

PROPOSED

HOUSE OF REPRESENTATIVES AMENDMENTS TO S.B. 1238

(Reference to Senate engrossed bill)

1 Strike everything after the enacting clause and insert:

2 "Section 1. Section 10-122, Arizona Revised Statutes, is amended to
3 read:

4 10-122. Filing, service and copying fees; expedited report
5 filing and access; same day and next day services;
6 posted wait times; advance monies; definition

7 A. The commission shall collect and deposit, pursuant to sections
8 35-146 and 35-147, the following nonrefundable fees when the documents
9 described in this subsection are delivered to the commission:

10	<u>Document</u>	<u>Fee</u>
11	1. Articles of incorporation	\$50
12	2. Application for use of indistinguishable name	10
13	3. Application for reserved name	10
14	4. Notice of transfer of reserved name	10
15	5. Application for registered name	10
16	6. Application for renewal of registered name	10
17	7. Agent's statement of resignation	10
18	8. Amendment of articles of incorporation	25
19	9. Restatement of articles of incorporation with	
20	amendment of articles	25
21	10. Articles of merger or share exchange	100
22	11. Articles of dissolution	25
23	12. Articles of domestication	100
24	13. Articles of revocation of dissolution	25
25	14. Application for reinstatement following	
26	administrative dissolution, in addition	
27	to other fees and penalties due	100
28	15. Application for authority	150

1	16. Application for withdrawal	25
2	17. Annual report	45
3	18. Articles of correction	25
4	19. Application for certificate of good standing	10
5	20. Any other document required or permitted	
6	to be filed by chapters 1 through 17	
7	of this title	25

8 B. The commission shall collect a nonrefundable fee of twenty-five
9 dollars each time process is served on it under chapters 1 through 17 of this
10 title. The party to a proceeding causing service of process is entitled to
11 recover this fee as costs if the party prevails in the proceeding.

12 C. The commission shall charge and collect a reasonable fee for
13 copying documents on request, provided the fee does not exceed the cost of
14 providing the service as determined by the commission. The commission shall
15 also charge a reasonable fee for certifying the copy of a filed document,
16 provided the fee does not exceed the cost of providing the service as
17 determined by the commission.

18 D. A penalty of one hundred dollars payable in addition to other fees
19 accrues and is payable if a foreign corporation fails to file an amendment,
20 restated articles that include an amendment, or articles of merger within
21 sixty days of the time of filing in the jurisdiction in which the corporation
22 is domiciled. The penalty collected pursuant to this subsection shall be
23 deposited, pursuant to sections 35-146 and 35-147, in the state general fund.

24 E. One-third of the fees for the annual report of domestic and foreign
25 corporations paid pursuant to subsection A, paragraph 17 of this section
26 shall be deposited in the Arizona arts trust fund established by section
27 41-983.01 and two-thirds of these fees shall be deposited, pursuant to
28 sections 35-146 and 35-147, in the public access fund established by section
29 10-122.01.

30 F. The commission shall provide for and establish an expedited service
31 for the filing of all documents and services provided pursuant to this title
32 as follows:

33 1. The expedited filing shall be a priority service to be completed as
34 soon as possible after the documents are delivered to the commission.

35 2. In addition to any other fees required by this section or any other
36 law, the commission shall charge a nonrefundable fee for expedited services,

1 including those requested by fax. The fee shall be determined by a
2 supermajority vote of the commissioners.

3 3. The commission may provide for and establish same day and next day
4 services for the filing of any documents and services provided pursuant to
5 this title as follows:

6 (a) The same day and next day services shall not be offered unless all
7 expedited services filed pursuant to this title are processed within a
8 maximum of five business days and all other documents and services filed
9 pursuant to this title are processed within a maximum of thirty business
10 days.

11 (b) The commission shall suspend same day or next day service if the
12 commission determines that it does not have the necessary resources to
13 perform the service within the established time period.

14 (c) In addition to any other fees required by this section or any
15 other law, the commissioners may charge a nonrefundable fee for the same day
16 or next day service or both. The fee shall be determined by a supermajority
17 vote of the commissioners.

18 4. The commission shall publicly post the current wait times for
19 processing regular, expedited and same day and next day services.

20 G. The commission may charge persons who access the commission's data
21 processing system that is maintained pursuant to section 10-122.01 from
22 remote locations and persons requesting special computer generated printouts,
23 reports and tapes a reasonable fee that does not exceed the cost of the time,
24 equipment and personnel necessary to provide this service or product as
25 determined by the commission.

26 H. Except as provided in section 10-122.01, subsection B, paragraph 3,
27 in addition to any fee charged pursuant to this section, the commission may
28 charge and collect the following nonrefundable fees to help defray the cost
29 of the improved data processing system that is maintained pursuant to section
30 10-122.01:

31 1. Filing articles of incorporation of a domestic corporation, ten
32 dollars.

33 2. Filing an application of a foreign corporation for authority to
34 transact business in this state, twenty-five dollars.

35 I. All monies received pursuant to subsections F, G and H of this
36 section shall be deposited, pursuant to sections 35-146 and 35-147, in the
37 public access fund established by section 10-122.01.

1 J. Fees charged pursuant to this section are exempt from section
2 39-121.03, subsection A, paragraph 3.

3 K. Any person may advance monies to the commission to pay fees
4 required pursuant to this section for future filings and services. All
5 monies received pursuant to this subsection shall be deposited, pursuant to
6 sections 35-146 and 35-147, in the money on deposit account in the public
7 access fund established by section 10-122.01.

8 L. IN ADDITION TO ANY OTHER FEES PRESCRIBED BY LAW, THE COMMISSION MAY
9 ESTABLISH A FEE FOR THE FILING OF AN ANNUAL BENEFIT REPORT DELIVERED TO THE
10 COMMISSION PURSUANT TO SECTION 10-2442. THE FEE SHALL BE DETERMINED BY A
11 MAJORITY VOTE OF THE COMMISSIONERS.

12 ~~L.~~ M. For the purposes of this section, "supermajority" means an
13 affirmative vote of at least four commissioners.

14 Sec. 2. Section 10-1302, Arizona Revised Statutes, is amended to read:
15 10-1302. Right to dissent

16 A. A shareholder is entitled to dissent from and obtain payment of the
17 fair value of the shareholder's shares in the event of any of the following
18 corporate actions:

19 1. Consummation of a plan of merger to which the corporation is a
20 party if either:

21 (a) Shareholder approval is required for the merger by section 10-1103
22 or the articles of incorporation and if the shareholder is entitled to vote
23 on the merger.

24 (b) The corporation is a subsidiary that is merged with its parent
25 under section 10-1104.

26 2. Consummation of a plan of share exchange to which the corporation
27 is a party as the corporation whose shares will be acquired, if the
28 shareholder is entitled to vote on the plan.

29 3. Consummation of a sale or exchange of all or substantially all of
30 the property of the corporation other than in the usual and regular course of
31 business, if the shareholder is entitled to vote on the sale or exchange,
32 including a sale in dissolution, but not including a sale pursuant to a court
33 order or a sale for cash pursuant to a plan by which all or substantially all
34 of the net proceeds of the sale will be distributed to the shareholders
35 within one year after the date of sale.

1 4. An amendment of the articles of incorporation that materially and
2 adversely affects rights in respect of a dissenter's shares because it
3 either:

4 (a) Alters or abolishes a preferential right of the shares.

5 (b) Creates, alters or abolishes a right in respect of redemption,
6 including a provision respecting a sinking fund for the redemption or
7 repurchase, of the shares.

8 (c) Alters or abolishes a preemptive right of the holder of the shares
9 to acquire shares or other securities.

10 (d) Excludes or limits the right of the shares to vote on any matter
11 or to cumulate votes other than a limitation by dilution through issuance of
12 shares or other securities with similar voting rights.

13 (e) Reduces the number of shares owned by the shareholder to a
14 fraction of a share if the fractional share so created is to be acquired for
15 cash under section 10-604.

16 5. Any corporate action taken pursuant to a shareholder vote to the
17 extent the articles of incorporation, the bylaws or a resolution of the board
18 of directors provides that voting or nonvoting shareholders are entitled to
19 dissent and obtain payment for their shares.

20 6. AN ELECTION OF THE SHAREHOLDERS PURSUANT TO SECTION 10-2404 TO HAVE
21 BENEFIT CORPORATION STATUS OR AN ELECTION OF THE SHAREHOLDERS PURSUANT TO
22 SECTION 10-2405 TO TERMINATE STATUS AS A BENEFIT CORPORATION.

23 B. A shareholder entitled to dissent and obtain payment for his shares
24 under this chapter may not challenge the corporate action creating the
25 shareholder's entitlement unless the action is unlawful or fraudulent with
26 respect to the shareholder or the corporation.

27 C. This section does not apply to the holders of shares of any class
28 or series if the shares of the class or series are redeemable securities
29 issued by a registered investment company as defined pursuant to the
30 investment company act of 1940 (15 United States Code section 80a-1 through
31 80a-64).

32 D. Unless the articles of incorporation of the corporation provide
33 otherwise, this section does not apply to the holders of shares of a class or
34 series if the shares of the class or series were registered on a national
35 securities exchange, were listed on the national market systems of the
36 national association of securities dealers automated quotation system or were

1 held of record by at least two thousand shareholders on the date fixed to
2 determine the shareholders entitled to vote on the proposed corporate action.

3 Sec. 3. Title 10, Arizona Revised Statutes, is amended by adding
4 chapter 22, to read:

5 CHAPTER 22

6 BENEFIT CORPORATIONS

7 ARTICLE 1. GENERAL PROVISIONS

8 10-2401. Application and effect of chapter

9 A. THIS CHAPTER IS APPLICABLE TO ALL BENEFIT CORPORATIONS.

10 B. THE EXISTENCE OF A PROVISION OF THIS CHAPTER DOES NOT OF ITSELF
11 CREATE AN IMPLICATION THAT A CONTRARY OR DIFFERENT RULE OF LAW IS APPLICABLE
12 TO A BUSINESS CORPORATION THAT IS NOT A BENEFIT CORPORATION. THIS CHAPTER
13 DOES NOT AFFECT A STATUTE OR RULE OF LAW THAT IS APPLICABLE TO A BUSINESS
14 CORPORATION THAT IS NOT A BENEFIT CORPORATION.

15 C. EXCEPT AS OTHERWISE PROVIDED IN THIS CHAPTER, CHAPTERS 1, 2, 3, 4,
16 5, 6, 7, 8, 10, 11, 12, 13, 14, 15, 16 AND 17 OF THIS TITLE ARE GENERALLY
17 APPLICABLE TO ALL BENEFIT CORPORATIONS. THE SPECIFIC PROVISIONS OF THIS
18 CHAPTER CONTROL OVER THE GENERAL PROVISIONS OF CHAPTERS 1 THROUGH 17 OF THIS
19 TITLE.

20 D. A BENEFIT CORPORATION MAY BE SUBJECT SIMULTANEOUSLY TO THIS CHAPTER
21 AND CHAPTER 18 OR 20 OF THIS TITLE. IN THAT EVENT, THE PROVISIONS OF THIS
22 CHAPTER CONTROL OVER CHAPTER 18 OR 20.

23 E. A PROVISION OF THE ARTICLES OF INCORPORATION OR BYLAWS OF A BENEFIT
24 CORPORATION MAY NOT LIMIT, BE INCONSISTENT WITH OR SUPERSEDE A PROVISION OF
25 THIS CHAPTER.

26 10-2402. Definitions

27 IN THIS CHAPTER, UNLESS THE CONTEXT OTHERWISE REQUIRES:

28 1. "BENEFIT CORPORATION" MEANS A CORPORATION THAT BOTH:

29 (a) HAS ELECTED TO BECOME SUBJECT TO THIS CHAPTER.

30 (b) THE STATUS OF WHICH AS A BENEFIT CORPORATION HAS NOT BEEN
31 TERMINATED.

32 2. "BENEFIT DIRECTOR" MEANS EITHER:

33 (a) THE DIRECTOR DESIGNATED AS THE BENEFIT DIRECTOR OF A BENEFIT
34 CORPORATION UNDER SECTION 10-2432.

35 (b) A PERSON WITH ONE OR MORE OF THE POWERS, DUTIES OR RIGHTS OF A
36 BENEFIT DIRECTOR TO THE EXTENT PROVIDED PURSUANT TO SECTION 10-2432,
37 SUBSECTION F.

1 3. "BENEFIT ENFORCEMENT PROCEEDING" MEANS ANY CLAIM OR ACTION FOR
2 EITHER OF THE FOLLOWING:

3 (a) THE FAILURE OF A BENEFIT CORPORATION TO PURSUE OR CREATE GENERAL
4 PUBLIC BENEFIT OR A SPECIFIC PUBLIC BENEFIT PURPOSE SET FORTH IN ITS
5 ARTICLES.

6 (b) A VIOLATION OF ANY OBLIGATION, DUTY OR STANDARD OF CONDUCT UNDER
7 THIS CHAPTER.

8 4. "BENEFIT OFFICER" MEANS THE INDIVIDUAL DESIGNATED AS THE BENEFIT
9 OFFICER OF A BENEFIT CORPORATION UNDER SECTION 10-2434.

10 5. "GENERAL PUBLIC BENEFIT" MEANS A MATERIAL POSITIVE IMPACT ON
11 SOCIETY AND THE ENVIRONMENT, TAKEN AS A WHOLE, ASSESSED AGAINST A THIRD-PARTY
12 STANDARD, FROM THE BUSINESS AND OPERATIONS OF A BENEFIT CORPORATION.

13 6. "INDEPENDENT" MEANS HAVING NO MATERIAL RELATIONSHIP WITH A BENEFIT
14 CORPORATION OR A SUBSIDIARY OF THE BENEFIT CORPORATION. A MATERIAL
15 RELATIONSHIP BETWEEN AN INDIVIDUAL AND A BENEFIT CORPORATION OR ANY OF ITS
16 SUBSIDIARIES IS CONCLUSIVELY PRESUMED TO EXIST IF ANY OF THE FOLLOWING
17 APPLIES:

18 (a) THE INDIVIDUAL IS, OR HAS BEEN WITHIN THE LAST THREE YEARS, AN
19 OFFICER OR EMPLOYEE, WHETHER OR NOT COMPENSATED, OTHER THAN A BENEFIT OFFICER
20 OF THE BENEFIT CORPORATION OR A SUBSIDIARY.

21 (b) AN IMMEDIATE FAMILY MEMBER OF THE INDIVIDUAL IS, OR HAS BEEN
22 WITHIN THE LAST THREE YEARS, AN OFFICER OR EMPLOYEE, WHETHER OR NOT
23 COMPENSATED, OTHER THAN A BENEFIT OFFICER OF THE BENEFIT CORPORATION OR A
24 SUBSIDIARY.

25 (c) THERE IS BENEFICIAL OR RECORD OWNERSHIP OF FIVE PER CENT OR MORE
26 OF THE OUTSTANDING SHARES OF THE BENEFIT CORPORATION, CALCULATED AS IF ALL
27 OUTSTANDING RIGHTS TO ACQUIRE EQUITY INTERESTS IN THE BENEFIT CORPORATION HAD
28 BEEN EXERCISED, BY EITHER OF THE FOLLOWING:

29 (i) THE INDIVIDUAL.

30 (ii) AN ENTITY OF WHICH THE INDIVIDUAL IS A DIRECTOR, AN OFFICER OR A
31 MANAGER OR IN WHICH THE INDIVIDUAL OWNS BENEFICIALLY OR OF RECORD FIVE PER
32 CENT OR MORE OF THE OUTSTANDING EQUITY INTERESTS, CALCULATED AS IF ALL
33 OUTSTANDING RIGHTS TO ACQUIRE EQUITY INTERESTS IN THE ENTITY HAD BEEN
34 EXERCISED.

35 7. "MINIMUM STATUS VOTE" MEANS:

36 (a) IN THE CASE OF A BUSINESS CORPORATION, IN ADDITION TO ANY OTHER
37 REQUIRED APPROVAL OR VOTE, THE SATISFACTION OF THE FOLLOWING CONDITIONS:

1 (i) THE SHAREHOLDERS OF EVERY CLASS OR SERIES ARE ENTITLED TO VOTE AS
2 A SEPARATE VOTING GROUP ON THE CORPORATE ACTION REGARDLESS OF A LIMITATION
3 STATED IN THE ARTICLES OF INCORPORATION OR BYLAWS ON THE VOTING RIGHTS OF ANY
4 CLASS OR SERIES.

5 (ii) THE CORPORATE ACTION IS APPROVED BY VOTE OF THE SHAREHOLDERS OF
6 EACH CLASS OR SERIES ENTITLED TO CAST AT LEAST TWO-THIRDS OF THE VOTES THAT
7 ALL SHAREHOLDERS OF THE CLASS OR SERIES ARE ENTITLED TO CAST ON THE ACTION.

8 (b) IN THE CASE OF A DOMESTIC ENTITY OTHER THAN A BUSINESS
9 CORPORATION, IN ADDITION TO ANY OTHER REQUIRED APPROVAL, VOTE OR CONSENT, THE
10 SATISFACTION OF THE FOLLOWING CONDITIONS:

11 (i) THE HOLDERS OF EVERY CLASS OR SERIES OF EQUITY INTEREST IN THE
12 ENTITY THAT ARE ENTITLED TO RECEIVE A DISTRIBUTION OF ANY KIND FROM THE
13 ENTITY ARE ENTITLED TO VOTE ON OR CONSENT TO THE ACTION REGARDLESS OF ANY
14 OTHERWISE APPLICABLE LIMITATION ON THE VOTING OR CONSENT RIGHTS OF ANY CLASS
15 OR SERIES.

16 (ii) THE ACTION IS APPROVED BY VOTE OR CONSENT OF THE HOLDERS
17 DESCRIBED IN ITEM (i) OF THIS SUBDIVISION ENTITLED TO CAST AT LEAST
18 TWO-THIRDS OF THE VOTES OR CONSENTS THAT ALL OF THOSE HOLDERS ARE ENTITLED TO
19 CAST ON THE ACTION.

20 8. "PUBLICLY TRADED CORPORATION" MEANS A BUSINESS CORPORATION THAT HAS
21 SHARES LISTED ON A NATIONAL SECURITIES EXCHANGE OR TRADED IN A MARKET
22 MAINTAINED BY ONE OR MORE MEMBERS OF A NATIONAL SECURITIES ASSOCIATION.

23 9. "SPECIFIC PUBLIC BENEFIT" INCLUDES:

24 (a) PROVIDING LOW-INCOME OR UNDERSERVED INDIVIDUALS OR COMMUNITIES
25 WITH BENEFICIAL PRODUCTS OR SERVICES.

26 (b) PROMOTING ECONOMIC OPPORTUNITY FOR INDIVIDUALS OR COMMUNITIES
27 BEYOND THE CREATION OF JOBS IN THE NORMAL COURSE OF BUSINESS.

28 (c) PROTECTING OR RESTORING THE ENVIRONMENT.

29 (d) IMPROVING HUMAN HEALTH.

30 (e) PROMOTING THE ARTS, SCIENCES OR ADVANCEMENT OF KNOWLEDGE.

31 (f) INCREASING THE FLOW OF CAPITAL TO ENTITIES WITH A PURPOSE TO
32 BENEFIT SOCIETY OR THE ENVIRONMENT.

33 (g) CONFERRING ANY OTHER PARTICULAR BENEFIT ON SOCIETY OR THE
34 ENVIRONMENT AS SPECIFIED IN THE BENEFIT CORPORATION'S ARTICLES OF
35 INCORPORATION.

1 10. "SUBSIDIARY" MEANS, IN RELATION TO A PERSON, AN ENTITY IN WHICH THE
2 PERSON OWNS BENEFICIALLY OR OF RECORD FIFTY PER CENT OR MORE OF THE
3 OUTSTANDING EQUITY INTERESTS.

4 11. "SUPERMAJORITY STATUS VOTE" MEANS:

5 (a) FOR A BUSINESS CORPORATION, IN ADDITION TO ANY OTHER REQUIRED
6 APPROVAL OR VOTE, THE SATISFACTION OF THE FOLLOWING CONDITIONS:

7 (i) THE SHAREHOLDERS OF EVERY CLASS OR SERIES ARE ENTITLED TO VOTE AS
8 A SEPARATE VOTING GROUP ON THE CORPORATE ACTION REGARDLESS OF A LIMITATION
9 STATED IN THE ARTICLES OF INCORPORATION OR BYLAWS ON THE VOTING RIGHTS OF ANY
10 CLASS OR SERIES.

11 (ii) THE CORPORATE ACTION IS APPROVED BY VOTE OF THE SHAREHOLDERS OF
12 EACH CLASS OR SERIES ENTITLED TO CAST AT LEAST THREE-FOURTHS OF THE VOTES
13 THAT ALL SHAREHOLDERS OF THE CLASS OR SERIES ARE ENTITLED TO CAST ON THE
14 ACTION.

15 (b) FOR A DOMESTIC ENTITY OTHER THAN A BUSINESS CORPORATION, IN
16 ADDITION TO ANY OTHER REQUIRED APPROVAL, VOTE OR CONSENT, THE SATISFACTION OF
17 THE FOLLOWING CONDITIONS:

18 (i) THE HOLDERS OF EVERY CLASS OR SERIES OF EQUITY INTEREST IN THE
19 ENTITY THAT ARE ENTITLED TO RECEIVE A DISTRIBUTION OF ANY KIND FROM THE
20 ENTITY ARE ENTITLED TO VOTE ON OR CONSENT TO THE ACTION REGARDLESS OF ANY
21 OTHERWISE APPLICABLE LIMITATION ON THE VOTING OR CONSENT RIGHTS OF ANY CLASS
22 OR SERIES.

23 (ii) THE ACTION IS APPROVED BY VOTE OR CONSENT OF THE HOLDERS
24 DESCRIBED IN ITEM (i) OF THIS SUBDIVISION ENTITLED TO CAST AT LEAST
25 THREE-FOURTHS OF THE VOTES OR CONSENTS THAT ALL OF THOSE HOLDERS ARE ENTITLED
26 TO CAST ON THE ACTION.

27 12. "THIRD-PARTY STANDARD" MEANS A RECOGNIZED STANDARD FOR DEFINING,
28 REPORTING AND ASSESSING CORPORATE SOCIAL AND ENVIRONMENTAL PERFORMANCE THAT
29 IS:

30 (a) COMPREHENSIVE BECAUSE IT ASSESSES THE EFFECT OF A BUSINESS AND ITS
31 OPERATIONS ON THE INTERESTS LISTED IN SECTION 10-2431, SUBSECTION A,
32 PARAGRAPH 1.

33 (b) DEVELOPED BY AN ENTITY THAT IS NOT CONTROLLED BY THE BENEFIT
34 CORPORATION.

35 (c) CREDIBLE BECAUSE IT IS DEVELOPED BY AN ENTITY THAT BOTH:

36 (i) HAS ACCESS TO NECESSARY EXPERTISE TO ASSESS OVERALL CORPORATE
37 SOCIAL AND ENVIRONMENTAL PERFORMANCE.

1 (ii) USES A BALANCED MULTISTAKEHOLDER APPROACH TO DEVELOP THE
2 STANDARD, INCLUDING A REASONABLE PUBLIC COMMENT PERIOD.

3 (d) TRANSPARENT BECAUSE THE FOLLOWING INFORMATION IS PUBLICLY
4 AVAILABLE ABOUT THE STANDARD:

5 (i) THE CRITERIA CONSIDERED WHEN MEASURING THE OVERALL SOCIAL AND
6 ENVIRONMENTAL PERFORMANCE OF A BUSINESS.

7 (ii) THE RELATIVE WEIGHTINGS, IF ANY, OF THOSE CRITERIA.

8 (e) TRANSPARENT BECAUSE THE FOLLOWING INFORMATION IS PUBLICLY
9 AVAILABLE ABOUT THE DEVELOPMENT AND REVISION OF THE STANDARD:

10 (i) THE IDENTITY OF THE DIRECTORS, OFFICERS, MATERIAL OWNERS AND
11 GOVERNING BODY OF THE ENTITY THAT DEVELOPED AND CONTROLS REVISIONS TO THE
12 STANDARD.

13 (ii) THE PROCESS BY WHICH REVISIONS TO THE STANDARD AND CHANGES TO THE
14 MEMBERSHIP OF THE GOVERNING BODY ARE MADE.

15 (iii) AN ACCOUNTING OF THE REVENUE AND SOURCES OF FINANCIAL SUPPORT
16 FOR THE ENTITY, WITH SUFFICIENT DETAIL TO DISCLOSE ANY RELATIONSHIPS THAT
17 COULD REASONABLY BE CONSIDERED TO PRESENT A POTENTIAL CONFLICT OF INTEREST.

18 10-2403. Incorporation of benefit corporation

19 A BENEFIT CORPORATION SHALL BE INCORPORATED IN ACCORDANCE WITH CHAPTER
20 2, ARTICLE 1 OF THIS TITLE, EXCEPT THAT ITS ARTICLES OF INCORPORATION MUST
21 ALSO STATE THAT IT IS A BENEFIT CORPORATION.

22 10-2404. Election of benefit corporation status

23 A. AN EXISTING BUSINESS CORPORATION MAY BECOME A BENEFIT CORPORATION
24 UNDER THIS CHAPTER BY AMENDING ITS ARTICLES OF INCORPORATION SO THAT THEY
25 CONTAIN, IN ADDITION TO THE REQUIREMENTS OF SECTION 10-202, A STATEMENT THAT
26 THE CORPORATION IS A BENEFIT CORPORATION. IN ORDER TO BE EFFECTIVE, THE
27 AMENDMENT MUST BE ADOPTED BY AT LEAST THE SUPERMAJORITY STATUS VOTE.

28 B. IF AN ENTITY THAT IS NOT A BENEFIT CORPORATION IS A PARTY TO A
29 MERGER OR THE ACQUIRED ENTITY IN A SHARE EXCHANGE, AND THE SURVIVING OR
30 ACQUIRED ENTITY IN THE MERGER OR SHARE EXCHANGE IS TO BE A BENEFIT
31 CORPORATION, THE PLAN OF MERGER OR SHARE EXCHANGE MUST BE ADOPTED BY AT LEAST
32 THE SUPERMAJORITY STATUS VOTE.

33 10-2405. Termination of benefit corporation status

34 A. A BENEFIT CORPORATION MAY TERMINATE ITS STATUS AS A BENEFIT
35 CORPORATION AND CEASE TO BE SUBJECT TO THIS CHAPTER BY AMENDING ITS ARTICLES
36 OF INCORPORATION TO DELETE THE PROVISION REQUIRED BY SECTIONS 10-2403 OR
37 10-2404 TO BE STATED IN THE ARTICLES OF A BENEFIT CORPORATION. IN ORDER TO

1 BE EFFECTIVE, THE AMENDMENT MUST BE ADOPTED BY AT LEAST THE MINIMUM STATUS
2 VOTE.

3 B. IF A PLAN OF MERGER OR SHARE EXCHANGE WOULD HAVE THE EFFECT OF
4 TERMINATING THE STATUS OF A BUSINESS CORPORATION AS A BENEFIT CORPORATION,
5 THE PLAN MUST BE ADOPTED BY AT LEAST THE MINIMUM STATUS VOTE IN ORDER TO BE
6 EFFECTIVE. ANY SALE, LEASE, EXCHANGE OR OTHER DISPOSITION OF ALL OR
7 SUBSTANTIALLY ALL OF THE ASSETS OF A BENEFIT CORPORATION, UNLESS THE
8 TRANSACTION IS IN THE USUAL AND REGULAR COURSE OF BUSINESS, SHALL NOT BE
9 EFFECTIVE UNLESS THE TRANSACTION IS APPROVED BY AT LEAST THE MINIMUM STATUS
10 VOTE.

11 ARTICLE 2. CORPORATE PURPOSES

12 10-2421. Corporate purposes

13 A. A BENEFIT CORPORATION SHALL HAVE A PURPOSE OF CREATING GENERAL
14 PUBLIC BENEFIT. THIS PURPOSE IS IN ADDITION TO ITS PURPOSE UNDER SECTION
15 10-301.

16 B. THE ARTICLES OF INCORPORATION OF A BENEFIT CORPORATION MAY IDENTIFY
17 ONE OR MORE SPECIFIC PUBLIC BENEFITS THAT IT IS THE PURPOSE OF THE BENEFIT
18 CORPORATION TO CREATE IN ADDITION TO ITS PURPOSES UNDER SECTION 10-301 AND
19 SUBSECTION A OF THIS SECTION. THE IDENTIFICATION OF A SPECIFIC PUBLIC
20 BENEFIT UNDER THIS SUBSECTION DOES NOT LIMIT THE OBLIGATION OF A BENEFIT
21 CORPORATION UNDER SUBSECTION A OF THIS SECTION.

22 C. THE CREATION OF GENERAL PUBLIC BENEFIT AND A SPECIFIC PUBLIC
23 BENEFIT UNDER SUBSECTIONS A AND B OF THIS SECTION IS IN THE BEST INTERESTS OF
24 THE BENEFIT CORPORATION.

25 D. A BENEFIT CORPORATION MAY AMEND ITS ARTICLES OF INCORPORATION TO
26 ADD, AMEND OR DELETE THE IDENTIFICATION OF A SPECIFIC PUBLIC BENEFIT THAT IT
27 IS THE PURPOSE OF THE BENEFIT CORPORATION TO CREATE. IN ORDER TO BE
28 EFFECTIVE, THE AMENDMENT MUST BE ADOPTED BY AT LEAST THE MINIMUM STATUS VOTE.

29 E. A PROFESSIONAL CORPORATION THAT IS A BENEFIT CORPORATION DOES NOT
30 VIOLATE SECTION 10-2211 BY HAVING THE PURPOSE TO CREATE GENERAL PUBLIC
31 BENEFIT OR A SPECIFIC PUBLIC BENEFIT.

32 ARTICLE 3. ACCOUNTABILITY

33 10-2431. Standard of conduct for directors

34 A. IN DISCHARGING THE DUTIES OF THEIR RESPECTIVE POSITIONS AND IN
35 CONSIDERING THE BEST INTERESTS OF THE BENEFIT CORPORATION, THE BOARD OF
36 DIRECTORS, COMMITTEES OF THE BOARD AND INDIVIDUAL DIRECTORS OF A BENEFIT
37 CORPORATION:

1 1. SHALL CONSIDER THE EFFECTS OF ANY ACTION OR INACTION ON:

2 (a) THE SHAREHOLDERS OF THE BENEFIT CORPORATION.

3 (b) THE EMPLOYEES AND WORKFORCE OF THE BENEFIT CORPORATION, ITS
4 SUBSIDIARIES AND ITS SUPPLIERS.

5 (c) THE INTERESTS OF CUSTOMERS AS BENEFICIARIES OF THE GENERAL PUBLIC
6 BENEFIT OR SPECIFIC PUBLIC BENEFIT PURPOSES OF THE BENEFIT CORPORATION.

7 (d) COMMUNITY AND SOCIETAL FACTORS, INCLUDING THOSE OF EACH COMMUNITY
8 IN WHICH OFFICES OR FACILITIES OF THE BENEFIT CORPORATION, ITS SUBSIDIARIES
9 OR ITS SUPPLIERS ARE LOCATED.

10 (e) THE LOCAL AND GLOBAL ENVIRONMENT.

11 (f) THE SHORT-TERM AND LONG-TERM INTERESTS OF THE BENEFIT CORPORATION,
12 INCLUDING BENEFITS THAT MAY ACCRUE TO THE BENEFIT CORPORATION FROM ITS
13 LONG-TERM PLANS AND THE POSSIBILITY THAT THESE INTERESTS MAY BE BEST SERVED
14 BY THE CONTINUED INDEPENDENCE OF THE BENEFIT CORPORATION.

15 (g) THE ABILITY OF THE BENEFIT CORPORATION TO ACCOMPLISH ITS GENERAL
16 PUBLIC BENEFIT PURPOSE AND ANY SPECIFIC PUBLIC BENEFIT PURPOSE.

17 2. MAY CONSIDER THE INTERESTS REFERRED TO IN SECTION 10-2702 AND OTHER
18 PERTINENT FACTORS OR THE INTERESTS OF ANY OTHER GROUP THAT THEY DEEM
19 APPROPRIATE EXCEPT THAT THEY DO NOT HAVE TO GIVE PRIORITY TO THE INTERESTS OF
20 A PARTICULAR PERSON OR GROUP REFERRED TO IN THIS SUBSECTION OVER THE
21 INTERESTS OF ANY OTHER PERSON OR GROUP UNLESS THE BENEFIT CORPORATION HAS
22 STATED IN ITS ARTICLES OF INCORPORATION ITS INTENTION TO GIVE PRIORITY TO
23 CERTAIN INTERESTS RELATED TO ITS ACCOMPLISHMENT OF ITS GENERAL PUBLIC BENEFIT
24 PURPOSE OR OF A SPECIFIC PUBLIC BENEFIT PURPOSE IDENTIFIED IN ITS ARTICLES.

25 B. THE CONSIDERATION OF INTERESTS AND FACTORS IN THE MANNER REQUIRED
26 BY SUBSECTION A OF THIS SECTION DOES NOT CONSTITUTE A VIOLATION OF SECTION
27 10-830.

28 C. EXCEPT AS PROVIDED IN THE ARTICLES OF INCORPORATION OR BYLAWS AND
29 IN SUBSECTION E OF THIS SECTION, A DIRECTOR IS NOT PERSONALLY LIABLE FOR
30 MONETARY DAMAGES FOR:

31 1. ANY ACTION OR INACTION IN THE COURSE OF PERFORMING THE DUTIES OF A
32 DIRECTOR UNDER SUBSECTION A OF THIS SECTION IF THE DIRECTOR PERFORMED THE
33 DUTIES OF OFFICE IN COMPLIANCE WITH SECTION 10-830 AND THIS SECTION.

34 2. FAILURE OF THE BENEFIT CORPORATION TO PURSUE OR CREATE GENERAL
35 PUBLIC BENEFIT OR A SPECIFIC PUBLIC BENEFIT.

1 D. A DIRECTOR DOES NOT HAVE A DUTY TO A PERSON THAT IS A BENEFICIARY
2 OF THE GENERAL PUBLIC BENEFIT PURPOSE OR A SPECIFIC PUBLIC BENEFIT PURPOSE OF
3 A BENEFIT CORPORATION ARISING FROM THE STATUS OF THE PERSON AS A BENEFICIARY.

4 E. SUBSECTION C OF THIS SECTION DOES NOT APPLY TO A DIRECTOR'S
5 CONFLICTING INTEREST TRANSACTION, AS DEFINED IN SECTION 10-860, IN WHICH THE
6 DIRECTOR HAS DIRECTLY OR INDIRECTLY BENEFITTED.

7 10-2432. Benefit director

8 A. THE BOARD OF DIRECTORS OF A BENEFIT CORPORATION THAT IS A PUBLICLY
9 TRADED CORPORATION SHALL, AND THE BOARD OF ANY OTHER BENEFIT CORPORATION MAY,
10 INCLUDE A DIRECTOR WHO BOTH:

11 1. IS DESIGNATED THE BENEFIT DIRECTOR.

12 2. HAS THE POWERS, DUTIES, RIGHTS AND IMMUNITIES PROVIDED IN THIS
13 ARTICLE, AND IF ELECTED IN ACCORDANCE WITH SUBSECTION B OF THIS SECTION, HAS
14 THE POWERS, DUTIES, RIGHTS AND IMMUNITIES OF THE OTHER DIRECTORS OF THE
15 BENEFIT CORPORATION.

16 B. EXCEPT AS PROVIDED IN SUBSECTION F OF THIS SECTION, THE BENEFIT
17 DIRECTOR SHALL BE ELECTED IN THE MANNER PROVIDED BY SECTIONS 10-728, 10-803
18 AND 10-804. EXCEPT AS PROVIDED IN SUBSECTION H OF THIS SECTION, THE BENEFIT
19 DIRECTOR SHALL BE AN INDIVIDUAL WHO IS INDEPENDENT. THE BENEFIT DIRECTOR MAY
20 SERVE AS THE BENEFIT OFFICER AT THE SAME TIME AS SERVING AS THE BENEFIT
21 DIRECTOR. THE ARTICLES OF INCORPORATION OR BYLAWS OF A BENEFIT CORPORATION
22 MAY PRESCRIBE ADDITIONAL QUALIFICATIONS OF THE BENEFIT DIRECTOR THAT ARE
23 CONSISTENT WITH THIS SUBSECTION.

24 C. THE BENEFIT DIRECTOR SHALL PREPARE, AND THE BENEFIT CORPORATION
25 SHALL INCLUDE IN THE ANNUAL BENEFIT REPORT TO SHAREHOLDERS REQUIRED BY
26 SECTION 10-2441, THE OPINION OF THE BENEFIT DIRECTOR ON ALL OF THE FOLLOWING:

27 1. WHETHER THE BENEFIT CORPORATION ACTED IN ACCORDANCE WITH ITS
28 GENERAL PUBLIC BENEFIT PURPOSE AND ANY SPECIFIC PUBLIC BENEFIT PURPOSE IN ALL
29 MATERIAL RESPECTS DURING THE PERIOD COVERED BY THE REPORT.

30 2. WHETHER THE DIRECTORS AND OFFICERS COMPLIED WITH SECTION 10-2431,
31 SUBSECTION A AND SECTION 10-2433, SUBSECTION A, RESPECTIVELY.

32 3. IF THE BENEFIT CORPORATION OR ITS DIRECTORS OR OFFICERS FAILED, IN
33 THE OPINION OF THE BENEFIT DIRECTOR, TO ACT OR COMPLY IN THE MANNER DESCRIBED
34 IN PARAGRAPHS 1 AND 2 OF THIS SUBSECTION, A DESCRIPTION OF THE WAYS IN WHICH
35 THE BENEFIT CORPORATION OR ITS DIRECTORS OR OFFICERS FAILED TO ACT OR COMPLY.

1 D. THE ACTION OR INACTION OF AN INDIVIDUAL IN THE CAPACITY OF A
2 BENEFIT DIRECTOR SHALL CONSTITUTE FOR ALL PURPOSES AN ACTION OR INACTION OF
3 THAT INDIVIDUAL IN THE CAPACITY OF A DIRECTOR OF THE BENEFIT CORPORATION.

4 E. REGARDLESS OF WHETHER THE ARTICLES OF INCORPORATION OF A BENEFIT
5 CORPORATION INCLUDE A PROVISION ELIMINATING OR LIMITING THE PERSONAL
6 LIABILITY OF DIRECTORS AUTHORIZED BY SECTION 10-202, SUBSECTION B, PARAGRAPH
7 1, A BENEFIT DIRECTOR IS NOT PERSONALLY LIABLE FOR AN ACT OR OMISSION IN THE
8 CAPACITY OF A BENEFIT DIRECTOR UNLESS THE ACT OR OMISSION CONSTITUTES A
9 DIRECTOR'S CONFLICTING INTEREST TRANSACTION AS DEFINED IN SECTION 10-860,
10 WILFUL MISCONDUCT OR A KNOWING VIOLATION OF LAW.

11 F. THE ARTICLES OF INCORPORATION OR BYLAWS OF A BENEFIT CORPORATION
12 MUST PROVIDE THAT THE PERSONS OR SHAREHOLDERS WHO PERFORM THE DUTIES OF THE
13 BOARD OF DIRECTORS INCLUDE A PERSON WITH THE POWERS, DUTIES, RIGHTS AND
14 IMMUNITIES OF A BENEFIT DIRECTOR IF EITHER OF THE FOLLOWING APPLIES:

15 1. AN AGREEMENT AUTHORIZED BY SECTION 10-732 PROVIDES THAT THE POWERS
16 AND DUTIES CONFERRED OR IMPOSED ON THE BOARD OF DIRECTORS BE TRANSFERRED TO
17 ONE OR MORE PERSONS OTHER THAN THE DIRECTORS.

18 2. THE ARTICLES OF INCORPORATION OR BYLAWS OF A CLOSE CORPORATION THAT
19 IS A BENEFIT CORPORATION PROVIDE THAT THE BUSINESS AND AFFAIRS OF THE
20 CORPORATION BE MANAGED BY OR UNDER THE DIRECTION OF THE SHAREHOLDERS.

21 G. A PERSON THAT EXERCISES ONE OR MORE OF THE POWERS, DUTIES OR RIGHTS
22 OF A BENEFIT DIRECTOR UNDER SUBSECTION F OF THIS SECTION:

23 1. DOES NOT NEED TO BE INDEPENDENT OF THE BENEFIT CORPORATION.

24 2. SHALL HAVE THE IMMUNITIES OF A BENEFIT DIRECTOR.

25 3. MAY SHARE THE POWERS, DUTIES AND RIGHTS OF A BENEFIT DIRECTOR WITH
26 ONE OR MORE OTHER PERSONS.

27 4. SHALL NOT BE SUBJECT TO THE PROCEDURES FOR ELECTION OF DIRECTORS IN
28 SECTIONS 10-728, 10-803 AND 10-804 OR REMOVAL OF DIRECTORS IN SECTION 10-808
29 UNLESS ONE OF THE FOLLOWING APPLIES:

30 (a) THE PERSON IS ALSO A DIRECTOR OF THE BENEFIT CORPORATION.

31 (b) THE ARTICLES OF INCORPORATION OR BYLAWS MAKE THE PROCEDURES
32 APPLICABLE.

33 H. THE BENEFIT DIRECTOR OF A PROFESSIONAL CORPORATION DOES NOT NEED TO
34 BE INDEPENDENT.

35 I. FOR THE PURPOSES OF THIS SECTION, AN INDIVIDUAL MAY BE INDEPENDENT
36 EVEN IF THE INDIVIDUAL SERVES AS BENEFIT DIRECTOR OR BENEFIT OFFICER.

1 10-2433. Standard of conduct for officers

2 A. EACH OFFICER OF A BENEFIT CORPORATION SHALL CONSIDER THE INTERESTS
3 AND FACTORS DESCRIBED IN SECTION 10-2431, SUBSECTION A, IN THE MANNER
4 PROVIDED IN THAT SUBSECTION, IF BOTH OF THE FOLLOWING APPLY:

5 1. THE OFFICER HAS DISCRETION TO ACT WITH RESPECT TO A MATTER.

6 2. IT REASONABLY APPEARS TO THE OFFICER THAT THE MATTER MAY HAVE A
7 MATERIAL EFFECT ON THE GENERAL PUBLIC BENEFIT OR SPECIFIC PUBLIC BENEFIT
8 IDENTIFIED IN THE ARTICLES OF INCORPORATION OF THE BENEFIT CORPORATION.

9 B. THE CONSIDERATION OF INTERESTS AND FACTORS IN THE MANNER DESCRIBED
10 IN SUBSECTION A OF THIS SECTION DOES NOT CONSTITUTE A VIOLATION OF SECTION
11 10-842.

12 C. EXCEPT AS PROVIDED IN THE ARTICLES OF INCORPORATION OR BYLAWS, AN
13 OFFICER IS NOT PERSONALLY LIABLE FOR MONETARY DAMAGES FOR EITHER OF THE
14 FOLLOWING:

15 1. AN ACTION OR INACTION AS AN OFFICER IN THE COURSE OF PERFORMING THE
16 DUTIES OF AN OFFICER UNDER SUBSECTION A OF THIS SECTION IF THE OFFICER
17 PERFORMED THE DUTIES OF THE POSITION IN COMPLIANCE WITH SECTION 10-842 AND
18 THIS SECTION.

19 2. FAILURE OF THE BENEFIT CORPORATION TO PURSUE OR CREATE GENERAL
20 PUBLIC BENEFIT OR A SPECIFIC PUBLIC BENEFIT.

21 D. AN OFFICER DOES NOT HAVE A DUTY TO A PERSON THAT IS A BENEFICIARY
22 OF THE GENERAL PUBLIC BENEFIT PURPOSE OR THE SPECIFIC PUBLIC BENEFIT PURPOSE
23 OF A BENEFIT CORPORATION ARISING FROM THE STATUS OF THE PERSON AS A
24 BENEFICIARY.

25 E. AN OFFICER WHO MAKES A BUSINESS JUDGMENT IN GOOD FAITH FULFILLS THE
26 DUTY UNDER THIS SECTION IF ALL OF THE FOLLOWING APPLY:

27 1. THE OFFICER IS NOT INTERESTED IN THE SUBJECT OF THE BUSINESS
28 JUDGMENT.

29 2. THE OFFICER IS INFORMED WITH RESPECT TO THE SUBJECT OF THE BUSINESS
30 JUDGMENT TO THE EXTENT THE OFFICER REASONABLY BELIEVES TO BE APPROPRIATE
31 UNDER THE CIRCUMSTANCES.

32 3. THE OFFICER RATIONALLY BELIEVES THAT THE BUSINESS JUDGMENT IS IN
33 THE BEST INTERESTS OF THE BENEFIT CORPORATION.

34 10-2434. Benefit officer

35 A. A BENEFIT CORPORATION MAY HAVE AN OFFICER DESIGNATED THE BENEFIT
36 OFFICER.

37 B. A BENEFIT OFFICER SHALL HAVE BOTH OF THE FOLLOWING:

1 1. THE POWERS AND DUTIES RELATING TO THE PURPOSE OF THE BENEFIT
2 CORPORATION TO CREATE THE GENERAL PUBLIC BENEFIT OR SPECIFIC PUBLIC BENEFIT
3 THAT IS PROVIDED BY EITHER OF THE FOLLOWING:

4 (a) THE BYLAWS.

5 (b) ABSENT CONTROLLING PROVISIONS IN THE BYLAWS, RESOLUTIONS OR ORDERS
6 OF THE BOARD OF DIRECTORS.

7 2. THE DUTY TO PREPARE THE BENEFIT REPORT REQUIRED BY SECTION 10-2441.
8 10-2435. Right of action

9 A. EXCEPT IN A BENEFIT ENFORCEMENT PROCEEDING, A PERSON MAY NOT BRING
10 AN ACTION OR ASSERT A CLAIM AGAINST A BENEFIT CORPORATION OR ITS DIRECTORS OR
11 OFFICERS WITH RESPECT TO EITHER OF THE FOLLOWING:

12 1. THE FAILURE TO PURSUE OR CREATE GENERAL PUBLIC BENEFIT OR A
13 SPECIFIC PUBLIC BENEFIT SET FORTH IN ITS ARTICLES OF INCORPORATION.

14 2. THE VIOLATION OF AN OBLIGATION, DUTY OR STANDARD OF CONDUCT UNDER
15 THIS CHAPTER.

16 B. A BENEFIT CORPORATION IS NOT LIABLE FOR MONETARY DAMAGES UNDER THIS
17 CHAPTER FOR ANY FAILURE OF THE BENEFIT CORPORATION TO PURSUE OR CREATE
18 GENERAL PUBLIC BENEFIT OR A SPECIFIC PUBLIC BENEFIT.

19 C. A BENEFIT ENFORCEMENT PROCEEDING MAY BE COMMENCED OR MAINTAINED
20 ONLY BY EITHER OF THE FOLLOWING:

21 1. DIRECTLY BY THE BENEFIT CORPORATION.

22 2. DERIVATIVELY IN ACCORDANCE WITH CHAPTER 7, ARTICLE 4 OF THIS TITLE
23 BY ANY OF THE FOLLOWING:

24 (a) A PERSON OR GROUP OF PERSONS THAT OWNS BENEFICIALLY OR OF RECORD
25 AT LEAST TWO PER CENT OF THE TOTAL NUMBER OF SHARES OF ALL CLASSES AND SERIES
26 OUTSTANDING AT THE TIME OF THE ACT OR OMISSION THAT IS THE SUBJECT OF THE
27 COMPLAINT.

28 (b) A DIRECTOR.

29 (c) A PERSON OR GROUP OF PERSONS THAT OWNS BENEFICIALLY OR OF RECORD
30 FIVE PER CENT OR MORE OF THE OUTSTANDING EQUITY INTERESTS IN AN ENTITY OF
31 WHICH THE BENEFIT CORPORATION IS A SUBSIDIARY AT THE TIME OF THE ACT OR
32 OMISSION THAT IS THE SUBJECT OF THE COMPLAINT.

33 (d) OTHER PERSONS AS SPECIFIED IN THE ARTICLES OF INCORPORATION OR
34 BYLAWS OF THE BENEFIT CORPORATION.

35 D. FOR PURPOSES OF THIS SECTION, A PERSON IS THE BENEFICIAL OWNER OF
36 SHARES OR EQUITY INTERESTS IF THE SHARES OR EQUITY INTERESTS ARE HELD IN A
37 VOTING TRUST OR BY A NOMINEE ON BEHALF OF THE BENEFICIAL OWNER.

ARTICLE 4. TRANSPARENCY

10-2441. Preparation of annual benefit report

A. A BENEFIT CORPORATION SHALL PREPARE AN ANNUAL BENEFIT REPORT THAT INCLUDES ALL OF THE FOLLOWING:

1. A NARRATIVE DESCRIPTION OF:

(a) THE WAYS IN WHICH THE BENEFIT CORPORATION PURSUED GENERAL PUBLIC BENEFIT DURING THE YEAR AND THE EXTENT TO WHICH GENERAL PUBLIC BENEFIT WAS CREATED.

(b) BOTH:

(i) THE WAYS IN WHICH THE BENEFIT CORPORATION PURSUED A SPECIFIC PUBLIC BENEFIT THAT THE ARTICLES OF INCORPORATION STATE IS THE PURPOSE OF THE BENEFIT CORPORATION TO CREATE.

(ii) THE EXTENT TO WHICH THE SPECIFIC PUBLIC BENEFIT WAS CREATED.

(c) ANY CIRCUMSTANCES THAT HAVE HINDERED THE BENEFIT CORPORATION IN CREATING GENERAL PUBLIC BENEFIT OR A SPECIFIC PUBLIC BENEFIT.

(d) THE PROCESS AND RATIONALE FOR SELECTING OR CHANGING THE THIRD-PARTY STANDARD USED TO PREPARE THE BENEFIT REPORT.

2. AN ASSESSMENT OF THE OVERALL SOCIAL AND ENVIRONMENTAL PERFORMANCE OF THE BENEFIT CORPORATION AGAINST A THIRD-PARTY STANDARD THAT IS EITHER OF THE FOLLOWING:

(a) APPLIED CONSISTENTLY WITH ANY APPLICATION OF THAT STANDARD IN PRIOR BENEFIT REPORTS.

(b) ACCOMPANIED BY AN EXPLANATION OF THE REASONS FOR EITHER OF THE FOLLOWING:

(i) ANY INCONSISTENT APPLICATION.

(ii) THE CHANGE TO THAT STANDARD FROM THE ONE USED IN THE IMMEDIATELY PRIOR REPORT.

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 BENEFIT CORPORATION DURING THE YEAR TO EACH DIRECTOR IN THE CAPACITY OF A DIRECTOR.

5. THE STATEMENT OF THE BENEFIT DIRECTOR DESCRIBED IN SECTION 10-2432, SUBSECTION C.

6. A STATEMENT OF ANY CONNECTION BETWEEN THE ORGANIZATION THAT ESTABLISHED THE THIRD-PARTY STANDARD, OR ITS DIRECTORS, ITS OFFICERS OR ANY HOLDER OF FIVE PER CENT OR MORE OF THE GOVERNANCE INTERESTS IN THE ORGANIZATION AND THE BENEFIT CORPORATION OR ITS DIRECTORS, ITS OFFICERS OR

1 ANY HOLDER OF FIVE PER CENT OR MORE OF THE OUTSTANDING SHARES OF THE BENEFIT
2 CORPORATION, OR ANY OTHER FINANCIAL OR GOVERNANCE RELATIONSHIP THAT MIGHT
3 MATERIALLY AFFECT THE CREDIBILITY OF THE USE OF THE THIRD-PARTY STANDARD.

4 7. IF THE BENEFIT CORPORATION HAS DISPENSED WITH OR RESTRICTED THE
5 DISCRETION OR POWERS OF THE BOARD OF DIRECTORS AS PROVIDED IN SECTION
6 10-2432, SUBSECTION F, A DESCRIPTION OF BOTH OF THE FOLLOWING:

7 (a) THE PERSONS THAT EXERCISE THE POWERS, DUTIES AND RIGHTS OF THE
8 BOARD OF DIRECTORS.

9 (b) THE BENEFIT DIRECTOR, AS REQUIRED BY SECTION 10-2432,
10 SUBSECTION F.

11 B. IF, DURING THE YEAR COVERED BY A BENEFIT REPORT, A BENEFIT DIRECTOR
12 RESIGNED FROM OR REFUSED TO STAND FOR REELECTION TO THE POSITION OF BENEFIT
13 DIRECTOR OR WAS REMOVED FROM THE POSITION OF BENEFIT DIRECTOR AND THE BENEFIT
14 DIRECTOR FURNISHED THE BENEFIT CORPORATION WITH ANY WRITTEN CORRESPONDENCE
15 CONCERNING THE CIRCUMSTANCES SURROUNDING THE RESIGNATION, REFUSAL OR REMOVAL,
16 THE BENEFIT REPORT SHALL INCLUDE THAT CORRESPONDENCE AS AN EXHIBIT.

17 C. NEITHER THE BENEFIT REPORT NOR THE ASSESSMENT OF THE PERFORMANCE OF
18 THE BENEFIT CORPORATION IN THE BENEFIT REPORT REQUIRED BY SUBSECTION A,
19 PARAGRAPH 2 OF THIS SECTION IS REQUIRED TO BE AUDITED OR CERTIFIED BY A
20 THIRD-PARTY STANDARDS PROVIDER.

21 10-2442. Availability of annual benefit report

22 A. A BENEFIT CORPORATION SHALL SEND ITS ANNUAL BENEFIT REPORT TO EACH
23 SHAREHOLDER:

24 1. WITHIN ONE HUNDRED TWENTY DAYS FOLLOWING THE END OF THE FISCAL YEAR
25 OF THE BENEFIT CORPORATION.

26 2. AT THE SAME TIME THE BENEFIT CORPORATION DELIVERS ANY OTHER ANNUAL
27 REPORT TO ITS SHAREHOLDERS.

28 B. A BENEFIT CORPORATION SHALL POST ALL OF ITS BENEFIT REPORTS ON THE
29 PUBLIC PORTION OF ITS INTERNET WEBSITE, IF ANY, EXCEPT THAT THE COMPENSATION
30 PAID TO DIRECTORS AND FINANCIAL OR PROPRIETARY INFORMATION INCLUDED IN THE
31 BENEFIT REPORTS MAY BE OMITTED FROM THE BENEFIT REPORTS AS POSTED.

32 C. IF A BENEFIT CORPORATION DOES NOT HAVE AN INTERNET WEBSITE, THE
33 BENEFIT CORPORATION SHALL PROVIDE A COPY OF ITS MOST RECENT BENEFIT REPORT,
34 WITHOUT CHARGE, TO ANY PERSON THAT REQUESTS A COPY, EXCEPT THAT THE
35 COMPENSATION PAID TO DIRECTORS AND FINANCIAL OR PROPRIETARY INFORMATION
36 INCLUDED IN THE BENEFIT REPORT MAY BE OMITTED FROM THE COPY OF THE BENEFIT
37 REPORT PROVIDED.

1 D. CONCURRENTLY WITH THE DELIVERY OF THE BENEFIT REPORT TO
2 SHAREHOLDERS UNDER SUBSECTION A OF THIS SECTION, THE BENEFIT CORPORATION
3 SHALL DELIVER A COPY OF THE BENEFIT REPORT TO THE ARIZONA CORPORATION
4 COMMISSION FOR FILING, EXCEPT THAT THE COMPENSATION PAID TO DIRECTORS AND
5 FINANCIAL OR PROPRIETARY INFORMATION INCLUDED IN THE BENEFIT REPORT MAY BE
6 OMITTED FROM THE BENEFIT REPORT AS DELIVERED TO THE ARIZONA CORPORATION
7 COMMISSION.

8 Sec. 4. Effective date

9 This act is effective from and after December 31, 2014."

10 Amend title to conform

THOMAS FORESE

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