the interests of a particular person or group referred to in paragraphs (a), (b) or (c) unless the social purpose corporation has stated in its articles of incorporation its intention to give such equal weight related to its accomplishment of its public benefit purpose or of any one or more specific public benefit purposes, if any, 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 social purpose 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 any one or more specific public benefit purposes of a social purpose 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:

(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 reasonably believed by the director to be appropriate under the circumstances; and

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

§ 607.1709. Benefit director.

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

(2) The benefit director shall be elected, and may be removed, in the manner provided by this

chapter. The benefit director 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 may prescribe additional qualifications of the benefit director.

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

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

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

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

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

§ 607.1710. Standard of conduct for officers.

(1) Each officer of a social purpose corporation shall consider the interests and factors described in s. 607.1708(1) in the manner provided in that subsection if:

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

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

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

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

(4) An officer does not have a duty to a person that is a beneficiary of the public benefit purpose or a beneficiary of any of the specific public benefit purposes of a social purpose 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 reasonably believed by the officer to be appropriate under the circumstances; and

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

§ 607.1711. Benefit officer.

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

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

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

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

§ 607.1712. Right of action.

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

1. failure to pursue or create 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 supplement.

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

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

(a) directly by the social purpose corporation; or

(b) derivatively by:

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

2. a director;

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

4. other persons as specified in the articles of incorporation or bylaws of the social purpose corporation.

§ 607.1713. Preparation of annual benefit report.

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

(a) A narrative description of:

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

2. Any circumstances that have hindered the creation by the social purpose corporation of public benefit.

3. If the social purpose corporation's articles of incorporation requires, or the board of directors determines that, the annual benefit report shall be prepared in accordance with a third-party standard, the process and rationale for selecting or changing the third-party standard used to prepare the benefit report.

(b) If the social purpose corporation's articles of incorporation requires, or the board of directors determines that, the annual benefit report shall be prepared in accordance with a third-party standard, an assessment of the overall societal and environmental performance of the social purpose corporation against a third-party standard:

1. applied consistently with any application of that standard in prior annual benefit reports; or

2. 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.

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

(d) If the corporation has a benefit director, the statement of the benefit director described in s. 607.1709(3).

(e) A statement of any connection between the organization that established the third-party standard, or its directors, officers or any holder of 5 percent or more of the governance interests in the organization, and the social purpose corporation or its directors, officers or any holder of 5 percent or more of the outstanding shares of the social purpose corporation, including any financial or governance relationship which might materially affect the credibility of the use of the third-party standard.

(2) If, during the year covered by an annual 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 social purpose corporation with any written correspondence concerning the circumstances surrounding the resignation, refusal, or removal, the annual benefit report shall include that correspondence as an exhibit.

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

§ 607.1714. Availability of annual benefit report.

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

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

(b) at the same time that the social purpose corporation delivers any other annual report to its shareholders.

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

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

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

* * *

Amendment to Section 607.1302 Relating to Appraisal Rights

§ 607.1302. Right of shareholders to appraisal

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

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

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

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

(j) A merger, conversion or share exchange of a benefit corporation to which s. 607.1805 applies.

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