

By: Hinojosa

H.B. No. 3488

A BILL TO BE ENTITLED

AN ACT

relating to authorizing the formation of public benefit corporations.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Section 3.007, Business Organizations Code, is amended by amending Subsection (d) and adding Subsection (e) to read as follows:

(d) Notwithstanding Section 2.008 and subject to Section 21.954, a for-profit corporation may include one or more social purposes in addition to the purpose or purposes required to be stated in the corporation's certificate of formation by Section 3.005(a)(3). The corporation may also include in the certificate of formation a provision that the board of directors and officers of the corporation shall consider any social purpose specified in the certificate of formation in discharging the duties of directors or officers under this code or otherwise.

(e) Notwithstanding Section 2.008, instead of including in its certificate of formation or amending its certificate of formation to include one or more social purposes as provided by Subsection (d), a for-profit corporation may elect to become a public benefit corporation under Subchapter S, Chapter 21, in the manner provided by this subsection and that subchapter. The certificate of formation of a public benefit corporation must:

(1) specify one or more specific public benefits, as

1 defined by Section 21.952, to be promoted by the corporation; and

2 (2) state in its heading that the corporation is a
3 public benefit corporation.

4 SECTION 2. Chapter 21, Business Organizations Code, is
5 amended by adding Subchapter S to read as follows:

6 SUBCHAPTER S. PUBLIC BENEFIT CORPORATIONS

7 Sec. 21.951. LAW APPLICABLE TO PUBLIC BENEFIT CORPORATIONS;
8 FORMATION. (a) A corporation may elect to become a public benefit
9 corporation as provided by Section 3.007(e) that is governed by
10 this subchapter.

11 (b) If a corporation elects to become a public benefit
12 corporation, the corporation is subject to the other provisions of
13 this chapter and other provisions of this code applicable to
14 for-profit corporations.

15 (c) To the extent of a conflict between this subchapter and
16 another provision in this chapter, this subchapter controls.

17 Sec. 21.952. DEFINITIONS. In this subchapter:

18 (1) "Public benefit" means a positive effect, or a
19 reduction of a negative effect, on one or more categories of
20 persons, entities, communities, or interests, other than
21 shareholders in their capacities as shareholders, including
22 effects of an artistic, charitable, cultural, economic,
23 educational, environmental, literary, medical, religious,
24 scientific, or technological nature.

25 (2) "Public benefit corporation" means a for-profit
26 corporation that is formed under Section 3.007(e) and the other
27 applicable provisions of Chapter 3 and is subject to this

1 subchapter.

2 (3) "Public benefit provisions" means the provisions
3 of a certificate of formation contained in the document as
4 specified by Section 3.007(e) and this subchapter.

5 Sec. 21.953. PURPOSE OF PUBLIC BENEFIT CORPORATION; NAME OF
6 CORPORATION. (a) A public benefit corporation is a domestic
7 for-profit corporation that is intended to produce a public benefit
8 or benefits and to operate in a responsible and sustainable manner.

9 (b) To accomplish the purpose of the corporation described
10 by Subsection (a), a public benefit corporation shall be managed in
11 a manner that balances:

- 12 (1) the shareholders' pecuniary interests;
13 (2) the best interests of those persons materially
14 affected by the corporation's conduct; and
15 (3) the public benefit or benefits specified in the
16 corporation's certificate of formation.

17 (c) The name of the public benefit corporation must contain
18 the words "public benefit corporation," the abbreviation "P.B.C.,"
19 or the designation "PBC," which is considered to satisfy the
20 applicable requirements of Chapter 5.

21 Sec. 21.954. CERTAIN AMENDMENTS AND MERGERS; VOTER APPROVAL
22 REQUIRED. (a) Notwithstanding any other provision of this
23 chapter, a corporation that is not a public benefit corporation may
24 not, without the approval of 90 percent of the owners of outstanding
25 shares of each class of shares of the corporation of which there are
26 outstanding shares, whether voting or nonvoting:

- 27 (1) amend the corporation's certificate of formation

1 to include a specific public benefit; or

2 (2) merge or consolidate with or into another entity
3 if, as a result of the merger or consolidation, the shares in the
4 corporation would become, or be converted into or exchanged for the
5 right to receive, shares or other equity interests in a domestic or
6 foreign public benefit corporation or similar entity.

7 (b) This section does not apply:

8 (1) until the corporation has received payment for any
9 of the corporation's capital stock; or

10 (2) with respect to a nonstock corporation, until the
11 corporation has members.

12 (c) Any shareholder of a corporation that is not a public
13 benefit corporation is entitled to an appraisal of the fair value of
14 the shareholder's shares of stock by a court, if the shareholder:

15 (1) holds shares of the corporation immediately before
16 the effective date of:

17 (A) an amendment to the corporation's
18 certificate of formation to include a specific public benefit
19 authorized by Section 3.007(e); or

20 (B) a merger or consolidation that would result
21 in the conversion of the corporation's shares into or exchange of
22 the corporation's shares for the right to receive shares or other
23 equity interests in a domestic or foreign public benefit
24 corporation or similar entity; and

25 (2) has not:

26 (A) voted in favor of an amendment, merger, or
27 consolidation described by Subdivision (1); or

1 (B) given written consent to the action under the
2 applicable provisions of this code.

3 (d) Notwithstanding any other provision of this chapter, a
4 corporation that is a public benefit corporation may not, without
5 the approval of two-thirds of the owners of outstanding shares of
6 each class of the stock of the corporation of which there are
7 outstanding shares, whether voting or nonvoting:

8 (1) amend the corporation's certificate of formation
9 to delete or amend a provision described by Section 3.007(e)(1) or
10 21.957(c); or

11 (2) merge or consolidate with or into another entity
12 if, as a result of the merger or consolidation, the shares in the
13 corporation would become, or be converted into or exchanged for the
14 right to receive, shares or other equity interests in a domestic or
15 foreign corporation:

16 (A) that is not a public benefit corporation or
17 similar entity; and

18 (B) the certificate of formation, or similar
19 governing document of which does not contain identical provisions
20 to the provisions containing the public benefit or benefits that
21 are specified in the certificate of formation under Section
22 3.007(e) or imposing requirements under Section 21.957(c).

23 (e) Notwithstanding any other provision of this section, a
24 nonprofit nonstock corporation may not be a constituent corporation
25 to any merger or consolidation governed by this section.

26 Sec. 21.955. STOCK CERTIFICATES; NOTICES REGARDING
27 UNCERTIFICATED STOCK. (a) A stock certificate issued by a public

1 benefit corporation must note conspicuously that the corporation is
2 a public benefit corporation formed under this subchapter.

3 (b) A notice sent by a public benefit corporation under
4 Section 3.205 must state conspicuously that the corporation is a
5 public benefit corporation formed under Section 3.007(e) and is
6 governed by this subchapter and the other applicable provisions of
7 this code.

8 Sec. 21.956. DUTIES OF DIRECTORS. (a) The board of
9 directors of a public benefit corporation shall manage or direct
10 the business and affairs of the corporation in a manner that
11 balances:

- 12 (1) the pecuniary interests of the shareholders;
13 (2) the best interests of those persons materially
14 affected by the corporation's conduct; and
15 (3) the specific public benefit or benefits specified
16 in the corporation's certificate of formation.

17 (b) A director of a public benefit corporation does not, by
18 virtue of the public benefit provisions specified in the
19 certificate of formation as provided by Section 3.007(e) or by
20 virtue of the purpose and requirements of Sections 21.953(a) and
21 (b), owe any duty to any person because of:

- 22 (1) any interest the person has in the public benefit
23 or benefits specified in the certificate of formation; or
24 (2) any interest materially affected by the
25 corporation's conduct.

26 (c) With respect to a decision implicating the balance
27 requirement of Subsection (a), a director of a public benefit

1 corporation is considered to have satisfied the director's
2 fiduciary duties to shareholders and the corporation if the
3 director's decision is both informed and disinterested and a
4 decision that a person of ordinary, sound judgment would approve.

5 (d) The certificate of formation of a public benefit
6 corporation may include a provision that any disinterested failure
7 of a director to satisfy the requirements of this section does not,
8 for the purposes of the applicable provisions of this code,
9 constitute an act or omission not in good faith or a breach of the
10 duty of loyalty.

11 Sec. 21.957. PERIODIC STATEMENTS AND THIRD-PARTY
12 CERTIFICATION. (a) A public benefit corporation shall include in
13 each notice of a meeting of shareholders a statement to the effect
14 that the corporation is a public benefit corporation governed by
15 this subchapter.

16 (b) A public benefit corporation, at least biennially,
17 shall provide to the corporation's shareholders a statement
18 pertaining to the corporation's promotion of the public benefit or
19 benefits specified in the corporation's certificate of formation
20 and promotion of the best interests of those materially affected by
21 the corporation's conduct. The statement must include:

22 (1) the objectives the board of directors has
23 established to promote the public benefit or benefits and
24 interests;

25 (2) the standards the board of directors has adopted
26 to measure the corporation's progress in promoting the public
27 benefit or benefits and interests;

1 (3) objective factual information based on those
2 standards regarding the corporation's success in meeting the
3 objectives for promoting the public benefit or benefits and
4 interests; and

5 (4) an assessment of the corporation's success in
6 meeting the objectives and promoting the public benefit or benefits
7 and interests.

8 (c) The certificate of formation or bylaws of a public
9 benefit corporation may require that the corporation:

10 (1) provide the statement required by Subsection (b)
11 more frequently than biennially;

12 (2) make the statement required by Subsection (b)
13 available to the public; or

14 (3) use a third-party standard in connection with or
15 attain a periodic third-party certification addressing the
16 corporation's promotion of the public benefit or benefits specified
17 in the certificate of formation or the best interests of those
18 persons materially affected by the corporation's conduct.

19 Sec. 21.958. DERIVATIVE SUITS. (a) In this section,
20 "shareholder" means:

21 (1) shareholders of a public benefit corporation that
22 own, individually or collectively, at least two percent of the
23 corporation's outstanding shares; or

24 (2) shareholders of a public benefit corporation the
25 shares of which are listed on a national securities exchange that
26 own the lesser of:

27 (A) the percentage of shares described by

1 Subdivision (1); or

2 (B) shares whose market value is at least
3 \$2,000,000.

4 (b) A shareholder of a public benefit corporation may bring
5 a derivative action to enforce compliance with the requirements of
6 Section 21.956(a).

7 Sec. 21.959. NO EFFECT ON OTHER CORPORATIONS. Except as
8 provided by Section 21.954, this subchapter does not apply to a
9 corporation that is not a public benefit corporation.

10 SECTION 3. This Act takes effect September 1, 2017.