

1 "Benefit officer" means the individual designated as the
2 benefit officer of a sustainable business corporation under
3 section -9.

4 "General public benefit" means a material positive impact
5 on society and the environment, taken as a whole and as measured
6 by a third-party standard under section -12, from the
7 business and operations of a sustainable business corporation.

8 "Independent" means having no material relationship with a
9 sustainable business corporation or any of its subsidiaries.

10 "Material owner" means a shareholder who holds either
11 beneficially or of record five per cent or more of the
12 outstanding shares of a sustainable business corporation.

13 "Material relationship" means a relationship between a
14 person and a sustainable business corporation where:

15 (1) The person is, or has been within the last three
16 years, an employee other than a benefit officer of the
17 sustainable business corporation or any of its
18 subsidiaries;

19 (2) The person is related by blood, marriage, or adoption
20 to; is a party to a civil union with; is a reciprocal
21 beneficiary or household member of; or resides with an
22 officer other than a benefit officer or director of



1 the sustainable business corporation or any of its
2 subsidiaries; or

3 (3) The person or an association of which the person is a
4 director, officer, or manager or in which the person
5 owns beneficially or of record five per cent or more
6 of the outstanding equity interests or the outstanding
7 shares of the sustainable business corporation;
8 provided that percentage ownership in an association
9 shall be calculated as if all outstanding rights to
10 acquire equity interests in the association had been
11 exercised.

12 "Minimum status vote" means that in addition to any other
13 approval or vote required by this chapter or the bylaws adopted
14 by the shareholders:

15 (1) The holders of shares of every class or series shall
16 be entitled to vote on the corporate action regardless
17 of any limitation stated in the articles of
18 incorporation or bylaws on the voting rights of any
19 class or series; and

20 (2) The corporate action shall be approved by vote of the
21 shareholders of each class or series entitled to cast



1 at least two-thirds of the votes that all shareholders
2 of the class or series are entitled to cast thereon.

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, incorporated under chapter 414, that has elected to
11 also become subject to this chapter and whose status as a
12 sustainable business corporation has not been terminated as
13 provided in this chapter.

14 "Third-party standard" means a standard for defining,
15 reporting, and assessing overall corporate social and
16 environmental performance that conforms to the requirements of
17 this chapter.

18 **§ -3 Election of a domestic corporation to become a**
19 **sustainable business corporation.** (a) A domestic corporation
20 incorporated under chapter 414 may elect to become a sustainable
21 business corporation under this chapter by including in its
22 articles or amending its articles to include a statement that



1 the corporation is a sustainable business corporation. An
2 amendment pursuant to this subsection shall not be effective
3 unless it is adopted by at least the minimum status vote.

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

13 **§ -4 Termination of sustainable business corporation**
14 **status.** (a) A sustainable business corporation may terminate
15 its status as such and cease to be subject to this chapter by
16 amending its articles to delete the statement that the
17 corporation is a sustainable business corporation. An amendment
18 pursuant to this subsection shall not be effective unless it is
19 adopted by at least the minimum status vote.

20 (b) If a plan of merger, consolidation, division, or share
21 exchange would have the effect of terminating the status of a
22 business corporation as a sustainable business corporation, the



1 plan shall not be effective unless it is adopted by at least the
2 minimum status vote.

3 **§ -5 Corporate purposes.** (a) Every sustainable
4 business corporation shall have among its purposes the creation
5 of a general public benefit.

6 (b) In addition to the purposes described in subsection
7 (a), the articles of a sustainable business corporation may
8 identify one or more specific public benefits for which the
9 sustainable business corporation was created. The
10 identification of a specific public benefit under this
11 subsection does not limit the obligation of a sustainable
12 business corporation to create a general public benefit.

13 Allowable specific benefits for sustainable business
14 corporations subject to this chapter include:

- 15 (1) Providing low-income or underserved individuals or
16 communities with beneficial products or services;
17 (2) Promoting economic opportunity for individuals or
18 communities beyond the creation of jobs in the normal
19 course of business;
20 (3) Preserving the environment;
21 (4) Improving human health;



- 1 (5) Promoting the arts, sciences, or advancement of
2 knowledge;
- 3 (6) Increasing the flow of capital to entities with a
4 public benefit purpose; and
- 5 (7) The accomplishment of any other particular benefit for
6 society or the environment.

7 (c) The creation of general and specific public benefits
8 as provided in subsections (a) and (b) shall be in the best
9 interests of the sustainable business corporation.

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

16 **§ -6 Standard of conduct for directors.** (a) In
17 discharging the duties of their respective positions, the board
18 of directors, committees of the board, and individual directors
19 of a sustainable business corporation, in considering the best
20 interests of the sustainable business corporation:

- 21 (1) Shall consider the effects of any action of the
22 sustainable business corporation upon:



- 1 (A) The shareholders of the sustainable business
- 2 corporation; and
- 3 (B) The accomplishment of general and specific public
- 4 benefits set forth in the sustainable business
- 5 corporation's purposes; and
- 6 (2) May consider:
- 7 (A) The employees and workforce of the sustainable
- 8 business corporation and its subsidiaries and
- 9 suppliers;
- 10 (B) The interests of customers as beneficiaries of
- 11 the general or specific public benefit purposes
- 12 of the sustainable business corporation;
- 13 (C) Community and societal considerations, including
- 14 those of any community in which offices or
- 15 facilities of the sustainable business
- 16 corporation or its subsidiaries or suppliers are
- 17 located;
- 18 (D) The local and global environment;
- 19 (E) The short-term and long-term interests of the
- 20 sustainable business corporation, including
- 21 benefits that may accrue to the sustainable
- 22 business corporation from its long-term plans and



1 the possibility that these interests may be best
2 served by the continued independence of the
3 sustainable business corporation;

4 (F) The ability of the sustainable business
5 corporation to accomplish its general public
6 benefit purpose and any specific public benefit
7 purpose;

8 (G) The resources, intent, and conduct of any person
9 seeking to acquire control of the corporation;
10 and

11 (H) Any other pertinent factors or the interests of
12 any other group that they deem appropriate.

13 (b) A director shall not be personally liable for monetary
14 damages for any action taken as a director if the director
15 performed the duties of the director's office in compliance with
16 the general standards of conduct pursuant to section 414-221.

17 **§ -7 Benefit director.** (a) The board of directors of a
18 sustainable business corporation shall include one director who
19 shall be designated the "benefit director" and who shall have,
20 in addition to all of the powers, duties, rights, and immunities
21 of the other directors of the sustainable business corporation,



1 the powers, duties, rights, and immunities provided in this
2 section.

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

10 (c) The benefit director shall prepare, and the
11 sustainable business corporation shall include in the annual
12 benefit report to shareholders required by section -11, a
13 statement whether, in the opinion of the benefit director, the
14 sustainable business corporation acted in accordance with its
15 general, and any specific, public benefit purpose in all
16 material respects during the period covered by the report and
17 whether the directors and officers complied with sections
18 -6(a) and -8(a), respectively. If in the opinion of the
19 benefit director the sustainable business corporation or its
20 directors or officers failed to act according to the
21 requirements of this chapter, then the statement of the benefit
22 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 The benefit director's statement included in the final draft of
4 the benefit report shall include formal responses to all
5 questions, concerns, comments, and suggestions raised through
6 the public comment period required by section -11.

7 (d) A benefit director shall be independent of and shall
8 have no material relationship with the sustainable benefit
9 corporation.

10 **§ -8 Standard of conduct for officers.** (a) Each
11 officer of a sustainable business corporation shall consider the
12 interests and factors described in section -6(a) in the
13 manner provided in that section when:

14 (1) The officer has discretion to act with respect to a
15 matter; and

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

18 (A) The creation of a general or specific public
19 benefit by the sustainable business corporation;

20 or

21 (B) Any of the interests or factors referred to in
22 section -6(a).



1 (b) An officer shall not be personally liable for monetary
2 damages for any action taken as an officer if the officer
3 performed the duties of the position in compliance with the
4 general standards of conduct pursuant to section 414-233.

5 **§ -9 Benefit officer.** (a) A sustainable business
6 corporation may have an officer designated as the benefit
7 officer who shall have the authority and shall perform the
8 duties in the management of the sustainable business corporation
9 relating to the purpose of the corporation to create general or
10 specific public benefit as may be provided by or pursuant to the
11 bylaws or, in the absence of controlling provisions in the
12 bylaws, as may be determined by or pursuant to resolutions or
13 orders of the board of directors. If a sustainable business
14 corporation has a benefit officer, the duties of the benefit
15 officer shall include preparing the benefit report required by
16 section -11.

17 (b) A benefit officer shall be independent of and shall
18 have no material relationship with the sustainable benefit
19 corporation.

20 **§ -10 Right of action.** The shareholders and directors
21 of a sustainable business corporation shall have the right to
22 bring direct or derivative claims to enforce corporate purposes



1 and the standards for directors as set forth in section
2 414-221(a) and shall have the right to bring direct or
3 derivative claims to enforce the general or specific public
4 benefit purposes of the sustainable business corporation and the
5 standard of conduct for directors pursuant to section
6 -6(a)(1).

7 **§ -11 Annual benefit report.** (a) A sustainable
8 business corporation shall deliver to each shareholder an annual
9 benefit report, including:

10 (1) A narrative description of:

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

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



- 1 (C) Any circumstances that have hindered the creation
2 by the sustainable business corporation of
3 general or specific public benefits;
- 4 (2) An assessment of the overall social and environmental
5 performance of the sustainable business corporation,
6 prepared in accordance with a third-party standard
7 under section -12 applied consistently with any
8 application of that standard in prior benefit reports
9 or accompanied by an explanation of the reasons for
10 any inconsistent application;
- 11 (3) The name of the benefit director and the benefit
12 officer, if any, and the address to which
13 correspondence to each of them may be directed;
- 14 (4) The compensation paid by the sustainable business
15 corporation during the year to each director in the
16 person's capacity as director;
- 17 (5) The name of each person who owns five per cent or more
18 of the outstanding shares of the sustainable business
19 corporation either beneficially to the extent known to
20 the sustainable business corporation or of record;
- 21 (6) The statement of the benefit director described in
22 section -7(c);



1 (7) A statement of any connection to the third-party
2 standard under section -12, or its directors,
3 officers, or material owners from the sustainable
4 business corporation, or its directors, officers, and
5 material owners, including any financial or governance
6 relationship that might materially affect the
7 credibility of the objective assessment of the third-
8 party standard; and

9 (8) A statement that, as a private corporation under the
10 direction of its board and accountable to its
11 shareholders and the articles and bylaws of the
12 sustainable benefit corporation, including those
13 governing the general or specific public benefit
14 purpose and the activities of the sustainable benefit
15 corporation, the sustainable benefit corporation and
16 its activities are subject to the oversight of the
17 board of the sustainable benefit corporation and are
18 not subject to the direct oversight, regulation, or
19 endorsement of any governmental body.

20 (b) A sustainable business corporation shall post a draft
21 of its benefit report on the public section of its website, or
22 make it otherwise available to the public, for a sixty-day



1 public comment period prior to final publication of the benefit
2 report. The deadline for a commentary shall be published in a
3 publicly accessible manner.

4 (c) 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 (d) 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. If a
12 sustainable business corporation does not have a public website,
13 it shall deliver a copy of its most recent benefit report upon
14 request and without charge to any person who requests a copy.

15 **§ -12 Third-party standard.** A third-party standard for
16 purposes of defining, reporting, and assessing overall corporate
17 social and environmental performance of a sustainable business
18 corporation subject to this chapter shall be:

19 (1) Comprehensive in its assessment of the effect of the
20 business and its operations upon the interests listed
21 in section -6(a);



- 1 (2) Developed by an organization that is independent of
- 2 the sustainable business corporation; and
- 3 (3) Transparent because the following information is
- 4 publicly available:
- 5 (A) The criteria considered when measuring the
- 6 overall social and environmental performance of a
- 7 business, as well as the relative weightings of
- 8 those criteria;
- 9 (B) The identity of the directors, officers, any
- 10 material owners, and the governing body of the
- 11 organization that developed and controls
- 12 revisions to the standard;
- 13 (C) The process by which revisions to the standard
- 14 are made;
- 15 (D) The process by which changes to the membership of
- 16 the governing body of the organization that
- 17 developed and controls revisions to the standard
- 18 are made; and
- 19 (E) An accounting of the sources of financial support
- 20 for the organization that developed and controls
- 21 revisions to the standard, with sufficient detail
- 22 to disclose any relationships that could



1 reasonably be considered to present a potential
2 conflict of interest.

3 **§ -13 Ministerial role of department director.** Section
4 414-16 shall apply to any filings made by a sustainable business
5 corporation."

6 SECTION 2. This Act shall take effect on July 1, 2112.



Report Title:

Business Regulation; Sustainable Business Corporations

Description:

Establishes an organizational and regulatory framework for sustainable benefits corporations. Effective July 1, 2112.
(SB298 HD1)

The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.

