

ACT 209

S.B. NO. 298

A Bill for an Act Relating to Business Regulation.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. The Hawaii Revised Statutes is amended by adding a new chapter to be appropriately designated and to read as follows:

**“CHAPTER
SUSTAINABLE BUSINESS CORPORATIONS**

§ -1 Purpose and findings. This chapter authorizes a designation and code of conduct for a business corporation to offer entrepreneurs and investors the option to build and invest in businesses that operate in a socially and environmentally sustainable manner. Enforcement of those responsibilities comes not from governmental oversight, but rather from new provisions on transparency and accountability included in this chapter.

§ -2 Definitions. As used in this chapter:

“Benefit director” means the director designated as the benefit director of a sustainable business corporation under section -7.

“Benefit officer” means the individual designated as the benefit officer of a sustainable business corporation under section -9.

“General public benefit” means a material positive impact on society and the environment, taken as a whole and as measured by a third-party standard under section -12, from the business and operations of a sustainable business corporation.

“Independent” means having no material relationship with a sustainable business corporation or any of its subsidiaries.

“Material owner” means a shareholder who holds either beneficially or of record five per cent or more of the outstanding shares of a sustainable business corporation.

“Material relationship” means a relationship between a person and a sustainable business corporation where:

- (1) The person is, or has been within the last three years, an employee other than a benefit officer of the sustainable business corporation or any of its subsidiaries;
- (2) The person is related by blood, marriage, or adoption to; is a party to a civil union with; is a reciprocal beneficiary or household mem-

ber of; or resides with an officer other than a benefit officer or director of the sustainable business corporation or any of its subsidiaries; or

- (3) The person or an association of which the person is a director, officer, or manager or in which the person owns beneficially or of record five per cent or more of the outstanding equity interests or the outstanding shares of the sustainable business corporation; provided that percentage ownership in an association shall be calculated as if all outstanding rights to acquire equity interests in the association had been exercised.

“Minimum status vote” means that in addition to any other approval or vote required by this chapter or the bylaws adopted by the shareholders:

- (1) The holders of shares of every class or series shall be entitled to vote on the corporate action regardless of any limitation stated in the articles of incorporation or bylaws on the voting rights of any class or series; and
- (2) The corporate action shall be approved by vote of the shareholders of each class or series entitled to cast at least two-thirds of the votes that all shareholders of the class or series are entitled to cast thereon.

“Subsidiary” of a person means an association in which the person owns beneficially or of record fifty per cent or more of the outstanding equity interests; provided that a percentage of ownership in an association shall be calculated as if all outstanding rights to acquire equity interests in the association had been exercised.

“Sustainable business corporation” means a domestic corporation, incorporated under chapter 414, that has elected to also become subject to this chapter and whose status as a sustainable business corporation has not been terminated as provided in this chapter.

“Third-party standard” means a standard for defining, reporting, and assessing overall corporate social and environmental performance that conforms to the requirements of this chapter.

§ -3 Election of a domestic corporation to become a sustainable business corporation. (a) A domestic corporation incorporated under chapter 414 may elect to become a sustainable business corporation under this chapter by including in its articles or amending its articles to include a statement that the corporation is a sustainable business corporation. An amendment pursuant to this subsection shall not be effective unless it is adopted by at least the minimum status vote.

(b) If a corporation that is not a sustainable business corporation is a party to a merger, consolidation, or division, or is the exchanging corporation in a share exchange, and the surviving, new, or any resulting corporation in the merger, consolidation, division, or share exchange is to be a sustainable business corporation, then the plan of merger, consolidation, division, or share exchange shall not be effective unless it is adopted by the corporation by at least the minimum status vote.

§ -4 Termination of sustainable business corporation status. (a) A sustainable business corporation may terminate its status as such and cease to be subject to this chapter by amending its articles to delete the statement that the corporation is a sustainable business corporation. An amendment pursuant to this subsection shall not be effective unless it is adopted by at least the minimum status vote.

(b) If a plan of merger, consolidation, division, or share exchange would have the effect of terminating the status of a business corporation as a sustainable business corporation, the plan shall not be effective unless it is adopted by at least the minimum status vote.

§ -5 Corporate purposes. (a) Every sustainable business corporation shall have among its purposes the creation of a general public benefit.

(b) In addition to the general public benefit purpose required by subsection (a), the articles of a sustainable business corporation may identify one or more specific public benefits for which the sustainable business corporation was created. The identification of a specific public benefit under this subsection shall not limit the obligation of a sustainable business corporation to create a general public benefit. Allowable specific public benefits for sustainable business corporations subject to this chapter include:

- (1) Providing low-income or underserved individuals or communities with beneficial products or services;
- (2) Promoting economic opportunity for individuals or communities beyond the creation of jobs in the normal course of business;
- (3) Preserving the environment;
- (4) Improving human health;
- (5) Promoting the arts, sciences, or advancement of knowledge;
- (6) Increasing the flow of capital to entities with a public benefit purpose;
- (7) Accomplishing any other particular benefit for society or the environment; and
- (8) Using the right to exclude, conferred by any and all patents in which the sustainable business corporation has an interest in this right through assignment, license, lien, security agreement, or obligation for the following purposes:
 - (A) Creating and retaining good jobs within the State as well as throughout the United States;
 - (B) Upholding fair labor standards nationally and internationally; provided that for purposes of this paragraph, "fair labor standards" shall be construed to prohibit child labor, forced or compulsory labor, discrimination in employment, restrictions on freedom of association, and denial of the right to collective bargaining; and
 - (C) Enhancing environmental protection nationally and internationally; provided that if the public benefit under this paragraph relating to the use of patents is specified, section -4 shall not apply to the corporation and the sustainable business corporation status shall be permanent, and this specific public benefit shall not be deleted from the articles of the corporation pursuant to subsection (d), unless the annual statement of the benefit director concludes that the sustainable business corporation has failed to pursue this specific public benefit, then the corporation shall have its status as a sustainable business corporation terminated.

(c) The creation of general and specific public benefits as provided in subsections (a) and (b) shall be in the best interests of the sustainable business corporation.

(d) A sustainable business corporation may amend its articles to add, amend, or delete the identification of a specific public benefit for which the sustainable business corporation was created. An amendment pursuant to this sub-

section shall not be effective unless it is adopted by at least the minimum status vote.

§ -6 Standard of conduct for directors. (a) In discharging the duties of their respective positions, the board of directors, committees of the board, and individual directors of a sustainable business corporation, in considering the best interests of the sustainable business corporation:

- (1) Shall consider the effects of any action of the sustainable business corporation upon:
 - (A) The shareholders of the sustainable business corporation; and
 - (B) The accomplishment of general and specific public benefits set forth in the sustainable business corporation's purposes; and
- (2) May consider:
 - (A) The employees and workforce of the sustainable business corporation and its subsidiaries and suppliers;
 - (B) The interests of customers as beneficiaries of the general or specific public benefit purposes of the sustainable business corporation;
 - (C) Community and societal considerations, including those of any community in which offices or facilities of the sustainable business corporation or its subsidiaries or suppliers are located;
 - (D) The local and global environment;
 - (E) The short-term and long-term interests of the sustainable business corporation, including benefits that may accrue to the sustainable business corporation from its long-term plans and the possibility that these interests may be best served by the continued independence of the sustainable business corporation;
 - (F) The ability of the sustainable business corporation to accomplish its general public benefit purpose and any specific public benefit purpose;
 - (G) The resources, intent, and conduct of any person seeking to acquire control of the corporation; and
 - (H) Any other pertinent factors or the interests of any other group that they deem appropriate.

(b) A director shall not be personally liable for monetary damages for any action taken as a director if the director performed the duties of the director's office in compliance with the general standards of conduct pursuant to section 414-221.

§ -7 Benefit director. (a) The board of directors of a sustainable business corporation shall include one director who shall be designated the "benefit director" and who shall have, in addition to all of the powers, duties, rights, and immunities of the other directors of the sustainable business corporation, the powers, duties, rights, and immunities provided in this section.

(b) The benefit director shall be elected pursuant to sections 414-193 and 414-194 and may be removed in the manner provided by sections 414-198 and 414-199. The benefit director may serve concurrently as the benefit officer. The articles or bylaws of a sustainable business corporation may prescribe additional qualifications of the benefit director; provided that the qualifications are consistent with this subsection.

(c) The benefit director shall prepare, and the sustainable business corporation shall include in the annual benefit report to shareholders required by section -11, a statement whether, in the opinion of the benefit director, the sustainable business corporation acted in accordance with its general, and any spe-

cific, public benefit purpose in all material respects during the period covered by the report and whether the directors and officers complied with sections -6(a) and -8(a), respectively. If in the opinion of the benefit director the sustainable business corporation or its directors or officers failed to act according to the requirements of this chapter, then the statement of the benefit director shall include a description of the ways in which the sustainable business corporation or its directors or officers failed to act according to the requirements of this chapter. The benefit director's statement included in the final draft of the benefit report shall include formal responses to all questions, concerns, comments, and suggestions raised through the public comment period required by section -11.

(d) A benefit director shall be independent of and shall have no material relationship with the sustainable business corporation.

§ -8 Standard of conduct for officers. (a) Each officer of a sustainable business corporation shall consider the interests and factors described in section -6(a) in the manner provided in that section when:

- (1) The officer has discretion to act with respect to a matter; and
- (2) It reasonably appears to the officer that the matter may have a material effect on:
 - (A) The creation of a general or specific public benefit by the sustainable business corporation; or
 - (B) Any of the interests or factors referred to in section -6(a).

(b) An officer shall not be personally liable for monetary damages for any action taken as an officer if the officer performed the duties of the position in compliance with the general standards of conduct pursuant to section 414-233.

§ -9 Benefit officer. (a) A sustainable business corporation may have an officer designated as the benefit officer who shall have the authority and shall perform the duties in the management of the sustainable business corporation relating to the purpose of the corporation to create general or specific public benefit as may be provided by or pursuant to the bylaws or, in the absence of controlling provisions in the bylaws, as may be determined by or pursuant to resolutions or orders of the board of directors. If a sustainable business corporation has a benefit officer, the duties of the benefit officer shall include preparing the benefit report required by section -11.

(b) A benefit officer shall be independent of and shall have no material relationship with the sustainable business corporation.

§ -10 Right of action. The shareholders and directors of a sustainable business corporation shall have the right to bring direct or derivative claims to enforce corporate purposes and the standards for directors as set forth in section 414-221(a) and shall have the right to bring direct or derivative claims to enforce the general or specific public benefit purposes of the sustainable business corporation and the standard of conduct for directors pursuant to section -6(a)(1).

§ -11 Annual benefit report. (a) A sustainable business corporation shall deliver to each shareholder an annual benefit report including:

- (1) A narrative description of:
 - (A) The ways in which the sustainable business corporation pursued general public benefits during the year and the extent to which general public benefit was created;
 - (B) The ways in which the sustainable business corporation pursued any specific public benefit that the articles state as a pur-

pose of the sustainable business corporation and the extent to which that specific public benefit was created; and

- (C) Any circumstances that have hindered the creation by the sustainable business corporation of general or specific public benefits;
- (2) An assessment of the overall social and environmental performance of the sustainable business corporation, prepared in accordance with a third-party standard under section -12 applied consistently with any application of that standard in prior benefit reports or accompanied by an explanation of the reasons for any inconsistent application;
- (3) The name of the benefit director and the benefit officer, if any, and the address to which correspondence to each of them may be directed;
- (4) The compensation paid by the sustainable business corporation during the year to each director in the person's capacity as director;
- (5) The name of each person who owns five per cent or more of the outstanding shares of the sustainable business corporation either beneficially to the extent known to the sustainable business corporation or of record;
- (6) The statement of the benefit director described in section -7(c);
- (7) A statement of any connection to the organization that developed the third-party standard under section -12, or its directors, officers, or material owners from the sustainable business corporation, or its directors, officers, and material owners, including any financial or governance relationship that might materially affect the credibility of the objective assessment of the third-party standard; and
- (8) A statement that, as a private corporation under the direction of its board and accountable to its shareholders and the articles and bylaws of the sustainable business corporation, including those governing the general or specific public benefit purpose and the activities of the sustainable business corporation, the sustainable business corporation and its activities are subject to the oversight of the board of the sustainable business corporation and are not subject to the direct oversight, regulation, or endorsement of any governmental body.

(b) A sustainable business corporation shall post a draft of its benefit report on the public section of its website, or make it otherwise available to the public, for a sixty-day public comment period prior to final publication of the benefit report. The deadline for a commentary shall be published in a publicly accessible manner.

(c) The benefit report shall be sent annually to each shareholder within one hundred twenty days following the end of the fiscal year of the sustainable business corporation.

(d) A sustainable business corporation shall post its most recent benefit report on the public portion of its website, if any, except that the compensation paid to directors and any financial or proprietary information included in the benefit report may be omitted from the benefit report as posted. If a sustainable business corporation does not have a public website, it shall deliver a copy of its most recent benefit report upon request and without charge to any person who requests a copy.

§ -12 Third-party standard. A third-party standard for purposes of defining, reporting, and assessing overall corporate social and environmental performance of a sustainable business corporation subject to this chapter shall be:

- (1) Comprehensive in its assessment of the effect of the business and its operations upon the interests listed in section -6(a);
- (2) Developed by an organization that is independent of the sustainable business corporation; and
- (3) Transparent because the following information is publicly available:
 - (A) The criteria considered when measuring the overall social and environmental performance of a business, as well as the relative weightings of those criteria;
 - (B) The identity of the directors, officers, any material owners, and the governing body of the organization that developed and controls revisions to the standard;
 - (C) The process by which revisions to the standard are made;
 - (D) The process by which changes to the membership of the governing body of the organization that developed and controls revisions to the standard are made; and
 - (E) An accounting of the sources of financial support for the organization that developed and controls revisions to the standard, with sufficient detail to disclose any relationships that could reasonably be considered to present a potential conflict of interest.

§ -13 Ministerial role of department director. Section 414-16 shall apply to any filings made by a sustainable business corporation.”

SECTION 2. This Act shall take effect upon its approval.

(Approved July 8, 2011.)