



General Assembly

February Session, 2012

Raised Bill No. 5466

LCO No. 1911

01911_____CE_

Referred to Committee on Commerce

Introduced by:
(CE)

AN ACT CONCERNING SOCIAL ENTERPRISE BUSINESSES.

Be it enacted by the Senate and House of Representatives in General Assembly convened:

1 Section 1. (NEW) (*Effective July 1, 2012*) As used in this section and
2 sections 2 to 9, inclusive, of this act:

3 (1) "Social enterprise business" means a for-profit organization
4 formed in accordance with sections 33-635, 33-636, 33-637 and 33-639
5 of the general statutes, provided such organization has the primary
6 purpose of creating a social benefit;

7 (2) "Social benefit" means a material positive impact on society or
8 the environment through one or more specific public benefit;

9 (3) "Specific public benefit" means:

10 (A) Providing low income or underserved individuals or
11 communities with beneficial products or services;

12 (B) Promoting economic opportunity for individuals or
13 communities beyond the creation of jobs in the normal course of
14 business;

- 15 (C) Preserving or improving the environment;
- 16 (D) Improving human health;
- 17 (E) Promoting the arts or sciences or the advancement of
18 knowledge;
- 19 (F) Increasing the flow of capital to entities with a social benefit
20 purpose;
- 21 (G) Accomplishing any other identifiable benefit for society or the
22 environment; or
- 23 (H) Significantly furthering the accomplishment of one or more
24 charitable, cultural, scientific, literary or educational purposes within
25 the meaning of section 170(c)(2)(B) of the Internal Revenue Code of
26 1986, or any subsequent corresponding internal revenue code of the
27 United States, as amended from time to time;
- 28 (4) "Subsidiary" means an entity in which the person owns
29 beneficially or of record fifty per cent or more of the equity interests;
- 30 (5) "Independent" means having no material relationship with a
31 social enterprise business or any of its subsidiaries, other than the
32 relationship of serving as the director or officer of a social enterprise
33 business, either directly or as an owner or manager of an entity that
34 has a material relationship with the social enterprise business or any of
35 its subsidiaries;
- 36 (6) "Material relationship" means a relationship between a person
37 and a social enterprise business or any of its subsidiaries in which:
- 38 (A) The person is, or has been within the last three years, an
39 employee of the social enterprise business or any of its subsidiaries;
- 40 (B) An immediate family member of the person is, or has been
41 within the last three years, an executive officer of the social enterprise
42 business or any of its subsidiaries; or

43 (C) The person or an entity of which the person is a manager or in
44 which the person owns beneficially or of record five per cent or more
45 of the equity interests owns beneficially or of record five per cent or
46 more of the shares of the social enterprise business; and

47 (7) "Living wage" means one hundred fifteen per cent of the recent
48 official poverty threshold, as published by the United States Census
49 Bureau in the previous year, for a family of four which family includes
50 two children under eighteen years of age within the household. The
51 living wage shall be calculated on the basis of a forty-hour work week
52 and fifty-two-week year.

53 Sec. 2. (NEW) (*Effective July 1, 2012*) (a) Any corporation organized
54 pursuant to sections 33-635, 33-636, 33-637 and 33-639 of the general
55 statutes may become a social enterprise business, as defined in section
56 1 of this act, by (1) amending its articles of incorporation and bylaws,
57 as appropriate, to add a statement of social benefit; or (2) being a party
58 to a plan of merger, adopted pursuant to chapter 601 of the general
59 statutes, or share exchange in which the surviving corporation will be
60 a social enterprise business.

61 (b) (1) Such amendment or plan of merger shall be adopted and
62 shall become effective in accordance with sections 33-795 to 33-803,
63 inclusive, of the general statutes, provided: (1) The notice of the
64 shareholders' meeting to approve an amendment or plan of merger
65 made pursuant to this section shall include a statement from the board
66 of directors about (A) why the board is proposing the amendment or
67 plan of merger; and (B) the anticipated effect on shareholders of
68 becoming a social enterprise business; and

69 (2) The amendment or plan of merger shall be approved by the
70 higher of (A) the vote required by the articles of incorporation; or (B)
71 two-thirds of the votes entitled to be cast by the outstanding shares of
72 the corporation, provided if any class of shares is entitled to vote as a
73 group, approval shall also require the affirmative vote of the holders of
74 at least two-thirds of the votes entitled to be cast by the outstanding

75 shares of each voting group.

76 Sec. 3. (NEW) (*Effective July 1, 2012*) (a) The articles of incorporation
77 of a social enterprise business, as defined in section 1 of this act, may
78 identify one or more specific public benefit in addition to the social
79 enterprise business's purposes under section 33-645 of the general
80 statutes. The adoption of a specific public benefit purpose under this
81 subsection shall not limit the obligation of a social enterprise business
82 to create a social benefit.

83 (b) A social enterprise business may amend its articles of
84 incorporation to add, amend or delete a specific public benefit,
85 provided there shall always be at least one specific public benefit. Any
86 such amendment shall be adopted and become effective in accordance
87 with sections 33-795 to 33-803, inclusive, of the general statutes.

88 (c) Any amendment of the articles of incorporation made pursuant
89 to subsection (b) of this section shall be (1) approved by the higher of
90 the vote required by the articles of incorporation, or (2) adopted by a
91 vote of at least two-thirds of the votes entitled to be cast by the
92 outstanding shares of the corporation, provided if any class of shares is
93 entitled to vote as a group, approval shall also require the affirmative
94 vote of the holders of at least two-thirds of the votes entitled to be cast
95 by the outstanding shares of each voting group.

96 (d) No social enterprise business shall have as a public benefit a
97 political or legislative purpose, as defined in Section 170(c)(2)(D) of the
98 Internal Revenue Code of 1986, or any subsequent corresponding
99 internal revenue code of the United States, as amended from time to
100 time.

101 (e) A social enterprise business shall at all times maintain and
102 enforce an ethical code of conduct and conflict of interest policy
103 consistent with the highest and best business practices in the industry
104 in which it conducts its business.

105 Sec. 4. (NEW) (*Effective July 1, 2012*) (a) A social enterprise business,
106 as defined in section 1 of this act, shall draft a compensation plan as
107 part of the articles of incorporation or bylaws to ensure that no
108 unreasonable compensation is paid to certain classes of employees and
109 that it provides a living wage to all of its employees, consultants and
110 independent contractors.

111 (b) Members, directors and officers of a social enterprise business, if
112 compensated, shall be compensated a fair and reasonable amount,
113 taking into consideration the business's resources and capabilities.

114 (c) A social enterprise business shall use local labor when
115 practicable.

116 (d) A social enterprise business shall distribute at least twenty per
117 cent of any distributed profits to a specific public benefit.

118 Sec. 5. (NEW) (*Effective July 1, 2012*) (a) Each director of a social
119 enterprise business, as defined in section 1 of this act, in discharging
120 his or her duties as a director:

121 (1) Shall, in determining what the director reasonably believes to be
122 in the best interests of the social enterprise business, consider the
123 effects of any action or inaction upon the:

124 (A) Shareholders of the social enterprise business;

125 (B) Employees and workforce of the social enterprise business and
126 its subsidiaries and suppliers;

127 (C) Interests of customers to the extent they are beneficiaries of the
128 social benefit or specific public benefit purposes of the social enterprise
129 business;

130 (D) Community and social considerations, including those of any
131 community in which offices or facilities of the social enterprise
132 business or its subsidiaries or suppliers are located;

133 (E) Local and global environment; and

134 (F) Long-term and short-term interests of the social enterprise
135 business, including the possibility that those interests may be best
136 served by the continued independence of the social enterprise
137 business;

138 (2) May consider any other pertinent factors or the interests of any
139 other group that the director determines appropriate;

140 (3) Shall not be required to give priority to the interests of any
141 particular person or group referred to in subdivision (1) or (2) of this
142 subsection over the interests of any other person or group unless the
143 social enterprise business has stated its intention to give priority to
144 interests related to its specific public benefit purpose in its articles of
145 incorporation; and

146 (4) Shall not be subject to a different or higher standard of care
147 when an action or inaction might affect control of the social enterprise
148 business.

149 (b) The consideration of interests and factors in the manner
150 described in subsection (a) of this section shall not constitute a
151 violation of section 33-756 of the general statutes.

152 (c) A director shall not be liable for the failure of a social enterprise
153 business to create social benefit or specific public benefit.

154 (d) A director shall not be liable to the social enterprise business or
155 any person entitled to bring a benefit enforcement proceeding for any
156 action or failure to take action in his or her official capacity if such
157 director performed the duties of his or her office in compliance with
158 this section and section 33-756 of the general statutes.

159 (e) A director of a social enterprise business shall have a fiduciary
160 duty only to those persons entitled to bring a benefit enforcement
161 proceeding against the social enterprise business. A director of a social

162 enterprise business shall not have any fiduciary duty to a person who
163 is a beneficiary of social benefit or specific public benefit purposes of
164 the social enterprise business arising only from the person's status as a
165 beneficiary.

166 Sec. 6. (NEW) (*Effective July 1, 2012*) (a) An officer of a social
167 enterprise business shall consider the interests and factors described in
168 subsection (a) of section 5 of this act in the manner provided in said
169 subsection (a) when:

170 (1) The officer has discretion in how to act or not act with respect to
171 a matter; and

172 (2) It reasonably appears to the officer that the matter may have a
173 material effect on:

174 (A) The creation of social benefit or specific public benefit by the
175 social enterprise business; or

176 (B) Any of the interests or factors referred to in subsection (a) of
177 section 5 of this act.

178 (b) The consideration of interests and factors in the manner
179 described in subsection (a) of this section shall not constitute a
180 violation of the fiduciary duty of an officer to the social enterprise
181 business.

182 (c) An officer shall not be liable to the social enterprise business or
183 any person entitled to bring a benefit enforcement proceeding for any
184 action or failure to take action in his or her official capacity if the
185 officer performed the duties of the position in compliance with this
186 section and sections 33-763 and 33-764 of the general statutes.

187 (d) An officer shall not be liable for the failure of a social enterprise
188 business to create social benefit or specific public benefit.

189 (e) An officer of a social enterprise business shall have a fiduciary

190 duty only to those persons entitled to bring a benefit enforcement
191 proceeding against the social enterprise business. An officer of a social
192 enterprise business shall not have any fiduciary duty to a person that
193 is a beneficiary of the social benefit or specific public benefit purposes
194 of the social enterprise business arising only from the person's status as
195 a beneficiary.

196 Sec. 7. (NEW) (*Effective July 1, 2012*) A social enterprise business, as
197 defined in section 1 of this act, may designate a social enterprise officer
198 who shall have the authority and shall perform the duties in the
199 management of the social enterprise business relating to the purpose of
200 the corporation to create public benefit as set forth in the bylaws, or to
201 the extent not inconsistent with the bylaws, prescribed by the board of
202 directors or by direction of an officer authorized by the board of
203 directors to prescribe the duties of the office.

204 Sec. 8. (NEW) (*Effective July 1, 2012*) (a) The duties of directors and
205 officers of a social enterprise business, as defined in section 1 of this
206 act, and the social benefit and specific public benefit purposes of a
207 social enterprise business may be enforced only in a benefit
208 enforcement proceeding and no person may bring such an action or
209 claim against a social enterprise business or its directors or officers
210 except as provided in this section.

211 (b) A benefit enforcement proceeding may be commenced or
212 maintained only by:

213 (1) A shareholder who would otherwise be entitled to commence or
214 maintain a proceeding in the right of the social enterprise business on
215 any basis;

216 (2) A director of the corporation;

217 (3) A person or group of persons who owns beneficially or of record
218 ten per cent or more of the equity interests in an entity of which the
219 social enterprise business is a subsidiary; or

220 (4) Such other persons or entities as may be specified in the articles
221 of incorporation of the social enterprise business.

222 (c) As used in sections 1 to 9, inclusive, of this act, "benefit
223 enforcement proceeding" means a claim or action against a director or
224 officer for:

225 (1) Failure to pursue the public social benefit purpose of the social
226 enterprise business or any specific public benefit purpose set forth in
227 its articles of incorporation; or

228 (2) Violation of a duty or standard of conduct under sections 1 to 9,
229 inclusive, of this act.

230 Sec. 9. (NEW) (*Effective July 1, 2012*) (a) A social enterprise business
231 shall deliver to each shareholder, in a format approved by the
232 directors, an annual benefit report, which shall include:

233 (1) A statement of the specific goals or outcomes identified by the
234 social enterprise business for creating social benefit and any specific
235 public benefit for the period of the benefit report;

236 (2) A description of the actions taken by the social enterprise
237 business to attain the identified goals or outcomes and the extent to
238 which the goals or outcomes were attained;

239 (3) A description of any circumstances that hindered the attainment
240 of the identified goals or outcomes and the creation of social benefit or
241 any specific public benefit;

242 (4) Specific actions the social enterprise business can take to
243 improve its social and environmental performance and attain the goals
244 or outcomes identified for creating social benefit and any specific
245 public benefit;

246 (5) An assessment of the social and environmental performance of
247 the social enterprise business prepared in accordance with a third-

248 party standard that has been applied consistently with prior benefit
249 reports or accompanied by an explanation of the reasons for any
250 inconsistent application;

251 (6) A statement of specific goals or outcomes identified by the social
252 enterprise business and approved by the shareholders for creating
253 social benefit and any specific public benefit for the period of the next
254 benefit report;

255 (7) The name of each social enterprise director and the social
256 enterprise officer, if any, and the address to which correspondence to
257 each of them may be directed;

258 (8) A budget and balance sheet, including the accounting method
259 used;

260 (9) A copy of the compensation plan;

261 (10) Disclosure of all financial investors;

262 (11) The compensation paid by the social enterprise business during
263 the year to each director and a list of the one per cent most highly
264 compensated employees;

265 (12) Code of conduct and conflict of interest policies; and

266 (13) The name of each person that owns beneficially or of record five
267 per cent or more of the shares of the social enterprise business.

268 (b) A social enterprise business shall annually deliver and publish
269 via its web site the benefit report to each shareholder within one
270 hundred twenty days of the end of the fiscal year of the social
271 enterprise business or at the same time that the social enterprise
272 business delivers any other annual report to its shareholders.

273 (c) After reasonable opportunity for review, the shareholders of the
274 social enterprise business shall approve or reject the annual benefit
275 report by majority vote at the annual meeting of shareholders or at a

276 special meeting held for that purpose.

277 (d) Every five years, the social enterprise business shall obtain an
278 independent third party to audit the benefit report and conduct
279 assessment of the social enterprise business's social benefit and specific
280 public benefit to ensure compliance and consistency with the articles of
281 incorporation.

This act shall take effect as follows and shall amend the following sections:		
Section 1	<i>July 1, 2012</i>	New section
Sec. 2	<i>July 1, 2012</i>	New section
Sec. 3	<i>July 1, 2012</i>	New section
Sec. 4	<i>July 1, 2012</i>	New section
Sec. 5	<i>July 1, 2012</i>	New section
Sec. 6	<i>July 1, 2012</i>	New section
Sec. 7	<i>July 1, 2012</i>	New section
Sec. 8	<i>July 1, 2012</i>	New section
Sec. 9	<i>July 1, 2012</i>	New section

Statement of Purpose:

To provide for the incorporation of social enterprise businesses in Connecticut.

[Proposed deletions are enclosed in brackets. Proposed additions are indicated by underline, except that when the entire text of a bill or resolution or a section of a bill or resolution is new, it is not underlined.]