

BY: Judicial Proceedings Committee

AMENDMENTS TO SENATE BILL 595

(First Reading File Bill)

AMENDMENT NO. 1

On page 1, in the sponsor line, strike “Senator Raskin” and substitute “Senators Raskin, Kelley, Forehand, and Jacobs”; in line 2, after “Corporations” insert “and Associations”; in line 3, strike “Corporation” and substitute “Limited Liability Company”; strike beginning with “corporation” in line 5 down through “corporation” in line 6 and substitute “limited liability company by including a certain statement in its articles of organization”; in lines 7 and 9, in each instance, strike “corporation” and substitute “limited liability company”; in line 10, strike “of the limited liability company” and substitute “or an amendment to the articles of organization”; in lines 10, 11, 14, and 18, in each instance, strike “the limited liability company” and substitute “a benefit limited liability company”; in line 12, strike “member of the limited liability company” and substitute “person managing the business and affairs of a benefit limited liability company”; in line 13, after “interests;” insert “providing that a person managing the business and affairs of a benefit limited liability company does not have any duty to certain persons on account of certain factors or interests;”; in line 15, strike “of the limited liability company”; strike beginning with “altering” in line 19 down through “changes;” in line 20 and substitute “defining certain terms;”; and in line 21, strike “corporations” and substitute “limited liability companies”.

On pages 1 and 2, strike in their entirety the lines beginning with line 22 on page 1 through line 3 on page 2, inclusive, and substitute:

“BY renumbering

Article - Corporations and Associations

Section 4A–1101 through 4A–1103, respectively, and the subtitle “Subtitle 11. Miscellaneous”

to be Section 4A–1201 through 4A–1203, respectively, and the subtitle “Subtitle 12. Miscellaneous”

(Over)

Annotated Code of Maryland
(2007 Replacement Volume and 2010 Supplement)

BY adding to

Article - Corporations and Associations

Section 4A-1101 through 4A-1108, to be under the new subtitle “Subtitle 11.
Benefit Limited Liability Companies”

Annotated Code of Maryland

(2007 Replacement Volume and 2010 Supplement)”.

AMENDMENT NO. 2

On pages 2 through 6, strike in their entirety the lines beginning with line 4 on page 2 through line 24 on page 6, inclusive, and substitute:

“SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND, That Section(s) 4A-1101 through 4A-1103, respectively, and the subtitle “Subtitle 11. Miscellaneous” of Article - Corporations and Associations of the Annotated Code of Maryland be renumbered to be Section(s) 4A-1201 through 4A-1203, respectively, and the subtitle “Subtitle 12. Miscellaneous.”

SECTION 2. AND BE IT FURTHER ENACTED, That the Laws of Maryland read as follows:

Article – Corporations and Associations

SUBTITLE 11. BENEFIT LIMITED LIABILITY COMPANIES.

4A-1101.

(A) IN THIS SUBTITLE THE FOLLOWING WORDS HAVE THE MEANINGS INDICATED.

(B) “BENEFIT LIMITED LIABILITY COMPANY” MEANS A MARYLAND LIMITED LIABILITY COMPANY THAT ELECTS TO BE A BENEFIT LIMITED LIABILITY COMPANY IN ACCORDANCE WITH § 4A-1103 OF THIS SUBTITLE AND HAS NOT CEASED TO BE A BENEFIT LIMITED LIABILITY COMPANY THROUGH THE OPERATION OF § 4A-1105 OF THIS SUBTITLE.

(C) “GENERAL PUBLIC BENEFIT” MEANS A MATERIAL, POSITIVE IMPACT ON SOCIETY AND THE ENVIRONMENT, AS MEASURED BY A THIRD-PARTY STANDARD, THROUGH ACTIVITIES THAT PROMOTE A COMBINATION OF SPECIFIC PUBLIC BENEFITS.

(D) “SPECIFIC PUBLIC BENEFIT” INCLUDES:

(1) PROVIDING INDIVIDUALS OR COMMUNITIES WITH BENEFICIAL PRODUCTS OR SERVICES;

(2) PROMOTING ECONOMIC OPPORTUNITY FOR INDIVIDUALS OR COMMUNITIES BEYOND THE CREATION OF JOBS IN THE NORMAL COURSE OF BUSINESS;

(3) PRESERVING THE ENVIRONMENT;

(4) IMPROVING HUMAN HEALTH;

(5) PROMOTING THE ARTS, SCIENCES, OR ADVANCEMENT OF KNOWLEDGE;

(6) INCREASING THE FLOW OF CAPITAL TO ENTITIES WITH A PUBLIC BENEFIT PURPOSE; OR

(7) THE ACCOMPLISHMENT OF ANY OTHER PARTICULAR BENEFIT FOR SOCIETY OR THE ENVIRONMENT.

(E) "THIRD-PARTY STANDARD" MEANS A STANDARD FOR DEFINING, REPORTING, AND ASSESSING BEST PRACTICES IN SOCIAL AND ENVIRONMENTAL PERFORMANCE THAT:

(1) IS DEVELOPED BY A PERSON OR ENTITY THAT IS INDEPENDENT OF THE BENEFIT LIMITED LIABILITY COMPANY; AND

(2) IS TRANSPARENT BECAUSE THE FOLLOWING INFORMATION ABOUT THE STANDARD IS PUBLICLY AVAILABLE OR ACCESSIBLE:

(i) THE FACTORS CONSIDERED WHEN MEASURING THE PERFORMANCE OF A BUSINESS;

(ii) THE RELATIVE WEIGHTINGS OF THOSE FACTORS; AND

(iii) THE IDENTITY OF THE PERSONS WHO DEVELOPED AND CONTROL CHANGES TO THE STANDARD AND THE PROCESS BY WHICH THOSE CHANGES WERE MADE.

4A-1102.

(A) THE PROVISIONS OF THIS TITLE APPLY TO BENEFIT LIMITED LIABILITY COMPANIES EXCEPT TO THE EXTENT THAT:

(1) THE CONTEXT OF A PROVISION CLEARLY REQUIRES OTHERWISE; OR

(2) A SPECIFIC PROVISION OF THIS TITLE PROVIDES OTHERWISE.

(B) THIS SUBTITLE APPLIES ONLY TO A BENEFIT LIMITED LIABILITY COMPANY.

(C) (1) THE EXISTENCE OF A PROVISION OF THIS SUBTITLE DOES NOT OF ITSELF CREATE ANY IMPLICATION THAT A CONTRARY OR DIFFERENT RULE OF LAW IS OR WOULD BE APPLICABLE TO A LIMITED LIABILITY COMPANY THAT IS NOT A BENEFIT LIMITED LIABILITY COMPANY.

(2) THIS SUBTITLE DOES NOT AFFECT ANY STATUTE OR RULE OF LAW AS IT APPLIES TO A LIMITED LIABILITY COMPANY THAT IS NOT A BENEFIT LIMITED LIABILITY COMPANY.

(D) A PROVISION OF THE ARTICLES OF ORGANIZATION OR OPERATING AGREEMENT OF A BENEFIT LIMITED LIABILITY COMPANY MAY NOT BE INCONSISTENT WITH ANY PROVISION OF THIS SUBTITLE.

4A-1103.

A LIMITED LIABILITY COMPANY MAY ELECT TO BE A BENEFIT LIMITED LIABILITY COMPANY UNDER THIS SUBTITLE BY INCLUDING IN ITS ARTICLES OF ORGANIZATION A STATEMENT THAT THE LIMITED LIABILITY COMPANY IS A BENEFIT LIMITED LIABILITY COMPANY.

(Over)

4A-1104.

CLEAR REFERENCE TO THE FACT THAT A LIMITED LIABILITY COMPANY IS A BENEFIT LIMITED LIABILITY COMPANY SHALL APPEAR PROMINENTLY:

(1) AT THE HEAD OF THE ARTICLES OF ORGANIZATION OR AN AMENDMENT TO THE ARTICLES OF ORGANIZATION IN WHICH THE ELECTION TO BE A BENEFIT LIMITED LIABILITY COMPANY IS MADE;

(2) AT THE HEAD OF EACH SUBSEQUENT ARTICLES OF ORGANIZATION OF THE BENEFIT LIMITED LIABILITY COMPANY; AND

(3) ON EACH CERTIFICATE REPRESENTING OUTSTANDING INTERESTS IN THE BENEFIT LIMITED LIABILITY COMPANY.

4A-1105.

A BENEFIT LIMITED LIABILITY COMPANY MAY TERMINATE ITS STATUS AS A BENEFIT LIMITED LIABILITY COMPANY AND CEASE TO BE SUBJECT TO THIS SUBTITLE BY AMENDING ITS ARTICLES OF ORGANIZATION TO DELETE THE STATEMENT REQUIRED UNDER § 4A-1103 OF THIS SUBTITLE THAT IT IS A BENEFIT LIMITED LIABILITY COMPANY.

4A-1106.

(A) (1) EACH BENEFIT LIMITED LIABILITY COMPANY SHALL HAVE THE PURPOSE OF CREATING A GENERAL PUBLIC BENEFIT.

(2) THE PURPOSE DESCRIBED IN PARAGRAPH (1) OF THIS SUBSECTION IS IN ADDITION TO, AND MAY BE A LIMITATION ON, THE PURPOSES OF THE BENEFIT LIMITED LIABILITY COMPANY UNDER § 4A-201 OF THIS TITLE.

(B) (1) IN ADDITION TO ITS PURPOSES UNDER § 4A-201 OF THIS TITLE AND SUBSECTION (A) OF THIS SECTION, THE ARTICLES OF ORGANIZATION OR OPERATING AGREEMENT OF A BENEFIT LIMITED LIABILITY COMPANY MAY IDENTIFY AS ONE OF THE PURPOSES OF THE BENEFIT LIMITED LIABILITY COMPANY THE CREATION OF ONE OR MORE SPECIFIC PUBLIC BENEFITS.

(2) THE IDENTIFICATION IN ITS ARTICLES OF ORGANIZATION OR OPERATING AGREEMENT OF A SPECIFIC PUBLIC BENEFIT PURPOSE UNDER PARAGRAPH (1) OF THIS SUBSECTION DOES NOT LIMIT THE OBLIGATION OF A BENEFIT LIMITED LIABILITY COMPANY TO CREATE A GENERAL PUBLIC BENEFIT.

4A-1107.

(A) A PERSON MANAGING THE BUSINESS AND AFFAIRS OF A BENEFIT LIMITED LIABILITY COMPANY:

(1) SHALL CONSIDER THE EFFECTS OF ANY ACTION OR DECISION NOT TO ACT ON:

(I) THE MEMBERS OF THE BENEFIT LIMITED LIABILITY COMPANY;

(II) THE EMPLOYEES AND WORKFORCE OF THE BENEFIT LIMITED LIABILITY COMPANY AND THE SUBSIDIARIES AND SUPPLIERS OF THE BENEFIT LIMITED LIABILITY COMPANY;

(III) THE INTERESTS OF CUSTOMERS AS BENEFICIARIES OF THE GENERAL OR SPECIFIC PUBLIC BENEFIT PURPOSES OF THE BENEFIT LIMITED LIABILITY COMPANY;

(IV) COMMUNITY AND SOCIETAL CONSIDERATIONS, INCLUDING THOSE OF ANY COMMUNITY IN WHICH OFFICES OR FACILITIES OF THE BENEFIT LIMITED LIABILITY COMPANY OR THE SUBSIDIARIES OR SUPPLIERS OF THE BENEFIT LIMITED LIABILITY COMPANY ARE LOCATED; AND

(V) THE LOCAL AND GLOBAL ENVIRONMENT; AND

(2) MAY CONSIDER ANY OTHER PERTINENT FACTORS OR THE INTERESTS OF ANY OTHER GROUP THAT THE PERSON DETERMINES ARE APPROPRIATE TO CONSIDER.

(B) A PERSON MANAGING THE BUSINESS AND AFFAIRS OF A BENEFIT LIMITED LIABILITY COMPANY DOES NOT HAVE ANY DUTY ON ACCOUNT OF THE FACTORS OR INTERESTS SET FORTH IN THIS SECTION TO:

(1) A PERSON THAT IS A BENEFICIARY OF THE PUBLIC BENEFIT PURPOSES OF THE BENEFIT LIMITED LIABILITY COMPANY; OR

(2) A MEMBER OF THE BENEFIT LIMITED LIABILITY COMPANY.

(A) A BENEFIT LIMITED LIABILITY COMPANY SHALL DELIVER TO EACH MEMBER AN ANNUAL BENEFIT REPORT INCLUDING:

(1) A DESCRIPTION OF:

(i) THE WAYS IN WHICH THE BENEFIT LIMITED LIABILITY COMPANY PURSUED A GENERAL PUBLIC BENEFIT DURING THE YEAR AND THE EXTENT TO WHICH THE GENERAL PUBLIC BENEFIT WAS CREATED;

(ii) THE WAYS IN WHICH THE BENEFIT LIMITED LIABILITY COMPANY PURSUED ANY SPECIFIC PUBLIC BENEFIT THAT ITS ARTICLES OF ORGANIZATION OR OPERATING AGREEMENT STATES IS THE PURPOSE OF THE BENEFIT LIMITED LIABILITY COMPANY TO CREATE AND THE EXTENT TO WHICH THAT SPECIFIC PUBLIC BENEFIT WAS CREATED; AND

(iii) ANY CIRCUMSTANCES THAT HAVE HINDERED THE CREATION BY THE BENEFIT LIMITED LIABILITY COMPANY OF THE PUBLIC BENEFIT; AND

(2) AN ASSESSMENT OF THE SOCIETAL AND ENVIRONMENTAL PERFORMANCE OF THE BENEFIT LIMITED LIABILITY COMPANY PREPARED IN ACCORDANCE WITH A THIRD-PARTY STANDARD APPLIED CONSISTENTLY WITH THE PRIOR YEAR'S BENEFIT REPORT OR ACCOMPANIED BY AN EXPLANATION OF THE REASONS FOR ANY INCONSISTENT APPLICATION.

(B) THE BENEFIT REPORT SHALL BE DELIVERED TO EACH MEMBER WITHIN 120 DAYS FOLLOWING THE END OF EACH FISCAL YEAR OF THE BENEFIT LIMITED LIABILITY COMPANY.

(Over)

(C) (1) A BENEFIT LIMITED LIABILITY COMPANY SHALL POST ITS MOST RECENT BENEFIT REPORT ON THE PUBLIC PORTION OF ITS WEB SITE, IF ANY.

(2) IF A BENEFIT LIMITED LIABILITY COMPANY DOES NOT HAVE A PUBLIC WEB SITE, THE BENEFIT LIMITED LIABILITY COMPANY SHALL PROVIDE A COPY OF ITS MOST RECENT BENEFIT REPORT ON DEMAND AND WITHOUT CHARGE TO ANY PERSON WHO REQUESTS A COPY.”.

On page 6, in line 25, strike “2.” and substitute “3”.