

SENATE FILE NO. SF0036

For-profit public benefit corporations.

Sponsored by: Select Committee on Blockchain, Financial
Technology and Digital Innovation Technology

A BILL

for

1 AN ACT relating to corporations; providing for for-profit
2 public benefit corporations; providing definitions;
3 specifying requirements and applicability; imposing duties
4 on boards of directors; and providing for an effective
5 date.

6

7 *Be It Enacted by the Legislature of the State of Wyoming:*

8

9 **Section 1.** W.S. 17-31-101 through 17-31-110 are
10 created to read:

11

12 CHAPTER 31

13 FOR-PROFIT PUBLIC BENEFIT CORPORATIONS SUPPLEMENT

14

15 ARTICLE 1

1 PROVISIONS

2

3 **17-31-101. Short title.**

4

5 This chapter shall be known and may be cited as the
6 "Wyoming For-profit Public Benefit Corporations
7 Supplement."

8

9 **17-31-102. Definitions.**

10

11 (a) As used in this chapter:

12

13 (i) A "for-profit public benefit corporation" is
14 a for-profit corporation organized under and subject to the
15 requirements of this chapter that is intended to produce a
16 public benefit and to operate in a responsible and
17 sustainable manner. A for-profit public benefit corporation
18 shall be managed in a manner that balances the pecuniary
19 interests of the stockholders and the public benefits
20 identified in its articles of incorporation. This
21 definition does not apply to or modify "public benefit
22 corporation" as defined in W.S. 17-19-140(a)(xxix);

23

1 (ii) "Public benefit" means a positive effect or
2 reduction of negative effects on one (1) or more categories
3 of persons, entities, communities or interests, other than
4 stockholders in their capacities as stockholders, including
5 effects of an artistic, charitable, cultural, economic,
6 educational, environmental, literary, medical, religious,
7 scientific or technological nature;

8
9 (iii) "Public benefit provisions" means the
10 provisions of the articles of incorporation contemplated by
11 this chapter.

12
13 **17-31-103. Applicability; formation.**

14
15 (a) The Wyoming Business Corporation Act applies to
16 for-profit public benefit corporations to the extent not
17 inconsistent with the provisions of this chapter.

18
19 (b) This chapter applies to all for-profit public
20 benefit corporations. If any type of corporation elects to
21 become, or converts to, a for-profit public benefit
22 corporation under this chapter in the manner prescribed in

1 this chapter, it shall be subject in all respects to the
2 provisions of this chapter.

3

4 **17-31-104. Contents of articles of incorporation.**

5

6 (a) In addition to any requirements set forth in W.S.
7 17-16-202, in the articles of incorporation a for-profit
8 public benefit corporation shall:

9

10 (i) Identify one (1) or more public benefits to
11 be promoted by the corporation; and

12

13 (ii) State that it is a for-profit public
14 benefit corporation.

15

16 (b) The name of the for-profit public benefit
17 corporation may contain the words "public benefit
18 corporation," or the abbreviation "P.B.C.," or the
19 designation "PBC," which shall be deemed to satisfy the
20 requirements of W.S. 17-16-401. Except as otherwise
21 provided in this subsection, if the name does not contain
22 such language, the corporation shall, prior to issuing
23 unissued shares of stock or disposing of treasury shares,

1 provide notice to any person to whom the stock is issued or
2 who acquires the treasury shares that it is a for-profit
3 public benefit corporation. The notice required under this
4 subsection need not be provided if the issuance or disposal
5 is pursuant to an offering registered under the Securities
6 Act of 1933 (15 U.S.C. § 77r et seq.) or if, at the time of
7 issuance or disposal, the corporation has a class of
8 securities that is registered under the Securities Exchange
9 Act of 1934 (15 U.S.C. § 78a et seq.).

10

11 **17-31-105. Nonprofit nonstock corporations.**

12

13 A nonprofit corporation shall not be a constituent
14 corporation to any merger or consolidation with a
15 for-profit public benefit corporation or in which the
16 articles of incorporation of the surviving corporation are
17 amended to include a provision authorized by W.S.
18 17-31-104(a)(i).

19

20 **17-31-106. Stock certificates; notices regarding**
21 **uncertificated stock.**

22

1 Any stock certificate issued by a for-profit public benefit
2 corporation shall note conspicuously that the corporation
3 is a for-profit public benefit corporation formed pursuant
4 to this chapter and that the directors of the for-profit
5 public benefit corporation are required to balance the
6 pecuniary interests of the stockholders and the public
7 benefits identified in the corporation's articles of
8 incorporation. Any notice given by a for-profit public
9 benefit corporation pursuant to W.S. 17-16-626(b) shall
10 state conspicuously that the corporation is a for-profit
11 public benefit corporation formed pursuant to this chapter.

12

13 **17-31-107. Duties of directors.**

14

15 (a) The board of directors shall manage or direct the
16 business and affairs of the for-profit public benefit
17 corporation in a manner that balances the pecuniary
18 interests of the stockholders and the public benefits
19 identified in its articles of incorporation.

20

21 (b) A director of a for-profit public benefit
22 corporation shall not, by virtue of the public benefit
23 provisions or W.S. 17-31-102(a)(i), have any duty to any

1 person on account of any interest of the person in the
2 public benefits identified in the articles of incorporation
3 or on account of any interest materially affected by the
4 corporation's conduct. With respect to a decision
5 implicating the balance requirement in subsection (a) of
6 this section, a director of a for-profit public benefit
7 corporation shall be deemed to satisfy the director's
8 fiduciary duties to stockholders and the corporation if the
9 director's decision is both informed and disinterested and
10 such that a person of ordinary, sound judgment would
11 approve.

12

13 (c) A director's ownership of or other interest in
14 the stock of the for-profit public benefit corporation
15 shall not alone, for the purposes of this section, create a
16 conflict of interest on the part of the director with
17 respect to the director's decision implicating the
18 balancing requirement in subsection (a) of this section,
19 except to the extent that the ownership or interest would
20 create a conflict of interest if the corporation were not a
21 for-profit public benefit corporation.

22

1 (d) In the absence of a conflict of interest, no
2 failure to satisfy the balancing requirement in subsection
3 (a) of this section shall, for the purposes of W.S.
4 17-16-202(b)(iv) or 17-16-851 through 17-16-858, constitute
5 an act or omission not in good faith or a breach of the
6 duty of loyalty, unless the articles of incorporation so
7 provide.

8

9 **17-31-108. Periodic statements and third-party**
10 **certification.**

11

12 (a) A for-profit public benefit corporation shall
13 include in every notice of a meeting of stockholders a
14 statement to the effect that it is a for-profit public
15 benefit corporation formed pursuant to this chapter.

16

17 (b) A for-profit public benefit corporation shall no
18 less than annually provide its stockholders with a
19 statement as to the corporation's promotion of the public
20 benefits identified in the articles of incorporation. The
21 statement required by this subsection shall include all of
22 the following:

23

1 (i) The objectives the board of directors has
2 established to promote the public benefits and interests;

3

4 (ii) The standards the board of directors has
5 adopted to measure the corporation's progress in promoting
6 the benefits and interests;

7

8 (iii) Objective factual information based on
9 those standards regarding the corporation's success in
10 meeting the objectives for promoting the public benefits
11 and interests;

12

13 (iv) An assessment of the corporation's success
14 in meeting the objectives and promoting the public benefits
15 and interests.

16

17 (c) The articles of incorporation or bylaws of a
18 for-profit public benefit corporation may require that the
19 corporation do any one (1) or more of the following:

20

21 (i) Provide the statement described in
22 subsection (b) of this section more frequently than
23 annually;

1

2 (ii) Make the statement described in subsection
3 (b) of this section available to the public;

4

5 (iii) Use a third-party standard in connection
6 with or attain a periodic third-party certification
7 addressing the corporation's promotion of the public
8 benefits identified in the articles of incorporation.

9

10 **17-31-109. Enforcement of balancing requirements.**

11

12 Unless otherwise agreed to by the shareholders, any action
13 to enforce the balancing requirement of W.S. 17-31-107(a),
14 including any individual, derivative or any other type of
15 proceeding, shall not be brought unless the plaintiffs in
16 the proceeding own individually or collectively, as of the
17 date of instituting the proceeding, at least two percent
18 (2%) of the corporation's outstanding shares or, in the
19 case of a corporation with shares listed on a national
20 securities exchange, the lesser of the percentage or shares
21 of the corporation with a market value of at least two
22 million dollars (\$2,000,000.00) as of the date the action
23 is instituted. This section shall not relieve the

1 plaintiffs from complying with any other conditions
2 applicable to filing a derivative proceeding including W.S.
3 17-16-741(a)(i) and any rules of the court in which the
4 action is filed.

5

6 **17-31-110. No effect on other corporations.**

7

8 This chapter shall not affect a statute or rule of law that
9 is applicable to a corporation that is not a for-profit
10 public benefit corporation, except as provided in W.S.
11 17-31-105.

12

13 **Section 2.** This act is effective July 1, 2021.

14

15 (END)