
Fourth Session, Forty-first Parliament
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Legislative Assembly of British Columbia

BILL M _____

**BUSINESS CORPORATIONS
AMENDMENT ACT, 2019**

Mr. Andrew Weaver

Explanatory Notes

SECTION 1: *[Business Corporations Act, section 1]* adds definitions of “benefit company”, “benefit provision”, “benefit report” and “benefit statement”.

SECTION 2: *[Business Corporations Act, section 42]* requires a benefit company to keep copies of its benefit reports at its records office.

SECTION 3: *[Business Corporations Act, section 43]* allows a benefit company to keep copies of its benefit reports at a location other than its records office after 7 years, as long as the records can be produced on 48 hours’ notice, not including Saturdays and holidays.

SECTION 4: *[Business Corporations Act, section 46]* provides for the inspection of a benefit report without charge.

BILL M _____ – 2019

**BUSINESS CORPORATIONS
AMENDMENT ACT, 2019**

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of British Columbia, enacts as follows:

1 Section 1 (1) of the Business Corporations Act, S.B.C. 2002, c. 57, is amended by adding the following definitions:

“**benefit company**” means a company that has a benefit statement in its notice of articles;

“**benefit provision**”, in relation to a benefit company, means the provision in the benefit company’s articles that sets out certain commitments, required under section 51.992 (2);

“**benefit report**”, in relation to a benefit company, means a report produced under section 51.994 (2);

“**benefit statement**”, in relation to a benefit company, means the statement in the benefit company’s notice of articles, required by section 51.992 (1); .

2 Section 42 is amended

(a) in subsection (1) by adding the following paragraph:

(q.2) if the company is a benefit company, a copy of each benefit report; , **and**

(b) in subsection (1) (r) by adding the following subparagraph:

(vi) paragraph (q.2).

3 Section 43 (1) is amended by striking out “(q.1) or (r) (ii), (iii), (iv) or (v)” and substituting “(q.1), (q.2) or (r) (ii), (iii), (iv), (v) or (vi)”.

4 Section 46 is amended

(a) by adding the following subsection:

(4.1) Any person may, without charge, inspect the copy of the benefit report that a benefit company is required to keep under section 42 (1) (q.2). , **and**

(b) in subsection (5) by striking out “In the case of” and substituting “Subject to subsection (4.1) of this section, in the case of”.

SECTION 5: *[Business Corporations Act, Part 2.3]* adds a Part respecting benefit companies.

5 *The following Part is added:*

PART 2.3 – BENEFIT COMPANIES

Definitions

51.991 (1) In this Part:

“**associate**” has the same meaning as in section 192 (1);

“**public benefit**” means a positive effect, including of an artistic, charitable, cultural, economic, educational, environmental, literary, medical, religious, scientific or technological nature, for the benefit of

- (a) a class of persons, other than shareholders of the company in their capacity as shareholders, or a class of communities or organizations, or
- (b) the environment, including air, land, water, flora and fauna, and animal, fish and plant habitats;

“**responsible and sustainable manner**”, in relation to the conduct of a benefit company’s business, means a manner of conducting the business that

- (a) takes into account the well-being of persons affected by the operations of the benefit company, and
- (b) endeavours to use a fair and proportionate share of available environmental, social and economic resources and capacities;

“**third-party standard**” means a standard for defining, reporting and assessing

- (a) the overall performance of a benefit company in relation to its conducting business in a responsible and sustainable manner, and
- (b) the performance of the benefit company in relation to the public benefits specified in that benefit company’s articles,

which standard is developed by a third-party standard-setting body and in accordance with the regulations, if any;

“**third-party standard-setting body**”, in relation to a benefit company, means a person or entity that is not related, in accordance with subsection (2), to the benefit company and that makes public the following information:

- (a) the name of each member of the third-party standard-setting body’s governing body;
- (b) the selection process for membership in that governing body;
- (c) the name of each person who,
 - (i) if the third-party standard-setting body is a corporation, controls the standard-setting body within the meaning of section 2 (3) of this Act, or
 - (ii) if the third-party standard-setting body is not a corporation, controls the operations of the standard-setting body;

SECTION 5: *[Business Corporations Act, Part 2.3 – continued]*

- (d) a description of the sources of the third-party standard-setting body's funding in sufficient detail to disclose any relationship that could reasonably be considered to compromise the standard-setting body's independence from the benefit company;
 - (e) a description of the process used to develop a third-party standard, including the criteria against which the benefit company's performance is to be measured and the relative weight of those criteria.
- (2) For the purposes of the definition of "third-party standard-setting body", a third-party standard-setting body is related to a benefit company,
- (a) in the case of a standard-setting body that is a corporation, if it is an affiliate of the benefit company, and
 - (b) whether or not the standard-setting body is a corporation, if
 - (i) a director, officer or shareholder, or an associate of a director, officer or shareholder, of the benefit company or of an affiliate of the benefit company is a member of the governing body of, or controls the operation of, or otherwise controls, the third-party standard-setting body, or
 - (ii) a person who beneficially owns shares of the benefit company, or an associate of such a person, is a member of the governing body of, or controls the operation of, or otherwise controls, the third-party standard-setting body.

Benefit statement and benefit provision

51.992 (1) A company is a benefit company if its notice of articles contains the following statement:

This company is a benefit company and, as such, is committed to conducting its business in a responsible and sustainable manner and promoting one or more public benefits.

- (2) A benefit company must include in its articles a provision that
- (a) specifies the public benefits to be promoted by the benefit company, and
 - (b) sets out the following commitments:
 - (i) to conduct the benefit company's business in a responsible and sustainable manner;
 - (ii) to promote the public benefits specified in paragraph (a).

Directors and officers

51.993 (1) A director or officer of a benefit company, when exercising the powers and performing the functions of a director or officer of the company, must

- (a) act honestly and in good faith with a view to
 - (i) conducting the business in a responsible and sustainable manner, and

SECTION 5: *[Business Corporations Act, Part 2.3 – continued]*

- (ii) promoting the public benefits specified in the company’s articles, and
 - (b) balance the duty under section 142 (1) (a) with the duty under paragraph (a) of this subsection.
- (2) Despite subsection (1),
 - (a) the directors and officers of a benefit company have no duty under subsection (1) to
 - (i) a person whose well-being may be affected by the company’s conduct, or
 - (ii) a person who has an interest in a public benefit specified in the company’s articles, and
 - (b) no legal proceeding may be brought by a person referred to in paragraph (a) (i) or (ii) against a director or officer of a benefit company in relation to the duties under subsection (1).
- (3) A director or officer of a benefit company does not contravene the duty under section 142 (1) (a) of this Act due only to the director or officer acting in accordance with subsection (1) of this section.
- (4) Despite subsection (2), a legal proceeding under this Act or any other enactment may be commenced in relation to the duties under subsection (1) only by shareholders of the benefit company and only if,
 - (a) in the case of a public company, the proceeding is commenced by shareholders holding, in the aggregate, at least the lesser of
 - (i) 2% of the issued shares of the company, and
 - (ii) issued shares of the company with a fair market value of at least \$2 000 000, and
 - (b) in any other case, the proceeding is commenced by shareholders holding, in the aggregate, at least 2% of the issued shares of the company.
- (5) Despite any rule of law to the contrary, a court may not order monetary damages in relation to any breach of subsection (1).

Benefit report

- 51.994** (1) In this section, “**publish**”, in relation to a benefit report, has the same meaning as in section 1 (1) and, for the purposes of this section, a reference in the definition of “publish” to a company’s financial statements or an auditor’s report is deemed to be a reference to the benefit report.
- (2) The directors of a benefit company must, for the purposes of preparing a benefit report, annually
 - (a) select a third-party standard, and

SECTION 5: *[Business Corporations Act, Part 2.3 – continued]*

- (b) assess against the third-party standard, for the most recently completed financial year, the performance of the benefit company in carrying out the commitments set out in the benefit company's benefit provision.
- (3) On or before each annual reference date for the company, the directors of a benefit company must produce and publish a report that discloses in the prescribed manner the following in relation to the company's most recently completed financial year:
 - (a) a fair and accurate description of the ways the benefit company demonstrated commitment
 - (i) to conducting its business in a responsible and sustainable manner, and
 - (ii) to promoting the public benefits specified in that benefit company's articles;
 - (b) a record of the assessment carried out under subsection (2) and the results of that assessment;
 - (c) the circumstances, if any, that hindered the benefit company's endeavours to carry out the commitments set out in the benefit company's benefit provision;
 - (d) the process and rationale for selecting or changing the third-party standard used to prepare the benefit report, including, as applicable,
 - (i) a statement that the standard was applied in the year before the most recently completed financial year and is being applied in the most recently completed financial year in a manner consistent with the previous application of that standard,
 - (ii) a statement that the standard was applied in the year before the most recently completed financial year but is not being applied in the most recently completed financial year, and the reasons for the inconsistency, or
 - (iii) if the report is for the first financial year in which the company is a benefit company, a statement that the report is the first benefit report for which the standard was selected and applied;
 - (e) any other information required by the regulations.
- (4) The directors of a benefit company must ensure that, before a benefit report is published, the report is
 - (a) approved by the directors, and
 - (b) signed by one or more directors to confirm that the approval required under paragraph (a) was obtained.
- (5) Promptly after a benefit report is published, the directors of the benefit company must post the report on the company's publicly accessible website, if the company has one.

SECTION 5: *[Business Corporations Act, Part 2.3 – continued]*

SECTION 6: *[Business Corporations Act, section 138]* is consequential to amendments made by this Bill.

SECTION 7: *[Business Corporations Act, section 157]* is consequential to amendments made by this Bill.

SECTION 8: *[Business Corporations Act, section 238]* allows a shareholder of a benefit company to dissent if the articles of the company are altered to change the company's benefit provision.

SECTION 9: *[Business Corporations Act, section 242]* is consequential to amendments made by this Bill.

SECTION 10: *[Business Corporations Act, section 260]* allows a shareholder of a benefit company to dissent in the circumstances described in section 238 of the Act, as amended by this Bill, in relation to a benefit company.

**Alteration of notice of articles to become
or to cease to be a benefit company**

- 51.995** (1) A company may become a benefit company by altering its notice of articles to include the benefit statement.
- (2) A company must not alter its notice of articles under subsection (1) unless the shareholders authorize the following by a special resolution:
- (a) the alteration referred to in subsection (1);
 - (b) an alteration to the articles to set out a benefit provision.
- (3) A benefit company may cease to be a benefit company by altering its notice of articles to delete the benefit statement.
- (4) A benefit company must not alter its notice of articles under subsection (3) unless the shareholders authorize, by a special resolution, the alteration.
- (5) A shareholder of a company may send a notice of dissent to the company under Division 2 of Part 8, in respect of a resolution under this section to alter the company's notice of articles to include or to delete the benefit statement.

6 *Section 138 (1) is amended by striking out “sections 142” and substituting “section 51.993, if applicable, and sections 142”.*

7 *Section 157 (1) is amended by striking out “section 142 (1)” and substituting “section 51.993 (1), if applicable, and section 142 (1)”.*

8 *Section 238 is amended*

(a) in subsection (1) (a) by striking out “or” at the end of subparagraph (i), by adding “, or” at the end of subparagraph (ii) and by adding the following subparagraph:

(iii) without limiting subparagraph (i), in the case of a benefit company, to alter the company's benefit provision; , and

(b) by adding the following subsection:

(1.1) A shareholder of a company, whether or not the shareholder's shares carry the right to vote, is entitled to dissent under section 51.995 (5) in respect of a resolution to alter its notice of articles to include or to delete the benefit statement.

9 *Section 242 (1) is amended by adding “or (1.1)” after “238 (1) (a), (b), (c), (d), (e) or (f)”.*

10 *Section 260 is amended by striking out “or” at the end of paragraph (a), by adding “, or” at the end of paragraph (b) and by adding the following paragraph:*

(c) without limiting paragraph (a), in the case of a benefit company, to alter the company's benefit provision.

SECTION 11: *[Business Corporations Act, section 266]*

- allows special Act corporations that convert into benefit companies to use their registration numbers in their names;
- provides that a special Act corporation that converts itself into a benefit company must adopt articles that set out a benefit provision.

SECTION 12: *[Business Corporations Act, section 270]* provides that a company resulting from an amalgamation must, if it is to be a benefit company, adopt a notice of articles and articles that set out a benefit provision.

SECTION 13: *[Business Corporations Act, section 302]* provides that a corporation that is continuing into British Columbia must, if it is to be a benefit company, adopt a notice of articles and articles that set out a benefit provision.

SECTION 14: *[Business Corporations Act, section 426]* creates the following offences:

- failure to comply with approval and signing requirements for a benefit report;
- failure to publish or post a benefit report;
- publishing or posting a non-compliant benefit report.

SECTION 15: *[Business Corporations Act, section 428]* sets out the penalty for an offence under section 426 (1), as amended by this Act.

SECTION 16: *[Business Corporations Act, section 432]* authorizes regulations in relation to third-party standards and benefit companies.

- 11 Section 266 (1) (a) (ii) is amended by striking out everything after “and, if the converted company is to be” and substituting the following:**
- (A) a community contribution company, section 51.92, or
 - (B) a benefit company, section 51.992, and .
- 12 Section 270 (2) (d) (i) is amended by striking out everything after “and, if the amalgamated company is to be” and substituting the following:**
- (A) a community contribution company, section 51.92, or
 - (B) a benefit company, section 51.992,
- and be signed by one or more of the individuals referred to in paragraph (a) of this subsection, and .
- 13 Section 302 (1) (c) is amended by striking out everything after “and, if the continued company is to be” and substituting the following:**
- (i) a community contribution company, section 51.92, or
 - (ii) a benefit company, section 51.992.
- 14 Section 426 is amended**
- (a) in subsection (1) (a) by adding “51.994 (4),” immediately after “51.96 (3),” and**
- (b) in subsection (1) by adding the following paragraph:**
- (d.2) fails to publish or post a benefit report in accordance with section 51.994 (3) or (5), as the case may be, or publishes or posts a benefit report that does not comply with the Act or regulations, .
- 15 Section 428 (1) is amended by adding “(d.2),” after “(d.1),”.**
- 16 Section 432 is amended by adding the following subsection:**
- (9.11) Without limiting the ability of the Lieutenant Governor in Council to make regulations respecting benefit companies under any other subsection of this section, the Lieutenant Governor in Council may make the following regulations respecting benefit companies:
- (a) prescribing, for the purposes of the definition of “third-party standard” in section 51.991 (1),
 - (i) the matters that the standard must define and address, and
 - (ii) the methods of assessment the standard must require;
 - (b) prescribing, for the purposes of section 51.994,
 - (i) information that must be included in a benefit report, and
 - (ii) the manner in which the benefit report must disclose the required information.

Commencement

17 This Act comes into force by regulation of the Lieutenant Governor in Council.