CHAPTER 304A

MINNESOTA PUBLIC BENEFIT CORPORATION ACT

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This chapter may be cited as the "Minnesota Public Benefit Corporation Act."

History: *2014 c 172 s 1*

304A.011 APPLICATION AND EFFECT OF CHAPTER.

Subdivision 1. **General rule.** This chapter applies to all public benefit corporations.

Subd. 2. **Laws applicable.** Chapter 302A applies to all public benefit corporations and all statutes and rules of law that apply to a corporation formed under chapter 302A also apply to a public benefit corporation. If chapter 302A conflicts with sections 304A.001 to 304A.301, sections 304A.001 to 304A.301 govern. The chapter does not affect a statute or rule of law that applies to a corporation formed under chapter 302A that is not a public benefit corporation.

Subd. 3. **Chapter not to be varied.** A provision of the articles, shareholder control agreement, or bylaws of a public benefit corporation may not limit, be inconsistent with, or supersede a provision of this chapter.

History: *2014 c 172 s 2*

304A.021 DEFINITIONS.

Subdivision 1. **Terms.** For the purposes of this chapter, unless the language or context clearly indicates that a different meaning is intended, the words, terms, and phrases defined in this section have the meanings given them.

Subd. 2. **General benefit corporation.** "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.

Subd. 3. **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.

Subd. 4. **Independent.** "Independent" means having no material relationship with a public benefit corporation or a parent, a subsidiary, or other affiliate of a public benefit corporation.

Subd. 5. **Minimum status vote.** "Minimum status vote" means that the shareholders shall take action by the affirmative vote of the holders of at least two-thirds of all of the issued and outstanding shares.

Subd. 6. **Organization.** "Organization" means a domestic or foreign business or nonprofit corporation, limited liability company, whether domestic or foreign, partnership, limited partnership, joint venture, association, trust, estate, enterprise, or other legal or commercial entity.

Subd. 7. **Public benefit corporation.** "Public benefit corporation" means a corporation formed under chapter 302A:

(1) that has elected to become subject to this chapter; and

(2) whose status as a public benefit corporation has not been terminated or revoked.

Subd. 8. **Specific benefit corporation.** "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.

Subd. 9. **Specific public benefit.** "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.

Subd. 10. **Third-party standard.** "Third-party standard" means:

(1) a publicly available standard or guideline for defining, reporting, and assessing the performance of a business enterprise as a social or benefit corporation;

(2) promulgated by a natural person or an organization; and

(3) that is independent of the public benefit corporation.

History: *2014 c 172 s 3*

304A.101 INCORPORATION OF A PUBLIC BENEFIT CORPORATION.

Subdivision 1. **Incorporation.** A public benefit corporation must be incorporated in accordance with chapter 302A, and its articles must also state that the public benefit corporation is a:

(1) general benefit corporation;

(2) general benefit corporation that also elects to pursue a specific public benefit purpose as stated in its articles; or

(3) a specific benefit corporation that elects to pursue a specific public benefit purpose as stated in its articles.

Subd. 2. **Name requirements.** A public benefit corporation name must comply with the requirements of section 302A.115 other than subdivision 1, paragraph (b), and with respect to:

(1) a general benefit corporation, contain the words "general benefit corporation," or the abbreviation "GBC;" and

(2) a specific benefit corporation, contain the words "specific benefit corporation," or the abbreviation "SBC."

History: *2014 c 172 s 4*

304A.102 ELECTION OF PUBLIC BENEFIT CORPORATION STATUS.

Subdivision 1. **By amendment.** In accordance with the procedures stated in chapter 302A and with approval by the minimum status vote, an existing corporation formed under chapter 302A may elect to become a public benefit corporation under this chapter by amending its articles to meet the requirements of section 304A.101.

Subd. 2. **By merger, exchange, conversion, or transfer.** (a) This subdivision applies if:

(1) an organization, other than a nonprofit corporation, that is not a public benefit corporation is a party to a merger, exchange, or conversion, or a transfer in accordance with section 302A.601; and

(2) the surviving organization in the merger, the acquiring organization in an exchange, the converted organization in the conversion, or the transferee is to be a public benefit corporation.

(b) If this subdivision applies, the transfer or the plan of merger, exchange, or conversion, must be adopted in accordance with the procedures stated in chapter 302A and with approval by the minimum status vote.

Subd. 3. **Rights of dissenting shareholders.** A shareholder of a corporation or the member of a limited liability company may dissent from, and obtain payment for the fair value of the shareholder's shares or the member's membership interests pursuant to sections 302A.471 and 302A.473, in the event of an election of public benefit corporation status pursuant to this section.

History: *2014 c 172 s 5; 2022 c 55 art 1 s 151*

304A.103 TERMINATION OF PUBLIC BENEFIT CORPORATION STATUS.

Subdivision 1. **By amendment.** In accordance with the procedures stated in chapter 302A and with approval by the minimum status vote, a public benefit corporation may terminate its status as a public benefit corporation and cease to be subject to this chapter by amending its articles to delete the requirements of section 304A.101, subdivision 1, and change its name to remove the information required by section 304A.101, subdivision 2.

Subd. 2. **Merger, exchange, conversion, or transfer.** If a merger, exchange, conversion, or transfer would have the effect of terminating the status of a public benefit corporation under this chapter, the transfer or the plan of merger, exchange, or conversion must be approved by the minimum status vote.

Subd. 3. **Rights of dissenting shareholders.** A shareholder of a public benefit corporation may dissent from, and obtain payment for the fair value of the shareholder's shares pursuant to sections 302A.471 and 302A.473 in the event of a termination of public benefit corporation status pursuant to this section.

Subd. 4. **Effects of termination.** A public benefit corporation that terminates its status, or has its status revoked more than once pursuant to section 304A.301, subdivision 5, may not elect to become a public benefit corporation under this chapter until three years have passed since the effective date of termination or revocation.

History: *2014 c 172 s 6*

304A.104 PUBLIC BENEFIT CORPORATION PURPOSES.

Subdivision 1. **General benefit corporation purpose.** A general benefit corporation has a purpose of pursuing general public benefit. A general benefit corporation may also state in its articles one or more

specific public benefit purposes the general benefit corporation elects to pursue. Purposes under these subdivisions are in addition to the purposes under section 302A.101.

Subd. 2. **Specific benefit corporation purpose.** A specific benefit corporation shall have a purpose of pursuing one or more specific public benefit purposes stated in its articles. Purposes under this subdivision are in addition to the purposes under section 302A.101. The election to pursue a specific public benefit purpose under this subdivision does not require a specific benefit corporation to pursue general public benefit under subdivision 1.

Subd. 3. **Effect of purposes.** The pursuit of general public benefit or a specific public benefit purpose under subdivision 1, or a specific public benefit purpose under subdivision 2, is in the best interests of a public benefit corporation.

Subd. 4. **Amendment of a specific public benefit purpose.** In accordance with the procedures stated in chapter 302A and with approval by the minimum status vote, a general benefit corporation or a specific benefit corporation may amend its articles to add, amend, or delete a specific public benefit purpose unless the amendment would cause a termination of public benefit corporation status under section 304A.103.

History: *2014 c 172 s 7*

304A.201 STANDARD OF CONDUCT FOR DIRECTORS.

Subdivision 1. **Considerations for a general benefit corporation.** In discharging the duties of the position of director of a general benefit corporation, a director:

(1) shall consider the effects of any proposed, contemplated, or actual conduct on:

(i) the general benefit corporation's ability to pursue general public benefit;

(ii) if the articles also state a specific public benefit purpose, the general benefit corporation's ability to pursue its specific public benefit; and

(iii) the interests of the constituencies stated in section 302A.251, subdivision 5, including the pecuniary interests of its shareholders; and

(2) may not give regular, presumptive, or permanent priority to:

(i) the pecuniary interests of the shareholders; or

(ii) any other interest or consideration unless the articles identify the interest or consideration as having priority.

Subd. 2. **Considerations for a specific benefit corporation.** In discharging the duties of the position of director of a specific benefit corporation, a director:

(1) shall consider the effects of any proposed, contemplated, or actual conduct on:

(i) the pecuniary interest of its shareholders; and

(ii) the specific benefit corporation's ability to pursue its specific public benefit purpose;

(2) may consider the interests of the constituencies stated in section 302A.251, subdivision 5; and

(3) may not give regular, presumptive, or permanent priority to:

(i) the pecuniary interests of the shareholders; or

(ii) any other interest or consideration unless the articles identify the interest or consideration as having priority.

Subd. 3. **Liability.** A director who performs the duties of a director stated in subdivisions 1 and 2 is not liable by reason of being or having been a director of a public benefit corporation.

Subd. 4. **Other applicable law.** The conduct and liability of a director of a public benefit corporation is subject to section 302A.251, subdivisions 1, 2, 3, and 4.

Subd. 5. **Duty of loyalty.** The articles of a public benefit corporation may include a provision that any disinterested failure to satisfy subdivision 1 or 2 of this section shall not, for purposes of this section or section 302A.251, subdivision 4, constitute a breach of the duty of loyalty.

History: *2014 c 172 s 8*

304A.202 RIGHT OF ACTION.

Subdivision 1. **Standing and grounds for claims.** (a) No person other than a shareholder may assert a claim under this chapter or chapter 302A 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.

(b) A public benefit corporation is not liable for monetary damages under this chapter for any failure of the public benefit corporation to pursue or create general public benefit or a specific public benefit.

Subd. 2. **Grounds for relief.** In addition to the grounds for relief stated in section 302A.751, subdivision 1, paragraph (b), a court may grant relief under this chapter when:

(1) directors or those in control of a public benefit corporation have breached the duties stated in section 304A.201 to a substantial extent and in a sustained manner; or

(2) the public benefit corporation has for an unreasonably long period of time failed to pursue:

(i) in the case of a general benefit corporation:

(A) general public benefit; or

(B) any specific public benefit purpose stated in its articles; and

(ii) in the case of a specific benefit corporation, any specific public benefit purpose stated in its articles.

Subd. 3. **Particular relief available.** (a) In an action under this chapter, in addition to granting any other equitable relief the court deems just and reasonable in the circumstances, the court may:

(1) order the public benefit corporation to terminate its status as a public benefit corporation pursuant to section 304A.103, subdivision 1;

(2) remove one or more directors from the public benefit corporation's board of directors and determine whether the vacancy will be filled:

(i) as provided in section 302A.225; or

(ii) by court appointment, with the appointee to serve only until a qualified successor is elected by the shareholders at the next regular or special meeting of the shareholders;

(3) 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 this chapter.

(b) Paragraph (a) does not imply any limitations on the relief available in a proceeding brought under section 302A.751 without reference to this chapter.

History: *2014 c 172 s 9*

304A.301 ANNUAL BENEFIT REPORT.

Subdivision 1. **Report required.** Before each April 1, 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 the previous 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.

Subd. 2. **Annual benefit report for a specific benefit corporation.** For a specific benefit corporation, the annual benefit report must contain:

(1) with regard to the period covered by the report, a narrative description of:

(i) the ways in which the corporation pursued and created the specific public benefit stated in its articles;

(ii) the extent to which that specific public benefit purpose was pursued and created; and

(iii) any circumstances that hindered efforts to pursue or create the specific public benefit; and

(2) a certification that its board of directors has reviewed and approved the report.

Subd. 3. **Annual benefit report for a general benefit corporation.** The annual benefit report of a general benefit corporation must:

(1) certify that its board of directors has:

(i) chosen the third-party standard designated pursuant to clause (2), item (i);

(ii) determined that the organization that promulgated the third-party standard is independent; and

(iii) approved the report;

(2) with regard to the period covered by the report:

(i) identify a third-party standard determined by the board; and

(ii) with reference to that third-party standard, describe:

(A) how the corporation has pursued general public benefit;

(B) the extent to which and the ways in which the corporation has created general public benefit; and

(C) any circumstances that hindered efforts to pursue or create general public benefit;

(3) if the report is the first delivered for filing by the general benefit corporation, explain how and why the board chose the third-party standard identified under clause (2), item (i);

(4) if the third-party standard identified under clause (2), item (i), is the same third-party standard identified in the immediately prior report:

(i) 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

(ii) if the third-party standard is not being so applied in a consistent manner, explain why;

(5) if the third-party standard identified under clause (2), item (i), is not the same as the third-party standard identified in the immediately prior report, explain how and why the board chose a different third-party standard; and

(6) if the general benefit corporation has also stated a specific public benefit purpose in its articles, the information required in subdivision 2, clause (1).

Subd. 4. **Audit not required.** A public benefit corporation is not required to have its annual benefit report audited, certified, or otherwise evaluated by a third party.

Subd. 5. **Failure to file an annual benefit report.** If a public benefit corporation fails to file, before April 1 of any calendar year, the annual benefit report required by this section, the secretary of state shall revoke the corporation's status as a public benefit corporation under this chapter and must notify the public benefit corporation of the revocation using the information provided by the corporation pursuant to section 5.002 or 5.34 or provided in the articles.

Subd. 6. **Effects of revocation; reinstatement.** (a) A public benefit corporation that has lost its public benefit corporation status for failure to timely file an annual benefit report or by terminating that status pursuant to section 304A.103 is not entitled to the benefits afforded to a public benefit corporation under this chapter as of the date of revocation or termination and must amend the articles of incorporation to reflect a name compliant with section 302A.115, but which does not include the corporate designation provided for in section 304A.101, subdivision 2.

(b) Within 30 days of issuance of revocation of public benefit corporation status by the secretary of state, filing a renewal complying with this section and a $500 fee with the secretary of state will reinstate the corporation as a public benefit corporation under this chapter as of the date of revocation.

Subd. 7. **Intentional failure to file an annual benefit report.** A shareholder of the public benefit corporation may obtain payment for the fair value of the shareholder's shares pursuant to section 302A.473 as a result of revocation of public benefit corporation status pursuant to this section caused by the intentional failure to file an annual benefit report.

Subd. 8. **Failure to change corporate name.** The duration of a corporation that has had public benefit status terminated or revoked and which fails to change the corporate name as provided in subdivision 6 expires automatically 30 days after termination or revocation of the public benefit corporation status.

History: *2014 c 172 s 10; 2015 c 77 art 2 s 55-58*