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An Act To Provide for the Establishment of Benefit Corporations

Be it enacted by the People of the State of Maine as follows:

Sec. 1. 13-C MRSA c. 18 is enacted to read:

CHAPTER 18

BENEFIT CORPORATIONS

SUBCHAPTER 1

GENERAL PROVISIONS

§ 1801. Application and effect of chapter

- 1. Application of chapter.** This chapter applies to all benefit corporations.
- 2. Application of corporation law generally.** This chapter does not create an implication that a contrary or different rule of law applies to a corporation that is not a benefit corporation. This chapter does not affect a statute or rule of law that applies to a corporation that is not a benefit corporation.
- 3. Laws applicable.** Except as otherwise provided in this chapter, this Title is generally applicable to all benefit corporations. A benefit corporation may be subject simultaneously to this chapter and Title 13, chapter 22-A. This chapter supersedes other provisions of this Title and Title 13, chapter 22-A with regard to benefit corporations.
- 4. Limit on articles and bylaws.** A provision of the articles of incorporation or bylaws of a benefit corporation may not limit, be inconsistent with or supersede a provision of this chapter.

§ 1802. Definitions

As used in this chapter, unless the context otherwise indicates, the following terms have the following meanings.

- 1. Benefit corporation.** "Benefit corporation" means a corporation:
 - A. That has elected to become subject to this chapter pursuant to section 1804; and**
 - B. The status of which as a benefit corporation has not been terminated.**
- 2. Benefit director.** "Benefit director" means the director designated as the benefit director of a benefit corporation under section 1822.

3. Benefit enforcement proceeding. "Benefit enforcement proceeding" means a claim or action or proceeding for:

- A. Failure of a benefit corporation to pursue or create a general public benefit or a specific public benefit purpose set forth in its articles; or
- B. Violation of any obligation, duty or standard of conduct under this chapter.

4. Benefit officer. "Benefit officer" means the individual designated as the benefit officer of a benefit corporation under section 1824.

5. General public benefit. "General public benefit" means a material positive impact on society and the environment, taken as a whole, assessed against a 3rd-party standard, from the business and operations of a benefit corporation.

6. Independent. "Independent" means having no material relationship with a benefit corporation or a subsidiary of the benefit corporation, except that serving as benefit director or benefit officer does not make an individual not independent. A material relationship between an individual and a benefit corporation or any of its subsidiaries is presumed to exist if any of the following applies:

- A. The individual is, or has been within the last 3 years, an employee other than a benefit officer of the benefit corporation or a subsidiary;
- B. An immediate family member of the individual is, or has been within the last 3 years, an executive officer other than a benefit officer of the benefit corporation or a subsidiary; and
- C. There is beneficial or record ownership of 5% or more of the outstanding shares of the benefit corporation, calculated as if all outstanding rights to acquire equity interests in the benefit corporation had been exercised, by:

(1) The individual; or

(2) An entity:

(a) Of which the individual is a director, an officer or a manager; or

(b) In which the individual owns beneficially or of record 5% or more of the outstanding equity interests, calculated as if all outstanding rights to acquire equity interests in the entity had been exercised.

7. Minimum status vote. "Minimum status vote" means:

- A. In the case of a corporation, in addition to any other required approval or vote, a vote to approve a corporate action:

(1) In which the shareholders of every class or series are entitled to vote as a separate voting group on the corporate action regardless of a limitation stated in the articles of incorporation or bylaws on the voting rights of any class or series; and

(2) That requires the affirmative vote of the shareholders of each class or series entitled to cast at least 2/3 of the votes that all shareholders of the class or series are entitled to cast on the action; and

B. In the case of a domestic entity other than a corporation, in addition to any other required approval, vote or consent, a vote to approve a corporate action:

(1) In which the holders of every class or series of equity interest in the entity that are entitled to receive a distribution of any kind from the entity are entitled to vote on or consent to the action regardless of any otherwise applicable limitation on the voting or consent rights of any class or series; and

(2) That requires the affirmative vote or consent of the holders described in subparagraph (1) entitled to cast at least 2/3 of the votes or consents that all of those holders are entitled to cast on the action.

8. Specific public benefit. "Specific public benefit" means any particular benefit to society or the environment, including without limitation:

A. The provision of low-income or underserved individuals or communities with beneficial products or services;

B. The promotion of economic opportunity for individuals or communities beyond the creation of jobs in the normal course of business;

C. The protection or restoration of the environment;

D. The improvement of human health;

E. The promotion of the arts, sciences or advancement of knowledge; and

F. The increase of the flow of capital to entities that endeavor to benefit society or the environment.

9. Subsidiary. "Subsidiary" means, in relation to a person, an entity in which the person owns beneficially or of record 50% or more of the outstanding equity interests, calculated as if all outstanding rights to acquire equity interests in the entity had been exercised.

10. Third-party standard. "Third-party standard" means a recognized standard for defining, reporting and assessing corporate social and environmental performance that:

A. Assesses the effects of the business and its operations upon the interests listed in section 1821, subsection 1;

B. Is developed by an entity that:

(1) Is not controlled by the benefit corporation;

(2) Has access to necessary expertise to assess overall corporate social and environmental performance; and

(3) Uses a balanced, multi-stakeholder approach to develop the standard, including a reasonable public comment period; and

C. Provides for transparency by making the following information publicly available:

(1) The criteria considered when measuring the overall social and environmental performance of a business and the relative weightings, if any, of those criteria;

(2) The identity of the directors, officers, material owners and governing body of the entity that developed and controls revisions to the standard;

(3) The process by which revisions to the standard and changes to the membership of the governing body are made; and

(4) An accounting of the revenue and sources of financial support for the entity, with sufficient detail to disclose any relationships that could reasonably be considered to present a potential conflict of interest.

§ 1803. Incorporation of benefit corporation

A benefit corporation must be incorporated in accordance with chapter 2, and its articles of incorporation must state that it is a benefit corporation.

§ 1804. Election of benefit corporation status

1. Existing corporation. An existing corporation may become a benefit corporation under this chapter by amending its articles of incorporation so that they contain, in addition to the requirements of section 202, a statement that the corporation is a benefit corporation. In order to be effective, the amendment must be adopted by at least the minimum status vote.

2. Mergers, conversions and share exchanges. This subsection governs mergers, conversions and share exchanges when the resulting entity is a benefit corporation.

A. Except as provided in paragraph B, if a domestic entity that is not a benefit corporation is a party to a merger or conversion or the exchanging entity in a share exchange and the surviving, new or resulting entity in the merger, conversion or share exchange is to be a benefit corporation, the plan of merger, conversion or share exchange must be approved by the domestic entity by at least the minimum status vote.

B. Paragraph A does not apply in the case of a corporation that is a party to a merger if the shareholders of the corporation are not entitled to vote on the merger pursuant to section 1105.

§ 1805. Termination of benefit corporation status

1. Termination. A benefit corporation may terminate its status as such and cease to be subject to this chapter by amending its articles of incorporation to delete the provision required by section 1803 or section 1804 to be stated in the articles of a benefit corporation. In order to be effective, the amendment must be adopted by at least the minimum status vote.

2. Mergers, conversions and share exchanges. This subsection governs mergers, conversions and share exchanges when the resulting entity is not a benefit corporation.

A. Except as provided in paragraph B, if a plan of merger, conversion or share exchange would have the effect of terminating the status of a corporation as a benefit corporation, the plan must be adopted by at least the minimum status vote in order to be effective.

B. Paragraph A does not apply in the case of a corporation that is a party to a merger if the shareholders of the corporation are not entitled to vote on the merger pursuant to section 1105.

C. Any sale, lease, exchange or other disposition of all or substantially all of the assets of a benefit corporation, unless the transaction is in the usual and regular course of business, is not effective unless the transaction is approved by at least the minimum status vote.

SUBCHAPTER 2

CORPORATE PURPOSES

§ 1811. Corporate purposes

1. General public benefit purpose. A benefit corporation must have a purpose of creating a general public benefit. This purpose is in addition to its purpose under section 301.

2. Optional specific public benefit purpose. The articles of incorporation of a benefit corporation may identify one or more specific public benefits that it is the purpose of the benefit corporation to create in addition to its purposes under section 301 and subsection 1. The identification of a specific public benefit under this subsection does not limit the purpose of a benefit corporation to create a general public benefit under subsection 1.

3. Effect of purposes. The creation of a general public benefit and a specific public benefit under subsections 1 and 2 is in the best interests of the benefit corporation.

4. Amendment. A benefit corporation may amend its articles of incorporation to add, amend or delete the identification of a specific public benefit that it is the purpose of the benefit corporation to create. In order to be effective, the amendment must be adopted by at least the minimum status vote.

5. Professional corporation. A professional corporation that is a benefit corporation does not violate Title 13, section 732 by having the purpose to create a general public benefit or a specific public benefit.

SUBCHAPTER 3

ACCOUNTABILITY

§ 1821. Standard of conduct for directors

1. Consideration of interests. In discharging the duties of their respective positions and in considering the best interests of the benefit corporation, the board of directors, committees of the board and individual directors of a benefit corporation shall consider the effects of any action or inaction upon:

- A. The shareholders of the benefit corporation;
- B. The employees and work force of the benefit corporation, its subsidiaries and its suppliers;
- C. The interests of customers as beneficiaries of the general public benefit or specific public benefit purposes of the benefit corporation;
- D. Community and societal factors, including those of each community in which offices or facilities of the benefit corporation, its subsidiaries or its suppliers are located;
- E. The local and global environment;
- F. The short-term and long-term interests of the benefit corporation, including benefits that may accrue to the benefit corporation from its long-term plans and the possibility that these interests may be best served by the continued independence of the benefit corporation; and
- G. The ability of the benefit corporation to accomplish its general public benefit purpose and any specific public benefit purpose.

The board of directors, committees of the board and individual directors of a benefit corporation may also consider other pertinent factors or the interests of any other group that they consider appropriate and may give priority to an interest or factor according to the benefit corporation's articles of incorporation.

2. Coordination with other provisions of law. The consideration of interests and factors in the manner provided by subsection 1 does not constitute a violation of section 832.

3. Exoneration from personal liability. Except as provided in the articles of incorporation, a director is not personally liable for monetary damages for:

- A. Any action or inaction in the course of performing the duties of a director under subsection 1 if the director performed the duties of office in compliance with section 832 and this section; or
- B. Failure of the benefit corporation to pursue or create a general public benefit or a specific public benefit.

4. Limitation on standing. A director does not have a duty to a person that is a beneficiary of the general public benefit purpose or a specific public benefit purpose of a benefit corporation arising from the status of the person as a beneficiary.

5. Business judgments. A director who makes a business judgment in good faith fulfills the duty under this section if the director:

- A. Is not interested in the subject of the business judgment;
- B. Is informed with respect to the subject of the business judgment to the extent the director reasonably believes to be appropriate under the circumstances; and
- C. Rationally believes that the business judgment is in the best interests of the benefit corporation.

§ 1822. Benefit director

1. General rule. The board of directors of a benefit corporation that is a public corporation shall, and the board of any other benefit corporation may, include a director, who:

- A. Is designated the benefit director; and
- B. Has, in addition to the powers, duties, rights and immunities of the other directors of the benefit corporation, the powers, duties, rights and immunities provided in this chapter for a benefit director.

2. Election, removal and qualifications. The benefit director must be elected, and may be removed, in the manner provided by chapter 8, subchapter 1. Except as provided in subsection 6, the benefit director must be an individual who is independent. The benefit director may also serve as the benefit officer. The articles of incorporation or bylaws of a benefit corporation may prescribe additional qualifications of the benefit director not inconsistent with this subsection.

3. Annual compliance statement. The benefit director shall prepare, and the benefit corporation shall include in the annual benefit report to shareholders required by section 1832, the opinion of the benefit director on the following:

- A. Whether the benefit corporation acted in accordance with its general public benefit purpose and any specific public benefit purpose in all material respects during the period covered by the report; and
- B. Whether the directors and officers complied with section 1821, subsection 1 and section 1823, subsection 1, respectively.

If, in the opinion of the benefit director, the benefit corporation or its directors or officers failed to act or comply in the manner described in paragraphs A and B, the benefit director must provide in the report a description of the ways in which the benefit corporation or its directors or officers failed to act or comply.

4. Status of actions. An act or inaction of an individual in the capacity of a benefit director constitutes for all purposes an act of that individual in the capacity of a director of the benefit corporation.

5. Exoneration from personal liability. Regardless of whether the articles of incorporation of a benefit corporation include a provision eliminating or limiting the personal liability of directors authorized by section 202, subsection 2, paragraph D, a benefit director is not personally liable for an act or omission in the capacity of a benefit director unless the act or omission constitutes self-dealing, willful misconduct or a knowing violation of law.

6. Professional corporation. The benefit director of a professional corporation as defined in Title 13, section 723 does not need to be independent.

§ 1823. Standard of conduct for officers

1. General rule. An officer of a benefit corporation shall consider the interests and factors described in section 1821, subsection 1 in the manner provided in section 1831, subsection 1 if:

- A. The officer has discretion to act with respect to a matter; and
- B. It reasonably appears to the officer that the matter may have a material effect on the creation by the benefit corporation of a general public benefit or a specific public benefit identified in the articles of incorporation of the benefit corporation.

2. Coordination with other provisions of law. The consideration of interests and factors in the manner provided in subsection 1 does not constitute a violation of section 843.

3. Exoneration from personal liability. Except as provided in the articles of incorporation, an officer is not personally liable for monetary damages for:

A. An action or inaction as an officer in the course of performing the duties of an officer under subsection 1 if the officer performed the duties of the position in compliance with section 843 and this section; or

B. Failure of the benefit corporation to pursue or create a general public benefit or a specific public benefit.

4. Limitation on standing. An officer does not have a duty to a person that is a beneficiary of the general public benefit purpose or a specific public benefit purpose of a benefit corporation arising from the status of the person as a beneficiary.

5. Business judgments. An officer who makes a business judgment in good faith fulfills the duty under this section if the officer:

A. Is not interested in the subject of the business judgment;

B. Is informed with respect to the subject of the business judgment to the extent the officer reasonably believes to be appropriate under the circumstances; and

C. Rationally believes that the business judgment is in the best interests of the benefit corporation.

§ 1824. Benefit officer

1. Designation. A benefit corporation may have an officer designated the benefit officer.

2. Functions. A benefit officer has:

A. The powers and duties relating to the purpose of the corporation to create a general public benefit or a specific public benefit provided by the bylaws or, absent controlling provisions in the bylaws, by resolution or order of the board of directors; and

B. The duty to prepare the benefit report required by section 1831.

§ 1825. Right of action

1. General rule. Except in a benefit enforcement proceeding, a person may not bring an action or assert a claim against a benefit corporation or its directors or officers with respect to:

A. Failure to pursue or create a general public benefit or a specific public benefit set forth in the articles of incorporation; or

B. Violation of an obligation, duty or standard of conduct under this chapter.

2. Limitation on liability of corporation. A benefit corporation is not liable for monetary damages under this chapter for any failure of the benefit corporation to pursue or create a general public benefit or a specific public benefit.

3. Standing. A benefit enforcement proceeding may be commenced or maintained only:

A. Directly by the benefit corporation; or

B. Derivatively in accordance with chapter 7, subchapter 4 by:

(1) A person or group of persons that owned beneficially or of record at least 2% of the total number of shares of a class or series outstanding at the time of the act or omission complained of;

(2) A director;

(3) A person or group of persons that owned beneficially or of record 5% or more of the outstanding equity interests in an entity of which the benefit corporation is a subsidiary at the time of the act or omission complained of; or

(4) Other persons as specified in the articles of incorporation or bylaws of the benefit corporation.

4. Beneficial ownership. For purposes of this section, a person is the beneficial owner of shares or equity interests if the shares or equity interests are held in a voting trust or by a nominee on behalf of the beneficial owner.

SUBCHAPTER 4

TRANSPARENCY

§ 1831. Preparation of annual benefit report

1. Contents. A benefit corporation shall prepare an annual benefit report including:

A. A narrative description of:

(1) The ways in which the benefit corporation pursued a general public benefit during the year and the extent to which the general public benefit was created;

(2) The ways in which the benefit corporation pursued a specific public benefit that the articles of incorporation state it is the purpose of the benefit corporation to create and the extent to which that specific public benefit was created;

(3) Any circumstances that have hindered the creation by the benefit corporation of a general public benefit or a specific public benefit; and

(4) The process and rationale for selecting or changing the 3rd-party standard used to prepare the benefit report;

B. An assessment of the overall social and environmental performance of the benefit corporation against a 3rd-party standard:

(1) Applied consistently with any application of that standard in prior benefit reports; or

(2) Accompanied by an explanation of the reasons for any inconsistent application or the change to that standard from the one used in the immediately prior report;

C. The name of the benefit director and the benefit officer, if any, and the address to which correspondence to each of them may be directed;

D. The compensation paid by the benefit corporation during the year to each director in the capacity of a director;

E. The statement of the benefit director described in section 1822, subsection 3; and

F. A statement of any connection between the organization that established the 3rd-party standard, or its directors, officers or any holder of 5% or more of the governance interests in the organization, and the benefit corporation, or its directors, officers or any holder of 5% or more of the outstanding shares of the benefit corporation, including any financial or governance relationship that might materially affect the credibility of the use of the 3rd-party standard.

2. Change of benefit director. If, during the year covered by a benefit report, a benefit director resigned from or refused to stand for reelection to the position of benefit director, or was removed from the position of benefit director, and the benefit director furnished the benefit corporation with any written correspondence concerning the circumstances surrounding the resignation, refusal or removal, the benefit report must include that correspondence as an exhibit.

3. Audit not required. Neither the benefit report nor the assessment of the performance of the benefit corporation in the benefit report required by subsection 1, paragraph B needs to be audited or certified by a 3rd party.

§ 1832. Availability of annual benefit report

1. Timing of report. A benefit corporation shall send its annual benefit report to each shareholder on the earlier of:

A. One hundred and twenty days following the end of the fiscal year of the benefit corporation; and

B. At the same time the benefit corporation delivers any other annual report to its shareholders.

2. Website posting. A benefit corporation shall post all of its annual benefit reports on the public portion of its Internet website. The compensation paid to directors and financial or proprietary information included in the benefit reports may be omitted from the annual benefit reports as posted.

3. Availability of copies. If a benefit corporation does not have an Internet website, the benefit corporation shall provide a copy of its most recent annual benefit report, without charge, to any person that requests a copy, but the compensation paid to directors and financial or proprietary information included in the annual benefit report may be omitted from the copy of the annual benefit report provided.

4. Filing of report. Concurrently with the delivery of the annual benefit report to shareholders under subsection 1, the benefit corporation shall deliver a copy of the annual benefit report to the Secretary of State for filing, but the compensation paid to directors and financial or proprietary information included in the annual benefit report may be omitted from the annual benefit report as delivered to the Secretary of State. The fee for filing the annual benefit report is the same as the fee for filing an annual report under section 123, subsection 1, paragraph DD.

SUMMARY

This bill creates a statutory framework that allows a corporation to elect to become a benefit corporation by explicitly stating in its articles of incorporation a general benefit purpose or one or more specific benefit purposes, which are other than maximizing shareholder value. "General public benefit" means a material positive impact on society and the environment, taken as a whole, assessed against a 3rd-party standard, from the business and operations of the benefit corporation. A specific public benefit can be providing goods and services to underserved individuals and communities, the promotion of economic opportunities, protecting the environment, improving human health or other particular benefits to society or the environment.

A benefit corporation may be subject to a benefit enforcement proceeding for failing to pursue or create a general public benefit or a specific public benefit as set forth in its articles of incorporation, or for a violation of any obligation, duty or standard of conduct imposed.

A benefit corporation must make its annual benefit report available publicly and file it as an annual corporate report with the Secretary of State.