

Senate File 221 - Introduced

SENATE FILE 221

BY ZAUN

A BILL FOR

1 An Act allowing the formation of certain for-profit
2 corporations as benefit corporations authorized to do
3 business in this state under certain conditions.
4 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

1 Section 1. Section 490.1302, subsection 1, Code 2017, is
2 amended by adding the following new paragraph:

3 NEW PARAGRAPH. *g.* Consummation of a transaction requiring
4 at least a ninety percent vote under section 490.1803.

5 Sec. 2. NEW SECTION. **490.1801 Definitions.**

6 As used in this division:

7 1. "*Benefit corporation*" means a for-profit corporation
8 intended to operate in a responsible and sustainable manner, to
9 produce a public benefit or benefits as set forth in a public
10 benefit provision, and to otherwise operate in a manner that
11 considers the best interests of those materially affected by
12 its conduct.

13 2. "*Public benefit*" means a positive effect, or reduction
14 of a negative effect, on the environment or on one or more
15 communities or categories of persons or entities, other than
16 shareholders in their capacity as shareholders, of an artistic,
17 charitable, economic, educational, cultural, literary,
18 religious, social, ecological, or scientific nature.

19 3. "*Public benefit provision*" means a provision in the
20 articles of incorporation that establishes one or more public
21 benefits to be promoted by the corporation.

22 Sec. 3. NEW SECTION. **490.1802 Name.**

23 1. The name of a benefit corporation shall contain the
24 words "benefit corporation", or the abbreviation "B.C.", or the
25 designation "BC", any of which shall be deemed to satisfy the
26 requirements of section 490.401, subsection 1.

27 2. Notwithstanding subsection 1, the corporate name of a
28 benefit corporation that is also a professional corporation
29 or foreign professional corporation under chapter 496C shall
30 contain the words "professional benefit corporation" or the
31 abbreviation "P.B.C." or "PBC", any of which shall be deemed to
32 satisfy the requirements of section 490.401, subsection 1.

33 Sec. 4. NEW SECTION. **490.1803 Certain amendments, mergers,
34 and share exchanges — votes required.**

35 1. Notwithstanding any other provisions of this chapter,

1 a corporation that is not a benefit corporation shall not,
2 without the approval of at least ninety percent of the voting
3 power of each class and series of the outstanding shares of the
4 corporation, in each case whether voting or nonvoting, do any
5 of the following:

6 *a.* Amend its articles of incorporation in accordance with
7 section 490.1003 to include a public benefit provision.

8 *b.* Merge with or into or enter into a share exchange
9 with another entity if, as a result of such merger or share
10 exchange, the shares in such corporation would become, or be
11 converted into or exchanged for the right to receive, shares in
12 a domestic benefit corporation, foreign benefit corporation,
13 or similar corporation.

14 2. Notwithstanding any other provisions of this chapter, a
15 benefit corporation shall not, without the approval of at least
16 two-thirds of the outstanding shares entitled to vote thereon,
17 do any of the following:

18 *a.* Amend or eliminate its public benefit provisions in
19 accordance with section 490.1003.

20 *b.* Merge with or into or agree to any share exchange with
21 any entity, unless no vote of shareholders of the corporation
22 would be required pursuant to section 490.1104, subsection 7.

23 *c.* Become an unincorporated entity by conversion.

24 Sec. 5. NEW SECTION. 490.1804 **Stock certificates.**

25 Any stock certificate issued by a benefit corporation
26 shall note conspicuously that the corporation is a benefit
27 corporation.

28 Sec. 6. NEW SECTION. 490.1805 **Duties of directors.**

29 1. In managing or directing the management of the
30 business and affairs of the benefit corporation, directors
31 shall consider the public benefit or benefits specified in
32 its articles of incorporation, the best interests of those
33 materially affected by the conduct of the corporation, and the
34 pecuniary interests of the corporation and its shareholders.

35 2. Directors of a benefit corporation shall not have any

1 duty to a person on account of any interest of such person in
2 the public benefit or public benefits specified in the articles
3 of incorporation or on account of any interest materially
4 affected by the conduct of the corporation in such person's
5 capacity as such a beneficiary.

6 3. Unless otherwise provided in the articles of
7 incorporation, any failure to consider the interests of those
8 materially affected by the conduct of the corporation, the
9 public benefit or benefits, or the pecuniary interests of the
10 shareholders shall not constitute an intentional infliction of
11 harm on the corporation or the shareholders for the purposes of
12 section 490.202, subsection 2, paragraph "d", subparagraph (1),
13 subparagraph division (b), or section 490.202, subsection 2,
14 paragraph "e", subparagraph (2).

15 Sec. 7. NEW SECTION. 490.1806 **Periodic statements and**
16 **reports.**

17 1. A benefit corporation shall include in every notice of a
18 meeting of shareholders a statement to the effect that it is
19 a benefit corporation.

20 2. A benefit corporation shall, no less than biennially,
21 provide its shareholders with a report addressing the public
22 benefit or benefits specified in the articles of incorporation,
23 and the interests of those materially affected by its conduct.
24 The report shall include all of the following:

25 a. The objectives the board of directors has established to
26 address such public benefit or public benefits and interests.

27 b. The standards the board of directors has adopted to
28 measure the corporation's progress in addressing such public
29 benefit or public benefits and interests.

30 c. Factual information based on those standards regarding
31 the corporation's success in meeting the objectives for
32 addressing such public benefit or public benefits and
33 interests.

34 d. An assessment of the corporation's success in meeting
35 the objectives and addressing such public benefit or public

1 benefits and interests.

2 3. The articles of incorporation of a benefit corporation
3 may require that the corporation do any of the following:

4 a. Provide its report more frequently than biennially.

5 b. Make the report described in subsection 2 available to
6 the public.

7 c. Use a third-party standard in connection with or
8 attain a periodic third-party certification addressing the
9 public benefit or public benefits identified in the public
10 benefit provision in the articles of incorporation or the best
11 interests of those materially affected by the corporation's
12 conduct.

13 Sec. 8. NEW SECTION. 490.1807 **Derivative suits.**

14 1. In any derivative suit instituted by a shareholder of a
15 benefit corporation to enforce the public benefit requirements
16 set forth in section 490.1805, subsection 1, the complaint must
17 state all of the following:

18 a. Each plaintiff was a shareholder of the corporation at
19 the time the complaint states the directors failed to properly
20 perform their obligations, or that such plaintiff's stock
21 thereafter devolved upon such plaintiff by operation of law,
22 and thereafter remained a shareholder of the corporation until
23 the lawsuit was commenced.

24 b. At the time the lawsuit was commenced, the plaintiff
25 individually or the plaintiffs collectively owned at least five
26 percent of any class of the corporation's shares.

27 2. The complaint shall also allege with particularity the
28 efforts, if any, made by the plaintiff to obtain the action the
29 plaintiff desires from the directors or comparable authority
30 and the reasons for the plaintiff's failure to obtain the
31 action or for not making the effort.

32 3. No such derivative suit may be maintained by any
33 plaintiff who fails to continue as a shareholder during the
34 pendency thereof or if the plaintiff individually or the
35 plaintiffs collectively fail to continue to own at least five

1 the explanation's substance by the members of the general assembly.

2 GENERAL. This bill amends the "Iowa Business Corporation
3 Act" codified in Code chapter 490, by allowing a for-profit
4 corporation to either incorporate as or become a benefit
5 corporation with the purpose of operating in a responsible and
6 sustainable manner, that promotes one or more public benefits,
7 and that operates in a manner that considers the best interests
8 of persons materially affected by its conduct (new Code
9 section 490.1801(1)). A public benefit may be of an artistic,
10 charitable, cultural, economic, educational, cultural,
11 literary, religious, social, ecological, or scientific nature
12 (new Code section 490.1801(2)). Both the Code chapter and the
13 bill's amendments creating new division XVIII are based on
14 model legislation prepared by the American bar association.

15 DECLARATION. In order to be regarded as a benefit
16 corporation, the corporation's articles of incorporation
17 (articles) must include a public benefit provision that
18 expressly describes the corporation's public benefit (new Code
19 section 490.1801(3)). Moreover, the corporation's benefit
20 status must be identified in its corporate name (new Code
21 section 490.1802). Consequently, a professional corporation
22 which is also a benefit corporation must also identify itself
23 as a form of benefit corporation (amended Code section 496C.5).
24 In addition, stock issued by the benefit corporation must state
25 its benefit status (new Code section 490.1804), as must any
26 shareholder meeting notice (Code section 490.1806(1)).

27 CHOICE TO FORM AS OR BECOME A BENEFIT ENTITY. A new
28 corporation may choose to form as a benefit corporation at
29 the time of incorporation by filing its articles with the
30 secretary of state, and an existing corporation may choose to
31 become a benefit corporation by amending its filed articles.
32 An existing corporation may also choose to become a benefit
33 corporation by combining through merger or share exchange
34 with a benefit corporation or similar foreign public benefit
35 entity (new Code section 490.1803(1)). In any case, at least

1 90 percent of the existing corporation's outstanding voting
2 and nonvoting shares of each class and series must approve
3 the choice. Dissenting shareholders are entitled to exercise
4 ordinary appraisal rights (amended Code section 490.1302(1)).
5 However, the approval of at least two-thirds (66 2/3 percent)
6 of a benefit corporation's outstanding shares entitled to vote
7 on the question is required to amend or eliminate a public
8 benefit provision from its articles, or to merge with or agree
9 to a share exchange with a nonbenefit entity (new Code section
10 490.1803(2)).

11 **MANAGEMENT.** When making a decision affecting the business
12 affairs of a benefit corporation, its board of directors
13 must balance three criteria: its public benefit provision,
14 the best interests of persons materially affected by the
15 benefit corporation's conduct, and the traditional factor
16 of its stockholders' pecuniary interests (new Code section
17 490.1805(1)). A director does not have a duty to account for
18 a business decision (new Code section 490.1805(2)), and a
19 director's failure to consider a factor does not constitute
20 an intentional infliction of harm on the corporation or the
21 shareholders, unless otherwise provided in the corporation's
22 articles (new Code section 490.1805(3)). However, at least
23 5 percent of the corporation's shareholders may institute a
24 derivative suit to enforce compliance with the corporation's
25 public benefit provision, in part by alleging that the
26 directors failed to properly perform their duties (new Code
27 section 490.1807).

28 **REPORT.** The benefit corporation must prepare and deliver a
29 report to shareholders that addresses how its public benefit
30 provision is being promoted and persons materially affected
31 by the corporation's conduct (new Code section 490.1806(2)).
32 The benefit corporation's directors are responsible for the
33 report's preparation. The corporation's articles may require
34 the involvement by a third party, who may be responsible for
35 certifying how the corporation addressed the public benefit

1 or the best interests of those materially affected by the
2 corporation's conduct. The report is not required to be
3 disclosed to the public, or delivered more frequently than once
4 every two years, unless otherwise specified in the benefit
5 corporation's articles (new Code section 490.1806(3)).

6 APPLICATION. The special designation of a corporation as a
7 benefit corporation does not by itself create an implication
8 that different rules apply to nonbenefit corporations.

9 However, a specific provision governing a benefit corporation
10 also does not affect any other provision that applies to a
11 nonbenefit corporation unless otherwise expressly stated (new
12 Code section 490.1808).