

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 provisions of subsection (a), the
7 articles of a sustainable business corporation may identify one
8 or more specific public benefits for which the sustainable
9 business corporation was created. The identification of a
10 specific public benefit under this subsection shall not limit
11 the obligation of a sustainable business corporation to create a
12 general public benefit. Allowable specific public benefits for
13 sustainable business corporations subject to this chapter
14 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;
- 5 (7) Accomplishing any other particular benefit for society
6 or the environment; and
- 7 (8) Using the right to exclude, conferred by any and all
8 patents in which the sustainable business corporation
9 has an interest in this right through assignment,
10 license, lien, security agreement, or obligation for
11 the following purposes:
 - 12 (A) Creating and retaining good jobs within the State
13 as well as throughout the United States;
 - 14 (B) Upholding fair labor standards nationally and
15 internationally; provided that for purposes of
16 this paragraph, "fair labor standards" shall be
17 construed to prohibit child labor, forced or
18 compulsory labor, discrimination in employment,
19 restrictions on freedom of association, and
20 denial of the right to collective bargaining; and
 - 21 (C) Enhancing environmental protection nationally and
22 internationally; provided that if this public



1 benefit is specified, section -4 shall not
2 apply to the corporation and the sustainable
3 business corporation status shall be permanent,
4 and this specific public benefit shall not be
5 deleted from the articles of the corporation
6 pursuant to subsection (d), unless the annual
7 statement of the benefit director concludes that
8 the sustainable business corporation has failed
9 to pursue this specific public benefit, then the
10 corporation shall have its status as a
11 sustainable business corporation terminated.

12 (c) The creation of general and specific public benefits
13 as provided in subsections (a) and (b) shall be in the best
14 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 **§ -6 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; and

8 (B) The accomplishment of general and specific public
9 benefits set forth in the sustainable business
10 corporation's purposes;

11 and

12 (2) May consider:

13 (A) The employees and workforce of the sustainable
14 business corporation and its subsidiaries and
15 suppliers;

16 (B) The interests of customers as beneficiaries of
17 the general or specific public benefit purposes
18 of the sustainable business corporation;

19 (C) Community and societal considerations, including
20 those of any community in which offices or
21 facilities of the sustainable business



1 corporation or its subsidiaries or suppliers are
2 located;

3 (D) The local and global environment;

4 (E) The short-term and long-term interests of the
5 sustainable business corporation, including
6 benefits that may accrue to the sustainable
7 business corporation from its long-term plans and
8 the possibility that these interests may be best
9 served by the continued independence of the
10 sustainable business corporation;

11 (F) The ability of the sustainable business
12 corporation to accomplish its general public
13 benefit purpose and any specific public benefit
14 purpose;

15 (G) The resources, intent, and conduct of any person
16 seeking to acquire control of the corporation;
17 and

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

20 (b) A director shall not be personally liable for monetary
21 damages for any action taken as a director if the director
22 performed the duties of the director's office in compliance with



1 the general standards of conduct pursuant to section 414-221.

2 **§ -7 Benefit director.** (a) The board of directors of a
3 sustainable business corporation shall include one director who
4 shall be designated the "benefit director" and who shall have,
5 in addition to all of the powers, duties, rights, and immunities
6 of the other directors of the sustainable business corporation,
7 the powers, duties, rights, and immunities provided in this
8 section.

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

16 (c) The benefit director shall prepare, and the
17 sustainable business corporation shall include in the annual
18 benefit report to shareholders required by section -11, a
19 statement whether, in the opinion of the benefit director, the
20 sustainable business corporation acted in accordance with its
21 general, and any specific, public benefit purpose in all
22 material respects during the period covered by the report and



1 whether the directors and officers complied with sections
2 -6(a) and -8(a), respectively. If in the opinion of the
3 benefit director the sustainable business corporation or its
4 directors or officers failed to act according to the
5 requirements of this chapter, then the statement of the benefit
6 director shall include a description of the ways in which the
7 sustainable business corporation or its directors or officers
8 failed to act according to the requirements of this chapter.
9 The benefit director's statement included in the final draft of
10 the benefit report shall include formal responses to all
11 questions, concerns, comments, and suggestions raised through
12 the public comment period required by section -11.

13 (d) A benefit director shall be independent of and shall
14 have no material relationship with the sustainable business
15 corporation.

16 **§ -8 Standard of conduct for officers.** (a) Each
17 officer of a sustainable business corporation shall consider the
18 interests and factors described in section -6(a) in the
19 manner provided in that section when:

20 (1) The officer has discretion to act with respect to a
21 matter; and



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

3 (A) The creation of a general or specific public
4 benefit by the sustainable business corporation;
5 or

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

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

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



1 officer shall include preparing the benefit report required by
2 section -11.

3 (b) A benefit officer shall be independent of and shall
4 have no material relationship with the sustainable business
5 corporation.

6 § -10 Right of action. The shareholders and directors
7 of a sustainable business corporation shall have the right to
8 bring direct or derivative claims to enforce corporate purposes
9 and the standards for directors as set forth in section
10 414-221(a) and shall have the right to bring direct or
11 derivative claims to enforce the general or specific public
12 benefit purposes of the sustainable business corporation and the
13 standard of conduct for directors pursuant to section
14 -6(a)(1).

15 § -11 Annual benefit report. (a) A sustainable
16 business corporation shall deliver to each shareholder an annual
17 benefit report, including:

- 18 (1) A narrative description of:
 - 19 (A) The ways in which the sustainable business
 - 20 corporation pursued general public benefits
 - 21 during the year and the extent to which general
 - 22 public benefit was created;



1 (B) The ways in which the sustainable business
2 corporation pursued any specific public benefit
3 that the articles state as a purpose of the
4 sustainable business corporation and the extent
5 to which that specific public benefit was
6 created; and

7 (C) Any circumstances that have hindered the creation
8 by the sustainable business corporation of
9 general or specific public benefits;

10 (2) An assessment of the overall social and environmental
11 performance of the sustainable business corporation,
12 prepared in accordance with a third-party standard
13 under section -12 applied consistently with any
14 application of that standard in prior benefit reports
15 or accompanied by an explanation of the reasons for
16 any inconsistent application;

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

20 (4) The compensation paid by the sustainable business
21 corporation during the year to each director in the
22 person's capacity as director;



- 1 (5) The name of each person who owns five per cent or more
2 of the outstanding shares of the sustainable business
3 corporation either beneficially to the extent known to
4 the sustainable business corporation or of record;
- 5 (6) The statement of the benefit director described in
6 section -7(c);
- 7 (7) A statement of any connection to the third-party
8 standard under section -12, or its directors,
9 officers, or material owners from the sustainable
10 business corporation, or its directors, officers, and
11 material owners, including any financial or governance
12 relationship that might materially affect the
13 credibility of the objective assessment of the third-
14 party standard; and
- 15 (8) A statement that, as a private corporation under the
16 direction of its board and accountable to its
17 shareholders and the articles and bylaws of the
18 sustainable business corporation, including those
19 governing the general or specific public benefit
20 purpose and the activities of the sustainable business
21 corporation, the sustainable business corporation and
22 its activities are subject to the oversight of the



1 board of the sustainable business corporation and are
2 not subject to the direct oversight, regulation, or
3 endorsement of any governmental body.

4 (b) A sustainable business corporation shall post a draft
5 of its benefit report on the public section of its website, or
6 make it otherwise available to the public, for a sixty-day
7 public comment period prior to final publication of the benefit
8 report. The deadline for a commentary shall be published in a
9 publicly accessible manner.

10 (c) The benefit report shall be sent annually to each
11 shareholder within one hundred twenty days following the end of
12 the fiscal year of the sustainable business corporation.

13 (d) A sustainable business corporation shall post its most
14 recent benefit report on the public portion of its website, if
15 any, except that the compensation paid to directors and any
16 financial or proprietary information included in the benefit
17 report may be omitted from the benefit report as posted. If a
18 sustainable business corporation does not have a public website,
19 it shall deliver a copy of its most recent benefit report upon
20 request and without charge to any person who requests a copy.

21 **§ -12 Third-party standard.** A third-party standard for
22 purposes of defining, reporting, and assessing overall corporate



1 social and environmental performance of a sustainable business
2 corporation subject to this chapter shall be:

3 (1) Comprehensive in its assessment of the effect of the
4 business and its operations upon the interests listed
5 in section -6(a);

6 (2) Developed by an organization that is independent of
7 the sustainable business corporation; and

8 (3) Transparent because the following information is
9 publicly available:

10 (A) The criteria considered when measuring the
11 overall social and environmental performance of a
12 business, as well as the relative weightings of
13 those criteria;

14 (B) The identity of the directors, officers, any
15 material owners, and the governing body of the
16 organization that developed and controls
17 revisions to the standard;

18 (C) The process by which revisions to the standard
19 are made;

20 (D) The process by which changes to the membership of
21 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 § -13 Ministerial role of department director. Section
10 414-16 shall apply to any filings made by a sustainable business
11 corporation."

12 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 business corporations. Effective July 1, 2112.
(SB298 HD3)

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