

ARTICLE 1.

GENERAL PROVISIONS

SECTION 1. The following shall be codified as Chapter ## of Title 79, Mississippi Code of 1972:

Section 101. **SHORT TITLE.** This act may be cited as the Mississippi For-profit Benefit Corporation Act of 2016.

Section 102. **APPLICABILITY.**

(a) This chapter applies to all for-profit benefit corporations. If a corporation, organized under the Mississippi Business Corporation Act, found in chapter 4 of this title, chooses to incorporate as, or convert to, a for-profit benefit corporation under this chapter, the corporation shall continue to be subject in all respects to the Mississippi Business Corporation Act, except to the extent that this chapter imposes additional or different requirements, in which case, the requirements of this chapter apply.

(b) This chapter shall not affect a statute or other rule of law applicable to a domestic nonprofit corporation that is not a for-profit benefit corporation; such entities are separate and distinct, as a domestic nonprofit corporation is governed by the provisions of Section 79-11-101, et. seq.

Section 103. **DEFINITIONS.** In this act:

- (1) "For-profit benefit corporation" means a domestic business corporation organized under and subject to the Mississippi Business Corporation Act, found in chapter 4 of this title, that intends to pursue a public benefit or public benefits;
- (2) "Foreign for-profit benefit corporation" means a for-profit corporation incorporated under a law other than the laws of this state that intends, as stated in its articles of incorporation or other governing instrument, to pursue a public benefit or public benefits and has, under that law, the status of a for-profit benefit corporation or its substantial equivalent;
- (3) "Public benefit" means a positive effect or reduction of negative effects on one (1) or more categories of persons, entities, communities, or interests, other than shareholders in their capacities as shareholders, including but not limited to, an artistic, charitable, cultural, economic, educational, environmental, literary, medical, religious, scientific or technological effect; and,
- (4) "Public benefit provisions" means the provisions of the articles of incorporation or other governing document as described in Section 104.

Section 104. **INCORPORATION PROVISION.**

(a) The articles of incorporation or other governing instrument of a for-profit benefit corporation shall:

- (1) Include a statement regarding the purpose or purposes for which the corporation is organized including one (1) or more public benefits to be pursued by the corporation; and,
- (2) State within its heading that it is a for-profit benefit corporation.

Section 105. **MANAGEMENT; LIMITATIONS ON CONVERSION OR MERGER; APPRAISAL RIGHTS.**

(a) (1) Notwithstanding the Mississippi Business Corporation act, compiled in chapter 4 of this title, a domestic for-profit benefit corporation shall not, without the approval of two-thirds (2/3) of the outstanding shares of each class of the stock of the corporation of which there are outstanding shares, whether voting or nonvoting:

(A) Amend its articles of incorporation or governing instrument to delete or amend the public benefit provision authorized by Section 104.

(B) Merge with or into, or consummate a plan of share exchange under §79-4-11.04 with, a for-profit benefit corporation or foreign for-profit benefit corporation if, as a

result of the merger or share exchange, the shares in the domestic for-profit corporation would become, or be converted into or exchanged for the right to receive, shares of other equity interests in a for-profit benefit corporation or foreign for-profit benefit corporation.

(C) Convert under 79-37-101 et. seq. to another form of entity.

(2) The restrictions of this subsection (a) shall not apply prior to the time that the corporation has received payment for any of its capital stock.

(b) Any shareholder of a domestic for-profit corporation that holds shares of stock of the domestic for-profit corporation immediately prior to the effective time of the following actions shall be entitled to appraisal rights and obtain payment of the fair value of that shareholder's shares under Section 79-4-13.02 of this title; provided, that such shareholder has neither voted in favor of the amendment, merger, plan of share exchange, conversion, nor consented in writing to the amendment, merger, plan of share exchange, or conversion.

(c) A for-profit benefit corporation shall be managed in a manner that considers the best interests of those materially affected by the corporation's conduct, including the pecuniary interests of shareholders, and the public benefit or public benefits identified in its charter.

Section 106. **Stock certificates and notices.**

(a) Any stock certificate issued by a for-profit benefit corporation shall conspicuously state the corporation is a for-profit benefit corporation subject to this chapter.

(b) Any notice sent by a for-profit corporation pursuant to §79-4-1.41 shall conspicuously state that the corporation is a for-profit benefit corporation subject to this chapter.

Section 107. **Directors; duties.**

(a) In discharging the duties of the position of director of a for-profit benefit corporation, a director shall consider the effects of any contemplated, proposed, or actual transaction or other conduct on the interests of those materially affected by the corporation's conduct, including the pecuniary interests of shareholders, and the public benefit or public benefits identified in its charter and shall not give regular, presumptive, or permanent priority to the interests of any individual constituency or limited group of constituencies materially affected by the corporation's conduct, including the pecuniary interests of the shareholders.

(b) A director of a for-profit benefit corporation shall not, by virtue of the public benefits provision authorized by Section 104, have any duty to any person on account of any interest of such person in the public benefit or public benefits

identified in the articles of incorporation or governing documents. A director who performs the duties of a director stated in subsection (a) is not liable by reason of being or having been a director of a for-profit benefit corporation under Section 79-4-8.31.

(c) The articles of incorporation or governing documents of a for-profit benefit corporation may include a provision that any disinterested failure to satisfy this section shall not, for the purposes of Sections 79-4-8.30, or 79-4-8.50 through 79-4-8.59, constitute an act or omission not in good faith or a breach of the duty of loyalty.

Section 108. Notices of shareholder meetings; annual benefit reports.

(a) A for-profit benefit corporation shall include in every notice of a meeting of the shareholders a statement that it is a for-profit benefit corporation subject to this chapter.

(b) No later than four (4) months after the close of a for-profit benefit corporation's fiscal year, the for-profit benefit corporation shall deliver to its shareholders an annual benefit report covering the immediately preceding fiscal year. The annual benefit report shall state the name of the for-profit benefit corporation and contain, with regard to the period covered by the report, a narrative description of:

(1) the ways in which the corporation pursued the public benefit or public benefits stated in its articles of incorporation or governing documents;

(2) the extent to which that public benefit purpose or purposes were pursued and achieved; and,

(3) any material circumstances that hindered efforts to pursue or achieve the public benefit or public benefits.

(c) A for-profit benefit corporation is not required to have its annual benefit report audited, certified, or otherwise evaluated by a third party.

(d) A for-profit benefit corporation shall post its annual benefit report on the public portion of its web site, if applicable; or, if a for-profit benefit corporation does not have a web site, the for-profit benefit corporation shall provide a copy of its most recent annual benefit report, without charge, to any person who requests a copy.

(e) Pursuant to subsection (d), all posted or distributed annual benefit reports need not include the compensation paid to directors; financial and proprietary information may also omitted.

(f) The articles of incorporation, bylaws, or other governing documents of a for-profit benefit corporation may require that the corporation use a third-party standard in connection with or attain a periodic third-party certification

addressing the corporation's promotion of the public benefit or public benefits identified in the charter or the best interests of those materially affected by the corporation's conduct.

Section 109. **Shareholder derivative lawsuits.**

Shareholders of a for-profit benefit corporation may bring actions as provided in Section 79-4-7.40, et seq.

Section 110. **Other domestic business corporations not affected.**

This chapter shall not affect a statute or other rule of law applicable to a domestic business corporation that is not a for-profit benefit corporation, except as provided in Section 104. Specifically, no implication is made by, and no inference may be drawn from, the enactment of this chapter as to whether, in exercising their duties, the officers or directors of a domestic business corporation that is not a for-profit benefit corporation may consider the impact of the corporation's transactions and other conduct on:

(1) the interests of those materially affected by the corporation's conduct, including the pecuniary interests of shareholders; and

(2) any public benefit or public benefits identified in its articles of incorporation or governing documents.