

# SENATE BILL 978

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By: **Senators Raskin and Feldman**

Introduced and read first time: February 10, 2014

Assigned to: Rules

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## A BILL ENTITLED

1 AN ACT concerning

2 **Maryland Benefit Corporations – Purposes, Duties of Directors, and Liability**

3 FOR the purpose of altering the purpose of a Maryland benefit corporation; clarifying  
4 that a director of a benefit corporation is required to perform the director's  
5 duties in accordance with a certain standard; requiring a director to consider  
6 the effects of a certain action or decision on certain interests of the benefit  
7 corporation and the ability of the benefit corporation to accomplish a certain  
8 goal; providing that the director may not be required to give priority to a certain  
9 interest or factor over any other interest or factor; clarifying that a director does  
10 not have a duty to certain persons; establishing that an act of a director is  
11 subject to a certain presumption; clarifying that a director has no duty to the  
12 corporation or the stockholders other than as set forth in certain provisions of  
13 law; prohibiting a person from bringing a certain action against a benefit  
14 corporation or its directors or officers with respect to certain matters;  
15 establishing that a benefit corporation or a director or officer of a benefit  
16 corporation is not liable for certain damages; providing that a certain action or  
17 claim may be maintained only by certain individuals or entities; making certain  
18 conforming changes; altering a certain definition; and generally relating to  
19 benefit corporations.

20 BY repealing and reenacting, with amendments,  
21 Article – Corporations and Associations  
22 Section 5–6C–01, 5–6C–06, and 5–6C–07  
23 Annotated Code of Maryland  
24 (2007 Replacement Volume and 2013 Supplement)

25 BY adding to  
26 Article – Corporations and Associations  
27 Section 5–6C–09  
28 Annotated Code of Maryland  
29 (2007 Replacement Volume and 2013 Supplement)

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EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



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

3 **Article – Corporations and Associations**

4 5–6C–01.

5 (a) In this subtitle the following words have the meanings indicated.

6 (b) “Benefit corporation” means a Maryland corporation that elects to be a  
7 benefit corporation in accordance with § 5–6C–03 of this subtitle and has not ceased to  
8 be a benefit corporation through the operation of § 5–6C–04 of this subtitle.

9 (c) “General public benefit” means a material, positive impact on society and  
10 the environment[, as measured by a third–party standard, through activities that  
11 promote a combination of specific public benefits] **THAT, TAKEN AS A WHOLE AND**  
12 **ASSESSED AGAINST A THIRD–PARTY STANDARD, RESULTS FROM THE BUSINESS**  
13 **AND OPERATIONS OF A BENEFIT CORPORATION.**

14 (d) “Specific public benefit” includes:

15 (1) Providing individuals or communities with beneficial products or  
16 services;

17 (2) Promoting economic opportunity for individuals or communities  
18 beyond the creation of jobs in the normal course of business;

19 (3) Preserving the environment;

20 (4) Improving human health;

21 (5) Promoting the arts, sciences, or advancement of knowledge;

22 (6) Increasing the flow of capital to entities with a public benefit  
23 purpose; or

24 (7) The accomplishment of any other particular benefit for society or  
25 the environment.

26 (e) “Third–party standard” means a standard for defining, reporting, and  
27 assessing best practices in corporate social and environmental performance that:

28 (1) Is developed by a person or entity that is independent of the  
29 benefit corporation; and

1           (2) Is transparent because the following information about the  
2 standard is publicly available or accessible:

3           (i) The factors considered when measuring the performance of a  
4 business;

5           (ii) The relative weightings of those factors; and

6           (iii) The identity of the persons who developed and control  
7 changes to the standard and the process by which those changes were made.

8 5-6C-06.

9           (a) (1) Each benefit corporation shall have [the] A purpose of creating a  
10 general public benefit.

11           (2) The purpose described in paragraph (1) of this subsection is in  
12 addition to[, and may be a limitation on,] the purposes of the corporation under §  
13 2-101 of this article.

14           (b) (1) In addition to its purposes under § 2-101 of this article and  
15 subsection (a) of this section, the charter of a benefit corporation may identify as one of  
16 the purposes of the benefit corporation the creation of one or more specific public  
17 benefits.

18           (2) The identification in its charter of a specific public benefit purpose  
19 under paragraph (1) of this subsection does not limit the obligation of a benefit  
20 corporation to create a general public benefit.

21           (c) The creation of a general public benefit or A specific public benefit as  
22 provided in subsections (a) and (b) of this section is in the best interests of the benefit  
23 corporation.

24 5-6C-07.

25           (a) **[A] SUBJECT TO SUBSECTION (B) OF THIS SECTION, A** director of a  
26 benefit corporation[, in performing] **SHALL PERFORM** the duties of a director,  
27 including the director's duties as a member of a committee [and in addition to the  
28 duties described] **ON WHICH THE DIRECTOR SERVES, IN ACCORDANCE WITH THE**  
29 **STANDARD PROVIDED** in § 2-405.1 of this article[:].

30           **[(1)] (B) (1)** In determining what the director reasonably believes  
31 to be in the best interests of the benefit corporation[, shall] **UNDER § 2-405.1(A)(2)**  
32 **OF THIS ARTICLE, THE DIRECTOR:**

1                   **(I) SUBJECT TO PARAGRAPH (2) OF THIS SUBSECTION,**  
 2 **SHALL** consider the effects of any action, or decision not to act, on:

3                   **[(i)] 1.** The stockholders of the benefit corporation;

4                   **[(ii)] 2.** The employees and workforce of the benefit  
 5 corporation and the subsidiaries and suppliers of the benefit corporation;

6                   **[(iii)] 3.** The interests of customers as beneficiaries of the  
 7 general or specific public benefit purposes of the benefit corporation;

8                   **[(iv)] 4.** Community and societal **[considerations] INTERESTS,**  
 9 including those of any community in which offices or facilities of the benefit  
 10 corporation or the subsidiaries or suppliers of the benefit corporation are located;  
 11 **[and]**

12                   **5. THE SHORT-TERM AND LONG-TERM INTERESTS**  
 13 **OF THE BENEFIT CORPORATION, INCLUDING BENEFITS THAT MAY ACCRUE TO**  
 14 **THE BENEFIT CORPORATION FROM ITS LONG-TERM PLANS AND THE**  
 15 **POSSIBILITY THAT THESE INTERESTS MAY BE BEST SERVED BY THE CONTINUED**  
 16 **INDEPENDENCE OF THE BENEFIT CORPORATION;**

17                   **6. THE ABILITY OF THE BENEFIT CORPORATION TO**  
 18 **ACCOMPLISH ITS GENERAL PUBLIC BENEFIT PURPOSE AND ANY SPECIFIC**  
 19 **PUBLIC BENEFIT PURPOSE; AND**

20                   **[(v)] 7.** The local and global environment; and

21                   **[(2)] (II) [May] SUBJECT TO PARAGRAPH (2) OF THIS**  
 22 **SUBSECTION, MAY** consider any other pertinent factors or the interests of any other  
 23 group that the director determines are appropriate to consider.

24                   **(2) THE DIRECTOR MAY NOT BE REQUIRED TO GIVE PRIORITY TO**  
 25 **A PARTICULAR INTEREST OR FACTOR REFERRED TO IN PARAGRAPH (1) OF THIS**  
 26 **SUBSECTION OVER ANY OTHER INTEREST OR FACTOR.**

27                   **[(b)] (C)** A director of a benefit corporation, in the performance of duties in  
 28 that capacity, does not have any duty to a person that is **[a]:**

29                   **(1) A** beneficiary of the public benefit purposes of the benefit  
 30 corporation;

31                   **(2) REFERRED TO IN SUBSECTION (B)(1)(I)2 THROUGH 4 OF THIS**  
 32 **SECTION; OR**

1           **(3) AFFECTED BY ANY OF THE INTERESTS REFERRED TO IN**  
2 **SUBSECTION (B)(1)(I)2 THROUGH 7 OF THIS SECTION.**

3           **[(c)] (D)** A director of a benefit corporation[, in the reasonable performance  
4 of duties] **WHO PERFORMS THE DUTIES OF A DIRECTOR** in accordance with the  
5 standard provided in this subtitle[, ] shall have the immunity from liability described  
6 in § 5–417 of the Courts Article.

7           **(E) AN ACT OF A DIRECTOR OF A BENEFIT CORPORATION IS PRESUMED**  
8 **TO SATISFY THE STANDARDS OF SUBSECTIONS (A) AND (B) OF THIS SECTION.**

9           **(F) A DIRECTOR OF A BENEFIT CORPORATION HAS NO DUTY TO THE**  
10 **BENEFIT CORPORATION OR ITS STOCKHOLDERS OTHER THAN AS SET FORTH IN**  
11 **§ 2–405.1 OF THIS ARTICLE AND THIS SUBTITLE.**

12 **5–6C–09.**

13           **(A) EXCEPT AS SET FORTH IN SUBSECTION (C) OF THIS SECTION, A**  
14 **PERSON MAY NOT BRING AN ACTION OR ASSERT A CLAIM AGAINST A BENEFIT**  
15 **CORPORATION OR ITS DIRECTORS OR OFFICERS WITH RESPECT TO:**

16           **(1) THE FAILURE TO PURSUE OR CREATE A GENERAL PUBLIC**  
17 **BENEFIT OR A SPECIFIC PUBLIC BENEFIT SET FORTH IN ITS CHARTER; OR**

18           **(2) A VIOLATION OF AN OBLIGATION, DUTY, OR STANDARD OF**  
19 **CONDUCT UNDER THIS SUBTITLE.**

20           **(B) A BENEFIT CORPORATION OR A DIRECTOR OR AN OFFICER OF A**  
21 **BENEFIT CORPORATION IS NOT LIABLE FOR MONETARY DAMAGES FOR A**  
22 **FAILURE OF THE BENEFIT CORPORATION TO PURSUE OR CREATE A GENERAL**  
23 **PUBLIC BENEFIT OR A SPECIFIC PUBLIC BENEFIT.**

24           **(C) AN ACTION OR CLAIM UNDER THIS SUBTITLE MAY BE COMMENCED**  
25 **OR MAINTAINED ONLY:**

26           **(1) DIRECTLY BY THE BENEFIT CORPORATION; OR**

27           **(2) DERIVATIVELY BY:**

28           **(I) A DIRECTOR;**

29           **(II) A PERSON OR GROUP OF PERSONS THAT OWNED**  
30 **BENEFICIALLY OR OF RECORD 2% OR MORE OF THE TOTAL NUMBER OF SHARES**

1 OF A CLASS OR SERIES OUTSTANDING AT THE TIME OF THE ACT OR OMISSION  
2 THAT IS THE SUBJECT OF THE ACTION OR CLAIM; OR

3 (III) A PERSON OR GROUP OF PERSONS THAT OWNED  
4 BENEFICIALLY OR OF RECORD 5% OR MORE OF THE OUTSTANDING EQUITY  
5 INTERESTS IN AN ENTITY OF WHICH THE BENEFIT CORPORATION IS A  
6 MAJORITY-OWNED OR GREATER SUBSIDIARY AT THE TIME OF THE ACT OR  
7 OMISSION THAT IS THE SUBJECT OF THE ACTION OR CLAIM.

8 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect  
9 October 1, 2014.