

State of Arizona
Senate
Fifty-first Legislature
First Regular Session
2013

SENATE BILL 1238

AN ACT

AMENDING SECTIONS 10-122 AND 10-1302, 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:

<u>Document</u>	<u>Fee</u>
10 1. Articles of incorporation	\$50
11 2. Application for use of indistinguishable name	10
12 3. Application for reserved name	10
13 4. Notice of transfer of reserved name	10
14 5. Application for registered name	10
15 6. Application for renewal of registered name	10
16 7. Agent's statement of resignation	10
17 8. Amendment of articles of incorporation	25
18 9. Restatement of articles of incorporation with	
19 amendment of articles	25
20 10. Articles of merger or share exchange	100
21 11. Articles of dissolution	25
22 12. Articles of domestication	100
23 13. Articles of revocation of dissolution	25
24 14. Application for reinstatement following	
25 administrative dissolution, in addition	
26 to other fees and penalties due	100
27 15. Application for authority	150
28 16. Application for withdrawal	25
29 17. Annual report	45
30 18. Articles of correction	25
31 19. Application for certificate of good standing	10
32 20. Any other document required or permitted	
33 to be filed by chapters 1 through 17	
34 of this title	25

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

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

1 provided the fee does not exceed the cost of providing the service as
2 determined by the commission.

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

9 E. One-third of the fees for the annual report of domestic and foreign
10 corporations paid pursuant to subsection A, paragraph 17 of this section
11 shall be deposited in the Arizona arts trust fund established by section
12 41-983.01 and two-thirds of these fees shall be deposited, pursuant to
13 sections 35-146 and 35-147, in the public access fund established by section
14 10-122.01.

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

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

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

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

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

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

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

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

41 G. The commission may charge persons who access the commission's data
42 processing system that is maintained pursuant to section 10-122.01 from
43 remote locations and persons requesting special computer generated printouts,

1 reports and tapes a reasonable fee that does not exceed the cost of the time,
2 equipment and personnel necessary to provide this service or product as
3 determined by the commission.

4 H. Except as provided in section 10-122.01, subsection B, paragraph 3,
5 in addition to any fee charged pursuant to this section, the commission may
6 charge and collect the following nonrefundable fees to help defray the cost
7 of the improved data processing system that is maintained pursuant to section
8 10-122.01:

9 1. Filing articles of incorporation of a domestic corporation, ten
10 dollars.

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

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

16 J. Fees charged pursuant to this section are exempt from section
17 39-121.03, subsection A, paragraph 3.

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

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

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

29 Sec. 2. Section 10-1302, Arizona Revised Statutes, is amended to read:
30 10-1302. Right to dissent

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

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

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

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

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

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

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

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

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

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

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

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

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

27 **6. AN ELECTION OF THE SHAREHOLDERS PURSUANT TO SECTION 10-2404 TO HAVE**
28 **BENEFIT CORPORATION STATUS OR AN ELECTION OF THE SHAREHOLDERS PURSUANT TO**
29 **SECTION 10-2405 TO TERMINATE STATUS AS A BENEFIT CORPORATION.**

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

34 C. This section does not apply to the holders of shares of any class
35 or series if the shares of the class or series are redeemable securities
36 issued by a registered investment company as defined pursuant to the
37 investment company act of 1940 (15 United States Code section 80a-1 through
38 80a-64).

39 D. Unless the articles of incorporation of the corporation provide
40 otherwise, this section does not apply to the holders of shares of a class or
41 series if the shares of the class or series were registered on a national
42 securities exchange, were listed on the national market systems of the
43 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 ENFORCEMENT PROCEEDING" MEANS ANY CLAIM OR ACTION FOR
33 EITHER OF THE FOLLOWING:

34 (a) THE FAILURE OF A BENEFIT CORPORATION TO PURSUE OR CREATE GENERAL
35 PUBLIC BENEFIT OR A SPECIFIC PUBLIC BENEFIT PURPOSE SET FORTH IN ITS
36 ARTICLES.

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

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

1 4. "MINIMUM STATUS VOTE" MEANS:

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

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

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

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

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

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

23 5. "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.

36 6. "SUBSIDIARY" MEANS, IN RELATION TO A PERSON, AN ENTITY IN WHICH THE
37 PERSON OWNS BENEFICIALLY OR OF RECORD FIFTY PER CENT OR MORE OF THE
38 OUTSTANDING EQUITY INTERESTS.

39 7. "SUPERMAJORITY STATUS VOTE" MEANS:

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

42 (i) THE SHAREHOLDERS OF EVERY CLASS OR SERIES ARE ENTITLED TO VOTE AS
43 A SEPARATE VOTING GROUP ON THE CORPORATE ACTION REGARDLESS OF A LIMITATION

1 STATED IN THE ARTICLES OF INCORPORATION OR BYLAWS ON THE VOTING RIGHTS OF ANY
2 CLASS OR SERIES.

3 (i) THE CORPORATE ACTION IS APPROVED BY VOTE OF THE SHAREHOLDERS OF
4 EACH CLASS OR SERIES ENTITLED TO CAST AT LEAST THREE-FOURTHS OF THE VOTES
5 THAT ALL SHAREHOLDERS OF THE CLASS OR SERIES ARE ENTITLED TO CAST ON THE
6 ACTION.

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

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

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

19 8. "THIRD-PARTY STANDARD" MEANS A RECOGNIZED STANDARD FOR DEFINING,
20 REPORTING AND ASSESSING CORPORATE SOCIAL AND ENVIRONMENTAL PERFORMANCE THAT
21 IS:

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

25 (b) DEVELOPED BY AN ENTITY THAT IS NOT CONTROLLED BY THE BENEFIT
26 CORPORATION.

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

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

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

32 (d) TRANSPARENT BECAUSE THE FOLLOWING INFORMATION IS PUBLICLY
33 AVAILABLE ABOUT THE STANDARD:

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

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

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

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

42 (ii) THE PROCESS BY WHICH REVISIONS TO THE STANDARD AND CHANGES TO THE
43 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 SUPERMAJORITY 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 SUPERMAJORITY 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

1 BENEFIT UNDER THIS SUBSECTION DOES NOT LIMIT THE OBLIGATION OF A BENEFIT
2 CORPORATION UNDER SUBSECTION A OF THIS SECTION.

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

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

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

13 ARTICLE 3. ACCOUNTABILITY

14 10-2431. Standard of conduct for directors

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

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

20 (a) THE SHAREHOLDERS OF THE BENEFIT CORPORATION.

21 (b) THE EMPLOYEES AND WORKFORCE OF THE BENEFIT CORPORATION, ITS
22 SUBSIDIARIES AND ITS SUPPLIERS.

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

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

28 (e) THE LOCAL AND GLOBAL ENVIRONMENT.

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

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

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

1 B. THE CONSIDERATION OF INTERESTS AND FACTORS IN THE MANNER REQUIRED
2 BY SUBSECTION A OF THIS SECTION DOES NOT CONSTITUTE A VIOLATION OF SECTION
3 10-830.

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

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

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

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

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

18 10-2432. Standard of conduct for officers

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

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

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

26 B. THE CONSIDERATION OF INTERESTS AND FACTORS IN THE MANNER DESCRIBED
27 IN SUBSECTION A OF THIS SECTION DOES NOT CONSTITUTE A VIOLATION OF SECTION
28 10-842.

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

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

36 2. FAILURE OF THE BENEFIT CORPORATION TO PURSUE OR CREATE GENERAL
37 PUBLIC BENEFIT OR A SPECIFIC PUBLIC BENEFIT.

38 D. AN OFFICER DOES NOT HAVE A DUTY TO A PERSON THAT IS A BENEFICIARY
39 OF THE GENERAL PUBLIC BENEFIT PURPOSE OR THE SPECIFIC PUBLIC BENEFIT PURPOSE
40 OF A BENEFIT CORPORATION ARISING FROM THE STATUS OF THE PERSON AS A
41 BENEFICIARY.

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

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

3 2. THE OFFICER IS INFORMED WITH RESPECT TO THE SUBJECT OF THE BUSINESS
4 JUDGMENT TO THE EXTENT THE OFFICER REASONABLY BELIEVES TO BE APPROPRIATE
5 UNDER THE CIRCUMSTANCES.

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

8 10-2433. 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 THE PURPOSES OF THIS SECTION, A PERSON IS THE BENEFICIAL OWNER
36 OF 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.

38 ARTICLE 4. TRANSPARENCY

39 10-2441. Preparation of annual benefit report

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

42 1. A NARRATIVE DESCRIPTION OF:

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

25 4. A STATEMENT OF ANY CONNECTION BETWEEN THE ORGANIZATION THAT
26 ESTABLISHED THE THIRD-PARTY STANDARD, OR ITS DIRECTORS, ITS OFFICERS OR ANY
27 HOLDER OF FIVE PER CENT OR MORE OF THE GOVERNANCE INTERESTS IN THE
28 ORGANIZATION AND THE BENEFIT CORPORATION OR ITS DIRECTORS, ITS OFFICERS OR
29 ANY HOLDER OF FIVE PER CENT OR MORE OF THE OUTSTANDING SHARES OF THE BENEFIT
30 CORPORATION, OR ANY OTHER FINANCIAL OR GOVERNANCE RELATIONSHIP THAT MIGHT
31 MATERIALLY AFFECT THE CREDIBILITY OF THE USE OF THE THIRD-PARTY STANDARD.

32 B. 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 IS REQUIRED TO BE AUDITED OR CERTIFIED BY A
35 THIRD-PARTY 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.

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

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

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

18 Sec. 4. Effective date

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