

1 (4) A supplier; or

2 (5) A creditor.

3 § -3 **Relationship to other law.** This chapter applies to
4 corporations incorporated or regulated under this chapter,
5 except as otherwise provided in this chapter, or where the
6 Hawaii Business Corporation Act under chapter 414 conflicts with
7 this chapter.

8 § -4 **Incorporation.** (a) A corporation may incorporate
9 under this chapter for any business purpose or purposes, unless
10 incorporation is contrary to chapter 414; provided that, unless
11 otherwise provided in its articles, a corporation has a general
12 business purpose.

13 (b) A corporation incorporated under this chapter shall
14 have articles of incorporation that provide that its business
15 purpose or purposes shall be carried out in compliance with this
16 chapter.

17 (c) The director of commerce and consumer affairs shall
18 maintain its incorporation records in a manner that clearly
19 distinguishes corporations incorporated under this chapter.

20 § -5 **Standard of conduct; directors.** (a) A director
21 shall discharge the duties of the position of director:

22 (1) In good faith;



1 (2) In a manner the director reasonably believes to be in
2 the best interests of the corporation, consistent with
3 this chapter; and

4 (3) With the care an ordinarily prudent person in a like
5 position would exercise under similar circumstances.

6 (b) A director who performs duties in the manner
7 prescribed under subsection (a) shall not be liable by reason of
8 being or having been a director of the corporation.

9 (c) Nothing in this chapter creates liability to, or a
10 cause of action in favor of, a person other than the corporation
11 or a shareholder.

12 (d) A director is entitled to rely on information,
13 opinions, reports, or statements, including financial statements
14 and other financial data, in each case prepared or presented by:

15 (1) One or more officers or employees of the corporation
16 whom the director reasonably believes to be reliable
17 and competent in the matters presented;

18 (2) Counsel, public accountants, or other persons as to
19 matters that the director reasonably believes are
20 within the person's professional or expert competence;

21 or



1 (3) A committee of the board of directors upon which the
2 director does not serve, as to matters within its
3 designated authority, if the director reasonably
4 believes the committee.

5 (e) Subsection (d) does not apply to a director who has
6 knowledge concerning the matter in question that makes the
7 reliance otherwise permitted by subsection (d) unwarranted.

8 (f) A director who is present at a meeting of the board of
9 directors when an action is approved by the affirmative vote of
10 a majority of the directors present, is presumed to have
11 assented to the action approved, unless the director:

12 (1) Objects at the beginning of the meeting to the
13 transaction of business because the meeting is not
14 lawfully called or convened and the director does not
15 participate thereafter in the meeting, in which case
16 the director shall not be considered to be present at
17 the meeting for any purpose of this chapter:

18 (2) Votes against the action at the meeting; or

19 (3) Is otherwise prohibited by this chapter from voting on
20 the action.

21 (g) A director's personal liability to the corporation or
22 its shareholders for monetary damages for breach of fiduciary



1 duty as a director may be eliminated or limited in the
2 corporation's articles of incorporation. The articles shall not
3 eliminate or limit the liability of a director for:

4 (1) Any breach of the director's duty of loyalty to the
5 corporation or its shareholders;

6 (2) Acts or omissions not in good faith or that involve
7 intentional misconduct or a knowing violation of law;

8 (3) Any transaction from which the director derived an
9 improper personal benefit; or

10 (4) Any act or omission occurring prior to the date when
11 the provision in the articles of incorporation
12 eliminating or limiting liability became effective.

13 (h) In determining the best interests of the corporation,
14 a director shall consider:

15 (1) The interests of the corporation's shareholders,
16 employees, customers, suppliers, and creditors;

17 (2) The economy of the State and nation, community and
18 societal considerations, including the public
19 interest; and

20 (3) The long-term and short-term interests of the
21 corporation and its stakeholders including the



1 possibility that these interests may be best served by
2 the continued independence of the corporation.

3 A director is not required to give priority to any
4 consideration referenced in this subsection over any other
5 consideration.

6 § -6 **Directors; representation of stakeholder interests.**

7 (a) A corporation operating under this chapter shall include
8 directors whose role as directors includes representation of,
9 and advocacy for, the interests of the corporation's employees
10 and of the public interest.

11 (b) At least twenty per cent of the corporation's
12 directors shall represent and advocate for the corporation's
13 employees. These directors shall be nominated and elected by
14 the employees.

15 (c) At least twenty per cent of the corporation's
16 directors shall represent and advocate for the public interest.
17 The directors shall be elected by the other board members, after
18 seeking input from persons or groups representing the public
19 interest.

20 (d) If a corporation has only one or two directors, the
21 director or directors may be elected solely by the shareholders.

1 (e) If a corporation has three directors, the bylaws shall
2 provide that one director shall be elected to represent the
3 employees or the public interest. That director shall be
4 nominated and elected pursuant to this chapter.

5 (f) The designation of certain directors as
6 representatives of, and advocates for employees or for the
7 public interest shall not affect the duty of other directors to
8 consider those interests, or the duty of designated directors to
9 consider the interests of other stakeholders.

10 (g) A corporation may, in its articles or bylaws, state a
11 priority for a particular component of the public interest.

12 § -7 **Standard of conduct; officers.** (a) An officer
13 shall discharge the officer's duties in good faith, in a manner
14 the officer reasonably believes to be in the best interests of
15 the corporation, and with the care an ordinarily prudent person
16 in a like position would exercise under similar circumstances.
17 A person exercising the principal functions of an office, or to
18 whom some or all of the duties and powers of an office are
19 delegated, is deemed an officer for purposes of this section.

20 (b) In determining the best interests of the corporation,
21 an officer shall consider the factors in section -5(h).



1 (c) Nothing in this section shall create liability to, or
2 a cause of action in favor of, a person other than the
3 corporation or a shareholder.

4 § -8 **Law of agency; applicability limited.** The law of
5 agency shall not apply to a corporation under this chapter, to
6 the extent that the law of agency requires that the officers and
7 directors act solely in the interests of shareholders by
8 maximizing the corporation's long-term or short-term profits.

9 § -9 **Input and accountability to considerations other**
10 **than shareholder interests.** (a) The board of directors shall
11 provide opportunities for advisory input from stakeholders other
12 than shareholders, such as regular stakeholder meetings
13 scheduled by the board or a web site or e-mail list provided by
14 the corporation for communication among those stakeholders and
15 between those stakeholders and the officers and directors.

16 (b) If the corporation's shares are publicly traded under
17 the federal Securities and Exchange Act of 1933, the corporation
18 shall produce and publish an annual public interest report at
19 the same time as it files its annual financial report required
20 under federal securities laws. The public interest report shall
21 summarize the corporation's actions undertaken within the



1 preceding year that benefit stakeholders other than shareholders
2 and the public interest.

3 (c) The corporation shall provide educational programs for
4 its officers, directors, and other employees, regarding their
5 special duties under this chapter to all of the corporation's
6 stakeholders and to the public interest. The corporation shall
7 provide the education to new officers, directors, and other
8 employees at the earliest reasonable opportunity.

9 § -10 Corporate tax exemption. A company incorporated
10 as a responsible business corporation under this chapter shall
11 be exempt from per cent of all corporate taxes imposed
12 under part VII, chapter 235; provided that any responsible
13 business corporation found to be in violation of this chapter
14 shall be subject to the recapture of per cent of the
15 corporate taxes exempted pursuant to this section."

16 SECTION 2. Chapter 235, Hawaii Revised Statutes, is
17 amended by adding a new section to be appropriately designated
18 and to read as follows:

19 "§235- Exemption; responsible business corporation;
20 recapture. (a) A company incorporated as a responsible
21 business corporation under chapter , shall be exempt from
22 per cent of all corporate taxes imposed under part VII,



1 chapter 235; provided that any responsible business corporation
 2 found to be in violation of the provisions of chapter _____,
 3 shall be subject to the recapture of _____ per cent of the
 4 corporate taxes exempted pursuant to this section.

5 The department of taxation may adopt rules pursuant to
 6 chapter 91 to effectuate this section."

7 SECTION 3. New statutory material is underscored.

8 SECTION 4. This Act shall take effect upon its approval.

9

INTRODUCED BY: *Dilkanan*
James R. Gromer
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Report Title:

Corporations; Responsible Business Corporation Act

SB. NO. 3032

Description:

Authorizes the incorporation of companies under the proposed Responsible Business Corporation Act for corporations that consider the public's interest in doing business.

