

# HOUSE BILL 1009

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CF SB 690

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By: **Delegate Feldman**

Introduced and read first time: February 15, 2010

Assigned to: Economic Matters

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Committee Report: Favorable with amendments

House action: Adopted

Read second time: March 24, 2010

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## CHAPTER \_\_\_\_\_

1 AN ACT concerning

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

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

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EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.

Underlining indicates amendments to bill.

~~Strike-out~~ indicates matter stricken from the bill by amendment or deleted from the law by amendment.



1 BY adding to  
 2 Article – Corporations and Associations  
 3 Section 5–6C–01 through 5–6C–08 to be under the new subtitle “Subtitle 6C. ~~B~~  
 4 ~~(For-Benefit)~~ Benefit Corporations”  
 5 Annotated Code of Maryland  
 6 (2007 Replacement Volume and 2009 Supplement)

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

9 **Article – Corporations and Associations**

10 **SUBTITLE 6C. ~~B (FOR-BENEFIT)~~ BENEFIT CORPORATIONS.**

11 **5–6C–01.**

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

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

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

23 ~~(C)~~ “~~PUBLIC BENEFIT~~” MEANS:

24 (D) “SPECIFIC PUBLIC BENEFIT” INCLUDES:

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

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

30 (3) PRESERVING THE ENVIRONMENT;

31 (4) IMPROVING HUMAN HEALTH;

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

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

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

7           (E) “THIRD-PARTY STANDARD” MEANS A STANDARD FOR DEFINING,  
8 REPORTING, AND ASSESSING BEST PRACTICES IN CORPORATE SOCIAL AND  
9 ENVIRONMENTAL PERFORMANCE THAT:

10           (1) IS DEVELOPED BY A PERSON OR ENTITY THAT IS  
11 INDEPENDENT OF THE BENEFIT CORPORATION; AND

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

14                   (I) THE FACTORS CONSIDERED WHEN MEASURING THE  
15 PERFORMANCE OF A BUSINESS;

16                   (II) THE RELATIVE WEIGHTINGS OF THOSE FACTORS; AND

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

20 5-6C-02.

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

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

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

28           (B) THIS SUBTITLE APPLIES ONLY TO ~~B~~ BENEFIT CORPORATIONS.

29           (C) (1) THE EXISTENCE OF A PROVISION OF THIS SUBTITLE DOES NOT  
30 OF ITSELF CREATE ANY IMPLICATION THAT A CONTRARY OR DIFFERENT RULE

1 OF LAW IS OR WOULD BE APPLICABLE TO A CORPORATION THAT IS NOT A ~~B~~  
2 BENEFIT CORPORATION.

3 (2) THIS SUBTITLE DOES NOT AFFECT ANY STATUTE OR RULE OF  
4 LAW AS IT APPLIES TO A CORPORATION THAT IS NOT A ~~B~~ BENEFIT  
5 CORPORATION.

6 (D) A PROVISION OF THE CHARTER OR BYLAWS OF A ~~B~~ BENEFIT  
7 CORPORATION MAY NOT BE INCONSISTENT WITH ANY PROVISION OF THIS  
8 SUBTITLE.

9 5-6C-03.

10 (A) A CORPORATION MAY ELECT TO BE A ~~B~~ BENEFIT CORPORATION  
11 UNDER THIS SUBTITLE BY AMENDING OR INCLUDING IN THE CHARTER OF THE  
12 CORPORATION A STATEMENT THAT THE CORPORATION IS A ~~B ("FOR BENEFIT")~~  
13 CORPORATION BENEFIT CORPORATION.

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

17 (1) ~~THE VOTE REQUIRED BY THE ARTICLES OF INCORPORATION~~  
18 ~~OF THE CORPORATION; OR~~

19 (2) ~~TWO THIRDS OF THE VOTES ENTITLED TO BE CAST BY THE~~  
20 ~~OUTSTANDING SHARES OF THE CORPORATION, PROVIDED THAT IF ANY CLASS~~  
21 ~~OF SHARES IS ENTITLED TO VOTE AS A GROUP, APPROVAL SHALL ALSO REQUIRE~~  
22 ~~THE AFFIRMATIVE VOTE OF THE HOLDERS OF AT LEAST TWO THIRDS OF THE~~  
23 ~~VOTES ENTITLED TO BE CAST BY THE OUTSTANDING SHARES OF EACH VOTING~~  
24 ~~GROUP~~ IN ACCORDANCE WITH TITLE 2, SUBTITLE 6 OF THIS ARTICLE.

25 5-6C-04.

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

30 (B) ~~THE TERMINATION OF~~ AN AMENDMENT TERMINATING A  
31 CORPORATION'S STATUS AS A ~~B~~ BENEFIT CORPORATION SHALL BE APPROVED  
32 BY THE STOCKHOLDERS OF THE CORPORATION ~~BY THE HIGHER OF:~~ IN  
33 ACCORDANCE WITH TITLE 2, SUBTITLE 6 OF THIS ARTICLE.

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** BENEFIT  
11 CORPORATION SHALL APPEAR PROMINENTLY:

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

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

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

18   5-6C-06.

19           (A) (1) EACH **B** BENEFIT CORPORATION SHALL HAVE THE PURPOSE  
20 OF CREATING A GENERAL PUBLIC BENEFIT.

21           (2) THE PURPOSE DESCRIBED IN PARAGRAPH (1) OF THIS  
22 SUBSECTION IS IN ADDITION TO, AND MAY BE A LIMITATION ON, THE PURPOSES  
23 OF THE CORPORATION UNDER § 2-101 OF THIS ARTICLE.

24           (B) (1) IN ADDITION TO ITS PURPOSES UNDER § 2-101 OF THIS  
25 ARTICLE AND SUBSECTION (A) OF THIS SECTION, THE CHARTER OF A BENEFIT  
26 CORPORATION MAY IDENTIFY AS ONE OF THE PURPOSES OF THE BENEFIT  
27 CORPORATION THE CREATION OF ONE OR MORE SPECIFIC PUBLIC BENEFITS.

28           (2) THE IDENTIFICATION IN ITS CHARTER OF A SPECIFIC PUBLIC  
29 BENEFIT PURPOSE UNDER PARAGRAPH (1) OF THIS SUBSECTION DOES NOT  
30 LIMIT THE OBLIGATION OF A BENEFIT CORPORATION TO CREATE A GENERAL  
31 PUBLIC BENEFIT.

1           ~~(B)~~ (C)       THE CREATION OF A GENERAL PUBLIC BENEFIT OR SPECIFIC  
 2 PUBLIC BENEFIT AS PROVIDED IN ~~SUBSECTION (A)~~ SUBSECTIONS (A) AND (B) OF  
 3 THIS SECTION IS IN THE BEST INTERESTS OF THE B BENEFIT CORPORATION.

4   5-6C-07.

5           (A)   A DIRECTOR OF A B BENEFIT CORPORATION, IN PERFORMING THE  
 6 DUTIES OF A DIRECTOR, INCLUDING THE DIRECTOR'S DUTIES AS A MEMBER OF  
 7 A COMMITTEE AND IN ADDITION TO THE DUTIES DESCRIBED IN § 2-405.1 OF  
 8 THIS ARTICLE:

9           (1)   IN DETERMINING WHAT THE DIRECTOR REASONABLY  
 10 BELIEVES TO BE IN THE BEST INTERESTS OF THE B BENEFIT CORPORATION,  
 11 SHALL CONSIDER THE EFFECTS OF ANY ACTION OR DECISION NOT TO ACT ON:

12                   (I)   THE STOCKHOLDERS OF THE B BENEFIT  
 13 CORPORATION;

14                   (II)   THE EMPLOYEES AND WORKFORCE OF THE B BENEFIT  
 15 CORPORATION AND THE SUBSIDIARIES AND SUPPLIERS OF THE B BENEFIT  
 16 CORPORATION;

17                   (III)   THE INTERESTS OF CUSTOMERS AS BENEFICIARIES OF  
 18 THE GENERAL OR SPECIFIC PUBLIC BENEFIT PURPOSES OF THE B BENEFIT  
 19 CORPORATION;

20                   (IV)   COMMUNITY AND SOCIETAL CONSIDERATIONS,  
 21 INCLUDING THOSE OF ANY COMMUNITY IN WHICH OFFICES OR FACILITIES OF  
 22 THE B BENEFIT CORPORATION OR THE SUBSIDIARIES OR SUPPLIERS OF THE B  
 23 BENEFIT CORPORATION ARE LOCATED; AND

24                   (V)   THE LOCAL AND GLOBAL ENVIRONMENT; AND

25           (2)   MAY CONSIDER ANY OTHER PERTINENT FACTORS OR THE  
 26 INTERESTS OF ANY OTHER GROUP THAT THE DIRECTOR DETERMINES ARE  
 27 APPROPRIATE TO CONSIDER ~~IN LIGHT OF THE PUBLIC BENEFIT DESCRIBED IN~~  
 28 ~~THE CHARTER OF THE B CORPORATION.~~

29           (B)   A DIRECTOR OF A B BENEFIT CORPORATION, IN THE PERFORMANCE  
 30 OF DUTIES IN THAT CAPACITY, DOES NOT HAVE ANY DUTY TO A PERSON THAT IS  
 31 A BENEFICIARY OF THE PUBLIC BENEFIT PURPOSES OF THE B BENEFIT  
 32 CORPORATION ~~DESCRIBED IN THE CHARTER OF THE B CORPORATION.~~

33           (C)   A DIRECTOR OF A B BENEFIT CORPORATION, IN THE REASONABLE  
 34 PERFORMANCE OF DUTIES IN ACCORDANCE WITH THE STANDARD PROVIDED IN

1 THIS SUBTITLE, SHALL HAVE THE IMMUNITY FROM LIABILITY DESCRIBED IN §  
2 5-417 OF THE COURTS ARTICLE.

3 5-6C-08.

4 (A) A ~~B~~ BENEFIT CORPORATION SHALL DELIVER TO EACH  
5 STOCKHOLDER AN ANNUAL ~~FOR-BENEFIT~~ BENEFIT REPORT INCLUDING:

6 (1) A DESCRIPTION OF:

7 (i) THE WAYS IN WHICH THE ~~B~~ BENEFIT CORPORATION  
8 ~~GENERALLY PURSUED THE A GENERAL PUBLIC BENEFIT DESCRIBED IN THE~~  
9 ~~CHARTER DURING THE YEAR AND THE EXTENT TO WHICH THE GENERAL PUBLIC~~  
10 ~~BENEFIT WAS CREATED; AND~~

11 (ii) THE WAYS IN WHICH THE BENEFIT CORPORATION  
12 PURSUED ANY SPECIFIC PUBLIC BENEFIT THAT ITS CHARTER STATES IS THE  
13 PURPOSE OF THE BENEFIT CORPORATION TO CREATE AND THE EXTENT TO  
14 WHICH THAT SPECIFIC PUBLIC BENEFIT WAS CREATED; AND

15 (iii) ANY CIRCUMSTANCES THAT HAVE HINDERED THE  
16 CREATION BY THE ~~B~~ BENEFIT CORPORATION OF THE PUBLIC BENEFIT; AND

17 (2) AN ASSESSMENT OF THE SOCIETAL AND ENVIRONMENTAL  
18 PERFORMANCE OF THE ~~B~~ BENEFIT CORPORATION PREPARED IN ACCORDANCE  
19 WITH ~~IDENTIFIED FACTORS THAT WERE CONSIDERED IN MEASURING THE~~  
20 ~~PERFORMANCE OF THE B CORPORATION~~ A THIRD-PARTY STANDARD APPLIED  
21 CONSISTENTLY WITH THE PRIOR YEAR'S BENEFIT REPORT OR ACCOMPANIED BY  
22 AN EXPLANATION OF THE REASONS FOR ANY INCONSISTENT APPLICATION.

23 (B) ~~THE FOR-BENEFIT BENEFIT REPORT SHALL BE DELIVERED TO~~  
24 ~~EACH STOCKHOLDER WITHIN 120 DAYS FOLLOWING THE END OF EACH FISCAL~~  
25 ~~YEAR OF THE B BENEFIT CORPORATION.~~

26 (C) (1) A BENEFIT CORPORATION SHALL POST ITS MOST RECENT  
27 BENEFIT REPORT ON THE PUBLIC PORTION OF ITS WEBSITE, IF ANY.

28 (2) IF A BENEFIT CORPORATION DOES NOT HAVE A PUBLIC  
29 WEBSITE, THE BENEFIT CORPORATION SHALL PROVIDE A COPY OF ITS MOST  
30 RECENT BENEFIT REPORT ON DEMAND AND WITHOUT CHARGE TO ANY PERSON  
31 WHO REQUESTS A COPY.

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