

HOUSE BILL No. 6454

September 16, 2010, Introduced by Reps. Barnett, Haugh, Liss, Lipton, Clemente and Griffin
and referred to the Committee on New Economy and Quality of Life.

A bill to amend 1972 PA 284, entitled
"Business corporation act,"
by amending sections 106, 108, 109, 202, 211, 541a, and 821 (MCL
450.1106, 450.1108, 450.1109, 450.1202, 450.1211, 450.1541a, and
450.1821), section 106 as amended by 2006 PA 68, sections 108, 202,
and 821 as amended and section 541a as added by 1989 PA 121,
section 109 as amended by 1993 PA 91, and section 211 as amended by
2008 PA 402.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 106. (1) "Corporation" or "domestic corporation" means a
2 corporation formed under this act, or existing on January 1, 1973
3 and formed under any other statute of this state for a purpose for
4 which a corporation may be formed under this act. **THE TERM INCLUDES**
5 **A PUBLIC BENEFIT CORPORATION OR A TRIPLE BENEFIT CORPORATION.**

1 (2) "Department" means the department of **ENERGY**, labor, and
2 economic growth.

3 (3) "Director" means a member of the board of a corporation.

4 (4) "Distribution" means a direct or indirect transfer of
5 money or other property, except the corporation's shares, or the
6 incurrence of indebtedness by the corporation to or for the benefit
7 of its shareholders in respect to the corporation's shares. A
8 distribution may be in the form of a dividend, a purchase,
9 redemption or other acquisition of shares, an issuance of
10 indebtedness, or any other declaration or payment to or for the
11 benefit of the shareholders.

12 (5) "Electronic transmission" or "electronically transmitted"
13 means any form of communication that meets all of the following:

14 (a) It does not directly involve the physical transmission of
15 paper.

16 (b) It creates a record that may be retained and retrieved by
17 the recipient.

18 (c) It may be directly reproduced in paper form by the
19 recipient through an automated process.

20 Sec. 108. (1) "Nonprofit corporation" or "domestic nonprofit
21 corporation" means a nonprofit corporation subject to the nonprofit
22 corporation act, ~~Act No. 162 of the Public Acts of 1982, being~~
23 ~~sections 450.2101 to 450.3192 of the Michigan Compiled Laws 1982 PA~~
24 **162, MCL 450.2101 TO 450.3192.**

25 (2) "Person" means an individual, a partnership, a domestic or
26 foreign corporation, **A LIMITED LIABILITY COMPANY**, or any other
27 association, corporation, trust, or legal entity.

1 (3) "TRIPLE BENEFIT CORPORATION" MEANS A DOMESTIC CORPORATION
2 THAT HAS INCLUDED IN ITS ARTICLES OF INCORPORATION A PURPOSE THAT
3 MEETS, AND THAT AT ALL TIMES CONDUCTS ITS ACTIVITIES TO MEET, ALL
4 OF THE FOLLOWING REQUIREMENTS:

5 (A) THE CORPORATION SIGNIFICANTLY FURTHERS THE ACCOMPLISHMENT
6 OF 1 OR MORE CHARITABLE OR EDUCATIONAL PURPOSES DESCRIBED IN
7 SECTION 170(C)(2)(B) OF THE INTERNAL REVENUE CODE, 26 USC 170, AND
8 WOULD NOT HAVE BEEN FORMED EXCEPT TO ACCOMPLISH THOSE CHARITABLE OR
9 EDUCATIONAL PURPOSES.

10 (B) THE PRODUCTION OF INCOME OR APPRECIATION OF PROPERTY IS
11 NOT A SIGNIFICANT PURPOSE OF THE CORPORATION. HOWEVER, IN THE
12 ABSENCE OF OTHER FACTORS, THE FACT THAT A CORPORATION PRODUCES
13 SIGNIFICANT INCOME OR CAPITAL APPRECIATION IS NOT CONCLUSIVE
14 EVIDENCE OF A SIGNIFICANT PURPOSE INVOLVING THE PRODUCTION OF
15 INCOME OR THE APPRECIATION OF PROPERTY.

16 (C) THE PURPOSES OF THE CORPORATION DO NOT INCLUDE
17 ACCOMPLISHING 1 OR MORE POLITICAL OR LEGISLATIVE PURPOSES DESCRIBED
18 IN SECTION 170(C)(2)(D) OF THE INTERNAL REVENUE CODE, 26 USC 170.

19 Sec. 109. (1) "Shareholder" means a person holding units of
20 proprietary interest in a corporation and is considered to be
21 synonymous with "member" in a nonstock corporation.

22 (2) "Shares" means the units into which proprietary interests
23 in a corporation are divided and is considered to be synonymous
24 with "membership" in a nonstock corporation.

25 (3) "TRIPLE BENEFIT CORPORATION" MEANS A DOMESTIC CORPORATION
26 THAT INCLUDES IN ITS ARTICLES OF INCORPORATION A PURPOSE THAT
27 MEETS, AND THAT AT ALL TIMES CONDUCTS ITS ACTIVITIES TO MEET, ALL

1 OF THE FOLLOWING REQUIREMENTS:

2 (A) THE CORPORATION MUST BALANCE THE INTERESTS OF BOTH PEOPLE
3 AND THE PLANET WHILE PURSUING PROFIT.

4 (B) THE CORPORATION EXISTS TO SERVE EQUALLY THE INTERESTS OF
5 ALL OF ITS STAKEHOLDERS, INCLUDING, BUT NOT LIMITED TO,
6 SHAREHOLDERS, EMPLOYEES, CONTRACTORS, CREDITORS, CUSTOMERS,
7 SUPPLIERS, SOCIETY AT LARGE, AND THE PHYSICAL WORLD IN WHICH IT
8 OPERATES.

9 (C) THE PRODUCTION OF INCOME OR APPRECIATION OF PROPERTY IS
10 CONSIDERED OF EQUAL IMPORTANCE TO SERVING THE INTERESTS OF SOCIETY
11 AND THE DIRECTORS, MANAGERS, AND EMPLOYEES SHALL STRIVE AT ALL
12 TIMES TO BALANCE THE INTERESTS OF ALL OF THE STAKEHOLDERS DESCRIBED
13 IN SUBDIVISION (B) IN CONNECTION WITH PURSUING PROFIT OR
14 APPRECIATION OF THE CORPORATION'S PROPERTY.

15 (D) THE CORPORATION IS PERMITTED TO ENGAGE IN ANY POLITICAL OR
16 LEGISLATIVE ACTIVITIES ALLOWED BY LAW IF THE OBJECTIVES OF THOSE
17 ACTIVITIES FURTHER THE INTERESTS OF ALL OF THE STAKEHOLDERS
18 DESCRIBED IN SUBDIVISION (B) EQUALLY AND NOT JUST THE INTERESTS OF
19 THE CORPORATION OR ITS INDUSTRY.

20 Sec. 202. The articles of incorporation shall contain all of
21 the following:

22 (a) The name of the corporation.

23 (b) The purposes for which the corporation is formed. **ALL OF**
24 **THE FOLLOWING APPLY FOR PURPOSES OF THIS SUBDIVISION:**

25 (i) It is a sufficient compliance with this subdivision to
26 state substantially, alone or with specifically enumerated
27 purposes, that the corporation may engage in any activity within

1 the purposes for which corporations may be formed under the
2 business corporation act, and all activities shall by the statement
3 be considered within the purposes of the corporation, subject to
4 expressed limitations.

5 (ii) Any corporation ~~which~~ **THAT** proposes to conduct educational
6 purposes shall state the purposes and shall comply with all
7 requirements of sections 170 to 177 of ~~Act No. 327 of the Public~~
8 ~~Acts of 1931, being sections 450.170 to 450.177 of the Michigan~~
9 ~~Compiled Laws 1931 PA 327, MCL 450.170 TO 450.177.~~

10 (iii) **IF THE CORPORATION IS A PUBLIC BENEFIT CORPORATION, IT IS**
11 **SUFFICIENT COMPLIANCE WITH THIS SUBDIVISION TO REFER TO SECTION**
12 **108(3) AND TO ADOPT BY REFERENCE THE REQUIREMENTS DESCRIBED IN THAT**
13 **SECTION AS THE PURPOSE FOR WHICH THE CORPORATION IS FORMED.**

14 (iv) **IF THE CORPORATION IS A TRIPLE BENEFIT CORPORATION, IT IS**
15 **SUFFICIENT COMPLIANCE WITH THIS SUBDIVISION TO REFER TO SECTION**
16 **109(3) AND TO ADOPT BY REFERENCE THE REQUIREMENTS DESCRIBED IN THAT**
17 **SECTION AS THE PURPOSE FOR WHICH THE CORPORATION IS FORMED.**

18 (c) The aggregate number of shares which the corporation has
19 authority to issue.

20 (d) If the shares are, or are to be, divided into classes, or
21 into classes and series, the designation of each class and series,
22 the number of shares in each class and series, and a statement of
23 the relative rights, preferences and limitations of the shares of
24 each class and series, to the extent that the designations,
25 numbers, relative rights, preferences, and limitations have been
26 determined.

27 (e) If any class of shares is to be divided into series, a

statement of any authority vested in the board to divide the class of shares into series, and to determine or change for any series its designation, number of shares, relative rights, preferences and limitations.

(f) The street address, and the mailing address if different from the street address, of the corporation's initial registered office and the name of the corporation's initial resident agent at that address.

(g) The names and addresses of the incorporators.

(h) The duration of the corporation if other than perpetual.

Sec. 211. (1) ~~The~~ **EXCEPT AS PROVIDED IN SUBSECTIONS (2) AND (3), THE** corporate name of a domestic corporation shall contain the word "corporation", "company", "incorporated", or "limited" or shall contain 1 of the following abbreviations: corp., co., inc., or ltd., with or without periods.

(2) **THE NAME OF A PUBLIC BENEFIT CORPORATION SHALL CONTAIN THE WORDS "PUBLIC BENEFIT CORPORATION", OR THE ABBREVIATION "P.B.C." OR "P.B.C.", WITH OR WITHOUT PERIODS OR OTHER PUNCTUATION.**

(3) **THE NAME OF A TRIPLE BENEFIT CORPORATION SHALL CONTAIN THE WORDS "TRIPLE BENEFIT CORPORATION" OR "PEOPLE PLANET PROFIT CORPORATION", OR CONTAIN THE ABBREVIATION "T.B.C.", "T.B.C.", "3.B.C.", "3.B.C.", "3.P.C.", OR "3.P.C.", WITH OR WITHOUT PERIODS OR OTHER PUNCTUATION.**

Sec. 541a. (1) A director or officer shall discharge his or her duties as a director or officer including his or her duties as a member of a committee in the following manner:

(a) In good faith.

1 (b) With the care an ordinarily prudent person in a like
2 position would exercise under similar circumstances.

3 (c) In a manner he or she reasonably believes to be in the
4 best interests of the corporation.

5 (2) In discharging his or her duties, a director or officer is
6 entitled to rely on information, opinions, reports, or statements,
7 including financial statements and other financial data, if
8 prepared or presented by any of the following:

9 (a) One or more directors, officers, or employees of the
10 corporation, or of a business organization under joint control or
11 common control, whom the director or officer reasonably believes to
12 be reliable and competent in the matters presented.

13 (b) Legal counsel, public accountants, engineers, or other
14 persons as to matters the director or officer reasonably believes
15 are within the person's professional or expert competence.

16 (c) A committee of the board of which he or she is not a
17 member if the director or officer reasonably believes the committee
18 merits confidence.

19 (3) A director or officer is not entitled to rely on the
20 information set forth in subsection (2) if he or she has knowledge
21 concerning the matter in question that makes reliance otherwise
22 permitted by subsection (2) unwarranted.

23 **(4) FOR PURPOSES OF DETERMINING IF A DIRECTOR OR OFFICER OF A**
24 **PUBLIC BENEFIT CORPORATION HAS COMPLIED WITH SUBSECTION (1) IN THE**
25 **DISCHARGE OF HIS OR HER DUTIES AS A DIRECTOR OR OFFICER, THERE IS A**
26 **REBUTTABLE PRESUMPTION THAT HE OR SHE ACTED IN GOOD FAITH, ON AN**
27 **INFORMED BASIS, AND WITH A VIEW TO THE BEST INTERESTS OF THE**

1 CORPORATION. IF A DIRECTOR OR OFFICER OF A PUBLIC BENEFIT
 2 CORPORATION ACTS IN GOOD FAITH TO ADVANCE THE PURPOSE OR MEET ANY
 3 OF THE REQUIREMENTS DESCRIBED IN SECTION 108(3) IN DISCHARGING HIS
 4 OR HER DUTIES, THAT ACTION DOES NOT CREATE OR AUTHORIZE ANY CAUSE
 5 OF ACTION AGAINST THE CORPORATION OR ITS DIRECTORS OR OFFICERS.

6 (5) FOR PURPOSES OF DETERMINING IF A DIRECTOR OR OFFICER OF A
 7 TRIPLE BENEFIT CORPORATION HAS COMPLIED WITH SUBSECTION (1) IN THE
 8 DISCHARGE OF HIS OR HER DUTIES AS A DIRECTOR OR OFFICER, THERE IS A
 9 REBUTTABLE PRESUMPTION THAT HE OR SHE ACTED IN GOOD FAITH, ON AN
 10 INFORMED BASIS, AND WITH A VIEW TO THE BEST INTERESTS OF THE
 11 CORPORATION. IF A DIRECTOR OR OFFICER OF A TRIPLE BENEFIT
 12 CORPORATION ACTS IN GOOD FAITH TO ADVANCE THE PURPOSE OR MEET ANY
 13 OF THE REQUIREMENTS DESCRIBED IN SECTION 109(3) IN DISCHARGING HIS
 14 OR HER DUTIES, THAT ACTION DOES NOT CREATE OR AUTHORIZE ANY CAUSE
 15 OF ACTION AGAINST THE CORPORATION OR ITS DIRECTORS OR OFFICERS.

16 (6) ~~(4)~~—An action against a director or officer for failure to
 17 perform the duties imposed by this section shall be commenced
 18 within 3 years after the cause of action has accrued, or within 2
 19 years after the time when the cause of action is discovered or
 20 should reasonably have been discovered, by the complainant,
 21 whichever occurs first.

22 Sec. 821. (1) The attorney general may bring an action in the
 23 circuit court of the county in which the principal place of
 24 business or registered office of ~~the~~**A** corporation is located for
 25 dissolution of ~~a~~**THE** corporation ~~upon~~**ON** the ground that the
 26 corporation has committed any of the following acts:

27 (a) Procured its organization through fraud.

1 (b) Repeatedly and willfully exceeded the authority conferred
2 ~~upon~~ **ON** it by law.

3 (c) Repeatedly and willfully conducted its business in an
4 unlawful manner.

5 (D) IF THE CORPORATION IS A PUBLIC BENEFIT CORPORATION, CEASED
6 TO MEET ANY OF THE REQUIREMENTS DESCRIBED IN SECTION 108(3) AND FOR
7 60 DAYS AFTER IT CEASED TO MEET THOSE REQUIREMENTS FAILED TO FILE A
8 CERTIFICATE OF AMENDMENT AMENDING ITS NAME TO CONFORM WITH THE
9 REQUIREMENTS OF SECTIONS 211 AND 212.

10 (E) IF THE CORPORATION IS A TRIPLE BENEFIT CORPORATION, CEASED
11 TO MEET ANY OF THE REQUIREMENTS DESCRIBED IN SECTION 109(3) AND FOR
12 60 DAYS AFTER IT CEASED TO MEET THOSE REQUIREMENTS FAILED TO FILE A
13 CERTIFICATE OF AMENDMENT AMENDING ITS NAME TO CONFORM WITH THE
14 REQUIREMENTS OF SECTIONS 211 AND 212.

15 (2) The enumeration in this section of grounds for dissolution
16 does not exclude any other statutory or common law action by the
17 attorney general for dissolution of a corporation or revocation or
18 forfeiture of its corporate franchises.