



# State of Tennessee

## PUBLIC CHAPTER NO. 497

### SENATE BILL NO. 972

By Dickerson, Harris, Stevens, Yarbrow, Norris

Substituted for: House Bill No. 767

By Powell, Swann, Marsh, Lundberg, Lamberth, Sargent, Clemmons, Stewart, Hazlewood, Travis

AN ACT to amend Tennessee Code Annotated, Title 48, relative to for-profit benefit corporations.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Title 48, is amended by adding the following language as a new chapter:

**48-28-101.** This chapter shall be known and may be cited as the "For-Profit Benefit Corporation Act."

**48-28-102.** This chapter applies to all for-profit benefit corporations. If a corporation, organized under the Tennessee Business Corporation Act, compiled in chapters 11—27 of this title, elects to become a for-profit benefit corporation under this chapter in the manner prescribed in this chapter, the corporation shall continue to be subject in all respects to the Tennessee Business Corporation Act, except to the extent that this chapter imposes additional or different requirements, in which case the requirements of this chapter shall apply.

**48-28-103.** As used in this chapter:

(1) "For-profit benefit corporation" means a domestic business corporation organized under and subject to the Tennessee Business Corporation Act, compiled in chapters 11—27 of this title that intends to pursue a public benefit or public benefits;

(2) "Foreign for-profit benefit corporation" means a for-profit corporation incorporated under a law other than the laws of this state that intends, as stated in its charter or similar governing instrument, to pursue a public benefit or public benefits and has, under that law, the status of a for-profit benefit corporation or its substantial equivalent;

(3) "Public benefit" means a positive effect or reduction of negative effects on one (1) or more categories of persons, entities, communities, or interests, other than shareholders in their capacities as shareholders, including, but not limited to, an artistic, charitable, cultural, economic, educational, environmental, literary, medical, religious, scientific, or technological effect; and

(4) "Public benefit provisions" means the provisions of a charter as described in § 48-28-104(d).

**48-28-104.**

(a)(1) Notwithstanding the Tennessee Business Corporation Act, compiled in chapters 11—27 of this title, a domestic for-profit corporation that is not a for-profit benefit corporation shall not, without the approval of two-thirds (2/3) of the outstanding shares of each class of the stock of the corporation of which there are outstanding shares, whether voting or nonvoting:

(A) Amend its charter to include a provision authorized by subsection (e); or

(B) Merge with or into, or consummate a plan of share exchange under § 48-21-103 with, a for-profit benefit corporation or foreign for-profit benefit corporation if, as a result of the merger or share exchange, the shares in the domestic for-profit corporation would become, or be converted into or exchanged for the right to receive, shares or other equity interests in a for-profit benefit corporation or foreign for-profit benefit corporation.

(2) The restrictions of this subsection (a) shall not apply prior to the time that the corporation has received payment for any of its capital stock.

(b) Any shareholder of a domestic for-profit corporation that holds shares of stock of the domestic for-profit corporation immediately prior to the effective time of the following actions shall be entitled to dissent and obtain payment for the shareholder's shares under chapter 23 of this title; provided that such shareholder has neither voted in favor of the amendment or the merger or plan of share exchange nor consented to in writing pursuant to § 48-17-104:

(1) An amendment to the corporation's charter to include a provision authorized by subsection (e); or

(2) A merger or consummation of a plan of share exchange under § 48-21-103 that would result in the conversion of the domestic for-profit corporation's stock into or the exchange of the corporation's stock for the right to receive shares or other equity interests in a foreign for-profit benefit corporation.

(c) Notwithstanding the Tennessee Business Corporation Act, compiled in chapters 11—27 of this title, a corporation that is a for-profit benefit corporation shall not, without the approval of two-thirds (2/3) of the outstanding shares of each class of the stock of the corporation of which there are outstanding shares, whether voting or nonvoting:

(1) Amend its charter to delete or amend a public benefit provision authorized by subsection (e);

(2) Merge with or into another entity if the surviving entity of the merger is not a for-profit benefit corporation or foreign for-profit benefit corporation;

(3) Merge with or into another entity that is a for-profit benefit corporation or foreign for-profit benefit corporation unless the charter or similar governing instrument of the surviving entity states that one (1) or more of its public benefit purposes is the same or substantially the same as the public benefit purpose or purposes of the for-profit benefit corporation merging with or into such other entity as of immediately prior to the merger;

(4) Consummate a plan of share exchange under § 48-21-103 with another entity that is not a for-profit benefit corporation or foreign for-profit benefit corporation; or

(5) Convert under § 48-21-109 to another form of entity.

(d) A for-profit benefit corporation shall be managed in a manner that considers the best interests of those materially affected by the corporation's conduct, including the pecuniary interests of shareholders, and the public benefit or public benefits identified in its charter.

(e) The charter of a for-profit benefit corporation shall:

(1) Notwithstanding § 48-12-102(b)(2)(A), include a statement regarding the purpose or purposes for which the corporation is organized including one (1) or more public benefits to be pursued by the corporation; and

(2) State within its heading that it is a for-profit benefit corporation.

**48-28-105.**

(a) Any stock certificate issued by a for-profit benefit corporation shall conspicuously note that the corporation is a for-profit benefit corporation subject to this chapter.

(b) Any notice sent by a for-profit benefit corporation pursuant to § 48-11-202, shall conspicuously state that the corporation is a for-profit benefit corporation subject to this chapter.

**48-28-106.**

(a) In discharging the duties of the position of director of a for-profit benefit corporation, a director shall consider the effects of any contemplated, proposed, or actual transaction or other conduct on the interests of those materially affected by the corporation's conduct, including the pecuniary interests of shareholders, and the public benefit or public benefits identified in its charter and shall not give regular, presumptive, or permanent priority to the interests of any individual constituency or limited group of constituencies materially affected by the corporation's conduct, including the pecuniary interests of shareholders.

(b) A director of a for-profit benefit corporation shall not, by virtue of the public benefit provisions authorized by § 48-28-104(d), have any duty to any person on account of any interest of such person in the public benefit or public benefits identified in the charter. A director who performs the duties of a director stated in subsection (a) is not liable by reason of being or having been a director of a for-profit benefit corporation under § 48-18-301.

(c) The charter of a for-profit benefit corporation may include a provision that any disinterested failure to satisfy this section shall not, for the purposes of §§ 48-18-301—303 or §§ 48-18-501—509, constitute an act or omission not in good faith, or a breach of the duty of loyalty.

**48-28-107.**

(a) A for-profit benefit corporation shall include in every notice of a meeting of shareholders a statement to the effect that it is a for-profit benefit corporation subject to this chapter.

(b) No later than four (4) months after the close of a for-profit benefit corporation's fiscal year, the for-profit benefit corporation shall deliver to its shareholders an annual benefit report covering the immediately preceding fiscal year. The annual benefit report shall state the name of the for-profit benefit corporation and contain, with regard to the period covered by the report, a narrative description of:

(1) The ways in which the corporation pursued the public benefit or public benefits stated in its charter;

(2) The extent to which that public benefit purpose or purposes were pursued and achieved; and

(3) Any material circumstances that hindered efforts to pursue or achieve the public benefit or public benefits.

(c) A for-profit benefit corporation is not required to have its annual benefit report audited, certified, or otherwise evaluated by a third party.

(d) A for-profit benefit corporation shall post its annual benefit reports on the public portion of its web site, if any; provided, the compensation paid to directors and financial or proprietary information may be omitted from the posted annual benefit reports.

(e) If a for-profit benefit corporation does not have a web site, the for-profit benefit corporation shall provide a copy of its most recent annual benefit report, without charge, to any person who requests a copy; provided, the compensation paid to directors and financial or proprietary information may be omitted from the provided annual benefit reports.

(f) The charter or bylaws of a for-profit benefit corporation may require that the corporation use a third-party standard in connection with or attain a periodic third-party certification addressing the corporation's promotion of the public benefit or public benefits identified in the charter or the best interests of those materially affected by the corporation's conduct.

**48-28-108.** Shareholders of a for-profit benefit corporation owning individually or collectively, as of the date of instituting the derivative suit, at least two percent (2%) of the

corporation's outstanding shares or, in the case of a corporation with shares listed on a national securities exchange, the lesser of that percentage or shares having at least two million dollars (\$2,000,000) in aggregate market value, may maintain a derivative lawsuit to enforce a director's duties set forth in § 48-28-106(a). For purposes of this section, "aggregate market value" means the average of the high and low trading values multiplied by the number of shares issued and outstanding determined as of the last trading day immediately preceding the date of filing the derivative suit.

**48-28-109.** This chapter shall not affect a statute or other rule of law applicable to a domestic business corporation that is not a for-profit benefit corporation, except as provided in § 48-28-104. Specifically, no implication is made by, and no inference may be drawn from, the enactment of this chapter as to whether, in exercising their duties, the officers or directors of a domestic business corporation that is not a for-profit benefit corporation may consider the impact of the corporation's transactions or other conduct on:

- (1) The interests of those materially affected by the corporation's conduct, including the pecuniary interests of shareholders; or
- (2) Any public benefit or public benefits identified in its charter.

SECTION 2. Tennessee Code Annotated, Section 48-23-102(a), is amended by adding the following language as a new subdivision:

(7) In accordance with and to the extent provided in § 48-28-104(b), an amendment to the charter of a corporation as described in § 48-28-104(b)(1), or consummation of a merger or plan of share exchange as described in § 48-28-104(b)(2);

SECTION 3. This act shall take effect January 1, 2016, the public welfare requiring it.

SENATE BILL NO. 972

PASSED: April 22, 2015

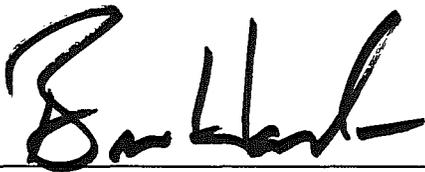


RON RAMSEY  
SPEAKER OF THE SENATE



BETH HARWELL, SPEAKER  
HOUSE OF REPRESENTATIVES

APPROVED this 20<sup>th</sup> day of MAY 2015



BILL HASLAM, GOVERNOR