Testimony before the
Michigan House Commerce Committee
in regards to
Benefit Corporation Legislation

Presented by, Erik Trojian, B Lab
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Chairman Foster and Committee Members,

My name is Erik Trojian and I am here in support of HB 4526 and HB 4527 benefit corporation legislation. I am the Director of Policy at B Lab, a nonprofit whose mission is to use the power of business to solve social and environmental problems. We believe that business is the greatest source of solutions for the issues that we face as a society and that the free market can address many problems quickly and efficiently without having to resort to government handouts. However, through our work with entrepreneurs across the country we have found that in many states, including Michigan, the free market is truly free and is prevented from fully solving these issues due to current corporate law. There is nothing wrong with profit and it does many good things, but if a company wishes to combine the quest for profit with the desire to consider additional purposes, such as their faith, a social mission or simply buy supplies locally in Michigan the traditional corporate form acts as a roadblock. HB 4526 and HB 4527 are pro-business bills that will create a new voluntary business form known as a benefit corporation. Benefit corporations deregulate the purpose of a corporation by allowing the free market and not government to decide on how the business operates. This new form gives the freedom to entrepreneurs and business owners to consider other factors in addition to profit. In all other areas, including taxes and regulation, benefit corporations are the same as a traditional corporation.

Yes, currently corporations can consider some factors other than profit, but to a limited extent and also with added risks, such as shareholder lawsuits. However, traditional corporations may only consider additional factors if their end goal is higher profits. This is referred to as the business judgment rule and was the very reason Delaware passed the legislation last year. They felt without the law, the business judgment rule hindered the advancement of the free market. This is the case for many companies that must justify their pursuit of a mission for the sake of marketing or PR. However, they are always at risk of a shareholder lawsuit without being a benefit corporation. The impediments of the traditional corporate form is particularly evident at the time of sale, succession or during any capital raises when

many companies may have to abandon their missions in order to avoid a shareholder lawsuit or they may simply not seek to expand their operations. In addition, shareholders who have invested in the company because it had a social purpose, such as advancing a religious mission or improving education in their community, have no accountability or transparency that the mission will continue over time. If the mission disappears these investors have no recourse but to sell their stock.

Benefit corporation legislation also provides a cost free economic development tool for States, because companies that voluntarily choose this form create an annual benefit report, similar to an annual financial report but focused on their qualitative activities. This additional transparency element helps investors by giving them a credible, independent and transparent analysis of the company, so they can make wise and quick investment decisions. It is important to note that this report does not need to be certified or audited and it can be produced internally. By reducing the due diligence required to make an investment in a company, an investor's cost and time to perform the transaction is lowered, resulting in an increased likelihood the investment will occur. This is all done through the free market, where there is $3 trillion in social impact investing money available today, without any reliance on government or additional regulation.

Currently, twenty states have passed benefit corporation legislation. The legislation has received 20 unanimous floor votes and been signed into law by many notable governors, including South Carolina Governor Nikki Haley, Louisiana Governor Bobby Jindal, Pennsylvania Governor Tom Corbett, Virginia Governor Bob McDonnell, Arizona Governor Jan Brewer, Nevada Governor Brian Sandoval, and New Jersey Governor Chris Christie. The legislation is moving forward in 12 states this session, including, Florida, Utah, and New Hampshire.

To date over 550 companies have already taken advantage of this new corporate form, many of them in the last six months alone. Companies such as Patagonia, the clothing company, and King Arthur Flour, one of the oldest companies in America, have become benefit corporations in their respective states and large companies support the legislation as well, such as Campbell's Soup Company and Prudential. We have also witness several companies leaving their home state to incorporate in states that have benefit corporation legislation.

Benefit corporation legislation is a completely voluntary cost free option that deregulates the traditional fiduciary duty of a corporation and allows the free market to solve some of the pressing issues facing society. The legislation can help attract jobs and investment and provide economic development opportunities for Michigan. I urge your aye vote on HB 4526 and HB 4527.