

REFERENCE TITLE: **benefit corporations**

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

HB 2276

Introduced by
Representatives Forese: Pierce, Thorpe

AN ACT

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

4 CHAPTER 22

5 BENEFIT CORPORATIONS

6 ARTICLE 1. GENERAL PROVISIONS

7 10-2401. Application and effect of chapter

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

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

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

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

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

25 10-2402. Definitions

26 IN THIS CHAPTER, UNLESS THE CONTEXT OTHERWISE REQUIRES:

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

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

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

31 2. "BENEFIT DIRECTOR" MEANS EITHER:

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

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

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

39 (a) THE FAILURE OF A BENEFIT CORPORATION TO PURSUE OR CREATE GENERAL
40 PUBLIC BENEFIT OR A SPECIFIC PUBLIC BENEFIT PURPOSE SET FORTH IN ITS
41 ARTICLES.

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

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

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

4 6. "INDEPENDENT" MEANS HAVING NO MATERIAL RELATIONSHIP WITH A BENEFIT
5 CORPORATION OR A SUBSIDIARY OF THE BENEFIT CORPORATION. A MATERIAL
6 RELATIONSHIP BETWEEN AN INDIVIDUAL AND A BENEFIT CORPORATION OR ANY OF ITS
7 SUBSIDIARIES IS CONCLUSIVELY PRESUMED TO EXIST IF ANY OF THE FOLLOWING
8 APPLIES:

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

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

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

19 (i) THE INDIVIDUAL.

20 (ii) AN ENTITY OF WHICH THE INDIVIDUAL IS A DIRECTOR, AN OFFICER OR A
21 MANAGER OR IN WHICH THE INDIVIDUAL OWNS BENEFICIALLY OR OF RECORD FIVE PER
22 CENT OR MORE OF THE OUTSTANDING EQUITY INTERESTS, CALCULATED AS IF ALL
23 OUTSTANDING RIGHTS TO ACQUIRE EQUITY INTERESTS IN THE ENTITY HAD BEEN
24 EXERCISED.

25 7. "MINIMUM STATUS VOTE" MEANS:

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

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

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

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

38 (i) THE HOLDERS OF EVERY CLASS OR SERIES OF EQUITY INTEREST IN THE
39 ENTITY THAT ARE ENTITLED TO RECEIVE A DISTRIBUTION OF ANY KIND FROM THE
40 ENTITY ARE ENTITLED TO VOTE ON OR CONSENT TO THE ACTION REGARDLESS OF ANY
41 OTHERWISE APPLICABLE LIMITATION ON THE VOTING OR CONSENT RIGHTS OF ANY CLASS
42 OR SERIES.

43 (ii) THE ACTION IS APPROVED BY VOTE OR CONSENT OF THE HOLDERS
44 DESCRIBED IN ITEM (i) OF THIS SUBDIVISION ENTITLED TO CAST AT LEAST

1 TWO-THIRDS OF THE VOTES OR CONSENTS THAT ALL OF THOSE HOLDERS ARE ENTITLED TO
2 CAST ON THE ACTION.

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

6 9. "SPECIFIC PUBLIC BENEFIT" INCLUDES:

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

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

11 (c) PROTECTING OR RESTORING THE ENVIRONMENT.

12 (d) IMPROVING HUMAN HEALTH.

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

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

16 (g) CONFERRING ANY OTHER PARTICULAR BENEFIT ON SOCIETY OR THE
17 ENVIRONMENT.

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

21 11. "THIRD-PARTY STANDARD" MEANS A RECOGNIZED STANDARD FOR DEFINING,
22 REPORTING AND ASSESSING CORPORATE SOCIAL AND ENVIRONMENTAL PERFORMANCE THAT
23 IS:

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

27 (b) DEVELOPED BY AN ENTITY THAT IS NOT CONTROLLED BY THE BENEFIT
28 CORPORATION.

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

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

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

34 (d) TRANSPARENT BECAUSE THE FOLLOWING INFORMATION IS PUBLICLY
35 AVAILABLE ABOUT THE STANDARD:

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

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

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

41 (i) THE IDENTITY OF THE DIRECTORS, OFFICERS, MATERIAL OWNERS AND
42 GOVERNING BODY OF THE ENTITY THAT DEVELOPED AND CONTROLS REVISIONS TO THE
43 STANDARD.

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

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

4 10-2403. Incorporation of benefit corporation

5 A BENEFIT CORPORATION SHALL BE INCORPORATED IN ACCORDANCE WITH CHAPTER
6 2, ARTICLE 1 OF THIS TITLE, EXCEPT THAT ITS ARTICLES OF INCORPORATION MUST
7 ALSO STATE THAT IT IS A BENEFIT CORPORATION.

8 10-2404. Election of benefit corporation status

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

14 B. IF AN ENTITY THAT IS NOT A BENEFIT CORPORATION IS A PARTY TO A
15 MERGER OR THE ACQUIRED ENTITY IN A SHARE EXCHANGE, AND THE SURVIVING OR
16 ACQUIRED ENTITY IN THE MERGER OR SHARE EXCHANGE IS TO BE A BENEFIT
17 CORPORATION, THE PLAN OF MERGER OR SHARE EXCHANGE MUST BE ADOPTED BY AT LEAST
18 THE MINIMUM STATUS VOTE.

19 10-2405. Termination of benefit corporation status

20 A. A BENEFIT CORPORATION MAY TERMINATE ITS STATUS AS A BENEFIT
21 CORPORATION AND CEASE TO BE SUBJECT TO THIS CHAPTER BY AMENDING ITS ARTICLES
22 OF INCORPORATION TO DELETE THE PROVISION REQUIRED BY SECTIONS 10-2403 OR
23 10-2404 TO BE STATED IN THE ARTICLES OF A BENEFIT CORPORATION. IN ORDER TO
24 BE EFFECTIVE, THE AMENDMENT MUST BE ADOPTED BY AT LEAST THE MINIMUM STATUS
25 VOTE.

26 B. IF A PLAN OF MERGER OR SHARE EXCHANGE WOULD HAVE THE EFFECT OF
27 TERMINATING THE STATUS OF A BUSINESS CORPORATION AS A BENEFIT CORPORATION,
28 THE PLAN MUST BE ADOPTED BY AT LEAST THE MINIMUM STATUS VOTE IN ORDER TO BE
29 EFFECTIVE. ANY SALE, LEASE, EXCHANGE OR OTHER DISPOSITION OF ALL OR
30 SUBSTANTIALLY ALL OF THE ASSETS OF A BENEFIT CORPORATION, UNLESS THE
31 TRANSACTION IS IN THE USUAL AND REGULAR COURSE OF BUSINESS, SHALL NOT BE
32 EFFECTIVE UNLESS THE TRANSACTION IS APPROVED BY AT LEAST THE MINIMUM STATUS
33 VOTE.

34 ARTICLE 2. CORPORATE PURPOSES

35 10-2421. Corporate purposes

36 A. A BENEFIT CORPORATION SHALL HAVE A PURPOSE OF CREATING GENERAL
37 PUBLIC BENEFIT. THIS PURPOSE IS IN ADDITION TO ITS PURPOSE UNDER SECTION
38 10-301.

39 B. THE ARTICLES OF INCORPORATION OF A BENEFIT CORPORATION MAY IDENTIFY
40 ONE OR MORE SPECIFIC PUBLIC BENEFITS THAT IT IS THE PURPOSE OF THE BENEFIT
41 CORPORATION TO CREATE IN ADDITION TO ITS PURPOSES UNDER SECTION 10-301 AND
42 SUBSECTION A OF THIS SECTION. THE IDENTIFICATION OF A SPECIFIC PUBLIC
43 BENEFIT UNDER THIS SUBSECTION DOES NOT LIMIT THE OBLIGATION OF A BENEFIT
44 CORPORATION UNDER SUBSECTION A OF THIS SECTION.

1 C. THE CREATION OF GENERAL PUBLIC BENEFIT AND A SPECIFIC PUBLIC
2 BENEFIT UNDER SUBSECTIONS A AND B OF THIS SECTION IS IN THE BEST INTERESTS OF
3 THE BENEFIT CORPORATION.

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

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

11 ARTICLE 3. ACCOUNTABILITY

12 10-2431. Standard of conduct for directors

13 A. IN DISCHARGING THE DUTIES OF THEIR RESPECTIVE POSITIONS AND IN
14 CONSIDERING THE BEST INTERESTS OF THE BENEFIT CORPORATION, THE BOARD OF
15 DIRECTORS, COMMITTEES OF THE BOARD AND INDIVIDUAL DIRECTORS OF A BENEFIT
16 CORPORATION:

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

18 (a) THE SHAREHOLDERS OF THE BENEFIT CORPORATION.

19 (b) THE EMPLOYEES AND WORKFORCE OF THE BENEFIT CORPORATION, ITS
20 SUBSIDIARIES AND ITS SUPPLIERS.

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

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

26 (e) THE LOCAL AND GLOBAL ENVIRONMENT.

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

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

33 2. MAY CONSIDER THE INTERESTS REFERRED TO IN SECTION 10-2702 AND OTHER
34 PERTINENT FACTORS OR THE INTERESTS OF ANY OTHER GROUP THAT THEY DEEM
35 APPROPRIATE EXCEPT THAT THEY DO NOT HAVE TO GIVE PRIORITY TO THE INTERESTS OF
36 A PARTICULAR PERSON OR GROUP REFERRED TO IN THIS SUBSECTION OVER THE
37 INTERESTS OF ANY OTHER PERSON OR GROUP UNLESS THE BENEFIT CORPORATION HAS
38 STATED IN ITS ARTICLES OF INCORPORATION ITS INTENTION TO GIVE PRIORITY TO
39 CERTAIN INTERESTS RELATED TO ITS ACCOMPLISHMENT OF ITS GENERAL PUBLIC BENEFIT
40 PURPOSE OR OF A SPECIFIC PUBLIC BENEFIT PURPOSE IDENTIFIED IN ITS ARTICLES.

41 B. THE CONSIDERATION OF INTERESTS AND FACTORS IN THE MANNER REQUIRED
42 BY SUBSECTION A OF THIS SECTION DOES NOT CONSTITUTE A VIOLATION OF SECTION
43 10-830.

44 C. EXCEPT AS PROVIDED IN THE ARTICLES OF INCORPORATION OR BYLAWS, A
45 DIRECTOR IS NOT PERSONALLY LIABLE FOR MONETARY DAMAGES FOR:

1 1. ANY ACTION OR INACTION IN THE COURSE OF PERFORMING THE DUTIES OF A
2 DIRECTOR UNDER SUBSECTION A OF THIS SECTION IF THE DIRECTOR PERFORMED THE
3 DUTIES OF OFFICE IN COMPLIANCE WITH SECTION 10-830 AND THIS SECTION.
4 2. FAILURE OF THE BENEFIT CORPORATION TO PURSUE OR CREATE GENERAL
5 PUBLIC BENEFIT OR A SPECIFIC PUBLIC BENEFIT.
6 D. A DIRECTOR DOES NOT HAVE A DUTY TO A PERSON THAT IS A BENEFICIARY
7 OF THE GENERAL PUBLIC BENEFIT PURPOSE OR A SPECIFIC PUBLIC BENEFIT PURPOSE OF
8 A BENEFIT CORPORATION ARISING FROM THE STATUS OF THE PERSON AS A BENEFICIARY.
9 E. A DIRECTOR WHO MAKES A BUSINESS JUDGMENT IN GOOD FAITH FULFILLS THE
10 DUTY UNDER THIS SECTION IF ALL OF THE FOLLOWING APPLY:
11 1. THE DIRECTOR IS NOT INTERESTED IN THE SUBJECT OF THE BUSINESS
12 JUDGMENT.
13 2. THE DIRECTOR IS INFORMED WITH RESPECT TO THE SUBJECT OF THE
14 BUSINESS JUDGMENT TO THE EXTENT THE DIRECTOR REASONABLY BELIEVES TO BE
15 APPROPRIATE UNDER THE CIRCUMSTANCES.
16 3. THE DIRECTOR RATIONALLY BELIEVES THAT THE BUSINESS JUDGMENT IS IN
17 THE BEST INTERESTS OF THE BENEFIT CORPORATION.
18 10-2432. Benefit director
19 A. THE BOARD OF DIRECTORS OF A BENEFIT CORPORATION THAT IS A PUBLICLY
20 TRADED CORPORATION SHALL, AND THE BOARD OF ANY OTHER BENEFIT CORPORATION MAY,
21 INCLUDE A DIRECTOR WHO BOTH:
22 1. IS DESIGNATED THE BENEFIT DIRECTOR.
23 2. IN ADDITION TO THE POWERS, DUTIES, RIGHTS AND IMMUNITIES OF THE
24 OTHER DIRECTORS OF THE BENEFIT CORPORATION, HAS THE POWERS, DUTIES, RIGHTS
25 AND IMMUNITIES PROVIDED IN THIS ARTICLE.
26 B. THE BENEFIT DIRECTOR SHALL BE ELECTED IN THE MANNER PROVIDED BY
27 CHAPTER 8 OF THIS TITLE. EXCEPT AS PROVIDED IN SUBSECTIONS G AND H OF THIS
28 SECTION, THE BENEFIT DIRECTOR SHALL BE AN INDIVIDUAL WHO IS INDEPENDENT. THE
29 BENEFIT DIRECTOR MAY SERVE AS THE BENEFIT OFFICER AT THE SAME TIME AS SERVING
30 AS THE BENEFIT DIRECTOR. THE ARTICLES OF INCORPORATION OR BYLAWS OF A
31 BENEFIT CORPORATION MAY PRESCRIBE ADDITIONAL QUALIFICATIONS OF THE BENEFIT
32 DIRECTOR THAT ARE CONSISTENT WITH THIS SUBSECTION.
33 C. THE BENEFIT DIRECTOR SHALL PREPARE, AND THE BENEFIT CORPORATION
34 SHALL INCLUDE IN THE ANNUAL BENEFIT REPORT TO SHAREHOLDERS REQUIRED BY
35 SECTION 10-2441, THE OPINION OF THE BENEFIT DIRECTOR ON ALL OF THE FOLLOWING:
36 1. WHETHER THE BENEFIT CORPORATION ACTED IN ACCORDANCE WITH ITS
37 GENERAL PUBLIC BENEFIT PURPOSE AND ANY SPECIFIC PUBLIC BENEFIT PURPOSE IN ALL
38 MATERIAL RESPECTS DURING THE PERIOD COVERED BY THE REPORT.
39 2. WHETHER THE DIRECTORS AND OFFICERS COMPLIED WITH SECTION 10-2431,
40 SUBSECTION A AND SECTION 10-2433, SUBSECTION A, RESPECTIVELY.
41 3. IF THE BENEFIT CORPORATION OR ITS DIRECTORS OR OFFICERS FAILED, IN
42 THE OPINION OF THE BENEFIT DIRECTOR, TO ACT OR COMPLY IN THE MANNER DESCRIBED
43 IN PARAGRAPHS 1 AND 2 OF THIS SUBSECTION, A DESCRIPTION OF THE WAYS IN WHICH
44 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
9 SELF-DEALING, WILFUL MISCONDUCT OR A KNOWING VIOLATION OF LAW.

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

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

17 2. THE ARTICLES OF INCORPORATION OR BYLAWS OF A STATUTORY CLOSE
18 CORPORATION THAT IS A BENEFIT CORPORATION PROVIDE THAT THE BUSINESS AND
19 AFFAIRS OF THE CORPORATION BE MANAGED BY OR UNDER THE DIRECTION OF THE
20 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 OR REMOVAL OF
28 DIRECTORS IN SECTION 10-803 OR 10-808, RESPECTIVELY, UNLESS ONE OF THE
29 FOLLOWING APPLIES:

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

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

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

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

36 10-2433. Standard of conduct for officers

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

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

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

1 B. THE CONSIDERATION OF INTERESTS AND FACTORS IN THE MANNER DESCRIBED
2 IN SUBSECTION A OF THIS SECTION DOES NOT CONSTITUTE A VIOLATION OF SECTION
3 10-842.

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

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

11 2. FAILURE OF THE BENEFIT CORPORATION TO PURSUE OR CREATE GENERAL
12 PUBLIC BENEFIT OR A SPECIFIC PUBLIC BENEFIT.

13 D. AN OFFICER DOES NOT HAVE A DUTY TO A PERSON THAT IS A BENEFICIARY
14 OF THE GENERAL PUBLIC BENEFIT PURPOSE OR THE SPECIFIC PUBLIC BENEFIT PURPOSE
15 OF A BENEFIT CORPORATION ARISING FROM THE STATUS OF THE PERSON AS A
16 BENEFICIARY.

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

19 1. THE OFFICER IS NOT INTERESTED IN THE SUBJECT OF THE BUSINESS
20 JUDGMENT.

21 2. THE OFFICER IS INFORMED WITH RESPECT TO THE SUBJECT OF THE BUSINESS
22 JUDGMENT TO THE EXTENT THE OFFICER REASONABLY BELIEVES TO BE APPROPRIATE
23 UNDER THE CIRCUMSTANCES.

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

26 10-2434. Benefit officer

27 A. A BENEFIT CORPORATION MAY HAVE AN OFFICER DESIGNATED THE BENEFIT
28 OFFICER.

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

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

33 (a) THE BYLAWS.

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

36 2. THE DUTY TO PREPARE THE BENEFIT REPORT REQUIRED BY SECTION 10-2441.

37 10-2435. Right of action

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

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

43 2. THE VIOLATION OF AN OBLIGATION, DUTY OR STANDARD OF CONDUCT UNDER
44 THIS CHAPTER.

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

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

6 1. DIRECTLY BY THE BENEFIT CORPORATION.

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

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

13 (b) A DIRECTOR.

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

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

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

23 ARTICLE 4. TRANSPARENCY

24 10-2441. Preparation of annual benefit report

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

27 1. A NARRATIVE DESCRIPTION OF:

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

31 (b) BOTH:

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

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

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

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

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

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

1 (b) ACCOMPANIED BY AN EXPLANATION OF THE REASONS FOR EITHER OF THE
2 FOLLOWING:
3 (i) ANY INCONSISTENT APPLICATION.
4 (ii) THE CHANGE TO THAT STANDARD FROM THE ONE USED IN THE IMMEDIATELY
5 PRIOR REPORT.
6 3. THE NAME OF THE BENEFIT DIRECTOR AND THE BENEFIT OFFICER, IF ANY,
7 AND THE ADDRESS TO WHICH CORRESPONDENCE TO EACH OF THEM MAY BE DIRECTED.
8 4. THE COMPENSATION PAID BY THE BENEFIT CORPORATION DURING THE YEAR TO
9 EACH DIRECTOR IN THE CAPACITY OF A DIRECTOR.
10 5. THE STATEMENT OF THE BENEFIT DIRECTOR DESCRIBED IN SECTION 10-2432,
11 SUBSECTION C.
12 6. A STATEMENT OF ANY CONNECTION BETWEEN THE ORGANIZATION THAT
13 ESTABLISHED THE THIRD-PARTY STANDARD, OR ITS DIRECTORS, ITS OFFICERS OR ANY
14 HOLDER OF FIVE PER CENT OR MORE OF THE GOVERNANCE INTERESTS IN THE
15 ORGANIZATION AND THE BENEFIT CORPORATION OR ITS DIRECTORS, ITS OFFICERS OR
16 ANY HOLDER OF FIVE PER CENT OR MORE OF THE OUTSTANDING SHARES OF THE BENEFIT
17 CORPORATION, INCLUDING ANY FINANCIAL OR GOVERNANCE RELATIONSHIP THAT MIGHT
18 MATERIALLY AFFECT THE CREDIBILITY OF THE USE OF THE THIRD-PARTY STANDARD.
19 7. IF THE BENEFIT CORPORATION HAS DISPENSED WITH OR RESTRICTED THE
20 DISCRETION OR POWERS OF THE BOARD OF DIRECTORS, A DESCRIPTION OF BOTH OF THE
21 FOLLOWING:
22 (a) THE PERSONS THAT EXERCISE THE POWERS, DUTIES AND RIGHTS AND WHO
23 HAVE THE IMMUNITIES OF THE BOARD OF DIRECTORS.
24 (b) THE BENEFIT DIRECTOR, AS REQUIRED BY SECTION 10-2432,
25 SUBSECTION F.
26 B. IF, DURING THE YEAR COVERED BY A BENEFIT REPORT, A BENEFIT DIRECTOR
27 RESIGNED FROM OR REFUSED TO STAND FOR REELECTION TO THE POSITION OF BENEFIT
28 DIRECTOR OR WAS REMOVED FROM THE POSITION OF BENEFIT DIRECTOR AND THE BENEFIT
29 DIRECTOR FURNISHED THE BENEFIT CORPORATION WITH ANY WRITTEN CORRESPONDENCE
30 CONCERNING THE CIRCUMSTANCES SURROUNDING THE RESIGNATION, REFUSAL OR REMOVAL,
31 THE BENEFIT REPORT SHALL INCLUDE THAT CORRESPONDENCE AS AN EXHIBIT.
32 C. NEITHER THE BENEFIT REPORT NOR THE ASSESSMENT OF THE PERFORMANCE OF
33 THE BENEFIT CORPORATION IN THE BENEFIT REPORT REQUIRED BY SUBSECTION A,
34 PARAGRAPH 2 OF THIS SECTION NEEDS TO BE AUDITED OR CERTIFIED BY A THIRD-PARTY
35 STANDARDS PROVIDER.
36 10-2442. Availability of annual benefit report
37 A. A BENEFIT CORPORATION SHALL SEND ITS ANNUAL BENEFIT REPORT TO EACH
38 SHAREHOLDER:
39 1. WITHIN ONE HUNDRED TWENTY DAYS FOLLOWING THE END OF THE FISCAL YEAR
40 OF THE BENEFIT CORPORATION.
41 2. AT THE SAME TIME THE BENEFIT CORPORATION DELIVERS ANY OTHER ANNUAL
42 REPORT TO ITS SHAREHOLDERS.
43 B. A BENEFIT CORPORATION SHALL POST ALL OF ITS BENEFIT REPORTS ON THE
44 PUBLIC PORTION OF ITS INTERNET WEBSITE, IF ANY, EXCEPT THAT THE COMPENSATION

1 PAID TO DIRECTORS AND FINANCIAL OR PROPRIETARY INFORMATION INCLUDED IN THE
2 BENEFIT REPORTS MAY BE OMITTED FROM THE BENEFIT REPORTS AS POSTED.

3 C. IF A BENEFIT CORPORATION DOES NOT HAVE AN INTERNET WEBSITE, THE
4 BENEFIT CORPORATION SHALL PROVIDE A COPY OF ITS MOST RECENT BENEFIT REPORT,
5 WITHOUT CHARGE, TO ANY PERSON THAT REQUESTS A COPY, EXCEPT THAT THE
6 COMPENSATION PAID TO DIRECTORS AND FINANCIAL OR PROPRIETARY INFORMATION
7 INCLUDED IN THE BENEFIT REPORT MAY BE OMITTED FROM THE COPY OF THE BENEFIT
8 REPORT PROVIDED.

9 D. CONCURRENTLY WITH THE DELIVERY OF THE BENEFIT REPORT TO
10 SHAREHOLDERS UNDER SUBSECTION A OF THIS SECTION, THE BENEFIT CORPORATION
11 SHALL DELIVER A COPY OF THE BENEFIT REPORT TO THE ARIZONA CORPORATION
12 COMMISSION FOR FILING, EXCEPT THAT THE COMPENSATION PAID TO DIRECTORS AND
13 FINANCIAL OR PROPRIETARY INFORMATION INCLUDED IN THE BENEFIT REPORT MAY BE
14 OMITTED FROM THE BENEFIT REPORT AS DELIVERED TO THE ARIZONA CORPORATION
15 COMMISSION.

16 Sec. 2. Effective date

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