



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

- 3 (1) Failure to pursue the general public benefit purpose  
4 of the sustainable benefit corporation or any specific  
5 public benefit purpose set forth in its articles; or  
6 (2) Violation of a duty or standard of conduct under this  
7 chapter.

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

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

15 "Independent" means that a person has no material  
16 relationship with a sustainable benefit corporation or any of  
17 its subsidiaries. Service as a benefit director or benefit  
18 officer shall not, by itself, deem a person independent. A  
19 material relationship between a person and a sustainable benefit  
20 corporation or any of its subsidiaries shall be conclusively  
21 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 benefit  
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 benefit 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 benefit  
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 benefit 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 benefit 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 414-7(a);
- 20 (2) Developed by an organization that is independent of  
21 the sustainable benefit 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 benefit corporations.** A  
10 sustainable benefit 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 benefit corporation.

14 **§ -4 Election of an existing domestic corporation to**  
15 **become a sustainable benefit corporation.** (a) An existing  
16 domestic corporation may become a sustainable benefit  
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 benefit 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 benefit  
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 benefit 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 benefit corporation**  
11 **status.** (a) A sustainable benefit 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 benefit corporation, as required by  
15 section -3. An amendment pursuant to this subsection shall  
16 not be effective unless it is adopted by at least the minimum  
17 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 benefit 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 benefit  
2 corporation shall have the purpose of creating a general public  
3 benefit. This purpose is in addition to its purpose as  
4 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 benefit  
7 corporation may identify one or more specific public benefits  
8 for which the sustainable benefit corporation was created. The  
9 identification of a specific public benefit under this  
10 subsection does not limit the obligation of a sustainable  
11 benefit 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 benefit corporation.

15           (d) A sustainable benefit corporation may amend its  
16 articles to add, amend, or delete the identification of a  
17 specific public benefit for which the sustainable benefit  
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 benefit corporation, in considering the best  
3 interests of the sustainable benefit corporation:

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

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

8 (B) The employees and workforce of the sustainable  
9 benefit 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 benefit corporation;

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

18 (E) The local and global environment;

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

7 (e) If the bylaws of a sustainable benefit 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 benefit  
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 benefit  
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 benefit 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 benefit 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 benefit 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 benefit  
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 benefit corporation arising from the  
7 status of the person as a beneficiary.

8 § -10 **Benefit officer.** A sustainable benefit  
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 benefit 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 benefit  
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 benefit 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 benefit corporation or its directors or officers with respect to  
6 the duties of directors and officers under this chapter and the  
7 general and any specific public benefit purpose of the  
8 sustainable benefit corporation, except in a benefit enforcement  
9 proceeding.

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

12 (1) Directly by the sustainable benefit 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 benefit corporation is a  
20 subsidiary; or



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

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

7 (1) A narrative description of:

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

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

21 (2) An assessment of the overall social and environmental  
22 performance of the sustainable benefit 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 benefit  
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 benefit corporation either beneficially, to the extent  
15 known to the sustainable benefit corporation without  
16 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 benefit 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 benefit corporation.

7 (c) A sustainable benefit 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 benefit 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 benefit 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 benefit corporation if the sustainable benefit corporation fails  
16 to file its annual benefit report for a period of two years.

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

19 -13 Rules. The director of commerce and consumer  
20 affairs shall adopt rules pursuant to chapter 91 to effectuate  
21 the purposes of this chapter."  
22



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

2



**Report Title:**

Business Regulation; Sustainable Benefit Corporation

**Description:**

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

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

