

State of Arizona
House of Representatives
Fifty-first Legislature
First Regular Session
2013

HOUSE BILL 2276

AN ACT

AMENDING SECTION 10-122, ARIZONA REVISED STATUTES; AMENDING TITLE 10, ARIZONA REVISED STATUTES, BY ADDING CHAPTER 22; RELATING TO BENEFIT CORPORATIONS.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:

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
29	16. Application for withdrawal	25
30	17. Annual report	45
31	18. Articles of correction	25
32	19. Application for certificate of good standing	10
33	20. Any other document required or permitted	
34	to be filed by chapters 1 through 17	
35	of this title	25

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

40 C. The commission shall charge and collect a reasonable fee for
41 copying documents on request, provided the fee does not exceed the cost of
42 providing the service as determined by the commission. The commission shall
43 also charge a reasonable fee for certifying the copy of a filed document,
44 provided the fee does not exceed the cost of providing the service as
45 determined by the commission.

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

7 E. One-third of the fees for the annual report of domestic and foreign
8 corporations paid pursuant to subsection A, paragraph 17 of this section
9 shall be deposited in the Arizona arts trust fund established by section
10 41-983.01 and two-thirds of these fees shall be deposited, pursuant to
11 sections 35-146 and 35-147, in the public access fund established by section
12 10-122.01.

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

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

18 2. In addition to any other fees required by this section or any other
19 law, the commission shall charge a nonrefundable fee for expedited services,
20 including those requested by fax. The fee shall be determined by a
21 supermajority vote of the commissioners.

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

25 (a) The same day and next day services shall not be offered unless all
26 expedited services filed pursuant to this title are processed within a
27 maximum of five business days and all other documents and services filed
28 pursuant to this title are processed within a maximum of thirty business
29 days.

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

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

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

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

1 H. Except as provided in section 10-122.01, subsection B, paragraph 3,
2 in addition to any fee charged pursuant to this section, the commission may
3 charge and collect the following nonrefundable fees to help defray the cost
4 of the improved data processing system that is maintained pursuant to section
5 10-122.01:

6 1. Filing articles of incorporation of a domestic corporation, ten
7 dollars.

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

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

13 J. Fees charged pursuant to this section are exempt from section
14 39-121.03, subsection A, paragraph 3.

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

20 L. For the purposes of this section, "supermajority" means an
21 affirmative vote of at least four commissioners.

22 M. IN ADDITION TO ANY OTHER FEES REQUIRED BY THIS SECTION OR ANY OTHER
23 LAW, THE COMMISSION MAY PROVIDE FOR AND ESTABLISH A FEE FOR THE FILING OF AN
24 ANNUAL BENEFIT REPORT DELIVERED TO THE COMMISSION FOR FILING PURSUANT TO
25 SECTION 10-2442. THE FEE SHALL BE DETERMINED BY A MAJORITY VOTE OF THE
26 COMMISSIONERS.

27 Sec. 2. Title 10, Arizona Revised Statutes, is amended by adding
28 chapter 22, to read:

29 CHAPTER 22

30 BENEFIT CORPORATIONS

31 ARTICLE 1. GENERAL PROVISIONS

32 10-2401. Application and effect of chapter

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

34 B. THE EXISTENCE OF A PROVISION OF THIS CHAPTER DOES NOT OF ITSELF
35 CREATE AN IMPLICATION THAT A CONTRARY OR DIFFERENT RULE OF LAW IS APPLICABLE
36 TO A BUSINESS CORPORATION THAT IS NOT A BENEFIT CORPORATION. THIS CHAPTER
37 DOES NOT AFFECT A STATUTE OR RULE OF LAW THAT IS APPLICABLE TO A BUSINESS
38 CORPORATION THAT IS NOT A BENEFIT CORPORATION.

39 C. EXCEPT AS OTHERWISE PROVIDED IN THIS CHAPTER, CHAPTERS 1, 2, 3, 4,
40 5, 6, 7, 8, 10, 11, 12, 13, 14, 15, 16 AND 17 OF THIS TITLE ARE GENERALLY
41 APPLICABLE TO ALL BENEFIT CORPORATIONS. THE SPECIFIC PROVISIONS OF THIS
42 CHAPTER CONTROL OVER THE GENERAL PROVISIONS OF CHAPTERS 1 THROUGH 17 OF THIS
43 TITLE.

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

4 E. A PROVISION OF THE ARTICLES OF INCORPORATION OR BYLAWS OF A BENEFIT
5 CORPORATION MAY NOT LIMIT, BE INCONSISTENT WITH OR SUPERSEDE A PROVISION OF
6 THIS CHAPTER.

7 10-2402. Definitions

8 IN THIS CHAPTER, UNLESS THE CONTEXT OTHERWISE REQUIRES:

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

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

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

13 2. "BENEFIT DIRECTOR" MEANS EITHER:

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

16 (b) A PERSON WITH ONE OR MORE OF THE POWERS, DUTIES OR RIGHTS OF A
17 BENEFIT DIRECTOR TO THE EXTENT PROVIDED IN THE BYLAWS UNDER SECTION 10-2432,
18 SUBSECTION F.

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

21 (a) THE FAILURE OF A BENEFIT CORPORATION TO PURSUE OR CREATE GENERAL
22 PUBLIC BENEFIT OR A SPECIFIC PUBLIC BENEFIT PURPOSE SET FORTH IN ITS
23 ARTICLES.

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

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

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

31 6. "INDEPENDENT" MEANS HAVING NO MATERIAL RELATIONSHIP WITH A BENEFIT
32 CORPORATION OR A SUBSIDIARY OF THE BENEFIT CORPORATION. A MATERIAL
33 RELATIONSHIP BETWEEN AN INDIVIDUAL AND A BENEFIT CORPORATION OR ANY OF ITS
34 SUBSIDIARIES IS CONCLUSIVELY PRESUMED TO EXIST IF ANY OF THE FOLLOWING
35 APPLIES:

36 (a) THE INDIVIDUAL IS, OR HAS BEEN WITHIN THE LAST THREE YEARS, AN
37 EMPLOYEE OTHER THAN A BENEFIT OFFICER OF THE BENEFIT CORPORATION OR A
38 SUBSIDIARY.

39 (b) AN IMMEDIATE FAMILY MEMBER OF THE INDIVIDUAL IS, OR HAS BEEN
40 WITHIN THE LAST THREE YEARS, AN EXECUTIVE OFFICER OTHER THAN A BENEFIT
41 OFFICER OF THE BENEFIT CORPORATION OR A SUBSIDIARY.

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

- 1 (i) THE INDIVIDUAL.
2 (ii) AN ENTITY OF WHICH THE INDIVIDUAL IS A DIRECTOR, AN OFFICER OR A
3 MANAGER OR IN WHICH THE INDIVIDUAL OWNS BENEFICIALLY OR OF RECORD FIVE PER
4 CENT OR MORE OF THE OUTSTANDING EQUITY INTERESTS, CALCULATED AS IF ALL
5 OUTSTANDING RIGHTS TO ACQUIRE EQUITY INTERESTS IN THE ENTITY HAD BEEN
6 EXERCISED.
- 7 7. "MINIMUM STATUS VOTE" MEANS:
8 (a) IN THE CASE OF A BUSINESS CORPORATION, IN ADDITION TO ANY OTHER
9 REQUIRED APPROVAL OR VOTE, THE SATISFACTION OF THE FOLLOWING CONDITIONS:
10 (i) THE SHAREHOLDERS OF EVERY CLASS OR SERIES ARE ENTITLED TO VOTE AS
11 A SEPARATE VOTING GROUP ON THE CORPORATE ACTION REGARDLESS OF A LIMITATION
12 STATED IN THE ARTICLES OF INCORPORATION OR BYLAWS ON THE VOTING RIGHTS OF ANY
13 CLASS OR SERIES.
14 (ii) THE CORPORATE ACTION IS APPROVED BY VOTE OF THE SHAREHOLDERS OF
15 EACH CLASS OR SERIES ENTITLED TO CAST AT LEAST TWO-THIRDS OF THE VOTES THAT
16 ALL SHAREHOLDERS OF THE CLASS OR SERIES ARE ENTITLED TO CAST ON THE ACTION.
17 (b) IN THE CASE OF A DOMESTIC ENTITY OTHER THAN A BUSINESS
18 CORPORATION, IN ADDITION TO ANY OTHER REQUIRED APPROVAL, VOTE OR CONSENT, THE
19 SATISFACTION OF THE FOLLOWING CONDITIONS:
20 (i) THE HOLDERS OF EVERY CLASS OR SERIES OF EQUITY INTEREST IN THE
21 ENTITY THAT ARE ENTITLED TO RECEIVE A DISTRIBUTION OF ANY KIND FROM THE
22 ENTITY ARE ENTITLED TO VOTE ON OR CONSENT TO THE ACTION REGARDLESS OF ANY
23 OTHERWISE APPLICABLE LIMITATION ON THE VOTING OR CONSENT RIGHTS OF ANY CLASS
24 OR SERIES.
25 (ii) THE ACTION IS APPROVED BY VOTE OR CONSENT OF THE HOLDERS
26 DESCRIBED IN ITEM (i) OF THIS SUBDIVISION ENTITLED TO CAST AT LEAST
27 TWO-THIRDS OF THE VOTES OR CONSENTS THAT ALL OF THOSE HOLDERS ARE ENTITLED TO
28 CAST ON THE ACTION.
- 29 8. "PUBLICLY TRADED CORPORATION" MEANS A BUSINESS CORPORATION THAT HAS
30 SHARES LISTED ON A NATIONAL SECURITIES EXCHANGE OR TRADED IN A MARKET
31 MAINTAINED BY ONE OR MORE MEMBERS OF A NATIONAL SECURITIES ASSOCIATION.
- 32 9. "SPECIFIC PUBLIC BENEFIT" INCLUDES:
33 (a) PROVIDING LOW-INCOME OR UNDERSERVED INDIVIDUALS OR COMMUNITIES
34 WITH BENEFICIAL PRODUCTS OR SERVICES.
35 (b) PROMOTING ECONOMIC OPPORTUNITY FOR INDIVIDUALS OR COMMUNITIES
36 BEYOND THE CREATION OF JOBS IN THE NORMAL COURSE OF BUSINESS.
37 (c) PROTECTING OR RESTORING THE ENVIRONMENT.
38 (d) IMPROVING HUMAN HEALTH.
39 (e) PROMOTING THE ARTS, SCIENCES OR ADVANCEMENT OF KNOWLEDGE.
40 (f) INCREASING THE FLOW OF CAPITAL TO ENTITIES WITH A PURPOSE TO
41 BENEFIT SOCIETY OR THE ENVIRONMENT.
42 (g) CONFERRING ANY OTHER PARTICULAR BENEFIT ON SOCIETY OR THE
43 ENVIRONMENT.

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. "THIRD-PARTY STANDARD" MEANS A RECOGNIZED STANDARD FOR DEFINING,
5 REPORTING AND ASSESSING CORPORATE SOCIAL AND ENVIRONMENTAL PERFORMANCE THAT
6 IS:

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

10 (b) DEVELOPED BY AN ENTITY THAT IS NOT CONTROLLED BY THE BENEFIT
11 CORPORATION.

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

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

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

17 (d) TRANSPARENT BECAUSE THE FOLLOWING INFORMATION IS PUBLICLY
18 AVAILABLE ABOUT THE STANDARD:

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

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

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

24 (i) THE IDENTITY OF THE DIRECTORS, OFFICERS, MATERIAL OWNERS AND
25 GOVERNING BODY OF THE ENTITY THAT DEVELOPED AND CONTROLS REVISIONS TO THE
26 STANDARD.

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

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

32 10-2403. Incorporation of benefit corporation

33 A BENEFIT CORPORATION SHALL BE INCORPORATED IN ACCORDANCE WITH CHAPTER
34 2, ARTICLE 1 OF THIS TITLE, EXCEPT THAT ITS ARTICLES OF INCORPORATION MUST
35 ALSO STATE THAT IT IS A BENEFIT CORPORATION.

36 10-2404. Election of benefit corporation status

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

42 B. IF AN ENTITY THAT IS NOT A BENEFIT CORPORATION IS A PARTY TO A
43 MERGER OR THE ACQUIRED ENTITY IN A SHARE EXCHANGE, AND THE SURVIVING OR
44 ACQUIRED ENTITY IN THE MERGER OR SHARE EXCHANGE IS TO BE A BENEFIT

1 CORPORATION, THE PLAN OF MERGER OR SHARE EXCHANGE MUST BE ADOPTED BY AT LEAST
2 THE SUPERMAJORITY STATUS VOTE.

3 10-2405. Termination of benefit corporation status

4 A. A BENEFIT CORPORATION MAY TERMINATE ITS STATUS AS A BENEFIT
5 CORPORATION AND CEASE TO BE SUBJECT TO THIS CHAPTER BY AMENDING ITS ARTICLES
6 OF INCORPORATION TO DELETE THE PROVISION REQUIRED BY SECTIONS 10-2403 OR
7 10-2404 TO BE STATED IN THE ARTICLES OF A BENEFIT CORPORATION. IN ORDER TO
8 BE EFFECTIVE, THE AMENDMENT MUST BE ADOPTED BY AT LEAST THE MINIMUM STATUS
9 VOTE.

10 B. IF A PLAN OF MERGER OR SHARE EXCHANGE WOULD HAVE THE EFFECT OF
11 TERMINATING THE STATUS OF A BUSINESS CORPORATION AS A BENEFIT CORPORATION,
12 THE PLAN MUST BE ADOPTED BY AT LEAST THE MINIMUM STATUS VOTE IN ORDER TO BE
13 EFFECTIVE. ANY SALE, LEASE, EXCHANGE OR OTHER DISPOSITION OF ALL OR
14 SUBSTANTIALLY ALL OF THE ASSETS OF A BENEFIT CORPORATION, UNLESS THE
15 TRANSACTION IS IN THE USUAL AND REGULAR COURSE OF BUSINESS, SHALL NOT BE
16 EFFECTIVE UNLESS THE TRANSACTION IS APPROVED BY AT LEAST THE MINIMUM STATUS
17 VOTE.

18 ARTICLE 2. CORPORATE PURPOSES

19 10-2421. Corporate purposes

20 A. A BENEFIT CORPORATION SHALL HAVE A PURPOSE OF CREATING GENERAL
21 PUBLIC BENEFIT. THIS PURPOSE IS IN ADDITION TO ITS PURPOSE UNDER SECTION
22 10-301.

23 B. THE ARTICLES OF INCORPORATION OF A BENEFIT CORPORATION MAY IDENTIFY
24 ONE OR MORE SPECIFIC PUBLIC BENEFITS THAT IT IS THE PURPOSE OF THE BENEFIT
25 CORPORATION TO CREATE IN ADDITION TO ITS PURPOSES UNDER SECTION 10-301 AND
26 SUBSECTION A OF THIS SECTION. THE IDENTIFICATION OF A SPECIFIC PUBLIC
27 BENEFIT UNDER THIS SUBSECTION DOES NOT LIMIT THE OBLIGATION OF A BENEFIT
28 CORPORATION UNDER SUBSECTION A OF THIS SECTION.

29 C. THE CREATION OF GENERAL PUBLIC BENEFIT AND A SPECIFIC PUBLIC
30 BENEFIT UNDER SUBSECTIONS A AND B OF THIS SECTION IS IN THE BEST INTERESTS OF
31 THE BENEFIT CORPORATION.

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

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

39 ARTICLE 3. ACCOUNTABILITY

40 10-2431. Standard of conduct for directors

41 A. IN DISCHARGING THE DUTIES OF THEIR RESPECTIVE POSITIONS AND IN
42 CONSIDERING THE BEST INTERESTS OF THE BENEFIT CORPORATION, THE BOARD OF
43 DIRECTORS, COMMITTEES OF THE BOARD AND INDIVIDUAL DIRECTORS OF A BENEFIT
44 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, A
29 DIRECTOR IS NOT PERSONALLY LIABLE FOR MONETARY DAMAGES FOR:
30 1. ANY ACTION OR INACTION IN THE COURSE OF PERFORMING THE DUTIES OF A
31 DIRECTOR UNDER SUBSECTION A OF THIS SECTION IF THE DIRECTOR PERFORMED THE
32 DUTIES OF OFFICE IN COMPLIANCE WITH SECTION 10-830 AND THIS SECTION.
33 2. FAILURE OF THE BENEFIT CORPORATION TO PURSUE OR CREATE GENERAL
34 PUBLIC BENEFIT OR A SPECIFIC PUBLIC BENEFIT.
35 D. A DIRECTOR DOES NOT HAVE A DUTY TO A PERSON THAT IS A BENEFICIARY
36 OF THE GENERAL PUBLIC BENEFIT PURPOSE OR A SPECIFIC PUBLIC BENEFIT PURPOSE OF
37 A BENEFIT CORPORATION ARISING FROM THE STATUS OF THE PERSON AS A BENEFICIARY.
38 10-2432. Benefit director
39 A. THE BOARD OF DIRECTORS OF A BENEFIT CORPORATION THAT IS A PUBLICLY
40 TRADED CORPORATION SHALL, AND THE BOARD OF ANY OTHER BENEFIT CORPORATION MAY,
41 INCLUDE A DIRECTOR WHO BOTH:
42 1. IS DESIGNATED THE BENEFIT DIRECTOR.
43 2. IN ADDITION TO THE POWERS, DUTIES, RIGHTS AND IMMUNITIES OF THE
44 OTHER DIRECTORS OF THE BENEFIT CORPORATION, HAS THE POWERS, DUTIES, RIGHTS
45 AND IMMUNITIES PROVIDED IN THIS ARTICLE.

1 B. THE BENEFIT DIRECTOR SHALL BE ELECTED IN THE MANNER PROVIDED BY
2 CHAPTER 8 OF THIS TITLE. EXCEPT AS PROVIDED IN SUBSECTIONS G AND H OF THIS
3 SECTION, THE BENEFIT DIRECTOR SHALL BE AN INDIVIDUAL WHO IS INDEPENDENT. THE
4 BENEFIT DIRECTOR MAY SERVE AS THE BENEFIT OFFICER AT THE SAME TIME AS SERVING
5 AS THE BENEFIT DIRECTOR. THE ARTICLES OF INCORPORATION OR BYLAWS OF A
6 BENEFIT CORPORATION MAY PRESCRIBE ADDITIONAL QUALIFICATIONS OF THE BENEFIT
7 DIRECTOR THAT ARE CONSISTENT WITH THIS SUBSECTION.

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

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

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

16 3. IF THE BENEFIT CORPORATION OR ITS DIRECTORS OR OFFICERS FAILED, IN
17 THE OPINION OF THE BENEFIT DIRECTOR, TO ACT OR COMPLY IN THE MANNER DESCRIBED
18 IN PARAGRAPHS 1 AND 2 OF THIS SUBSECTION, A DESCRIPTION OF THE WAYS IN WHICH
19 THE BENEFIT CORPORATION OR ITS DIRECTORS OR OFFICERS FAILED TO ACT OR COMPLY.

20 D. THE ACTION OR INACTION OF AN INDIVIDUAL IN THE CAPACITY OF A
21 BENEFIT DIRECTOR SHALL CONSTITUTE FOR ALL PURPOSES AN ACTION OR INACTION OF
22 THAT INDIVIDUAL IN THE CAPACITY OF A DIRECTOR OF THE BENEFIT CORPORATION.

23 E. REGARDLESS OF WHETHER THE ARTICLES OF INCORPORATION OF A BENEFIT
24 CORPORATION INCLUDE A PROVISION ELIMINATING OR LIMITING THE PERSONAL
25 LIABILITY OF DIRECTORS AUTHORIZED BY SECTION 10-202, SUBSECTION B, PARAGRAPH
26 1, A BENEFIT DIRECTOR IS NOT PERSONALLY LIABLE FOR AN ACT OR OMISSION IN THE
27 CAPACITY OF A BENEFIT DIRECTOR UNLESS THE ACT OR OMISSION CONSTITUTES
28 SELF-DEALING, WILFUL MISCONDUCT OR A KNOWING VIOLATION OF LAW.

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

33 1. AN AGREEMENT AUTHORIZED BY SECTION 10-732 PROVIDES THAT THE POWERS
34 AND DUTIES CONFERRED OR IMPOSED ON THE BOARD OF DIRECTORS BE EXERCISED OR
35 PERFORMED BY A PERSON OTHER THAN THE DIRECTORS.

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

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

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

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

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

1 4. SHALL NOT BE SUBJECT TO THE PROCEDURES FOR ELECTION OR REMOVAL OF
2 DIRECTORS IN SECTION 10-803 OR 10-808, RESPECTIVELY, UNLESS ONE OF THE
3 FOLLOWING APPLIES:

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

5 (b) THE ARTICLES OR BYLAWS MAKE THE PROCEDURES APPLICABLE.

6 H. THE BENEFIT DIRECTOR OF A PROFESSIONAL CORPORATION DOES NOT NEED TO
7 BE INDEPENDENT.

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

10 10-2433. Standard of conduct for officers

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

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

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

18 B. THE CONSIDERATION OF INTERESTS AND FACTORS IN THE MANNER DESCRIBED
19 IN SUBSECTION A OF THIS SECTION DOES NOT CONSTITUTE A VIOLATION OF SECTION
20 10-842.

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

24 1. AN ACTION OR INACTION AS AN OFFICER IN THE COURSE OF PERFORMING THE
25 DUTIES OF AN OFFICER UNDER SUBSECTION A OF THIS SECTION IF THE OFFICER
26 PERFORMED THE DUTIES OF THE POSITION IN COMPLIANCE WITH SECTION 10-842 AND
27 THIS SECTION.

28 2. FAILURE OF THE BENEFIT CORPORATION TO PURSUE OR CREATE GENERAL
29 PUBLIC BENEFIT OR A SPECIFIC PUBLIC BENEFIT.

30 D. AN OFFICER DOES NOT HAVE A DUTY TO A PERSON THAT IS A BENEFICIARY
31 OF THE GENERAL PUBLIC BENEFIT PURPOSE OR THE SPECIFIC PUBLIC BENEFIT PURPOSE
32 OF A BENEFIT CORPORATION ARISING FROM THE STATUS OF THE PERSON AS A
33 BENEFICIARY.

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

36 1. THE OFFICER IS NOT INTERESTED IN THE SUBJECT OF THE BUSINESS
37 JUDGMENT.

38 2. THE OFFICER IS INFORMED WITH RESPECT TO THE SUBJECT OF THE BUSINESS
39 JUDGMENT TO THE EXTENT THE OFFICER REASONABLY BELIEVES TO BE APPROPRIATE
40 UNDER THE CIRCUMSTANCES.

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

43 10-2434. Benefit officer

44 A. A BENEFIT CORPORATION MAY HAVE AN OFFICER DESIGNATED THE BENEFIT
45 OFFICER.

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

4 (b) BOTH:

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

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

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

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

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

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

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

20 (i) ANY INCONSISTENT APPLICATION.

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

23 3. THE NAME OF THE BENEFIT DIRECTOR AND THE BENEFIT OFFICER, IF ANY,
24 AND THE ADDRESS TO WHICH CORRESPONDENCE TO EACH OF THEM MAY BE DIRECTED.

25 4. THE COMPENSATION PAID BY THE BENEFIT CORPORATION DURING THE YEAR TO
26 EACH DIRECTOR IN THE CAPACITY OF A DIRECTOR.

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

29 6. A STATEMENT OF ANY CONNECTION BETWEEN THE ORGANIZATION THAT
30 ESTABLISHED THE THIRD-PARTY STANDARD, OR ITS DIRECTORS, ITS OFFICERS OR ANY
31 HOLDER OF FIVE PER CENT OR MORE OF THE GOVERNANCE INTERESTS IN THE
32 ORGANIZATION AND THE BENEFIT CORPORATION OR ITS DIRECTORS, ITS OFFICERS OR
33 ANY HOLDER OF FIVE PER CENT OR MORE OF THE OUTSTANDING SHARES OF THE BENEFIT
34 CORPORATION, INCLUDING ANY FINANCIAL OR GOVERNANCE RELATIONSHIP THAT MIGHT
35 MATERIALLY AFFECT THE CREDIBILITY OF THE USE OF THE THIRD-PARTY STANDARD.

36 7. IF THE BENEFIT CORPORATION HAS DISPENSED WITH OR RESTRICTED THE
37 DISCRETION OR POWERS OF THE BOARD OF DIRECTORS AS PROVIDED IN SECTION
38 10-2432, SUBSECTION F, A DESCRIPTION OF BOTH OF THE FOLLOWING:

39 (a) THE PERSONS THAT EXERCISE THE POWERS, DUTIES AND RIGHTS AND WHO
40 HAVE THE IMMUNITIES OF THE BOARD OF DIRECTORS.

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

43 B. IF, DURING THE YEAR COVERED BY A BENEFIT REPORT, A BENEFIT DIRECTOR
44 RESIGNED FROM OR REFUSED TO STAND FOR REELECTION TO THE POSITION OF BENEFIT
45 DIRECTOR OR WAS REMOVED FROM THE POSITION OF BENEFIT DIRECTOR AND THE BENEFIT

1 DIRECTOR FURNISHED THE BENEFIT CORPORATION WITH ANY WRITTEN CORRESPONDENCE
2 CONCERNING THE CIRCUMSTANCES SURROUNDING THE RESIGNATION, REFUSAL OR REMOVAL,
3 THE BENEFIT REPORT SHALL INCLUDE THAT CORRESPONDENCE AS AN EXHIBIT.

4 C. NEITHER THE BENEFIT REPORT NOR THE ASSESSMENT OF THE PERFORMANCE OF
5 THE BENEFIT CORPORATION IN THE BENEFIT REPORT REQUIRED BY SUBSECTION A,
6 PARAGRAPH 2 OF THIS SECTION NEEDS TO BE AUDITED OR CERTIFIED BY A THIRD-PARTY
7 STANDARDS PROVIDER.

8 10-2442. Availability of annual benefit report

9 A. A BENEFIT CORPORATION SHALL SEND ITS ANNUAL BENEFIT REPORT TO EACH
10 SHAREHOLDER:

11 1. WITHIN ONE HUNDRED TWENTY DAYS FOLLOWING THE END OF THE FISCAL YEAR
12 OF THE BENEFIT CORPORATION.

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

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

19 C. IF A BENEFIT CORPORATION DOES NOT HAVE AN INTERNET WEBSITE, THE
20 BENEFIT CORPORATION SHALL PROVIDE A COPY OF ITS MOST RECENT BENEFIT REPORT,
21 WITHOUT CHARGE, TO ANY PERSON THAT REQUESTS A COPY, EXCEPT THAT THE
22 COMPENSATION PAID TO DIRECTORS AND FINANCIAL OR PROPRIETARY INFORMATION
23 INCLUDED IN THE BENEFIT REPORT MAY BE OMITTED FROM THE COPY OF THE BENEFIT
24 REPORT PROVIDED.

25 D. CONCURRENTLY WITH THE DELIVERY OF THE BENEFIT REPORT TO
26 SHAREHOLDERS UNDER SUBSECTION A OF THIS SECTION, THE BENEFIT CORPORATION
27 SHALL DELIVER A COPY OF THE BENEFIT REPORT TO THE ARIZONA CORPORATION
28 COMMISSION FOR FILING, EXCEPT THAT THE COMPENSATION PAID TO DIRECTORS AND
29 FINANCIAL OR PROPRIETARY INFORMATION INCLUDED IN THE BENEFIT REPORT MAY BE
30 OMITTED FROM THE BENEFIT REPORT AS DELIVERED TO THE ARIZONA CORPORATION
31 COMMISSION.

32 Sec. 3. Effective date

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