

Assembly Bill No. 89—Assemblymen Bobzien, Kirkpatrick, Horne, Frierson, Hickey; Bustamante Adams, Carlton, Carrillo, Cohen, Daly, Diaz, Eisen, Flores, Hardy, Healey, Ohrenschall, Spiegel and Swank

Joint Sponsors: Senators Denis, Smith, Kieckhefer, Roberson, Segerblom; Jones and Parks

CHAPTER.....

AN ACT relating to business entities; authorizing the formation of benefit corporations; providing for the operation and governance of benefit corporations; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

This bill authorizes and provides for the governance of a new type of business entity known as a benefit corporation. **Section 14** of this bill provides that the purpose of a benefit corporation is to create general public benefit. Under **sections 5 and 9** of this bill, general public benefit is defined as a material positive impact on society and the environment, taken as a whole, as assessed against a third-party standard that satisfies certain requirements. **Section 14** further authorizes a benefit corporation to identify in its articles of incorporation one or more specific public benefits as an additional purpose of the benefit corporation. Under **section 7** of this bill, such specific public benefits include, without limitation, providing low-income or underserved individuals or communities with beneficial products or services, promoting economic opportunity for individuals or communities beyond the creation of jobs in the ordinary course of business, preserving the environment, improving human health and promoting the arts, sciences or the advancement of knowledge.

Under **sections 10 and 11** of this bill, a benefit corporation must be formed by filing articles of incorporation with the Secretary of State and paying the fee for the filing of articles of incorporation required by existing law. **Sections 6, 10 and 12** of this bill establish the procedures by which an existing corporation or other type of business entity may become a benefit corporation. **Sections 6, 10 and 13** of this bill set forth the manner in which a benefit corporation may terminate its status as a benefit corporation.

Sections 15 and 17 of this bill set forth the duties of directors and officers of benefit corporations. **Sections 15 and 17** require directors and officers to consider the impacts of any action or proposed action upon certain constituencies, including, without limitation, shareholders, employees, suppliers, subsidiaries, customers who are beneficiaries of the general or specific public benefit purposes of the benefit corporation and the environment.

Sections 16 and 19 of this bill establish reporting requirements for benefit corporations and the boards of directors of benefit corporations. Under **section 19**, a benefit corporation must deliver to each shareholder an annual benefit report which includes, without limitation, an assessment concerning the social and environmental performance of the benefit corporation and a description of the ways in which the benefit corporation pursued general public benefit and any specific public benefit identified in its articles of incorporation. **Section 16** requires the board of directors to include with the annual benefit report a statement indicating whether, in the opinion of the board, the benefit corporation failed in any material



respect to pursue its general public benefit purpose or any specific public benefit purpose identified in its articles of incorporation during the period covered by the report.

Section 18 of this bill enacts provisions governing the liability of a director or officer of a benefit corporation. Under **section 18**, the duties of a director or officer may be enforced only in a benefit enforcement proceeding that may be commenced or maintained only by certain persons.

EXPLANATION – Matter in *bolded italics* is new; matter between brackets ~~omitted material~~ is material to be omitted.

THE PEOPLE OF THE STATE OF NEVADA, REPRESENTED IN
SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. Title 7 of NRS is hereby amended by adding thereto a new chapter to consist of the provisions set forth as sections 2 to 20, inclusive, of this act.

Sec. 2. *As used in this chapter, unless the context otherwise requires, the words and terms defined in sections 3 to 9, inclusive, of this act have the meanings ascribed to them in those sections.*

Sec. 3. *“Benefit corporation” means a corporation organized under chapter 78 or 78A of NRS, NRS 81.010 to 81.160, inclusive, or chapter 89 of NRS that has elected to become subject to this chapter and whose status as a benefit corporation has not been terminated pursuant to this chapter.*

Sec. 4. *“Benefit enforcement proceeding” means a claim or action for:*

1. Failure of a benefit corporation to pursue the general public benefit purpose of the benefit corporation or any specific public benefit purpose set forth in its articles of incorporation;

2. Violation of a duty or standard of conduct imposed on a director or officer of a benefit corporation pursuant to this chapter; or

3. Failure of a benefit corporation to deliver or post on its Internet website an annual benefit report as required by section 19 of this act.

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

Sec. 6. *“Minimum status vote” means:*

1. In the case of a corporation, in addition to any other approval or vote required by chapter 78 or 78A of NRS, NRS 81.010 to 81.160, inclusive, or chapter 89 of NRS, whichever is



applicable, by chapter 92A of NRS or by the articles of incorporation, satisfaction of both of the following conditions:

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

(b) The corporate action must be approved by the outstanding shares of each class or series by at least two-thirds of the votes, or the greater vote if required by the articles of incorporation, that all shareholders of the class or series are entitled to cast on that action.

2. In the case of a business entity organized and existing under the laws of this State other than a corporation, in addition to any other approval, vote or consent required by the laws of this State that govern the internal affairs of the entity, by any provision of the publicly filed record or document required to form the entity, or by any agreement binding some or all of the holders of the equity interests in the entity, satisfaction of both of the following conditions:

(a) The holders of every class or series of interest in the entity that are entitled to receive a distribution of any kind from the entity or partnership are 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.

(b) The action must be approved by the vote or consent of the holders described in paragraph (a) by at least two-thirds of the votes or consent of those holders, or the greater vote or consent if required by the publicly filed record or document required to form the entity or partnership or by any agreement binding those holders.

Sec. 7. "Specific public benefit" includes, without limitation:

1. Providing low-income or underserved individuals or communities with beneficial products or services;

2. Promoting economic opportunity for individuals or communities beyond the creation of jobs in the normal course of business;

3. Protecting, preserving or restoring the environment;

4. Improving human health;

5. Promoting the arts, sciences or advancement of knowledge;

6. Increasing the flow of capital to entities with a general public benefit purpose; and



7. *The accomplishment of any other particular benefit for society or the environment.*

Sec. 8. *“Subsidiary” means an entity in which a person owns beneficially or of record 50 percent or more of the outstanding equity interests.*

Sec. 9. *“Third-party standard” means a standard for defining, reporting and assessing overall corporate social and environmental performance:*

1. *That provides for a comprehensive assessment of the impact of the benefit corporation and its operations upon the considerations listed in paragraphs (b) to (e), inclusive, of subsection 1 of section 15 of this act; and*

2. *That is developed by an entity that:*

(a) *Has no material financial relationship with the benefit corporation or a subsidiary of the benefit corporation;*

(b) *Is governed by a governing body of which not more than one-third of the members are representatives of:*

(1) *Associations of businesses operating in a specific industry whose members’ performances are measured by the standard;*

(2) *Businesses from a specific industry or an association of businesses in that industry; or*

(3) *Businesses whose performance is assessed against that standard;*

(c) *Is not materially financed by an association or business described in paragraph (b);*

(d) *Accesses necessary and appropriate expertise to assess overall corporate social and environmental performance; and*

(e) *Uses a balanced, multistakeholder approach to develop the standard, including, without limitation, a public comment period of at least 30 days; and*

3. *About which the following information is available to the public:*

(a) *The criteria considered when measuring the overall social and environmental performance of a business;*

(b) *The relative weightings assigned to the criteria described in paragraph (a);*

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

(d) *The process for revising the standard and changing the membership of the governing body that developed, and controls revisions to, the standard; and*



(e) An accounting of the sources of financial support for the entity that developed, and controls revisions to, the standard which provides sufficient detail to disclose any relationships that could reasonably be considered to present a potential conflict of interest.

Sec. 10. *1. This chapter is applicable to all benefit corporations.*

2. The provisions of this chapter do not create any implication that a contrary or different rule of law is or would be applicable to a corporation that is not a benefit corporation. The provisions of this chapter do not affect any statute or rule of law that is or would be applicable to a corporation that is not a benefit corporation.

3. The provisions of chapters 78 and 78A of NRS, NRS 81.010 to 81.160, inclusive, and chapters 89 and 92A of NRS apply to benefit corporations except where those provisions conflict or are inconsistent with the provisions of this chapter. A benefit corporation may be subject simultaneously to this chapter and chapter 78 or 78A of NRS, NRS 81.010 to 81.160, inclusive, or chapter 89 of NRS, as applicable.

4. A provision of the articles of incorporation or bylaws of a benefit corporation may not limit, be inconsistent with or supersede a provision of this chapter.

Sec. 11. *A benefit corporation must be formed in accordance with NRS 78.030 to 78.055, inclusive, except that the articles of incorporation must:*

1. State that the corporation is a benefit corporation; and

2. Identify any specific public benefit adopted by the corporation pursuant to section 14 of this act.

Sec. 12. *1. A domestic corporation may become a benefit corporation under this chapter by amending its articles of incorporation so that the articles of incorporation contain a statement that the domestic corporation is a benefit corporation. The amendment must be adopted by at least the minimum status vote. If the amendment is adopted, a shareholder of the corporation may, by complying with the provisions of NRS 92A.300 to 92A.500, inclusive, require the corporation to purchase at their market value the shares owned by the shareholder which are dissenting shares in accordance with the procedures set forth in NRS 92A.300 to 92A.500, inclusive, as if the adoption of the amendment were an action to which those provisions were applicable.*

2. If a corporation that is not a benefit corporation is a constituent entity in a merger or is acquired in an exchange, and



the surviving entity in the merger is to be a benefit corporation or the articles of incorporation of the acquired corporation are to be amended in the exchange to provide that the acquired corporation will be a benefit corporation, the merger or exchange, whichever is applicable, is not effective unless the plan of merger or exchange, whichever is applicable, is approved by the corporation by the minimum status vote.

3. If a domestic other business entity is a constituent entity in a merger and the surviving entity in the merger is to be a benefit corporation, the merger is not effective unless the plan of merger is approved by the domestic other business entity by at least the minimum status vote.

4. If a domestic other business entity is the constituent entity in a conversion in which the resulting entity will be a benefit corporation, the plan of conversion is not effective unless the conversion is approved by the converting entity by at least the minimum status vote.

5. As used in this section:

(a) “Constituent entity” has the meaning ascribed to it in NRS 92A.015.

(b) “Domestic corporation” means a corporation organized and existing under chapter 78, 78A or 89 of NRS, or a nonprofit cooperative corporation organized pursuant to NRS 81.010 to 81.160, inclusive.

(c) “Domestic other business entity” means a limited-liability company organized and existing under chapter 86 of NRS, a limited partnership organized and existing under chapter 87A or 88 of NRS or a business trust organized and existing under chapter 88A of NRS.

(d) “Exchange” has the meaning ascribed to it in NRS 92A.050.

(e) “Resulting entity” has the meaning ascribed to it in NRS 92A.090.

Sec. 13. *1. A benefit corporation may terminate its status as a benefit corporation and cease to be subject to this chapter by amending its articles of incorporation to delete the statement in the articles of incorporation that the corporation is a benefit corporation as required by section 11 or 12 of this act. To be effective, the amendment must be adopted by at least the minimum status vote.*

2. If a benefit corporation is a constituent entity in a merger, conversion or exchange and the effect of the merger, conversion or exchange will terminate the status of the benefit corporation as



a benefit corporation, the plan or merger, conversion or exchange, whichever is applicable, is not effective unless it is approved by at least the minimum status vote.

3. If not made in the usual and regular course of business, a sale, lease, exchange or other disposition of all or substantially all of the property of a benefit corporation is not effective unless it is approved by at least the minimum status vote.

4. As used in this section:

(a) "Constituent entity" has the meaning ascribed to it in NRS 92A.015.

(b) "Exchange" has the meaning ascribed to it in NRS 92A.050.

Sec. 14. *1. A benefit corporation shall have the purpose of creating general public benefit. This purpose is in addition to, and may be a limitation on, the corporation's purpose under NRS 78.030 and any specific purpose set forth in its articles of incorporation pursuant to NRS 78.037.*

2. In addition to the provisions required to be stated in the articles of incorporation pursuant to NRS 78.035, the articles of incorporation of a benefit corporation must contain a statement that the corporation is a benefit corporation. The articles of incorporation may identify the creation of one or more specific public benefits as a purpose or as purposes of the benefit corporation. The identification of any specific public benefit pursuant to this subsection does not limit the obligation of the benefit corporation to create general public benefit.

3. The creation of general and specific public benefits as provided in subsections 1 and 2 is in the best interests of the benefit corporation.

4. A professional corporation that is a benefit corporation does not violate NRS 89.050 by providing the professional services for which it was incorporated for the purpose of creating general public benefit or any specific public benefit.

5. A benefit corporation may amend its articles of incorporation to add, amend or delete the identification of any specific public benefit that must be the purpose of the benefit corporation to create. To be effective, the amendment must be adopted by at least the minimum status vote.

Sec. 15. *1. In discharging the duties of their respective positions, and in considering the best interests of the benefit corporation, the board of directors, committees of the board of directors and individual directors of a benefit corporation must consider the impacts of any action or inaction upon:*



- (a) The shareholders of the benefit corporation.*
- (b) The employees and workforce of the benefit corporation and its subsidiaries and suppliers.*
- (c) The interests of customers of the benefit corporation as beneficiaries of the general public benefit purpose or any specific public benefit purpose of the benefit corporation.*
- (d) Community and societal factors, including, without limitation, factors in the community in which offices or facilities of the benefit corporation or its subsidiaries or suppliers are located.*
- (e) The local and global environment.*
- (f) The short-term and long-term interests of the benefit corporation, including, without limitation, benefits that may accrue to the benefit corporation from its long-term plans and the possibility that those interests may be best served by control of the benefit corporation remaining unchanged.*
- (g) The ability of the benefit corporation to accomplish its general public benefit purpose and any specific public benefit purpose.*

2. In discharging their respective duties, the board of directors, committees of the board of directors and individual directors of a benefit corporation may consider:

(a) The resources, intent and conduct, including, without limitation, the past, stated and potential conduct, of any person seeking to acquire control of the benefit corporation.

(b) Any other pertinent factors or the interests of any other person or group.

3. In discharging their respective duties, the board of directors, committees of the board of directors and individual directors of a benefit corporation are not required to give priority to any particular factor or the interests of any particular person or group referred to in subsection 1 or 2 over any other factor or the interests of any other person or group, unless the benefit corporation has stated its intention to give priority to a specific public benefit purpose identified in the articles of incorporation of the benefit corporation.

4. In performing his or her duties, a director of a benefit corporation is entitled to rely on information, opinions, reports, books of account or statements, including financial statements and other financial data, that are prepared or presented by:

(a) One or more directors, officers or employees of the benefit corporation reasonably believed to be reliable and competent in the matters prepared or presented;



(b) Counsel, public accountants, financial advisers, valuation advisers, investment bankers or other persons as to matters reasonably believed to be within the preparer's or presenter's professional or expert competence; or

(c) A committee on which the director does not serve, established in accordance with NRS 78.125, as to matters within the committee's designated authority and matters on which the committee is reasonably believed to merit confidence,

↪ but a director is not entitled to rely on such information, opinions, reports, books of account or statements if the director has knowledge concerning the matter in question that would cause reliance thereon to be unwarranted.

5. The consideration of interests and factors in the manner required by this section does not constitute a violation of NRS 78.138 or 78.139 and is in addition to the ability of directors to consider the interests and factors set forth in NRS 78.138 and 78.139.

6. A director of a benefit corporation is not liable for monetary damages for:

(a) Any action or inaction in the course of performing the duties of a director under this section if the director performed the duties of a director in compliance with this section and NRS 78.138 and 78.139.

(b) Failure of the benefit corporation to pursue or create general public benefit or any specific public benefit identified in the articles of incorporation of the benefit corporation pursuant to section 14 of this act.

7. A director does not have a duty to a person who is a beneficiary of the general public benefit purpose or any specific public benefit purpose identified in the articles of incorporation of the benefit corporation pursuant to section 14 of this act arising from the status of the person as a beneficiary.

8. In performing his or her duties, a director of a benefit corporation has the benefit of the presumptions established by subsection 3 of NRS 78.138.

Sec. 16. *1. The board of directors of a benefit corporation shall prepare and include in the annual benefit report to shareholders required by section 19 of this act a statement indicating whether, in the opinion of the board of directors, the benefit corporation failed in any material respect to pursue its general public benefit purpose and any specific public benefit purpose identified in the articles of incorporation pursuant to section 14 of this act during the period covered by the report.*



2. *If, in the opinion of the board of directors, the benefit corporation failed to pursue its general public benefit purpose or any specific public benefit purpose identified in the articles of incorporation pursuant to section 14 of this act, the statement required by subsection 1 must include a description of the ways in which the benefit corporation failed to pursue its general public benefit purpose or any specific public benefit purpose.*

Sec. 17. 1. *Each officer of a benefit corporation shall consider the interests and factors described in section 15 of this act 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:

(1) The creation of general public benefit or any specific public benefit identified in the articles of incorporation of the benefit corporation pursuant to section 14 of this act; or

(2) Any of the interests or factors described in subsections 2 and 3 of section 15 of this act.

2. *The consideration by an officer of a benefit corporation of interests and factors in the manner described in subsection 1 does not constitute a violation of the duties of the officer.*

3. *An officer is not liable for monetary damages for:*

(a) Any 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 his or her position in compliance with this section.

(b) Failure of the benefit corporation to pursue or create general public benefit or any specific public benefit identified in the articles of incorporation pursuant to section 14 of this act.

4. *An officer does not have a duty to a person who is a beneficiary of the general public benefit purpose or any specific public benefit purpose identified in the articles of incorporation of the benefit corporation pursuant to section 14 of this act arising from the status of the person as a beneficiary.*

5. *In performing his or her duties, an officer of a benefit corporation has the benefit of the presumptions established by subsection 3 of NRS 78.138.*

Sec. 18. 1. *Except in a benefit enforcement proceeding, no person may bring an action or assert a claim against a benefit corporation or its directors or officers with respect to:*



(a) Failure to pursue or create general public benefit or any specific public benefit identified in the articles of incorporation of a benefit corporation pursuant to section 14 of this act; or

(b) A violation of an obligation, duty or standard of conduct under this chapter.

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

(a) Directly by the benefit corporation; or

(b) Derivatively by:

(1) A shareholder who owned beneficially or of record at least 2 percent of the total number of shares of a class or series outstanding at the time of the act or omission complained of;

(2) A director;

(3) A person or group of persons that owns beneficially or of record 5 percent or more of the equity interests in an entity of which the benefit corporation is a subsidiary at the time of the act or omission complained of; or

(4) Any other person authorized in the articles of incorporation or bylaws of the benefit corporation to commence and maintain a benefit enforcement proceeding.

3. A benefit corporation is not liable for monetary damages under this chapter for any failure of the benefit corporation to create general public benefit or any specific public benefit identified in the articles of incorporation of the benefit corporation pursuant to section 14 of this act.

4. If the court in a benefit enforcement proceeding finds that a failure to comply with this chapter was without justification, the court may award an amount sufficient to reimburse the plaintiff for the reasonable expenses incurred by the plaintiff, including attorney's fees and expenses, in connection with the benefit enforcement proceeding.

Sec. 19. *1. A benefit corporation shall deliver to each shareholder an annual benefit report which includes the following:*

(a) A narrative description of:

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

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

(3) The ways in which the benefit corporation pursued any specific public benefit identified in the articles of incorporation of



the benefit corporation pursuant to section 14 of this act and the extent to which that specific public benefit was created; and

(4) Any circumstances that have hindered the creation by the benefit corporation of general public benefit or any specific public benefit identified in the articles of incorporation of the benefit corporation pursuant to section 14 of this act.

(b) An assessment of the overall social and environmental performance of the benefit corporation, prepared in accordance with a third-party standard applied consistently with any application of that standard in prior benefit reports or accompanied by an explanation of the reasons for any inconsistent application. The assessment is not required to be audited or certified by a third party.

(c) The statement required by section 16 of this act.

(d) A statement of any connection between the entity that established the third-party standard, or its directors, officers or material owners, and the benefit corporation, or its directors, officers and material owners, including, without limitation, any financial or governance relationship that might materially affect the credibility of the objective assessment of the third-party standard.

2. The annual benefit report required by subsection 1 must be sent annually to each shareholder within 120 days following the end of the fiscal year of the benefit corporation or at the same time that the benefit corporation delivers any other annual report to its shareholders.

3. A benefit corporation shall post all of its annual benefit reports on the public portion of its Internet website, if any, except that the compensation paid to directors and any financial or proprietary information included in the annual benefit report may be omitted from the annual benefit report posted on the Internet website.

4. If a benefit corporation does not have an Internet website, the benefit corporation must provide a copy of its most recent annual benefit report, without charge, to any person requesting a copy. The benefit corporation may omit any proprietary or financial information, including, without limitation, the compensation paid to directors, from the copy of an annual benefit report that the corporation provides pursuant to this subsection.

Sec. 20. *In addition to any other statement required by chapter 78 or 78A of NRS, NRS 81.010 to 81.160, inclusive, or chapter 89 of NRS, each certificate representing a share of a*



benefit corporation shall contain conspicuously on the face of the certificate the following statement:

This entity is a benefit corporation.

Sec. 21. NRS 92A.025 is hereby amended to read as follows:

92A.025 “Domestic corporation” means a corporation organized and existing under chapter 78, 78A or 89 of NRS, *or sections 2 to 20, inclusive, of this act*, or a nonprofit cooperative corporation organized pursuant to NRS 81.010 to 81.160, inclusive.

Sec. 22. NRS 92A.205 is hereby amended to read as follows:

92A.205 1. After a plan of conversion is approved as required by this chapter, if the resulting entity is a domestic entity, the constituent entity shall deliver to the Secretary of State for filing:

(a) Articles of conversion setting forth:

(1) The name and jurisdiction of organization of the constituent entity and the resulting entity; and

(2) That a plan of conversion has been adopted by the constituent entity in compliance with the law of the jurisdiction governing the constituent entity.

(b) The charter document of the domestic resulting entity required by the applicable provisions of chapter 78, 78A, 82, 86, 87A, 88, 88A or 89 of NRS ~~§~~ *or sections 2 to 20, inclusive, of this act*.

(c) The information required pursuant to NRS 77.310.

2. After a plan of conversion is approved as required by this chapter, if the resulting entity is a foreign entity, the constituent entity shall deliver to the Secretary of State for filing articles of conversion setting forth:

(a) The name and jurisdiction of organization of the constituent entity and the resulting entity;

(b) That a plan of conversion has been adopted by the constituent entity in compliance with the laws of this State; and

(c) The address of the resulting entity where copies of process may be sent by the Secretary of State.

3. If the entire plan of conversion is not set forth in the articles of conversion, the filing party must include in the articles of conversion a statement that the complete signed plan of conversion is on file at the registered office or principal place of business of the resulting entity or, if the resulting entity is a domestic limited partnership, the office described in paragraph (a) of subsection 1 of NRS 87A.215 or paragraph (a) of subsection 1 of NRS 88.330.

4. If the conversion takes effect on a later date specified in the articles of conversion pursuant to NRS 92A.240, the charter



document to be filed with the Secretary of State pursuant to paragraph (b) of subsection 1 must state the name and the jurisdiction of the constituent entity and that the existence of the resulting entity does not begin until the later date.

5. Any records filed with the Secretary of State pursuant to this section must be accompanied by the fees required pursuant to this title for filing the charter document.

Sec. 23. This act becomes effective on January 1, 2014.

