§1822. Benefit director

1. General rule. The board of directors of a benefit corporation that is a public corporation shall, and the board of any other benefit corporation may, include a director, who:

A. Is designated the benefit director; and [PL 2019, c. 328, §1 (NEW).]

B. Has, in addition to the powers, duties, rights and immunities of the other directors of the benefit corporation, the powers, duties, rights and immunities provided in this chapter for a benefit director. [PL 2019, c. 328, §1 (NEW).]

[PL 2019, c. 328, §1 (NEW).]

2. Election, removal and qualifications. The benefit director must be elected, and may be removed, in the manner provided by chapter 8, subchapter 1. Except as provided in subsection 6, the benefit director must be an individual who is independent. The benefit director may also serve as the benefit officer. The articles of incorporation or bylaws of a benefit corporation may prescribe additional qualifications of the benefit director not inconsistent with this subsection.

[PL 2019, c. 328, §1 (NEW).]

3. Annual compliance statement. The benefit director shall prepare, and the benefit corporation shall include in the annual benefit report to shareholders required by section 1832, the opinion of the benefit director on the following:

A. Whether the benefit corporation acted in accordance with its general public benefit purpose and any specific public benefit purpose in all material respects during the period covered by the report; and [PL 2019, c. 328, §1 (NEW).]

B. Whether the directors and officers complied with section 1821, subsection 1 and section 1823, subsection 1, respectively. [PL 2019, c. 328, §1 (NEW).]

If, in the opinion of the benefit director, the benefit corporation or its directors or officers failed to act or comply in the manner described in paragraphs A and B, the benefit director must provide in the report a description of the ways in which the benefit corporation or its directors or officers failed to act or comply.

[PL 2019, c. 328, §1 (NEW).]

4. Status of actions. An act or inaction of an individual in the capacity of a benefit director constitutes for all purposes an act of that individual in the capacity of a director of the benefit corporation.

[PL 2019, c. 328, §1 (NEW).]

5. Exoneration from personal liability. Regardless of whether the articles of incorporation of a benefit corporation include a provision eliminating or limiting the personal liability of directors authorized by section 202, subsection 2, paragraph D, a benefit director is not personally liable for an act or omission in the capacity of a benefit director unless the act or omission constitutes self-dealing, willful misconduct or a knowing violation of law.

[PL 2019, c. 328, §1 (NEW).]

6. Professional corporation. The benefit director of a professional corporation as defined in Title 13, section 723, subsection 4 does not need to be independent.

[PL 2019, c. 328, §1 (NEW).]

SECTION HISTORY

PL 2019, c. 328, §1 (NEW).

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