

HOUSE BILL 1009

C1

0lr3303
CF SB 690

By: **Delegate Feldman**

Introduced and read first time: February 15, 2010

Assigned to: Economic Matters

A BILL ENTITLED

1 AN ACT concerning

2 **Corporations – B (For–Benefit) Corporation**

3 FOR the purpose of authorizing a corporation to elect to be a certain B (for–benefit)
4 corporation by amending or including in the charter of the corporation a
5 statement that the corporation is a B corporation; providing for the application
6 of this Act; requiring the election to be approved by the stockholders in a certain
7 manner; authorizing a corporation to terminate status as a B corporation in a
8 certain manner; requiring that clear reference to the fact that a corporation is a
9 B corporation appear prominently in a certain charter document; establishing
10 that every B corporation shall have the purpose of creating a public benefit;
11 establishing that the creation of a public benefit as provided in this Act is in the
12 best interests of the B corporation; requiring a director of a B corporation, in
13 performing the duties of director, in determining what the director reasonably
14 believes to be in the best interests of the B corporation, to consider the effects of
15 any action or decision not to act on certain factors; establishing that a certain
16 director shall not have any duty to a certain person; providing that a certain
17 director shall have a certain immunity from liability under certain
18 circumstances; requiring a B corporation to deliver to each stockholder a certain
19 annual report; defining certain terms; and generally relating to for–benefit
20 corporations.

21 BY adding to

22 Article – Corporations and Associations

23 Section 5–6C–01 through 5–6C–08 to be under the new subtitle “Subtitle 6C. B
24 (For–Benefit) Corporations”

25 Annotated Code of Maryland

26 (2007 Replacement Volume and 2009 Supplement)

27 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF
28 MARYLAND, That the Laws of Maryland read as follows:

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



Article – Corporations and Associations

SUBTITLE 6C. B (FOR-BENEFIT) CORPORATIONS.

5-6C-01.

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

(B) “B CORPORATION” MEANS A MARYLAND CORPORATION THAT ELECTS TO BE A FOR-BENEFIT CORPORATION IN ACCORDANCE WITH § 5-6C-03 OF THIS SUBTITLE AND HAS NOT CEASED TO BE A FOR-BENEFIT CORPORATION THROUGH THE OPERATION OF § 5-6C-04 OF THIS SUBTITLE.

(C) “PUBLIC BENEFIT” MEANS:

(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; OR

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

5-6C-02.

(A) THE PROVISIONS OF THE MARYLAND GENERAL CORPORATION LAW APPLY TO B CORPORATIONS EXCEPT TO THE EXTENT THAT:

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

(2) A SPECIFIC PROVISION OF THIS SUBTITLE OR ANOTHER PROVISION OF LAW GOVERNING SPECIFIC CLASSES OF CORPORATIONS PROVIDES OTHERWISE.

1 **(B) THIS SUBTITLE APPLIES ONLY TO B CORPORATIONS.**

2 **(C) (1) THE EXISTENCE OF A PROVISION OF THIS SUBTITLE DOES NOT**
3 **OF ITSELF CREATE ANY IMPLICATION THAT A CONTRARY OR DIFFERENT RULE**
4 **OF LAW IS OR WOULD BE APPLICABLE TO A CORPORATION THAT IS NOT A B**
5 **CORPORATION.**

6 **(2) THIS SUBTITLE DOES NOT AFFECT ANY STATUTE OR RULE OF**
7 **LAW AS IT APPLIES TO A CORPORATION THAT IS NOT A B CORPORATION.**

8 **(D) A PROVISION OF THE CHARTER OR BYLAWS OF A B CORPORATION**
9 **MAY NOT BE INCONSISTENT WITH ANY PROVISION OF THIS SUBTITLE.**

10 **5-6C-03.**

11 **(A) A CORPORATION MAY ELECT TO BE A B CORPORATION UNDER THIS**
12 **SUBTITLE BY AMENDING OR INCLUDING IN THE CHARTER OF THE**
13 **CORPORATION A STATEMENT THAT THE CORPORATION IS A B (“FOR-BENEFIT”)**
14 **CORPORATION.**

15 **(B) AN ELECTION DESCRIBED IN SUBSECTION (A) OF THIS SECTION**
16 **SHALL BE APPROVED BY THE STOCKHOLDERS OF THE CORPORATION BY THE**
17 **HIGHER OF:**

18 **(1) THE VOTE REQUIRED BY THE ARTICLES OF INCORPORATION**
19 **OF THE CORPORATION; OR**

20 **(2) TWO-THIRDS OF THE VOTES ENTITLED TO BE CAST BY THE**
21 **OUTSTANDING SHARES OF THE CORPORATION, PROVIDED THAT IF ANY CLASS**
22 **OF SHARES IS ENTITLED TO VOTE AS A GROUP, APPROVAL SHALL ALSO REQUIRE**
23 **THE AFFIRMATIVE VOTE OF THE HOLDERS OF AT LEAST TWO-THIRDS OF THE**
24 **VOTES ENTITLED TO BE CAST BY THE OUTSTANDING SHARES OF EACH VOTING**
25 **GROUP.**

26 **5-6C-04.**

27 **(A) A CORPORATION MAY TERMINATE STATUS AS A B CORPORATION**
28 **AND CEASE TO BE SUBJECT TO THIS SUBTITLE BY AMENDING THE ARTICLES OF**
29 **INCORPORATION OF THE CORPORATION TO DELETE THE STATEMENT THAT THE**
30 **CORPORATION IS A B CORPORATION.**

31 **(B) THE TERMINATION OF STATUS AS A B CORPORATION SHALL BE**
32 **APPROVED BY THE STOCKHOLDERS OF THE CORPORATION BY THE HIGHER OF:**

1 **(1) THE VOTE REQUIRED BY THE ARTICLES OF INCORPORATION**
2 **OF THE CORPORATION; OR**

3 **(2) TWO-THIRDS OF THE VOTES ENTITLED TO BE CAST BY THE**
4 **OUTSTANDING SHARES OF THE CORPORATION, PROVIDED THAT IF ANY CLASS**
5 **OF SHARES IS ENTITLED TO VOTE AS A GROUP, APPROVAL SHALL ALSO REQUIRE**
6 **THE AFFIRMATIVE VOTE OF THE HOLDERS OF AT LEAST TWO-THIRDS OF THE**
7 **VOTES ENTITLED TO BE CAST BY THE OUTSTANDING SHARES OF EACH VOTING**
8 **GROUP.**

9 **5-6C-05.**

10 **CLEAR REFERENCE TO THE FACT THAT A CORPORATION IS A B**
11 **CORPORATION SHALL APPEAR PROMINENTLY:**

12 **(1) AT THE HEAD OF THE CHARTER DOCUMENT IN WHICH THE**
13 **ELECTION TO BE A B CORPORATION IS MADE;**

14 **(2) AT THE HEAD OF EACH SUBSEQUENT CHARTER DOCUMENT OF**
15 **THE B CORPORATION; AND**

16 **(3) ON EACH CERTIFICATE REPRESENTING OUTSTANDING STOCK**
17 **OF THE B CORPORATION.**

18 **5-6C-06.**

19 **(A) EACH B CORPORATION SHALL HAVE THE PURPOSE OF CREATING A**
20 **PUBLIC BENEFIT.**

21 **(B) THE CREATION OF A PUBLIC BENEFIT AS PROVIDED IN SUBSECTION**
22 **(A) OF THIS SECTION IS IN THE BEST INTERESTS OF THE B CORPORATION.**

23 **5-6C-07.**

24 **(A) A DIRECTOR OF A B CORPORATION, IN PERFORMING THE DUTIES**
25 **OF A DIRECTOR, INCLUDING THE DIRECTOR'S DUTIES AS A MEMBER OF A**
26 **COMMITTEE AND IN ADDITION TO THE DUTIES DESCRIBED IN § 2-405.1 OF THIS**
27 **ARTICLE:**

28 **(1) IN DETERMINING WHAT THE DIRECTOR REASONABLY**
29 **BELIEVES TO BE IN THE BEST INTERESTS OF THE B CORPORATION, SHALL**
30 **CONSIDER THE EFFECTS OF ANY ACTION OR DECISION NOT TO ACT ON:**

1 (I) THE STOCKHOLDERS OF THE B CORPORATION;

2 (II) THE EMPLOYEES AND WORKFORCE OF THE B
3 CORPORATION AND THE SUBSIDIARIES AND SUPPLIERS OF THE B
4 CORPORATION;

5 (III) THE INTERESTS OF CUSTOMERS AS BENEFICIARIES OF
6 THE GENERAL OR SPECIFIC PUBLIC BENEFIT PURPOSES OF THE B
7 CORPORATION;

8 (IV) COMMUNITY AND SOCIETAL CONSIDERATIONS,
9 INCLUDING THOSE OF ANY COMMUNITY IN WHICH OFFICES OR FACILITIES OF
10 THE B CORPORATION OR THE SUBSIDIARIES OR SUPPLIERS OF THE B
11 CORPORATION ARE LOCATED; AND

12 (V) THE LOCAL AND GLOBAL ENVIRONMENT; AND

13 (2) MAY CONSIDER ANY OTHER PERTINENT FACTORS OR THE
14 INTERESTS OF ANY OTHER GROUP THAT THE DIRECTOR DETERMINES ARE
15 APPROPRIATE TO CONSIDER IN LIGHT OF THE PUBLIC BENEFIT DESCRIBED IN
16 THE CHARTER OF THE B CORPORATION.

17 (B) A DIRECTOR OF A B CORPORATION, IN THE PERFORMANCE OF
18 DUTIES IN THAT CAPACITY, DOES NOT HAVE ANY DUTY TO A PERSON THAT IS A
19 BENEFICIARY OF THE PUBLIC BENEFIT PURPOSES OF THE B CORPORATION
20 DESCRIBED IN THE CHARTER OF THE B CORPORATION.

21 (C) A DIRECTOR OF A B CORPORATION, IN THE REASONABLE
22 PERFORMANCE OF DUTIES IN ACCORDANCE WITH THE STANDARD PROVIDED IN
23 THIS SUBTITLE, SHALL HAVE THE IMMUNITY FROM LIABILITY DESCRIBED IN §
24 5-417 OF THE COURTS ARTICLE.

25 5-6C-08.

26 (A) A B CORPORATION SHALL DELIVER TO EACH STOCKHOLDER AN
27 ANNUAL FOR-BENEFIT REPORT INCLUDING:

28 (1) A DESCRIPTION OF:

29 (I) THE WAYS IN WHICH THE B CORPORATION GENERALLY
30 PURSUED THE PUBLIC BENEFIT DESCRIBED IN THE CHARTER DURING THE YEAR
31 AND THE EXTENT TO WHICH THE PUBLIC BENEFIT WAS CREATED; AND

1 **(II) ANY CIRCUMSTANCES THAT HAVE HINDERED THE**
2 **CREATION BY THE B CORPORATION OF THE PUBLIC BENEFIT; AND**

3 **(2) AN ASSESSMENT OF THE SOCIETAL AND ENVIRONMENTAL**
4 **PERFORMANCE OF THE B CORPORATION PREPARED IN ACCORDANCE WITH**
5 **IDENTIFIED FACTORS THAT WERE CONSIDERED IN MEASURING THE**
6 **PERFORMANCE OF THE B CORPORATION.**

7 **(B) THE FOR-BENEFIT REPORT SHALL BE DELIVERED TO EACH**
8 **STOCKHOLDER WITHIN 120 DAYS FOLLOWING THE END OF EACH FISCAL YEAR**
9 **OF THE B CORPORATION.**

10 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
11 October 1, 2010.