

1 derivatively on behalf of a sustainable business corporation,
2 against a director or officer for:

3 (1) Failure to pursue the general public benefit purpose
4 of the sustainable business corporation or any
5 specific public benefit purpose set forth in its
6 articles; or

7 (2) Violation of a duty or standard of conduct under this
8 chapter.

9 "Benefit officer" means the individual designated as the
10 benefit officer of a sustainable business corporation under
11 section -10.

12 "General public benefit" means a material positive impact
13 on society and the environment, taken as a whole and as measured
14 by a third-party standard, from the business and operations of a
15 sustainable business corporation.

16 "Independent" means that a person has no material
17 relationship with a sustainable business corporation or any of
18 its subsidiaries. Service as a benefit director or benefit
19 officer shall not, by itself, deem a person independent. A
20 material relationship between a person and a sustainable
21 business corporation or any of its subsidiaries shall be
22 conclusively presumed to exist if any of the following apply:



- 1 (1) The person is, or has been within the last three
2 years, an employee of the sustainable business
3 corporation or any of its subsidiaries, other than as
4 a benefit officer;
- 5 (2) An immediate family member of the person is, or has
6 been within the last three years, an executive officer
7 of the sustainable business corporation or any of its
8 subsidiaries, other than as a benefit officer; or
- 9 (3) The person or an association of which the person is a
10 director, an officer, or a manager or in which the
11 person owns beneficially or of record five per cent or
12 more of the outstanding equity interests or owns
13 beneficially or record five per cent or more of the
14 outstanding shares of the sustainable business
15 corporation; provided that a percentage of ownership
16 in an association shall be calculated as if all
17 outstanding rights to acquire equity interests in the
18 association had been exercised.

19 "Minimum status vote" means that in addition to any other
20 approval or vote required by this chapter or the bylaws adopted
21 by the shareholders:

1 (1) The holders of shares of every class or series shall
2 be entitled to vote on the corporate action regardless
3 of any limitation stated in the articles of
4 incorporation or bylaws on the voting rights of any
5 class or series; and

6 (2) The corporate action shall be approved by vote of the
7 shareholders of each class or series entitled to cast
8 at least two-thirds of the votes that all shareholders
9 of the class or series are entitled to cast thereon.

10 "Specific public benefit" includes:

11 (1) Providing low-income or underserved individuals or
12 communities with beneficial products or services;

13 (2) Promoting economic opportunity for individuals or
14 communities beyond the creation of jobs in the normal
15 course of business;

16 (3) Preserving the environment;

17 (4) Improving human health;

18 (5) Promoting the arts, sciences, or advancement of
19 knowledge;

20 (6) Increasing the flow of capital to entities with a
21 public benefit purpose; and



1 (7) The accomplishment of any other particular benefit for
2 society or the environment.

3 "Subsidiary" of a person means an association in which the
4 person owns beneficially or of record fifty per cent or more of
5 the outstanding equity interests; provided that a percentage of
6 ownership in an association shall be calculated as if all
7 outstanding rights to acquire equity interests in the
8 association had been exercised.

9 "Sustainable business corporation" means a domestic
10 corporation, as defined in section 414-3, that has elected to
11 become subject to this chapter and whose status as a sustainable
12 business corporation has not been terminated as provided in this
13 chapter.

14 "Third-party standard" means a standard for defining,
15 reporting, and assessing overall corporate social and
16 environmental performance that is:

- 17 (1) Comprehensive in its assessment of the effect of the
18 business and its operations upon the interest listed
19 in section -7(a);
- 20 (2) Developed by an organization that is independent of
21 the sustainable business corporation;



- 1 (3) Credible because the standard is developed by an
- 2 organization that:
- 3 (A) Has access to necessary expertise to assess
- 4 overall corporate social and environmental
- 5 performance; and
- 6 (B) Uses a balanced multi-stakeholder approach
- 7 including a public comment period of at least
- 8 thirty days to develop the standard; and
- 9 (4) Transparent because the following information is
- 10 publicly available:
- 11 (A) The criteria considered when measuring the
- 12 overall social and environmental performance of a
- 13 business, as well as the relative weightings of
- 14 those criteria;
- 15 (B) The identity of the directors, officers, any
- 16 material owners, and the governing body of the
- 17 organization that developed and controls
- 18 revisions to the standard;
- 19 (C) The process by which revisions to the standard
- 20 are made;
- 21 (D) The process by which changes to the membership of
- 22 the governing body of the organization that



1 developed and controls revisions to the standard
2 are made; and
3 (E) An accounting of the sources of financial support
4 for the organization that developed and controls
5 revisions to the standard, with sufficient detail
6 to disclose any relationships that could
7 reasonably be considered to present a potential
8 conflict of interest.

9 § -3 **Formation of sustainable business corporations.** A
10 sustainable business corporation shall be formed in accordance
11 with the domestic corporation organizational requirements of
12 chapter 414; provided that its articles shall also state that it
13 is a sustainable business corporation.

14 § -4 **Election of an existing domestic corporation to**
15 **become a sustainable business corporation.** (a) An existing
16 domestic corporation may become a sustainable business
17 corporation under this chapter by amending its articles so that
18 they contain, in addition to the requirements of chapter 414,
19 part XI, a statement that the corporation is a sustainable
20 business corporation. An amendment pursuant to this subsection
21 shall not be effective unless it is adopted by at least the
22 minimum status vote.



1 (b) If a corporation that is not a sustainable business
2 corporation is a party to a merger, consolidation, or division,
3 or is the exchanging corporation in a share exchange and the
4 surviving, new, or any resulting corporation in the merger,
5 consolidation, division, or share exchange is to be a
6 sustainable business corporation, then the plan of merger,
7 consolidation, division, or share exchange shall not be
8 effective unless it is adopted by the corporation by at least
9 the minimum status vote.

10 § -5 Termination of sustainable business corporation

11 status. (a) A sustainable business corporation may terminate
12 its status as such and cease to be subject to this chapter by
13 amending its articles to delete the statement that the
14 corporation is a sustainable business corporation, as required
15 by section -3. An amendment pursuant to this subsection
16 shall not be effective unless it is adopted by at least the
17 minimum status vote.

18 (b) If a plan of merger, consolidation, division, or share
19 exchange would have the effect of terminating the status of a
20 business corporation as a sustainable business corporation, the
21 plan shall not be effective unless it is adopted by at least the
22 minimum status vote.

1 § -6 **Corporate purposes.** (a) Every sustainable
2 business corporation shall have the purpose of creating a
3 general public benefit. This purpose is in addition to its
4 purpose as specified pursuant to section 414-41.

5 (b) In addition to its purpose under section 414-41 and
6 subsection (a), the articles of a sustainable business
7 corporation may identify one or more specific public benefits
8 for which the sustainable business corporation was created. The
9 identification of a specific public benefit under this
10 subsection does not limit the obligation of a sustainable
11 business corporation to create a general public benefit.

12 (c) The creation of general and specific public benefits
13 as provided in subsections (a) and (b) of this section shall be
14 in the best interests of the sustainable business corporation.

15 (d) A sustainable business corporation may amend its
16 articles to add, amend, or delete the identification of a
17 specific public benefit for which the sustainable business
18 corporation was created. An amendment pursuant to this
19 subsection shall not be effective unless it is adopted by at
20 least the minimum status vote.

21 § -7 **Standard of conduct for directors.** (a) In
22 discharging the duties of their respective positions, the board



1 of directors, committees of the board, and individual directors
2 of a sustainable business corporation, in considering the best
3 interests of the sustainable business corporation:

4 (1) Shall consider the effects of any action of the
5 sustainable business corporation upon:

6 (A) The shareholders of the sustainable business
7 corporation;

8 (B) The employees and workforce of the sustainable
9 business corporation and its subsidiaries and
10 suppliers;

11 (C) The interests of customers as beneficiaries of
12 the general or specific public benefit purposes
13 of the sustainable business corporation;

14 (D) Community and societal considerations, including
15 those of any community in which offices or
16 facilities of the sustainable business
17 corporation or its subsidiaries or suppliers are
18 located;

19 (E) The local and global environment;

20 (F) The short-term and long-term interests of the
21 sustainable business corporation, including
22 benefits that may accrue to the sustainable



1 business corporation from its long-term plans and
2 the possibility that these interests may be best
3 served by the continued independence of the
4 sustainable business corporation; and
5 (G) The ability of the sustainable business
6 corporation to accomplish its general public
7 benefit purpose and any specific public benefit
8 purpose;
9 (2) May consider:
10 (A) The resources, intent, and conduct of any person
11 seeking to acquire control of the corporation;
12 and
13 (B) Any other pertinent factors or the interests of
14 any other group that they deem appropriate; and
15 (3) Shall not be required to give priority to the
16 interests of any particular person or group specified
17 in paragraphs (1) or (2) over the interests of any
18 other person or group unless the sustainable business
19 corporation has stated its intention to give priority
20 to interests related to a specific public benefit
21 purpose identified in its articles.



1 (b) The consideration of interests and factors in the
2 manner required by subsection (a) shall not constitute a
3 violation of a director's fiduciary duties.

4 (c) A director shall not be personally liable for monetary
5 damages for any action taken as a director if the director
6 performed the duties of the director's office in compliance with
7 the general standards of conduct pursuant to section 414-221 and
8 this section or for failure of the sustainable business
9 corporation to create a general public benefit or a specific
10 public benefit.

11 (d) A director shall not have a fiduciary duty to a person
12 that is a beneficiary of the general or specific public benefit
13 purposes of a sustainable business corporation arising from the
14 status of the person as a beneficiary.

15 § -8 **Benefit director.** (a) The board of directors of a
16 sustainable business corporation shall include one director who
17 shall be designated the "benefit director" and who shall have,
18 in addition to all of the powers, duties, rights, and immunities
19 of the other directors of the sustainable business corporation,
20 the powers, duties, rights, and immunities provided in this
21 section.



1 (b) The benefit director shall be elected pursuant to
2 sections 414-193 and 414-194 and may be removed in the manner
3 provided by sections 414-198 and 414-199, and shall be an
4 individual who is independent. The benefit director may serve
5 concurrently as the benefit officer. The articles or bylaws of
6 a sustainable business corporation may prescribe additional
7 qualifications of the benefit director, provided that the
8 qualifications are consistent with this subsection.

9 (c) The benefit director shall prepare, and the
10 sustainable business corporation shall include in the annual
11 benefit report to shareholders required by section -12, a
12 statement whether, in the opinion of the benefit director, the
13 sustainable business corporation acted in accordance with its
14 general, and any specific, public benefit purpose in all
15 material respects during the period covered by the report and
16 whether the directors and officers complied with sections
17 -7(a) and -9(a), respectively. If in the opinion of the
18 benefit director the sustainable business corporation or its
19 directors or officers failed to act according to the
20 requirements of this chapter, then the statement of the benefit
21 director shall include a description of the ways in which the



1 sustainable business corporation or its directors or officers
2 failed to act according to the requirements of this chapter.

3 (d) For all purposes, the acts of an individual in the
4 capacity of a benefit director shall constitute acts of that
5 individual in the capacity of a director of the sustainable
6 business corporation.

7 (e) If the bylaws of a sustainable business corporation
8 provide that the powers and duties conferred or imposed upon the
9 board of directors shall be exercised or performed by a person
10 or persons other than the directors or if the bylaws of a
11 statutory close corporation that is a sustainable business
12 corporation provide that the business and affairs of the
13 corporation shall be managed by or under the direction of the
14 shareholders, then the bylaws of the sustainable business
15 corporation shall provide that the person, persons, or
16 shareholders who perform the duties of the board of directors
17 shall include a person with the powers, duties, rights, and
18 immunities of a benefit director.

19 (f) Regardless of whether the bylaws of a sustainable
20 business corporation include a provision eliminating or limiting
21 the personal liability of directors, a benefit director shall
22 not be personally liable for any act or omission committed in



1 the capacity of a benefit director unless the act or omission
2 constitutes self-dealing, wilful misconduct, or a knowing
3 violation of law.

4 § -9 Standard of conduct for officers. (a) Each
5 officer of a sustainable business corporation shall consider the
6 interests and factors described in section -7(a) in the
7 manner provided in that section when:

8 (1) The officer has discretion to act with respect to a
9 matter; and

10 (2) It reasonably appears to the officer that the matter
11 may have a material effect on:

12 (A) The creation of general or specific public
13 benefit by the sustainable business corporation;
14 or

15 (B) Any of the interests or factors referred to in
16 section -7(a).

17 (b) The consideration of interests and factors pursuant to
18 subsection (a) shall not constitute a violation of the officer's
19 fiduciary duties.

20 (c) An officer shall not be personally liable for monetary
21 damages for any action taken as an officer if the officer
22 performed the duties of the position in compliance with the



1 general standards of conduct pursuant to section 414-233 and
2 this section or for failure of the sustainable business
3 corporation to create a general or specific public benefit.

4 (d) An officer shall not have a fiduciary duty to a person
5 that is a beneficiary of the general or specific public benefit
6 purposes of a sustainable business corporation arising from the
7 status of the person as a beneficiary.

8 § -10 **Benefit officer.** A sustainable business
9 corporation may have an officer designated as the benefit
10 officer who shall have the authority and shall perform the
11 duties in the management of the sustainable business corporation
12 relating to the purpose of the corporation to create general or
13 specific public benefit as may be provided by or pursuant to the
14 bylaws or, in the absence of controlling provisions in the
15 bylaws, as may be determined by or pursuant to resolutions or
16 orders of the board of directors. If a sustainable business
17 corporation has a benefit officer, the duties of the benefit
18 officer shall include preparing the benefit report required by
19 section -12.

20 § -11 **Right of action.** (a) Except as provided in
21 sections -12(e) and -12(f), the duties of directors and
22 officers under this chapter, and the general and any specific



1 public benefit purpose of a sustainable business corporation,
2 shall be enforced only in a benefit enforcement proceeding.
3 Except as provided in section -12(e) and -12(f), no person
4 may bring an action or assert a claim against a sustainable
5 business corporation or its directors or officers with respect
6 to the duties of directors and officers under this chapter and
7 the general and any specific public benefit purpose of the
8 sustainable business corporation, except in a benefit
9 enforcement proceeding.

10 (b) A benefit enforcement proceeding may be commenced or
11 maintained only:

12 (1) Directly by the sustainable business corporation; or

13 (2) Derivatively by:

14 (A) A shareholder;

15 (B) A director;

16 (C) A person or group of persons that owns
17 beneficially or of record five per cent or more
18 of the equity interests in an association of
19 which the sustainable business corporation is a
20 subsidiary; or



1 (D) Any other persons as may be specified in the
2 articles or bylaws of the sustainable business
3 corporation.

4 § -12 **Annual benefit report.** (a) A sustainable
5 business corporation shall deliver to each shareholder an annual
6 benefit report including:

7 (1) A narrative description of:

8 (A) The ways in which the sustainable business
9 corporation pursued general public benefits
10 during the year and the extent to which general
11 public benefit was created;

12 (B) The ways in which the sustainable business
13 corporation pursued any specific public benefit
14 that the articles state as a purpose of the
15 sustainable business corporation and the extent
16 to which that specific public benefit was
17 created; and

18 (C) Any circumstances that have hindered the creation
19 by the sustainable business corporation of
20 general or specific public benefits;

21 (2) An assessment of the overall social and environmental
22 performance of the sustainable business corporation,



1 prepared in accordance with a third-party standard
2 applied consistently with any application of that
3 standard in prior benefit reports or accompanied by an
4 explanation of the reasons for any inconsistent
5 application;

6 (3) The name of the benefit director and the benefit
7 officer, if any, and the address to which
8 correspondence to each of them may be directed;

9 (4) The compensation paid by the sustainable business
10 corporation during the year to each director in their
11 capacity as director;

12 (5) The name of each person that owns five per cent or
13 more of the outstanding shares of the sustainable
14 business corporation either beneficially, to the
15 extent known to the sustainable business corporation
16 without independent investigation, or of record;

17 (6) The statement of the benefit director described in
18 section -8(c); and

19 (7) A statement of any connection to the third party
20 standard, or its directors, officers, or material
21 owners from the sustainable business corporation, or
22 its directors, officers, and material owners,



1 including any financial or governance relationship
2 that might materially affect the credibility of the
3 objective assessment of the third party standard.

4 (b) The benefit report shall be sent annually to each
5 shareholder within one hundred twenty days following the end of
6 the fiscal year of the sustainable business corporation.

7 (c) A sustainable business corporation shall post its most
8 recent benefit report on the public portion of its website, if
9 any, except that the compensation paid to directors and any
10 financial or proprietary information included in the benefit
11 report may be omitted from the benefit report as posted.

12 (d) Concurrently with the delivery of the benefit report
13 to shareholders pursuant to subsection (b), the sustainable
14 business corporation shall deliver a copy of the benefit report
15 to the department of commerce and consumer affairs for filing,
16 except that the compensation paid to directors and any financial
17 or proprietary information included in the benefit report may be
18 omitted from the benefit report as filed under this section.
19 The department of commerce and consumer affairs shall charge a
20 fee of \$70 for filing a benefit report.

21 (e) In addition to the penalties set forth in section
22 414-473, each sustainable business corporation that fails or



1 refuses to file a benefit report for any year shall be subject
2 to a penalty in an amount not to exceed \$100 for every
3 violation, neglect, or failure, to be determined by the director
4 of commerce and consumer affairs by rule pursuant to chapter 91
5 to be recovered by action brought in the name of the State by
6 the director. A continuing failure to file the required report
7 shall be a separate offense for each thirty days of the
8 continuation. The director of commerce and consumer affairs,
9 for good cause shown, may reduce or waive the penalty imposed by
10 this subsection.

11 (f) In addition to the grounds for administrative
12 dissolution set forth in section 414-401, the director of
13 commerce and consumer affairs may commence a proceeding under
14 section 414-402 to administratively dissolve a sustainable
15 business corporation if the sustainable business corporation
16 fails to file its annual benefit report for a period of two
17 years.

18 (g) The provisions of section 414-16 shall apply to the
19 filing of an annual report pursuant to this section.

20 § -13 Rules. The director of commerce and consumer
21 affairs shall adopt rules pursuant to chapter 91 to effectuate
22 the purposes of this chapter."



1 SECTION 2. This Act shall take effect upon its approval.

2



Report Title:

Business Regulation; Sustainable Business Corporations

Description:

Establishes an organizational and regulatory framework for sustainable benefits corporations. (SD1)

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