

**MINNESOTA  
PUBLIC BENEFIT CORPORATION  
ACT**



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April 29, 2014

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## **Introduction**

Public benefit corporation legislation has become law in Minnesota. The public benefit corporation is a relatively recent legal innovation that occupies a hybrid position between a traditional corporation and a non-profit corporation. A public benefit corporation requires directors to consider the impacts of corporate action on either all stakeholders in general or on a specific group of stakeholders, in addition to merely considering the impact on shareholders. At the same time, a public benefit corporation operates for profit and can confer pecuniary gain upon its shareholders (something not possible in a non-profit corporation). While these effects can be achieved through contractual modifications under current law, the legislation provides a formal and standard model for such enterprises and allows them to be easily distinguished by consumers and commercial partners from traditional for-profit corporations.

## **Minnesota Public Benefit Corporation Legislation**

The legislation is inscribed as new Minnesota Chapter 304A, which provides an overlay to the Minnesota Business Corporation Act in Chapter 302A (the “MBCA”). The MBCA applies to all public benefit corporations, unless a specific provision of the Minnesota Public Benefit Corporation Act conflicts with the MBCA, in which case the Minnesota Public Benefit Corporation Act governs. No provision of a public benefit corporation’s articles, bylaws, or shareholder control agreement can supersede any provision of the Minnesota Public Benefit Corporations Act.

A “public benefit corporation” as described in the statute, means a corporation formed under the MBCA:

- that has elected to become subject to the Minnesota Public Benefit Corporation Act; and
- whose status as a public benefit corporation has not been terminated or revoked.

## **Effective Date**

The legislation is effective January 1, 2015.

## **Types of Public Benefit Corporations**

There are two types of public benefit corporations: general benefit corporations and specific benefit corporations. A “general benefit corporation” means a public benefit corporation that elects in its articles to pursue general public benefit and that may state in its articles a specific public benefit purpose it elects to pursue in addition to the pursuit of general public benefit. “General public benefit” means a net material positive impact from the business and operations of a general benefit corporation on society, the environment, and the well-being of present and future generations.

“Specific benefit corporation” means a public benefit corporation that states in its articles a specific public benefit purpose it elects to pursue, but does not include a general benefit corporation that states in its articles a specific public benefit purpose it elects to pursue. “Specific public benefit” means one or more positive impacts, or reduction of a negative impact, on specified categories of natural persons, entities, communities, or interests, other than

shareholders in their capacity as shareholders, as enumerated in the articles of a public benefit corporation.

In other words, a general benefit corporation always has a purpose to pursue a general public benefit, and may have an additional purpose to pursue a specific public benefit, while a specific benefit corporation has a purpose to pursue only a specific public benefit and not any general public benefit. The distinctions between general benefit corporations and specific benefit corporations effect the scope of the fiduciary duties of directors, discussed in further detail below.

### **Establishment of a Public Benefit Corporation**

A public benefit corporation may be established at the time of incorporation pursuant to the MBCA by the inclusion within the articles of incorporation the statements that the corporation is a:

- general benefit corporation;
- general benefit corporation that also elects to pursue a specific public benefit purpose as stated in its articles; or
- a specific benefit corporation that elects to pursue a specific public benefit purpose as stated in its articles.

An existing corporation can also elect to become a public benefit corporation by amending its articles as described above. However, the amendment of a corporation's articles to become a public benefit corporation will give rise to dissenters' rights under Section 302A.471 and 302A.473 of the MBCA.

### **Name**

A public benefit corporation name must comply with the naming requirements of the MBCA, and with respect to:

- a general benefit corporation, contain the words "general benefit corporation," or the abbreviation "GBC;" and
- a specific benefit corporation, contain the words "specific benefit corporation," or the abbreviation "SBC."

### **Standard of Conduct**

#### *General Benefit Corporations*

In discharging the duties of the position of director of a general benefit corporation, a director:

- must consider the effects of any proposed, contemplated, or actual conduct on:
  - the general benefit corporation's ability to pursue general public benefit;
  - if the articles also state a specific public benefit purpose, the general benefit corporation's ability to pursue its specific public benefit; and
  - the interests of the corporation's employees, customers, suppliers, creditors, the economy of the state and nation, community and societal considerations, and the long-term as well as short-term interests of the corporation and its shareholders, in addition to the pecuniary interests of its shareholders; and

- may not give regular, presumptive, or permanent priority to:
  - the pecuniary interests of the shareholders; or
  - any other interest or consideration unless the articles identify the interest or consideration as having priority.

### *Specific Benefit Corporations*

In discharging the duties of the position of director of a specific benefit corporation, a director:

- must consider the effects of any proposed, contemplated, or actual conduct on:
  - the pecuniary interest of its shareholders; and
  - the specific benefit corporation’s ability to pursue its specific public benefit purpose;
- may consider the interests of the corporation’s employees, customers, suppliers, creditors, the economy of the state and nation, community and societal considerations, and the long-term as well as short-term interests of the corporation and its shareholders; and;
- may not give regular, presumptive, or permanent priority to:
  - the pecuniary interests of the shareholders; or
  - any other interest or consideration unless the articles identify the interest or consideration as having priority.

### **Right of Action**

Although public benefit corporations entail expanded fundamental purposes for existence and broader fiduciary duties for directors, the Minnesota Public Benefit Corporation Act provides limitations on the expansion of director and officer liability for breaches of fiduciary duty or failure to fulfill the stated public benefit purpose.

No person other than a shareholder may assert a claim under the Minnesota Public Benefit Corporation Act or the MBCA against a public benefit corporation, its directors, or its officers on account of the public benefit corporation’s director’s or officer’s failure to pursue or create general public benefit or a specific public benefit.

A public benefit corporation is not liable for monetary damages for any failure of the public benefit corporation to pursue or create general public benefit or a specific public benefit.

A court may grant relief under the Minnesota Public Benefit Corporation Act when:

- directors or those in control of a public benefit corporation have breached the duties stated above to a substantial extent and in a sustained manner; or
- the public benefit corporation has for an unreasonably long period of time failed to pursue:
  - in the case of a general benefit corporation:
    - general public benefit; or
    - any specific public benefit purpose stated in its articles; and
  - in the case of a specific benefit corporation, any specific public benefit purpose stated in its articles.

In an action under Chapter 304A, in addition to granting any other equitable relief the court deems just and reasonable in the circumstances, the court may:

- order the public benefit corporation to terminate its status as a public benefit corporation;
- remove one or more directors from the public benefit corporation’s board of directors and determine how the vacancy will be filled; or
- appoint a receiver of the public benefit corporation to (i) wind up and liquidate the activities and business of the public benefit corporation, or (ii) carry on the business and activities of the public benefit corporation in a manner consistent with the Minnesota Public Benefit Corporation Act.

## **Annual Report**

No later than 90 days after the conclusion of each calendar year, a public benefit corporation must deliver to the secretary of state for filing an annual benefit report covering the 12-month period ending on December 31 of that year and pay a fee of \$35 to the secretary of state. The annual benefit report must state the name of the public benefit corporation, be signed by the public benefit corporation’s chief executive officer not more than 30 days before the report is delivered to the secretary of state for filing, and must be current when signed.

### *Specific Benefit Corporations*

For a specific benefit corporation, the annual benefit report must contain:

- with regard to the period covered by the report, a narrative description of:
  - the ways in which the corporation pursued and created the specific public benefit stated in its articles;
  - the extent to which that specific public benefit purpose was pursued and created; and
  - any circumstances that hindered efforts to pursue or create the specific public benefit; and
- a certification that its board of directors has reviewed and approved the report.

### *General Benefit Corporations*

The annual benefit report of a general benefit corporation must:

- certify that its board of directors has:
  - chosen the third-party standard referred to in the next paragraph;
  - determined that the organization that promulgated the third-party standard is independent; and
  - approved the report.
- With regard to the period covered by the report:
  - identify a publicly available standard or guideline for defining, reporting, and assessing the performance of a business enterprise as a social or benefit corporation that is promulgated by a third-party that is independent of the corporation (a “third-party standard”) and certain information about the third party standard; and
  - with reference to that third-party standard, describe:

- how the corporation has pursued general public benefit;
- the extent to which and the ways in which the corporation has created general public benefit; and
- any circumstances that hindered efforts to pursue or create general public benefit.

In addition:

- if the report is the first delivered for filing by the general benefit corporation, it must contain an explanation of how and why the board chose the third-party standard;
- if the third-party standard is the same third-party standard identified in the immediately prior report:
  - it must state whether the third-party standard is being applied in a manner consistent with the third-party standard's application in the prior reports; and
  - if the third-party standard is not being so applied in a consistent manner, it must contain an explanation of why not;
- if the third-party standard is not the same as the third-party standard identified in the immediately prior report, it must contain an explanation of how and why the board chose a different third-party standard; and
- if the general benefit corporation has also stated a specific public benefit purpose in its articles, information similar to that required for specific benefit corporations discussed above (other than a board certification).

#### *Audit*

A public benefit corporation is not required to have its annual benefit report audited, certified, or otherwise evaluated by a third party.

#### *Failure to File an Annual Report*

If a public benefit corporation fails to file an annual benefit report in accordance with the above within 90 days of the date on which an annual benefit report is due, the secretary of state is required to revoke the corporation's status as a public benefit corporation and must notify the public benefit corporation of the revocation using prescribed methods.

The Minnesota Public Benefit Corporation Act provides for a reinstatement procedure but only within 30 days following issuance of the revocation of status.

#### *Intentional Failure to File an Annual Benefit Report*

A shareholder of a public benefit corporation may obtain payment for the fair value of the shareholder's shares under the MBCA's dissenters' rights statute as a result of revocation of public benefit corporation status caused by the intentional failure to file an annual benefit report.