

PROPOSED AMENDMENT
SENATE AMENDMENTS TO S.B. 1141
(Reference to printed bill)

1 Strike everything after the enacting clause and insert:

2 "Section 1. Section 10-140, Arizona Revised Statutes, is amended to
3 read:

4 10-140. Definitions

5 In chapters 1 through 17 of this title, unless the context otherwise
6 requires:

7 1. "Acknowledged" or "acknowledgment" means either an acknowledgment
8 pursuant to title 33, chapter 4, article 5 or the signature, without more, of
9 the person or persons signing the instrument, in which case the signature or
10 signatures constitute the affirmation or acknowledgment of the signatory,
11 under penalties of perjury, that the instrument is the act and deed of the
12 signatory and that the facts stated in the instrument are true.

13 2. "Act of the board of directors" means either:

14 (a) An act of the majority of the directors present at a duly called
15 meeting at which a quorum is present, unless the act of a greater number is
16 required by chapters 1 through 17 of this title, the articles of
17 incorporation or the bylaws.

18 (b) Action taken by written consent of the directors in accordance
19 with chapters 1 through 17 of this title.

20 3. "Act of the shareholders" means either:

21 (a) An act adopted or rejected by a majority of the votes entitled to
22 be cast by each class of shareholders entitled to vote on the act at a duly
23 called meeting at which a quorum is present, unless a greater number of votes
24 is required by chapters 1 through 17 of this title, the articles of
25 incorporation or the bylaws.

1 (b) An action taken by written consent of the shareholders in
2 accordance with chapters 1 through 17 of this title.

3 4. "Address" means a mailing address.

4 5. "Affiliate" means a person that directly or indirectly, through one
5 or more intermediaries controls, is controlled by or is under common control
6 with the person specified.

7 6. "Articles of incorporation" means the original or restated articles
8 of incorporation or articles of merger and all amendments to the articles of
9 incorporation or merger and includes amended and restated articles of
10 incorporation and articles of amendment and merger.

11 7. "Authorized shares" means the shares of all classes that a domestic
12 or foreign corporation is authorized to issue.

13 8. "Board of directors" means the group of persons vested with the
14 management of the affairs of the corporation irrespective of the name by
15 which the group is designated and includes the governing body or bodies of a
16 water users' association if the articles of incorporation of such water
17 users' association provide for a governing body or bodies denominated other
18 than as a board of directors.

19 9. "Business day" means a day that is not a Saturday, a Sunday or any
20 other legal holiday in this state.

21 10. "Bylaws" means the code of rules adopted for the regulation or
22 management of the affairs of the corporation irrespective of the name by
23 which those rules are designated.

24 11. "Certificate of disclosure" means the certificate of disclosure
25 described in section 10-202.

26 12. "Commission" means the Arizona corporation commission.

27 13. "Conspicuous" means so written that a reasonable person against
28 whom the writing is to operate should have noticed it. For example, printing
29 in italics, boldface or contrasting color or typing in capitals or underlined
30 is conspicuous.

31 14. "Corporation" or "domestic corporation" means a corporation for
32 profit that is not a foreign corporation and that is incorporated under or
33 subject to chapters 1 through 17 of this title.

1 15. "Court" means the superior court of this state.

2 16. "Deliver" includes **SENDING BY** mail, private courier or
3 telefacsimile transmission.

4 17. "Delivery" means actual receipt by the person or entity to which
5 directed.

6 18. "Dissolved" means the status of a corporation on either:

7 (a) Effectiveness of articles of dissolution pursuant to section
8 10-1403, subsection B or section 10-1421, subsection B.

9 (b) A decree pursuant to section 10-1433, subsection B becoming final.

10 19. "Distribution" means a direct or indirect transfer of money or
11 other property, except its own shares, or incurrence of indebtedness by a
12 corporation to or for the benefit of its shareholders in respect of any of
13 its shares. A distribution may be in the form of any of the following:

14 (a) A declaration or payment of a dividend.

15 (b) Any purchase, redemption or other acquisition of shares.

16 (c) A distribution of indebtedness.

17 (d) Otherwise.

18 20. "Effective date of notice" is as prescribed in section 10-141.

19 21. **"ELECTRONIC TRANSMISSION" MEANS ANY FORM OR PROCESS OF**
20 **COMMUNICATION THAT DOES NOT DIRECTLY INVOLVE THE PHYSICAL TRANSFER OF PAPER**
21 **OR ANOTHER TANGIBLE MEDIUM THAT IS SUITABLE FOR THE RETENTION, RETRIEVAL AND**
22 **REPRODUCTION OF INFORMATION BY THE RECIPIENT AND THAT IS RETRIEVABLE IN PAPER**
23 **FORM BY THE RECIPIENT THROUGH AN AUTOMATED PROCESS USED IN CONVENTIONAL**
24 **COMMERCIAL PRACTICE, UNLESS OTHERWISE AUTHORIZED PURSUANT TO SECTION 10-141.**

25 ~~21.~~ 22. "Employee" includes an officer but not a director. A director
26 may accept duties that make the director also an employee.

27 ~~22.~~ 23. "Entity" includes a corporation, foreign corporation, not for
28 profit corporation, profit and not for profit unincorporated association,
29 nonprofit corporation, close corporation, corporation sole or limited
30 liability company, a professional corporation, association or limited
31 liability company, a business trust, estate, partnership, registered limited
32 liability partnership, trust or joint venture, two or more persons having a

1 joint or common economic interest, any person other than an individual and a
2 state, the United States and a foreign government.

3 ~~23.~~ 24. "Executed by the corporation" means executed by manual or
4 facsimile signature on behalf of the corporation by a duly authorized officer
5 or, if the corporation is in the hands of a receiver or trustee, by the
6 receiver or trustee.

7 ~~24.~~ 25. "Filing" means the commission completing the following
8 procedure with respect to any document delivered for that purpose:

9 (a) Determining that the filing fee requirements of section 10-122
10 have been satisfied.

11 (b) Determining that the document appears in all respects to conform
12 to the requirements of chapters 1 through 17 of this title.

13 (c) On making the determinations, endorsement of the word "filed" with
14 the applicable date on or attached to the document and the return of copies
15 to the person who delivered the document or the person's representative.

16 ~~25.~~ 26. "Foreign corporation" means a corporation for profit that is
17 incorporated under a law other than the law of this state.

18 ~~26.~~ 27. "Governmental subdivision" includes an authority, county,
19 district, municipality and political subdivision.

20 ~~27.~~ 28. "Includes" and "including" denotes a partial definition.

21 ~~28.~~ 29. "Individual" includes the estate of an incompetent or deceased
22 individual.

23 ~~29.~~ 30. "Insolvent" means inability of a corporation to pay its debts
24 as they become due in the usual course of its business.

25 ~~30.~~ 31. "Known place of business" means the known place of business
26 required to be maintained pursuant to section 10-501.

27 ~~31.~~ 32. "Liquidate its assets and business" includes the distribution
28 of assets, the payment of obligations and debts, the discontinuance of
29 business or any one or more of the distribution, payment or discontinuance.

30 ~~32.~~ 33. "Mail", "to mail" or "have mailed" means to deposit or have
31 deposited a communication in the United States mail with first class or
32 airmail postage prepaid.

33 ~~33.~~ 34. "Means" denotes an exhaustive definition.

1 ~~34.~~ 35. "Newspaper" has the meaning set forth in section 39-201.

2 ~~35.~~ 36. "Notice" and "notify" are as prescribed in section 10-141.

3 ~~36.~~ 37. "Person" includes an individual and entity.

4 ~~37.~~ 38. "President" means that officer designated as the president in
5 the articles of incorporation or bylaws or, if not so designated, that
6 officer authorized in the articles of incorporation, bylaws or otherwise to
7 perform the functions of the chief executive officer, irrespective of the
8 name by which designated.

9 ~~38.~~ 39. "Principal office" means the office, in or out of this state,
10 so designated in the annual report where the principal executive offices of a
11 domestic or foreign corporation are located or in any other document executed
12 by the corporation by an officer and delivered to the commission for filing.
13 If an office has not been so designated, principal office means the known
14 place of business of the corporation.

15 ~~39.~~ 40. "Proceeding" includes a civil suit and a criminal,
16 administrative and investigatory action.

17 ~~40.~~ 41. "Publish" means to publish in a newspaper of general
18 circulation in the county of the known place of business for three
19 consecutive publications.

20 ~~41.~~ 42. "Record date" means the date established under chapter 6 or 7
21 of this title on which a corporation determines the identity of its
22 shareholders and their shareholdings for purposes of chapters 1 through 17 of
23 this title. The determinations shall be made as of the close of business on
24 the record date unless another time for doing so is specified when the record
25 date is fixed.

26 ~~42.~~ 43. "Secretary" means that officer designated as the secretary in
27 the articles of incorporation or bylaws or that officer authorized in the
28 articles of incorporation, the bylaws or otherwise to perform the functions
29 of secretary, irrespective of the name by which designated.

30 ~~43.~~ 44. "Shareholder" means the person in whose name shares are
31 registered in the records of a corporation or the beneficial owner of shares
32 to the extent of the rights granted by a nominee certificate on file with a
33 corporation.

1 ~~44.~~ 45. "Shares" means the units into which the proprietary interests
2 in a corporation are divided.

3 ~~45.~~ 46. "State", if referring to a part of the United States, includes
4 a state and commonwealth and their agencies and governmental subdivisions and
5 a territory and insular possession of the United States and their agencies
6 and governmental subdivisions.

7 ~~46.~~ 47. "Subscriber" means a person who subscribes for shares in a
8 corporation, whether before or after incorporation.

9 ~~47.~~ 48. "Treasurer" means that officer designated as the treasurer in
10 the articles of incorporation or bylaws or that officer authorized in the
11 articles of incorporation, ~~OR~~ bylaws or otherwise to perform the functions
12 of treasurer, irrespective of the name by which designated.

13 ~~48.~~ 49. "United States" includes a district, authority, bureau,
14 commission and department and any other agency of the United States.

15 ~~49.~~ 50. "Vice-president" means an officer designated as the
16 vice-president in the articles of incorporation or bylaws or an officer
17 authorized in the articles of incorporation, the bylaws or otherwise to
18 perform the functions of a vice-president, irrespective of the name by which
19 designated.

20 ~~50.~~ 51. "Voting group" means all shares of one or more classes or
21 series that under the articles of incorporation or chapters 1 through 17 of
22 this title are entitled to vote and be counted together collectively on a
23 matter at a meeting of shareholders. All shares entitled by the articles of
24 incorporation or chapters 1 through 17 of this title to vote generally on the
25 matter are for that purpose a single voting group.

26 ~~51.~~ 52. "Water users' association" means a corporation that operates a
27 federal reclamation project pursuant to a contract with the United States.

28 Sec. 2. Section 10-202, Arizona Revised Statutes, is amended to read:

29 10-202. Articles of incorporation; violation; classification

30 A. The articles of incorporation shall set forth:

31 1. A corporate name for the corporation that satisfies the
32 requirements of section 10-401.

33 2. The number of shares the corporation is authorized to issue.

1 3. A brief statement of the character of business that the corporation
2 initially intends to actually conduct in this state. This statement does not
3 constitute a limitation on the character of business that the corporation
4 ultimately may conduct.

5 4. The name and address of each person who is to serve as a director
6 until a successor is elected and qualifies.

7 5. The name, street address and signature of the corporation's
8 statutory agent.

9 6. The street address of the known place of business for the
10 corporation, if different from that of its statutory agent.

11 7. The name and address of each incorporator.

12 8. Any provision elected by the incorporators that under chapters 1
13 through 17 of this title or any other law of this state may be elected only
14 by specific inclusion in the articles of incorporation.

15 9. The signatures of all incorporators.

16 B. The articles of incorporation may set forth:

17 1. A provision eliminating or limiting the liability of a director to
18 the corporation or its shareholders for money damages for any action taken or
19 any failure to take any action as a director, except liability for any of the
20 following:

21 (a) The amount of a financial benefit received by a director to which
22 the director is not entitled.

23 (b) An intentional infliction of harm on the corporation or the
24 shareholders.

25 (c) A violation of section 10-833.

26 (d) An intentional violation of criminal law.

27 2. A provision permitting or making obligatory indemnification of a
28 director for liability, as defined in section 10-850, to any person for any
29 action taken, or any failure to take any action, as a director, except
30 liability for any of the exceptions described in paragraph 1 of this
31 subsection.

32 3. Any other provision, not inconsistent with law.

1 C. The articles of incorporation need not set forth any of the
2 corporate powers enumerated in chapters 1 through 17 of this title.

3 D. The certificate of disclosure shall set forth all of the following:

4 1. The following information regarding all persons who at the time of
5 its delivery are officers, directors, trustees, incorporators and persons
6 controlling or holding over ten ~~per-cent~~ PERCENT of the issued and
7 outstanding common shares or ten ~~per-cent~~ PERCENT of any other proprietary,
8 beneficial or membership interest in the corporation:

9 (a) Whether any of the persons have been convicted of a felony
10 involving a transaction in securities, consumer fraud or antitrust in any
11 state or federal jurisdiction within the ~~seven~~ FIVE-year period immediately
12 preceding the execution of the certificate.

13 (b) Whether any of the persons have been convicted of a felony, the
14 essential elements of which consisted of fraud, misrepresentation, theft by
15 false pretenses or restraint of trade or monopoly in any state or federal
16 jurisdiction within the ~~seven~~ FIVE-year period immediately preceding the
17 execution of the certificate.

18 (c) Whether any of the persons are or have been subject to an
19 injunction, judgment, decree or permanent order of any state or federal court
20 entered within the ~~seven~~ FIVE-year period immediately preceding the execution
21 of the certificate, if the injunction, judgment, decree or permanent order
22 involved any of the following:

23 (i) The violation of fraud or registration provisions of the
24 securities laws of that jurisdiction.

25 (ii) The violation of the consumer fraud laws of that jurisdiction.

26 (iii) The violation of the antitrust or restraint of trade laws of
27 that jurisdiction.

28 (d) With regard to any of the persons who have been convicted of the
29 crimes or who are the subject of the judicial action described in
30 subdivisions (a), (b) and (c) of this paragraph, information regarding:

31 (i) Identification of the persons, including present full name, all
32 prior names or aliases, including full birth name, present home address, all

1 prior addresses for the immediately preceding ~~seven~~ FIVE-year period and date
2 and location of birth.

3 (ii) The nature and description of each conviction or judicial action,
4 the date and location, the court and public agency involved, and the file or
5 cause number of the case.

6 2. A brief statement disclosing whether any persons who at the time of
7 its delivery are officers, directors, trustees, incorporators and persons
8 controlling or holding over twenty ~~per-cent~~ PERCENT of the issued and
9 outstanding common shares or twenty ~~per-cent~~ PERCENT of any other
10 proprietary, beneficial or membership interest in the corporation and who
11 have served in any such capacity or held a twenty ~~per-cent~~ PERCENT interest
12 in any other corporation on the bankruptcy or receivership of the other
13 corporation. If so, for each corporation, the certificate shall include:

14 (a) The names and addresses of each corporation and the person or
15 persons involved.

16 (b) The state in which each corporation:

17 (i) Was incorporated.

18 (ii) Transacted business.

19 (c) The dates of corporate operation.

20 3. The signatures of all of the incorporators.

21 4. The date of its execution, which shall be not more than thirty days
22 before its delivery to the commission.

23 5. A declaration by each signer that he swears to its contents under
24 penalty of law.

25 E. The certificate of disclosure may set forth the name and address of
26 any other person whom the incorporators elect to be the subject of those
27 disclosures required under subsection D, paragraph 1 of this section.

28 F. If within sixty days after delivering the articles of incorporation
29 and certificate of disclosure to the commission any person becomes an
30 officer, director, trustee or person controlling or holding over ten ~~per-cent~~
31 PERCENT of the issued and outstanding shares or ten ~~per-cent~~ PERCENT of any
32 other proprietary, beneficial or membership interest in the corporation and
33 the person was not the subject of the disclosures set forth in the

1 certificate of disclosure, the incorporators or, if the organization of the
2 corporation has been completed as provided in section 10-205, the corporation
3 shall execute and deliver to the commission within the sixty-day period a
4 declaration, sworn to under penalty of law, setting forth all information
5 required by subsection D, paragraph 1 of this section regarding the person.
6 If the incorporators or, as applicable, the corporation fail to comply with
7 this subsection, the commission may administratively dissolve the corporation
8 pursuant to section 10-1421.

9 G. If any of the persons described in subsection D, paragraph 1 of
10 this section have been convicted of the crimes or are the subject of the
11 judicial action described in subsection D, paragraph 1 of this section, the
12 commission may direct detailed interrogatories to the persons requiring any
13 additional relevant information deemed necessary by the commission. The
14 interrogatories shall be completely answered within thirty days after mailing
15 of the interrogatories. With respect to corporations incorporating or
16 seeking authority to transact business, articles of incorporation or an
17 application for authority shall not be filed until all outstanding
18 interrogatories have been answered to the satisfaction of the commission.
19 With respect to existing domestic and foreign corporations, if the
20 interrogatories are not answered as provided in this subsection or the
21 answers to the interrogatories otherwise indicate proper grounds for an
22 administrative dissolution, the commission shall initiate an administrative
23 dissolution in accordance with chapters 1 through 17 of this title.

24 H. On a quarterly updated basis, the commission shall provide to the
25 attorney general a list of all persons who are convicted of the crimes or who
26 are the subject of the judicial action described in subsection D, paragraph 1
27 of this section as indicated by the certificates of disclosure filed during
28 the preceding three months.

29 I. Any person who executes or contributes information for a
30 certificate of disclosure and who intentionally makes any untrue statement of
31 material fact or withholds any material fact with regard to the information
32 required in subsection D, paragraph 1 of this section is guilty of a class 6
33 felony.

1 Sec. 3. Section 10-204, Arizona Revised Statutes, is amended to read:

2 10-204. Actions before incorporation; liability

3 ~~All persons~~ ANY PERSON purporting to act as or on behalf of a
4 corporation ~~with actual knowledge~~ THAT KNEW OR SHOULD HAVE KNOWN that ~~no~~ THE
5 corporation ~~exists~~ HAS NOT BEEN FORMED under chapters 1 through 17 of this
6 title ~~are jointly and severally~~ IS liable ~~to the extent not precluded by~~
7 ~~section 12-2506~~ for all DEBTS AND liabilities ~~created while so acting~~
8 INCURRED BY THE ACT.

9 Sec. 4. Section 10-302, Arizona Revised Statutes, is amended to read:

10 10-302. General powers

11 Unless its articles of incorporation provide otherwise, every
12 corporation has perpetual duration and succession in its corporate name and
13 has the same powers as an individual to do all things necessary or convenient
14 to carry out its business and affairs, including power to:

15 1. Sue and be sued, complain and defend in its corporate name.

16 2. Have a corporate seal, which may be altered at will, and to use it,
17 or a facsimile of it, by impressing or affixing it or in any other manner
18 reproducing it.

19 3. Make and amend bylaws, not inconsistent with its articles of
20 incorporation or with the laws of this state, for managing the business and
21 regulating the affairs of the corporation.

22 4. Purchase, receive, lease or otherwise acquire and to own, hold,
23 improve, use and otherwise deal with real or personal property or
24 any interest in property wherever located.

25 5. Sell, convey, mortgage, pledge, lease, exchange and otherwise
26 dispose of all or any part of its property.

27 6. Purchase, receive, subscribe for or otherwise acquire, own, hold,
28 vote, use, sell, mortgage, lend, pledge or otherwise dispose of and
29 deal with shares or other interests in or obligations of any other entity.

30 7. Make contracts and guarantees, incur liabilities, borrow monies,
31 issue its notes, bonds and other obligations, which may be convertible into
32 or include the option to purchase other securities of the corporation, and

1 secure any of its obligations by mortgage, deed of trust, security agreement,
2 pledge or other encumbrance of any of its property, franchises or income.

3 8. Issue any bond, debenture or debt security of the corporation by
4 causing one or more officers designated in the bylaws or by the board of
5 directors to sign the bond, debenture or debt security either manually or in
6 facsimile and, if deemed necessary or appropriate by the officers, by causing
7 its authentication, countersignature or registration, either manually or in
8 facsimile, by a trustee, transfer agent or registrar other than the
9 corporation itself or an employee of the corporation. If an officer who has
10 signed, either manually or in facsimile, a bond, debenture or debt security
11 as provided in this paragraph ceases for any reason to be an officer before
12 the security is issued, the corporation may issue the security with the same
13 effect as if the officer were still in office at the date of issue.

14 9. Lend monies, invest and reinvest its monies and receive and hold
15 real and personal property as security for repayment.

16 10. Be a promoter, incorporator, partner, member, associate or manager
17 of any corporation, partnership, joint venture, trust or other entity.

18 11. Conduct its business, locate offices and exercise the powers
19 granted by chapters 1 through 17 of this title within or without this state.

20 12. Elect directors and appoint officers, employees and agents of the
21 corporation, define their duties, fix their compensation and lend them monies
22 and credit.

23 13. Pay pensions and establish pension plans, pension trusts, profit
24 sharing plans, share bonus plans, share option plans and benefit or incentive
25 plans for any of its or its affiliates' current or former directors,
26 officers, employees and agents.

27 14. Eliminate or limit the liability of its directors in the manner and
28 to the extent provided by section 10-202 and chapter 8, article 5 of this
29 title.

30 15. Make donations for the public welfare or for charitable, scientific
31 or educational purposes.

32 16. Transact any lawful business that will aid governmental policy.

1 17. Make payments or donations or do any other act not inconsistent
2 with law that furthers the business and affairs of the corporation.

3 18. TAKE ANY ACTION TO PURSUE ANY PURPOSE, INCLUDING A NONMONETARY
4 PURPOSE AS DEFINED IN SECTION 10-846, SUBSECTION D, PARAGRAPH 2 OR TO CREATE
5 ANY PRIVATE OR PUBLIC BENEFIT.

6 Sec. 5. Section 10-304, Arizona Revised Statutes, is amended to read:

7 10-304. Validity of actions

8 A. Except as provided in subsection B OF THIS SECTION, the validity of
9 corporate action may not be challenged on the ground that the corporation
10 lacks or lacked power to act.

11 B. A corporation's power to act may be challenged either:

12 1. In a proceeding by a shareholder against the corporation to enjoin
13 the act.

14 2. In a proceeding by the corporation, directly, derivatively or
15 through any receiver, trustee or other legal representative, against an
16 incumbent or former director, officer, employee or agent of the corporation.

17 3. In a proceeding by the attorney general as provided in chapters 1
18 through 17 of this title to dissolve the corporation or in a proceeding by
19 the attorney general to enjoin the corporation from the transaction of
20 unauthorized business.

21 C. In a shareholder's proceeding under subsection B, paragraph 1 OF
22 THIS SECTION to enjoin an unauthorized corporate act, the court may enjoin or
23 set aside the act, if equitable and if all affected persons are parties to
24 the proceeding, and may award damages for loss, other than anticipated
25 profits, suffered by the corporation or another party because of enjoining
26 the unauthorized act.

27 D. EXCEPT AS PROVIDED IN SECTIONS 10-831 AND 10-845, ANY PERSON
28 PURPORTING TO ACT ON BEHALF OF A CORPORATION AS AN OFFICER OR A DIRECTOR WHO
29 KNEW OR SHOULD HAVE KNOWN THAT THE PERSON DID NOT HAVE AUTHORITY TO DO THE
30 ACT IS LIABLE FOR ALL DEBTS AND LIABILITY INCURRED BY THE ACT. THIS
31 SUBSECTION DOES NOT APPLY TO A PERSON WHO ACTS ON BEHALF OF A CORPORATION
32 THAT HAS BEEN ADMINISTRATIVELY DISSOLVED UNLESS THE PERSON HAS ACTUAL
33 KNOWLEDGE OF THE DISSOLUTION.

1 Sec. 6. Section 10-704, Arizona Revised Statutes, is amended to read:
2 10-704. Action by shareholders without meeting; notice

3 A. Action required or permitted by chapters 1 through 17 of this title
4 to be taken at a shareholders' meeting, **EXCEPT AN ACTION INVOLVING CUMULATIVE**
5 **VOTING**, may be taken without a meeting if the action is taken by all of the
6 shareholders entitled to vote on the action. ~~—~~ **OR UNLESS OTHERWISE RESTRICTED**
7 **BY THE ARTICLES OF INCORPORATION OR BYLAWS OF THE CORPORATION, WITHOUT PRIOR**
8 **NOTICE AND WITHOUT A VOTE. THE ACTION MUST BE SIGNED BY THE HOLDERS OF**
9 **OUTSTANDING STOCK HOLDING AT LEAST THE MINIMUM NUMBER OF VOTES THAT WOULD BE**
10 **NECESSARY TO AUTHORIZE OR TAKE THE ACTION AT A MEETING AT WHICH ALL SHARES**
11 **ENTITLED TO VOTE ON THE ACTION ARE PRESENT AND VOTED. EACH ACTION TAKEN BY**
12 **WRITTEN CONSENT OF SHAREHOLDERS** must be evidenced by one or more written
13 consents describing the action taken, signed by all of the shareholders
14 entitled to vote on the action **OR, IF SIGNED BY FEWER THAN ALL OF THE**
15 **SHAREHOLDERS, BY AT LEAST THE MINIMUM NUMBER OF VOTES THAT WOULD BE NECESSARY**
16 **TO AUTHORIZE OR TAKE THE ACTION AT A MEETING AT WHICH ALL SHARES ENTITLED TO**
17 **VOTE ON THE ACTION ARE PRESENT AND VOTED. ~~and~~ THE ACTIONS MUST BE** delivered
18 to the corporation for inclusion in the minutes or filing with the corporate
19 records. **ALL CONSENTS DESCRIBED IN THIS SUBSECTION MUST BE IN WRITING, WHICH**
20 **INCLUDES ELECTRONIC TRANSMISSION. ALL WRITINGS, INCLUDING AN ELECTRONIC**
21 **TRANSMISSION OR TRANSMISSIONS, MUST BE INCLUDED IN THE MINUTES OR FILED WITH**
22 **THE CORPORATE RECORDS. THE FILING MUST BE IN PAPER FORM IF THE MINUTES ARE**
23 **MAINTAINED IN PAPER FORM AND MUST BE IN ELECTRONIC FORM IF THE MINUTES ARE**
24 **MAINTAINED IN ELECTRONIC FORM.**

25 B. If not otherwise fixed under section 10-703 or 10-707, the record
26 date for determining shareholders entitled to take action without a meeting
27 is the date the first shareholder signs the consent under subsection A of
28 this section.

29 C. A consent signed under this section has the effect of a meeting
30 vote and may be described as such in any document.

31 D. Unless otherwise specified in the consent or consents, the action
32 is effective on the date that the last shareholder signs the consent or
33 consents, except that if chapters 1 through 17 of this title require that

1 notice of proposed actions be given to shareholders not entitled to vote and
2 the action is to be taken by unanimous consent of the shareholders entitled
3 to vote, the effective date is not before ten days after the corporation
4 gives its shareholders not entitled to vote written notice of the proposed
5 action. The notice must contain or be accompanied by the same material that
6 under chapters 1 through 17 of this title would have been required to be sent
7 to shareholders not entitled to vote in a notice of meeting at which the
8 proposed action would have been submitted to the shareholders for action.

9 E. Any shareholder may revoke ~~it's~~ THE SHAREHOLDER'S consent by
10 delivering a signed revocation of the consent to the president or secretary
11 before the date that the last shareholder signs the consent or consents.

12 F. NOTICE OF THE TAKING OF A CORPORATE ACTION WITHOUT A MEETING MUST
13 BE GIVEN WITHIN THIRTY DAYS AFTER THE EFFECTIVE DATE OF THE CORPORATE ACTION
14 TO BOTH:

15 1. SHAREHOLDERS THAT DO NOT CONSENT TO THE ACTION IN WRITING.

16 2. SHAREHOLDERS THAT, IF THE ACTION HAD BEEN TAKEN AT A MEETING, WOULD
17 HAVE BEEN ENTITLED TO NOTICE OF THE MEETING IF THE RECORD DATE FOR NOTICE OF
18 THE MEETING HAD BEEN THE DATE THAT WRITTEN CONSENTS SIGNED BY A SUFFICIENT
19 NUMBER OF HOLDERS TO TAKE THE ACTION WERE DELIVERED TO THE CORPORATION AS
20 PROVIDED IN SUBSECTION A OF THIS SECTION.

21 Sec. 7. Section 10-708, Arizona Revised Statutes, is amended to read:

22 10-708. Participation in shareholders' meetings: remote
23 communication

24 A. Unless the articles of incorporation or bylaws provide otherwise,
25 the board of directors may permit any or all shareholders to participate in
26 an annual or special shareholders' meeting by or conduct the meeting through
27 use of any means of REMOTE communication ~~by which all shareholders~~
28 ~~participating may simultaneously hear each other during the meeting.~~ If the
29 board of directors ~~in its sole discretion~~ elects to permit participation by
30 ~~such~~ means of REMOTE communication, the notice of the meeting shall specify
31 how a shareholder may participate in the meeting by ~~such~~ means of REMOTE
32 communication. ~~The~~ Participation may be limited by the board of directors ~~in~~
33 ~~its sole discretion~~ to specified locations or means of ~~communications.~~ ~~A~~

1 ~~shareholder participating in a meeting by this means is deemed to be present~~
2 ~~in person at the meeting~~ COMMUNICATION.

3 B. UNLESS THE ARTICLES OF INCORPORATION OR BYLAWS PROVIDE OTHERWISE,
4 IF AUTHORIZED BY THE BOARD OF DIRECTORS AND SUBJECT TO SUCH GUIDELINES AND
5 PROCEDURES AS THE BOARD OF DIRECTORS MAY ADOPT, SHAREHOLDERS NOT PHYSICALLY
6 PRESENT AT A MEETING OF SHAREHOLDERS, BY MEANS OF REMOTE COMMUNICATION, MAY
7 BOTH:

8 1. PARTICIPATE IN A MEETING OF SHAREHOLDERS.

9 2. BE DEEMED PRESENT IN PERSON AND VOTE AT A MEETING OF SHAREHOLDERS,
10 WHETHER THE MEETING IS TO BE HELD AT A DESIGNATED PLACE OR SOLELY BY MEANS OF
11 REMOTE COMMUNICATION IF THE CORPORATION DOES ALL OF THE FOLLOWING:

12 (a) IMPLEMENTS REASONABLE MEASURES TO VERIFY THAT EACH PERSON DEEMED
13 PRESENT AND PERMITTED TO VOTE AT THE MEETING BY MEANS OF REMOTE COMMUNICATION
14 IS A SHAREHOLDER.

15 (b) IMPLEMENTS REASONABLE MEASURES TO PROVIDE SHAREHOLDERS A
16 REASONABLE OPPORTUNITY TO PARTICIPATE IN THE MEETING AND TO VOTE ON MATTERS
17 SUBMITTED TO THE SHAREHOLDERS SUBSTANTIALLY CONCURRENTLY WITH THE
18 PROCEEDINGS. PARTICIPATION MAY BE THROUGH VERBAL, WRITTEN OR OTHER SUITABLE
19 MEANS OF COMMUNICATION AS DESCRIBED BY THIS SECTION.

20 (c) MAINTAINS A RECORD OF THE VOTE OR OTHER ACTION IF ANY SHAREHOLDER
21 VOTES OR TAKES OTHER ACTION AT THE MEETING BY MEANS OF REMOTE COMMUNICATION.

22 C. ALL VOTES OF SHAREHOLDERS MUST BE IN WRITING, UNLESS OTHERWISE
23 PROVIDED FOR IN THE ARTICLES OF INCORPORATION OR BYLAWS. IF AUTHORIZED BY
24 THE ARTICLES OF INCORPORATION, BYLAWS OR BOARD OF DIRECTORS, THE REQUIREMENT
25 OF A WRITING MAY BE SATISFIED BY A VOTE SUBMITTED BY ELECTRONIC TRANSMISSION
26 IF THE ELECTRONIC TRANSMISSION IS EITHER SET FORTH OR IS SUBMITTED WITH
27 INFORMATION FROM WHICH IT CAN BE DETERMINED THAT THE ELECTRONIC TRANSMISSION
28 WAS AUTHORIZED BY THE SHAREHOLDER.

29 Sec. 8. Section 10-722, Arizona Revised Statutes, is amended to read:

30 10-722. Proxies

31 A. A shareholder may vote its shares in person or by proxy.

32 B. ~~Each A shareholder who is entitled to vote at a meeting of~~
33 ~~shareholders or to express consent or dissent to corporate action without a~~

1 ~~meeting may in writing authorize another person or persons~~ OR THE
2 SHAREHOLDER'S AGENT OR ATTORNEY-IN-FACT APPOINTS A PROXY to VOTE OR OTHERWISE
3 act for the shareholder by proxy. ~~The person or persons shall not vote or~~
4 ~~act on the proxy twelve months or more after the date on the proxy statement~~
5 SIGNING AN APPOINTMENT FORM OR BY AN ELECTRONIC TRANSMISSION. AN ELECTRONIC
6 TRANSMISSION MUST CONTAIN OR BE ACCOMPANIED BY INFORMATION FROM WHICH THE
7 RECIPIENT CAN DETERMINE THE DATE OF THE TRANSMISSION AND THAT THE
8 TRANSMISSION WAS AUTHORIZED BY THE SENDER OR THE SENDER'S AGENT OR
9 ATTORNEY-IN-FACT.

10 C. AN APPOINTMENT OF a proxy is effective when the secretary,
11 INSPECTOR OF ELECTION or other officer or agent who is authorized to tabulate
12 votes receives ~~the proxy~~ A SIGNED APPOINTMENT FORM OR AN ELECTRONIC
13 TRANSMISSION OF THE APPOINTMENT. UNLESS THE ARTICLES OF INCORPORATION OR
14 BYLAWS PROVIDE OTHERWISE, AN APPOINTMENT IS VALID FOR TWELVE MONTHS UNLESS A
15 SHORTER OR LONGER PERIOD IS EXPRESSLY PROVIDED IN THE APPOINTMENT FORM.

16 ~~C. A shareholder may authorize another person or persons to act for~~
17 ~~the shareholder as a proxy pursuant to subsection B of this section in any~~
18 ~~manner, including the following:~~

19 ~~1. A shareholder may execute a written statement that authorizes~~
20 ~~another person or persons to act for the shareholder as proxies. The~~
21 ~~shareholder, or the shareholder's authorized officer, director, employee or~~
22 ~~agent may execute the statement by signing it or causing the signature to be~~
23 ~~affixed to the statement by any reasonable means including by telefacsimile~~
24 ~~signature.~~

25 ~~2. A shareholder may authorize another person or persons to act for~~
26 ~~the shareholder as a proxy by transmitting or authorizing the transmission of~~
27 ~~a telegram, cablegram or other means of electronic transmission to the person~~
28 ~~who will be the holder of the proxy or to a proxy solicitation firm, proxy~~
29 ~~support service organization or a similar agent that is authorized by the~~
30 ~~person who will be the holder of the proxy to receive the transmission. Any~~
31 ~~telegram, cablegram or other means of electronic transmission shall include~~
32 ~~information that demonstrates that the shareholder authorized the telegram,~~
33 ~~cablegram or other means of electronic transmission. The inspector or, if~~

1 ~~there is no inspector, any other person who makes a determination that~~
2 ~~the telegram, cablegram or other means of electronic transmission is valid~~
3 ~~shall specify the information on which the inspector or other person relied~~
4 ~~to make the validity determination.~~

5 ~~D. Any copy, telefacsimile, telecommunication or other reliable~~
6 ~~reproduction of the written statement or transmission made pursuant to~~
7 ~~subsection C of this section may be substituted for or used in lieu of the~~
8 ~~original written statement or transmission for any purpose for which the~~
9 ~~original written statement or transmission could be used if the copy,~~
10 ~~telefacsimile, telecommunication or other reliable reproduction of the~~
11 ~~written statement or transmission is a complete reproduction of the entire~~
12 ~~original written statement or transmission.~~

13 ~~E. D.~~ An executed APPOINTMENT OF A proxy is revocable by the
14 shareholder unless the proxy conspicuously states that it is irrevocable and
15 it is coupled with an interest. Proxies coupled with an interest include the
16 appointment of any of the following:

- 17 1. A pledgee.
- 18 2. A person who purchased, agreed to purchase, holds an option to
19 purchase or holds any other right to acquire the shares.
- 20 3. A creditor of the corporation who extended or continued credit to
21 the corporation under terms requiring the appointment.
- 22 4. An employee of the corporation whose employment contract requires
23 the appointment.
- 24 5. A party to a voting agreement created under section 10-731.

25 ~~F. E.~~ The death or incapacity of the shareholder appointing a proxy
26 does not affect the right of the corporation to accept the proxy's authority
27 unless written notice of the death or incapacity is received by the
28 secretary, THE INSPECTOR OF ELECTION or other officer or agent authorized to
29 tabulate votes before the proxy exercises the proxy's authority under the
30 appointment.

31 ~~G. F. A proxy~~ AN APPOINTMENT THAT IS made irrevocable under
32 subsection ~~E- D~~ of this section is revoked when the interest with which it is
33 coupled is extinguished.

1 ~~H.~~ G. A transferee for value of shares subject to an irrevocable
2 ~~proxy~~ APPOINTMENT may revoke the ~~proxy~~ APPOINTMENT if the transferee did not
3 know of its existence when the transferee acquired the shares and the
4 existence of the irrevocable ~~proxy~~ APPOINTMENT was not noted conspicuously on
5 the certificate representing the shares or on the information statement for
6 shares without certificates.

7 ~~I.~~ H. Subject to section 10-724 and to any express limitation on the
8 proxy's authority ~~appearing on the face of the proxy~~ STATED IN THE
9 APPOINTMENT FORM OR ELECTRONIC TRANSMISSION, a corporation is entitled to
10 accept the proxy's vote or other action as that of the shareholder executing
11 the proxy.

12 ~~J.~~ I. Notwithstanding the other provisions of this section, a water
13 users' association may provide in its articles of incorporation the
14 qualifications of shareholders to vote, eliminate the right to vote by proxy,
15 specify the locations where votes may be cast and limit voting to natural
16 persons. A water users' association may adopt bylaws for the registration of
17 voters and method of holding elections.

18 Sec. 9. Section 10-732, Arizona Revised Statutes, is amended to read:
19 10-732. Shareholder agreements

20 A. An agreement among the shareholders of a corporation that complies
21 with this section is effective among the shareholders and the corporation
22 even though it is inconsistent with one or more other provisions of chapters
23 1 through 17 of this title if it meets any of the following conditions:

- 24 1. Restricts the discretion or powers of the board of directors.
- 25 2. Governs the authorization or making of distributions whether or not
26 in proportion to ownership of shares, subject to the limitations in section
27 10-640.
- 28 3. Establishes who shall be directors or officers of the corporation,
29 their terms and conditions of office or employment or their manner of
30 selection or removal.
- 31 4. Governs, in general or in regard to specific matters, the exercise
32 or division of voting power by or between the shareholders and directors or

1 by or among any of them, including use of weighted voting rights or director
2 proxies.

3 5. Establishes the terms and conditions of any agreement for the
4 transfer or use of property or the provision of services between the
5 corporation and any shareholder, director, officer or employee of the
6 corporation or among any of them.

7 6. Transfers to one or more shareholders or other persons all or part
8 of the authority to exercise the corporate powers or to manage the business
9 and affairs of the corporation, including the resolution of any issue about
10 which there exists a deadlock among directors or shareholders.

11 7. Requires dissolution of the corporation at the request of one or
12 more of the shareholders or on the occurrence of a specified event or
13 contingency.

14 8. Establishes the terms and conditions of employment of shareholders.

15 9. Addresses the use of arbitration or other forms of dispute
16 resolution to resolve disputes among shareholders.

17 10. Restricts the transfer of shares.

18 11. Otherwise governs the exercise of the corporate powers or the
19 management of the business and affairs of the corporation, its liquidation
20 and dissolution or the relationship among the shareholders, the directors and
21 the corporation, or among any of them.

22 B. An agreement authorized by this section shall be:

23 1. Set forth either:

24 (a) In the articles of incorporation or bylaws and approved by all
25 persons who are shareholders at the time of the agreement.

26 (b) In a written agreement that is signed by all persons who are
27 shareholders at the time of the agreement and that is filed with the
28 corporation.

29 2. Subject to amendment or termination only by all persons who are
30 shareholders at the time of the amendment, unless the agreement provides
31 otherwise.

32 3. Valid for ~~ten years~~ THE DURATION OF THE CORPORATION'S EXISTENCE,
33 unless the agreement provides otherwise.

1 C. An agreement authorized by this section is enforceable by any ~~party~~
2 ~~to the agreement against any other party to the agreement~~ PERSON WITH
3 STANDING. The existence of an agreement authorized by this section shall be
4 noted conspicuously on the front or back of each certificate for outstanding
5 shares or on the information statement required by section 10-626,
6 subsection B. The failure to note the existence of the agreement on the
7 certificate or information statement does not affect the validity of the
8 agreement or any action taken pursuant to it. Any purchaser of shares who at
9 the time of purchase did not have knowledge of the existence of the agreement
10 is entitled to rescission of the purchase. A purchaser shall be deemed to
11 have knowledge of the existence of the agreement if its existence is noted on
12 the certificate or information statement for the shares in compliance with
13 this subsection and, if the shares are not represented by a certificate, the
14 information statement is delivered to the purchaser at or before the time of
15 purchase of the shares or the purchaser has actual notice of the existence of
16 the agreement at the time of purchase. An action to enforce the right of
17 rescission authorized by this subsection must be commenced within the earlier
18 of ninety days after discovery of the existence of the agreement or two years
19 after the time of the purchase of the shares.

20 D. An agreement authorized by this section ceases to be effective when
21 shares of the corporation are listed on a national securities exchange or are
22 regularly traded in a market maintained by one or more members of a national
23 or affiliated securities association. If the agreement ceases to be
24 effective for any reason, the board of directors, if the agreement is
25 contained or referred to in the corporation's articles of incorporation or
26 bylaws, may adopt an amendment to the articles of incorporation or bylaws,
27 without shareholder action, to delete the agreement and any references to it.

28 E. An agreement that is authorized by this section and that limits the
29 discretion or powers of the board of directors relieves the directors of and
30 imposes on the person or persons in whom such discretion or powers are vested
31 liability for acts or omissions imposed by law on directors to the extent
32 that the discretion or powers of the directors are limited by the agreement.

1 F. The existence or performance of an agreement authorized by this
2 section is not a ground for imposing personal liability on any shareholder
3 for the acts or debts of the corporation even if the agreement or its
4 performance treats the corporation as if it were a partnership or results in
5 failure to observe the corporate formalities otherwise applicable to the
6 matters governed by the agreement.

7 G. Incorporators or subscribers for shares may act as shareholders
8 with respect to an agreement authorized by this section if no shares have
9 been issued when the agreement is made.

10 H. This section does not apply to, limit or invalidate agreements that
11 are otherwise valid or authorized without regard to this section, including
12 without limitation shareholder agreements between or among some or all of the
13 shareholders or agreements between or among the corporation and one or more
14 shareholders. The procedure set forth in this section is not the exclusive
15 method of agreement among shareholders or among shareholders and the
16 corporation with respect to any of the matters described in this section.

17 Sec. 10. Section 10-821, Arizona Revised Statutes, is amended to read:

18 10-821. Action by directors without meeting

19 A. Unless the articles of incorporation or bylaws provide otherwise,
20 action required or permitted by chapters 1 through 17 of this title to be
21 taken at a directors' meeting may be taken without a meeting if the action is
22 taken by all of the directors. The action must be evidenced by one or more
23 ~~written~~ consents describing the action taken, **WHICH, IN THE AGGREGATE, MUST**
24 **BE** signed by each director ~~and included in the minutes or filed with the~~
25 ~~corporate records reflecting the action taken.~~ **THE CONSENTS AND SIGNATURES**
26 **MAY BE IN WRITING OR BY ELECTRONIC TRANSMISSION, AND THE WRITING OR WRITINGS**
27 **OR ELECTRONIC TRANSMISSION OR TRANSMISSIONS MUST BE INCLUDED IN THE MINUTES**
28 **OR FILED WITH THE CORPORATE RECORDS. THE FILING MUST BE IN PAPER FORM IF THE**
29 **MINUTES ARE MAINTAINED IN PAPER FORM AND MUST BE IN ELECTRONIC FORM IF THE**
30 **MINUTES ARE MAINTAINED IN ELECTRONIC FORM.**

31 B. Action taken under this section is effective when the last director
32 signs the consent, unless the consent specifies a different effective date.

1 C. A consent signed under this section has the effect of a meeting
2 vote and may be described as such in any document.

3 D. Any director may revoke a consent by delivering a signed revocation
4 of the consent to the president or secretary before the date the last
5 director signs the consent or consents.

6 Sec. 11. Section 10-830, Arizona Revised Statutes, is amended to read:

7 10-830. General standards of conduct for directors; presumption

8 A. A director's duties, including duties as a member of a committee,
9 shall be discharged:

10 1. In good faith.

11 2. With the care an ordinarily prudent person in a like position would
12 exercise under similar circumstances.

13 3. In a manner the director reasonably believes to be in the best
14 interests of the corporation.

15 B. In discharging duties, a director is entitled to rely on
16 information, opinions, reports or statements, including financial statements
17 and other financial data, if prepared or presented by any of the following:

18 1. One or more officers or employees of the corporation whom the
19 director reasonably believes are reliable and competent in the matters
20 presented.

21 2. Legal counsel, public accountants or other persons as to matters
22 the director reasonably believes are within the person's professional or
23 expert competence.

24 3. A committee of the board of directors of which the director is not
25 a member if the director reasonably believes the committee merits confidence.

26 C. A director is not acting in good faith if the director has
27 knowledge concerning the matter in question that makes reliance otherwise
28 permitted by subsection B **OF THIS SECTION** unwarranted.

29 ~~D. A director is not liable for any action taken as a director or any~~
30 ~~failure to take any action if the director's duties were performed in~~
31 ~~compliance with this section. In any proceeding commenced under this section~~
32 ~~or any other provision of this chapter, a director has all of the defenses~~
33 ~~and presumptions ordinarily available to a director. A director is presumed~~

~~in all cases to have acted, failed to act or otherwise discharged such director's duties in accordance with subsection A. The burden is on the party challenging a director's action, failure to act or other discharge of duties to establish by clear and convincing evidence facts rebutting the presumption.~~

D. UNLESS OTHERWISE PROVIDED IN THE ARTICLES OF INCORPORATION OR BYLAWS OR A RESOLUTION OF THE BOARD OF DIRECTORS OF THE CORPORATION, IN DETERMINING WHAT IS IN THE BEST INTERESTS OF THE CORPORATION, A DIRECTOR:

1. MUST CONSIDER THE EFFECT OF A PROPOSED ACTION OR INACTION ON THE SHAREHOLDERS AND WHETHER A PROPOSED ACTION OR INACTION MAY FURTHER THE PURPOSES OF THE CORPORATION.

2. MAY CONSIDER THE EFFECTS OF ANY ACTION OR INACTION ON THE LONG-TERM AND SHORT-TERM INTERESTS OF THE CORPORATION, ITS SHAREHOLDERS, EMPLOYEES, CUSTOMERS, COMMUNITY AND ENVIRONMENT AND ANY OTHER GROUP AND OTHER PERTINENT FACTORS THAT THE DIRECTOR DEEMS APPROPRIATE.

E. THE BEST INTERESTS OF THE CORPORATION DO NOT REQUIRE THAT ANY PARTICULAR INTERESTS BE GIVEN PRIORITY OVER OTHER INTERESTS UNLESS THE ARTICLES OF INCORPORATION, THE BYLAWS, A RESOLUTION OF THE BOARD OF DIRECTORS OR A RESOLUTION APPROVED BY THE NUMBER OF SHAREHOLDERS REQUIRED TO AMEND THE ARTICLES OF INCORPORATION STATES AN INTENTION TO GIVE PRIORITY TO PARTICULAR INTERESTS.

Sec. 12. Title 10, chapter 8, article 3, Arizona Revised Statutes, is amended by adding section 10-831, to read:

10-831. Standards of liability for directors: presumption

A DIRECTOR IS NOT LIABLE FOR ANY ACTION TAKEN AS A DIRECTOR OR ANY FAILURE TO TAKE ANY ACTION IF THE DIRECTOR'S DUTIES WERE PERFORMED IN COMPLIANCE WITH SECTION 10-830. IN ANY PROCEEDING COMMENCED UNDER THIS CHAPTER, A DIRECTOR HAS ALL OF THE DEFENSES AND PRESUMPTIONS ORDINARILY AVAILABLE TO A DIRECTOR. A DIRECTOR IS PRESUMED IN ALL CASES TO HAVE ACTED, FAILED TO ACT OR OTHERWISE DISCHARGED THE DIRECTOR'S DUTIES PURSUANT TO SECTION 10-830. THE BURDEN IS ON THE PARTY CHALLENGING A DIRECTOR'S ACTION, FAILURE TO ACT OR OTHER DISCHARGE OF DUTIES TO ESTABLISH BY CLEAR AND CONVINCING EVIDENCE FACTS REBUTTING THE PRESUMPTION.

1 Sec. 13. Section 10-842, Arizona Revised Statutes, is amended to read:

2 10-842. Standards of conduct for officers

3 A. If an officer has discretionary authority with respect to any
4 duties, an officer's duties shall be discharged under that authority:

5 1. In good faith.

6 2. With the care an ordinarily prudent person in a like position would
7 exercise under similar circumstances.

8 3. In a manner the officer reasonably believes to be in the best
9 interests of the corporation.

10 B. In discharging duties, an officer is entitled to rely on
11 information, opinions, reports or statements, including financial statements
12 and other financial data, if prepared or presented by either:

13 1. One or more directors, officers or employees of the corporation
14 whom the officer reasonably believes to be reliable and competent in the
15 matters presented.

16 2. Legal counsel, public accountants or other persons as to matters
17 the officer reasonably believes are within the person's professional or
18 expert competence.

19 C. An officer is not acting in good faith if the officer has knowledge
20 concerning the matter in question that makes reliance otherwise permitted by
21 subsection B **OF THIS SECTION** unwarranted.

22 ~~D. An officer is not liable for any action taken as an officer or any
23 failure to take any action if the officer's duties were performed in
24 compliance with this section. In any proceeding commenced under this section
25 or any other provision of this chapter, an officer has all of the defenses
26 and presumptions ordinarily available to an officer. An officer is presumed
27 in all cases to have acted, failed to act or otherwise discharged such
28 officer's duties in accordance with subsection A. The burden is on the party
29 challenging an officer's action, failure to act or other discharge of duties
30 to establish by clear and convincing evidence facts rebutting the
31 presumption.~~

1 C. A CORPORATION AND ITS DIRECTORS AND OFFICERS ARE NOT LIABLE FOR
2 MONETARY DAMAGES RESULTING FROM ANY DECISION OR FAILURE OF THE CORPORATION TO
3 PURSUE OR CREATE ANY NONMONETARY PURPOSE, WHETHER OR NOT THE PURPOSE IS SET
4 FORTH IN ITS ARTICLES OF INCORPORATION.

5 D. FOR THE PURPOSES OF THIS SECTION:

6 1. "ENFORCEMENT PROCEEDING" MEANS ANY CLAIM OR ACTION FOR A VIOLATION
7 OF ANY OBLIGATION, DUTY OR STANDARD OF CONDUCT UNDER THIS CHAPTER.

8 2. "NONMONETARY PURPOSE" MEANS ANY PURPOSE OTHER THAN TO BENEFIT THE
9 ECONOMIC OR FINANCIAL INTERESTS OF THE SHAREHOLDERS OF THE CORPORATION,
10 INCLUDING ANY PURPOSE TO BENEFIT ANY INTEREST OR FACTOR THAT IS INCLUDED IN
11 SECTION 10-830, SUBSECTION D, PARAGRAPH 2, AS APPLICABLE.

12 Sec. 15. Section 10-1403, Arizona Revised Statutes, is amended to
13 read:

14 10-1403. Articles of dissolution; effective date of
15 dissolution; annual report requirements

16 A. At any time after dissolution is authorized, the corporation may
17 dissolve by delivering to the commission for filing articles of dissolution
18 setting forth all of the following:

19 1. The name of the corporation.

20 2. The date dissolution was authorized.

21 3. If dissolution was approved by the shareholders, both:

22 (a) The number of votes entitled to be cast on the proposal to
23 dissolve.

24 (b) Either the total number of votes cast for and against dissolution
25 or the total number of undisputed votes cast for dissolution and a statement
26 that the number cast for dissolution was sufficient for approval.

27 4. If voting by voting groups was required, the information required
28 by paragraph 3 OF THIS SUBSECTION shall be separately provided for each
29 voting group entitled to vote separately on the plan to dissolve.

30 5. A STATEMENT FROM THE CORPORATION THAT IT HAS FILED OR WILL FILE ITS
31 FINAL TAX RETURN WITH THE DEPARTMENT OF REVENUE AND HAS PAID OR WILL PAY ALL
32 TAXES LEVIED UNDER TITLE 42, CHAPTER 5, ARTICLE 1 AGAINST THE CORPORATION OR

1 THAT THE CORPORATION IS NOT SUBJECT TO THE TAXES AND THAT A COPY OF THE
2 ARTICLES OF DISSOLUTION HAS BEEN DELIVERED TO THE DEPARTMENT OF REVENUE.

3 B. A corporation is dissolved on the effective date of its articles of
4 dissolution.

5 ~~C. The articles of dissolution shall not be considered complete until
6 the commission has received a notice from the department of revenue to the
7 effect that the tax levied under title 42, chapter 5, article 1 against the
8 corporation has been paid, or until it is notified by the department of
9 revenue that the corporation is not subject to the tax and until the
10 commission has received from the department of revenue its certificate issued
11 pursuant to section 43-1151.~~

12 ~~D.~~ C. Within sixty days after the commission approves the filing, a
13 copy of the articles of dissolution shall be published. An affidavit
14 evidencing the publication may be filed with the commission.

15 ~~E.~~ D. The articles of dissolution shall not be considered complete
16 until all fees, penalties and costs required to be paid under this title have
17 been paid.

18 E. ON DELIVERY OF ITS ARTICLES OF DISSOLUTION TO THE COMMISSION FOR
19 FILING, THE CORPORATION IS NOT REQUIRED TO FILE ANY ANNUAL REPORT DUE ON OR
20 AFTER THE DATE OF THE DELIVERY IF THE ARTICLES OF DISSOLUTION ARE FILED BY
21 THE COMMISSION WITHIN ONE HUNDRED EIGHTY DAYS AFTER DELIVERY. IF THE
22 CORPORATION FILES ARTICLES OF REVOCATION OF DISSOLUTION PURSUANT TO SECTION
23 10-1404, THE CORPORATION THEREAFTER MUST FILE ANY ANNUAL REPORT THAT IS
24 PRESCRIBED BY CHAPTER 16, ARTICLE 2 OF THIS TITLE.

25 Sec. 16. Section 10-1407, Arizona Revised Statutes, is amended to
26 read:

27 10-1407. Unknown claims against dissolved corporation

28 A. A dissolved corporation may also publish notice of its dissolution
29 and request that persons with claims against the corporation present them in
30 accordance with the notice.

1 B. The notice shall:

2 1. Be published one time in a newspaper of general circulation in the
3 county where the dissolved corporation's known place of business is or was
4 last located.

5 2. Describe the information that must be included in a claim and
6 provide a mailing address where the claim may be sent.

7 3. State that a claim against the corporation will be barred unless a
8 proceeding to enforce the claim is commenced within five years after the
9 publication of the notice **OR BEFORE THE EXPIRATION OF ANY OTHER APPLICABLE**
10 **LIMITATIONS PERIOD, WHICHEVER IS EARLIER.**

11 C. If the dissolved corporation publishes a newspaper notice in
12 accordance with subsection B of this section, the claim of each of the
13 following claimants is barred unless the claimant commences a proceeding to
14 enforce the claim against the dissolved corporation within five years after
15 the publication date of the newspaper notice **OR BEFORE THE EXPIRATION OF ANY**
16 **OTHER APPLICABLE LIMITATIONS PERIOD, WHICHEVER IS EARLIER:**

17 1. A claimant who did not receive written notice under section
18 10-1406.

19 2. A claimant whose claim was timely sent to the dissolved corporation
20 but not acted on.

21 3. A claimant whose claim is contingent or based on an event occurring
22 after the effective date of the dissolution.

23 D. A claim, including a contingent claim or a claim based on an event
24 occurring after the effective date of dissolution, may be enforced under this
25 section either:

26 1. Against the dissolved corporation to the extent of its
27 undistributed assets.

28 2. If the assets have been distributed in liquidation, against a
29 shareholder of the dissolved corporation to the extent of ~~his~~ **THE**
30 **SHAREHOLDER'S** pro rata share of the claim or the corporate assets distributed
31 to ~~him~~ **THE SHAREHOLDER** in liquidation, whichever is less, but a shareholder's
32 total liability for all claims under this subsection shall not exceed the
33 total amount of assets distributed to ~~him~~ **THE SHAREHOLDER.**

1 E. THIS SECTION DOES NOT EXTEND OR LENGTHEN ANY OTHERWISE APPLICABLE
2 TIME PERIOD DURING WHICH CLAIMS MAY BE BROUGHT AGAINST THE CORPORATION.

3 Sec. 17. Section 10-1420, Arizona Revised Statutes, is amended to
4 read:

5 10-1420. Grounds for administrative dissolution

6 The commission may commence a proceeding under section 10-1421 to
7 administratively dissolve a corporation if either:

8 1. The corporation does not pay within sixty days after they are due
9 any fees or penalties imposed by chapters 1 through 17 of this title.

10 2. The corporation does not deliver its annual report to the
11 commission within sixty days after it is due.

12 3. The corporation is without a statutory agent or known place of
13 business in this state for sixty days or more.

14 4. The corporation does not notify the commission within sixty days
15 that its statutory agent or known place of business has been changed, that
16 its statutory agent has resigned or that its principal office has been
17 discontinued.

18 5. The corporation has failed to make any publication required by this
19 title, provided the commission has notified the corporation of the intent of
20 the commission to commence a dissolution proceeding for that reason and the
21 corporation has failed to file an affidavit of publication or other
22 appropriate evidence of publication within sixty days after that notice.

23 6. The corporation's period of duration stated in its articles of
24 incorporation expires.

25 7. The corporation has failed to comply with section 10-202,
26 subsection F.

27 8. Any officer or other representative of the corporation has made any
28 misrepresentation of a material matter in any application, report or other
29 document submitted by the corporation pursuant to chapters 1 through 17 of
30 this title.

31 9. The corporation has failed to comply with section 10-1403,
32 subsection ~~D~~ C or ~~E~~ D, ~~or the commission has not received the notice~~

1 ~~required by section 10-1403, subsection C, within six months after filing~~
2 ~~articles of dissolution.~~

3 10. The corporation has failed to file a certificate of disclosure or
4 answer interrogatories as prescribed in chapters 1 through 17 of this title.

5 11. The corporation failed to comply with section 10-1623,
6 subsection A.

7 Sec. 18. Section 10-1503, Arizona Revised Statutes, is amended to
8 read:

9 10-1503. Application for authority to transact business

10 A. A foreign corporation may apply for authority to transact business
11 in this state by delivering an application and a certificate of disclosure to
12 the commission for filing. The certificate of disclosure shall contain the
13 information set forth in section 10-202, subsection D and is subject to the
14 requirements of section 10-202, subsection F. The application shall be
15 executed by the corporation and shall set forth:

16 1. The name of the foreign corporation and, if its name is unavailable
17 for use in this state, a corporate name that satisfies the requirements of
18 section 10-1506.

19 2. The name of the state or country under whose law it is
20 incorporated.

21 3. Its date of incorporation and period of duration.

22 4. The street address of its principal office in its state or country
23 of incorporation **OR, IF NONE, THE STREET ADDRESS OF ITS REGISTERED AGENT IN**
24 **ITS STATE OR COUNTRY OF INCORPORATION.**

25 5. The street address of the proposed known place of business of the
26 corporation in this state and the name and street address of its proposed
27 statutory agent in this state.

28 6. If its purpose or purposes are narrower than the transaction of any
29 or all lawful business in which corporations may engage in the state or
30 country under whose law it is incorporated, a statement of the limitations on
31 its purpose.

1 7. The names and usual business addresses of its current directors and
2 officers.

3 8. A statement of the aggregate number of shares that the corporation
4 has authority to issue, itemized by classes, ~~par value of shares, shares~~
5 ~~without par value~~ and series, if any, within a class.

6 9. A statement of the aggregate number of issued shares itemized by
7 classes, ~~par value of shares, shares without par value~~ and series, if any,
8 within a class.

9 10. A brief statement of the character of business that the corporation
10 initially intends actually to conduct in this state. This statement does not
11 limit the character of business that the corporation ultimately conducts.

12 B. The foreign corporation shall deliver the application and the
13 certificate of disclosure to the commission, together with a copy of its
14 articles of incorporation, any amendments to the articles of incorporation
15 and a certificate of existence or a document of similar import duly
16 authenticated by the secretary of state or other official having custody of
17 corporate records in the state or country under whose law it is incorporated,
18 and the nonrefundable fees required by law.

19 C. After determining that the application sets forth the information
20 required by this section, does not use as the name of the corporation in this
21 state a name that is in violation of section 10-1506 and appears in all other
22 respects to conform to the requirements of this article, the commission shall
23 file the application. The date of filing shall be the date on which the
24 corporation is granted authority to transact business in this state.

25 D. Within sixty days after the commission approves the filing, a copy
26 of the application shall be published. An affidavit evidencing the
27 publication may be filed with the commission.

28 E. A foreign corporation authorized to transact business in this state
29 is subject to section 10-1623.

1 Sec. 19. Section 10-1504, Arizona Revised Statutes, is amended to
2 read:

3 10-1504. Delivery of changes; changes requiring amended
4 authority

5 A. Whenever the articles of incorporation of a foreign corporation
6 authorized to transact business in this state are amended or restated by
7 merger or otherwise, within sixty days after the amendment or restatement
8 becomes effective, the foreign corporation shall deliver to the commission a
9 copy of the amendment or restatement duly authenticated by the secretary of
10 state or other official having custody of corporate records in the state or
11 country where the foreign corporation is incorporated.

12 B. ~~IN ADDITION TO THE REQUIREMENT OF SUBSECTION A OF THIS SECTION, a~~
13 ~~foreign corporation authorized to transact business in this state shall~~
14 ~~obtain new authority from the commission by complying with section 10-1503~~
15 ~~AMEND ITS APPLICATION FOR AUTHORITY BY FILING WITH THE COMMISSION ARTICLES OF~~
16 ~~AMENDMENT TO APPLICATION FOR AUTHORITY~~ if ~~it changes~~ any of the following
17 ~~OCCURS:~~

18 1. ~~THE FOREIGN CORPORATION CHANGES~~ its actual corporate name or the
19 name under which it has obtained authority to transact business in this state
20 pursuant to section 10-1503, subsection A, paragraph 1.

21 2. The ~~FOREIGN CORPORATION CHANGES ITS~~ period of ~~its~~ duration.

22 3. The ~~FOREIGN CORPORATION CHANGES ITS~~ state or country of ~~its~~
23 incorporation.

24 4. ~~A STATEMENT IN THE APPLICATION FOR AUTHORITY WAS INACCURATE WHEN~~
25 ~~MADE.~~

26 Sec. 20. Section 10-1506, Arizona Revised Statutes, is amended to
27 read:

28 10-1506. Corporate name of foreign corporation

29 A. If the corporate name of a foreign corporation does not satisfy the
30 requirements of section 10-401, to obtain or maintain a grant of authority to
31 transact business in this state the foreign corporation:

1 1. Shall either:

2 (a) Add the word "association", "bank", "company", "corporation" or
3 "incorporated" or an abbreviation of one of these words to its corporate name
4 for use in this state.

5 (b) Use a fictitious name that satisfies the requirements of section
6 10-401 to transact business in this state if its real name is unavailable and
7 it delivers to the commission for filing a copy of the resolution of its
8 board of directors, certified by its secretary, adopting the fictitious name.

9 2. Shall not include language in its corporate name stating or
10 implying that the foreign corporation is organized for a purpose other than
11 that permitted by section 10-301 and its articles of incorporation.

12 3. Notwithstanding paragraph 1, subdivision (a) of this subsection,
13 shall not include the words "bank", "deposit", "credit union", "trust" or
14 "trust company" separately or in combination in its corporate name to
15 indicate or convey the idea that the foreign corporation is engaged in
16 banking or trust business unless the foreign corporation is to be and becomes
17 actively and substantially engaged in the banking, credit union or trust
18 business or the foreign corporation is a holding company holding a
19 substantial interest in companies actively and substantially engaged in the
20 banking or trust business.

21 B. Except as authorized by subsections C and D of this section, the
22 corporate name, including a fictitious name, of a foreign corporation shall
23 be distinguishable from:

24 1. The corporate name of a corporation incorporated in this state or a
25 foreign corporation authorized to transact business in this state.

26 2. A corporate name reserved under section 10-402 or registered under
27 section 10-403.

28 3. The fictitious name adopted by another foreign corporation under
29 this section.

30 4. The corporate name of a nonprofit corporation incorporated under
31 this title or a foreign nonprofit or not for profit corporation authorized to
32 conduct affairs in this state.

1 5. The partnership name of a limited partnership organized and
2 registered under the laws of this state or of a foreign limited partnership
3 authorized to transact business in this state.

4 6. The name of a limited liability company organized under title 29,
5 chapter 4 or a foreign limited liability company authorized to transact
6 business in this state.

7 7. A trade name registered pursuant to title 44, chapter 10,
8 article 3.1.

9 8. The name of a registered limited liability partnership registered
10 under title 29, chapter 5, article 10 or a foreign registered limited
11 liability partnership authorized to transact business in this state.

12 C. Notwithstanding subsection B of this section, the commission shall
13 authorize the use of a name that is not distinguishable under subsection B of
14 this section from one or more of the names described in subsection B of this
15 section if the applicant delivers to the commission a certified copy of a
16 final judgment of a court of competent jurisdiction establishing the
17 applicant's right to use the name applied for in this state.

18 D. If a foreign corporation authorized to transact business in this
19 state changes its corporate name to one that does not satisfy the
20 requirements of section 10-401, it may not transact business in this state
21 under the changed name until it adopts a name satisfying the requirements of
22 section 10-401 and obtains ~~new~~ AMENDED authority under section 10-1504.

23 Sec. 21. Title 10, chapter 16, article 3, Arizona Revised Statutes, is
24 amended by adding section 10-1636, to read:

25 10-1636. Civil liability for false filings; exceptions

26 A. EXCEPT AS PROVIDED IN SUBSECTION C OR D OF THIS SECTION, ANY PERSON
27 THAT AUTHORIZES OR SIGNS A REPORT, CERTIFICATE, NOTICE OR OTHER DOCUMENT WITH
28 RESPECT TO A CORPORATION THAT IS DELIVERED FOR FILING WITH THE COMMISSION
29 PURSUANT TO THIS CHAPTER AND THAT HAS KNOWLEDGE AT THE TIME OF DELIVERY TO
30 THE COMMISSION FOR FILING THAT THE INFORMATION CONTAINED IN THAT REPORT,
31 CERTIFICATE, NOTICE OR OTHER DOCUMENT IS MATERIALLY FALSE OR MISLEADING IS
32 LIABLE TO THE CORPORATION AND ITS CREDITORS AND SHAREHOLDERS FOR ALL DAMAGES
33 RESULTING. THE PREVAILING PARTY IN AN ACTION FOR THE LIABILITY IMPOSED UNDER

1 THIS SUBSECTION IS ENTITLED TO AN AWARD FOR ITS COSTS AND REASONABLE ATTORNEY
2 FEES.

3 B. AN ACTION FOR THE LIABILITY IMPOSED BY SUBSECTION A OF THIS SECTION
4 MUST BE COMMENCED WITHIN TWO YEARS AFTER DISCOVERY OF THE FALSE STATEMENT OR
5 THE TIME A REASONABLE PERSON WOULD HAVE DISCOVERED IT, BUT NOT LATER THAN SIX
6 YEARS AFTER THE REPORT, CERTIFICATE, NOTICE OR OTHER DOCUMENT WAS FILED OR
7 RECEIVED BY THE COMMISSION.

8 C. THIS SECTION DOES NOT APPLY TO ANY FILING MADE BY A CORPORATION
9 WHOSE SHARES ARE LISTED OR APPROVED FOR LISTING ON ANY STOCK EXCHANGE OR
10 NATIONAL MARKET SYSTEM OF A NATIONAL SECURITIES ASSOCIATION SPECIFIED IN
11 SECTION 44-1843, SUBSECTION A, PARAGRAPH 7 OR THE RULES OF THE CORPORATION
12 COMMISSION RELATING TO THAT PARAGRAPH OR WHOSE SECURITIES ARE ISSUED BY AN
13 ENTITY THAT IS EXEMPT FROM SECTION 44-1841 PURSUANT TO SECTION 44-1843,
14 SUBSECTION A, PARAGRAPH 2 OR 3 OR THE RULES OF THE CORPORATION COMMISSION
15 RELATING TO THOSE PARAGRAPHS.

16 D. EXECUTION OF A CONSENT TO SERVE AS A STATUTORY AGENT DOES NOT BY
17 ITSELF CONSTITUTE A CERTIFICATION OF THE TRUTH OR ACCURACY OF THE INFORMATION
18 CONTAINED IN A REPORT, CERTIFICATE, NOTICE OR OTHER DOCUMENT WITH RESPECT TO
19 THE CORPORATION EVEN IF THE CONSENT IS ATTACHED TO ANOTHER FILING.

20 E. THIS SECTION DOES NOT PREVENT THE AWARD OF EQUITABLE REMEDIES, IF
21 APPROPRIATE.

22 Sec. 22. Section 10-2401, Arizona Revised Statutes, is amended to
23 read:

24 10-2401. Application and effect of chapter

25 A. This chapter is applicable to all benefit corporations.

26 B. The existence of a provision of this chapter does not of itself
27 create an implication that a contrary or different rule of law is applicable
28 to a business corporation that is not a benefit corporation. This chapter
29 does not affect a statute or rule of law that is applicable to a business
30 corporation that is not a benefit corporation.

31 C. Except as otherwise provided in this chapter, chapters 1, 2, 3, 4,
32 5, 6, 7, 8, 10, 11, 12, 13, 14, 15, 16 and 17 of this title are generally
33 applicable to all benefit corporations. The specific provisions of this

1 chapter control over the general provisions of chapters 1 through 17 of this
2 title.

3 D. A benefit corporation may be subject simultaneously to this chapter
4 and chapter 18 or 20 of this title. In that event, the provisions of this
5 chapter control over chapter 18 or 20.

6 E. A provision of the articles of incorporation or bylaws of a benefit
7 corporation may not limit, be inconsistent with or supersede a provision of
8 this chapter.

9 F. THE ENUMERATION IN THIS CHAPTER OF POWERS AND INTERESTS OF A
10 BENEFIT CORPORATION DOES NOT IMPLY THAT THE POWERS AND INTERESTS DO NOT EXIST
11 IN OR MAY NOT BE CONSIDERED BY ANY OTHER TYPE OF CORPORATION, AND UNLESS
12 PROVIDED OTHERWISE IN THE ARTICLES OF INCORPORATION OR BYLAWS OR A RESOLUTION
13 OF THE BOARD OF DIRECTORS, ANY CORPORATION FORMED UNDER THIS TITLE HAS THE
14 POWERS OF A BENEFIT CORPORATION UNDER THIS CHAPTER AND A DIRECTOR OF ANY
15 CORPORATION FORMED UNDER THIS TITLE MAY CONSIDER ANY INTERESTS THAT MAY BE
16 CONSIDERED BY A DIRECTOR OF A BENEFIT CORPORATION UNDER THIS CHAPTER IN
17 DETERMINING WHAT IS IN THE BEST INTERESTS OF THE CORPORATION.

18 Sec. 23. Section 10-2431, Arizona Revised Statutes, is amended to
19 read:

20 10-2431. Standard of conduct for directors

21 A. In discharging the duties of their respective positions and in
22 considering the best interests of the benefit corporation, the board of
23 directors, committees of the board and individual directors of a benefit
24 corporation:

25 1. Shall consider the effects of any action or inaction on:

26 (a) The shareholders of the benefit corporation.

27 (b) The employees and workforce of the benefit corporation, its
28 subsidiaries and its suppliers.

29 (c) The interests of customers as beneficiaries of the general public
30 benefit or specific public benefit purposes of the benefit corporation.

31 (d) Community and societal factors, including those of each community
32 in which offices or facilities of the benefit corporation, its subsidiaries
33 or its suppliers are located.

1 (e) The local and global environment.

2 (f) The short-term and long-term interests of the benefit corporation,
3 including benefits that may accrue to the benefit corporation from its
4 long-term plans and the possibility that these interests may be best served
5 by the continued independence of the benefit corporation.

6 (g) The ability of the benefit corporation to accomplish its general
7 public benefit purpose and any specific public benefit purpose.

8 2. May consider the interests referred to in section 10-2702 and other
9 pertinent factors or the interests of any other group that they deem
10 appropriate except that they do not have to give priority to the interests of
11 a particular person or group referred to in this subsection over the
12 interests of any other person or group unless the benefit corporation has
13 stated in its articles of incorporation its intention to give priority to
14 certain interests related to its accomplishment of its general public benefit
15 purpose or of a specific public benefit purpose identified in its articles.

16 B. The consideration of interests and factors in the manner required
17 by subsection A of this section does not constitute a violation of section
18 10-830.

19 C. Except as provided in the articles of incorporation or bylaws and
20 in ~~subsection E of this~~ section 10-2401, SUBSECTION C, a director is not
21 personally liable for monetary damages for:—

22 ~~1. Any action or inaction in the course of performing the duties of a~~
23 ~~director under subsection A of this section if the director performed the~~
24 ~~duties of office in compliance with section 10-830 and this section.~~

25 ~~2.~~ failure of the benefit corporation to pursue or create general
26 public benefit or a specific public benefit. THE STANDARDS OF CONDUCT AND
27 PRESUMPTIONS SET FORTH IN CHAPTER 8 OF THIS TITLE APPLY TO DIRECTORS AND
28 OFFICERS OF BENEFIT CORPORATIONS.

29 D. A director does not have a duty to a person that is a beneficiary
30 of the general public benefit purpose or a specific public benefit purpose of
31 a benefit corporation arising from the status of the person as a beneficiary.

1 ~~E. Subsection C of this section does not apply to a director's~~
2 ~~conflicting interest transaction, as defined in section 10-860, in which the~~
3 ~~director has directly or indirectly benefitted.~~

4 Sec. 24. Section 10-2702, Arizona Revised Statutes, is amended to
5 read:

6 10-2702. Duties of director

7 In discharging the duties of the position of director under this
8 chapter, a director of an issuing public corporation, in considering the best
9 interests of the corporation, shall consider the long-term as well as the
10 short-term interests of the corporation and its shareholders including the
11 possibility that these interests may be best served by the continued
12 independence of the corporation. This section ~~shall~~ DOES not modify the
13 duties of the position of director in any matter outside the scope of this
14 chapter AND DOES NOT LIMIT THE ABILITY OF A DIRECTOR TO CONSIDER ANY OTHER
15 FACTOR PERMITTED BY SECTION 10-830, SUBSECTION D.

16 Sec. 25. Section 10-3202, Arizona Revised Statutes, is amended to
17 read:

18 10-3202. Articles of incorporation; violation; classification

19 A. The articles of incorporation shall set forth:

20 1. A corporate name for the corporation that satisfies the
21 requirements of section 10-3401.

22 2. A brief statement of the character of affairs that the corporation
23 initially intends to conduct. This statement does not limit the affairs that
24 the corporation may conduct.

25 3. The name and address of each person who is to serve as a director
26 until a successor is elected and qualifies.

27 4. The name, street address and signature of the corporation's
28 statutory agent.

29 5. The street address of the known place of business for the
30 corporation, if different from that of its statutory agent.

31 6. The name and address of each incorporator.

32 7. Whether or not the corporation will have members.

1 8. Any provision elected by the incorporators that under chapters 24
2 through 40 of this title or any other law of this state may be elected only
3 by specific inclusion in the articles of incorporation.

4 9. The signatures of all incorporators.

5 B. The articles of incorporation may set forth:

6 1. A provision eliminating or limiting the liability of a director to
7 the corporation or its members for money damages for any action taken or any
8 failure to take any action as a director, except liability for any of the
9 following:

10 (a) The amount of a financial benefit received by a director to which
11 the director is not entitled.

12 (b) An intentional infliction of harm on the corporation or the
13 members.

14 (c) A violation of section 10-3833.

15 (d) An intentional violation of criminal law.

16 2. A provision permitting or making obligatory indemnification of a
17 director for liability, as defined in section 10-3850, to any person for any
18 action taken, or any failure to take any action, as a director, except
19 liability for any of the exceptions described in paragraph 1 of this
20 subsection.

21 3. Any other provision, not inconsistent with law.

22 C. The articles of incorporation need not set forth any of the
23 corporate powers enumerated in chapters 24 through 40 of this title.

24 D. The certificate of disclosure shall set forth all of the following:

25 1. The following information regarding all persons who at the time of
26 its delivery are officers, directors, trustees and incorporators:

27 (a) Whether any of the persons have been convicted of a felony
28 involving a transaction in securities, consumer fraud or antitrust in any
29 state or federal jurisdiction within the ~~seven~~ FIVE-year period immediately
30 preceding the execution of the certificate.

31 (b) Whether any of the persons have been convicted of a felony, the
32 essential elements of which consisted of fraud, misrepresentation, theft by
33 false pretenses or restraint of trade or monopoly in any state or federal

1 jurisdiction within the ~~seven~~ FIVE-year period immediately preceding the
2 execution of the certificate.

3 (c) Whether any of the persons are or have been subject to an
4 injunction, judgment, decree or permanent order of any state or federal court
5 entered within the ~~seven~~ FIVE-year period immediately preceding the execution
6 of the certificate, if the injunction, judgment, decree or permanent order
7 involved any of the following:

8 (i) The violation of fraud or registration provisions of the
9 securities laws of that jurisdiction.

10 (ii) The violation of consumer fraud laws of that jurisdiction.

11 (iii) The violation of the antitrust or restraint of trade laws of
12 that jurisdiction.

13 (d) With regard to any of the persons who have been convicted of the
14 crimes or who are the subject of the judicial action described in
15 subdivisions (a), (b) and (c) of this paragraph, information regarding:

16 (i) Identification of the persons, including present full name, all
17 prior names or aliases, including full birth name, present home address, all
18 prior addresses for the immediately preceding ~~seven~~ FIVE-year period and date
19 and location of birth.

20 (ii) The nature and description of each conviction or judicial action,
21 the date and location, the court and public agency involved, and the file or
22 case number of the case.

23 2. A brief statement disclosing whether any persons who at the time of
24 its delivery are officers, directors, trustees and incorporators and who have
25 served in any such capacity in any other corporation on the bankruptcy or
26 receivership of the other corporation. If so, for each corporation, the
27 certificate shall include:

28 (a) The names and addresses of each corporation and the person or
29 persons involved.

30 (b) The state in which each corporation:

31 (i) Was incorporated.

32 (ii) Transacted business.

33 (c) The dates of corporate operation.

1 3. The signatures of all the incorporators.

2 4. The date of its execution, which shall be not more than thirty days
3 before its delivery to the commission.

4 5. A declaration by each signer that the signer swears to its contents
5 under penalty of law.

6 E. The certificate of disclosure may set forth the name and address of
7 any other person whom the incorporator or incorporators choose to be the
8 subject of those disclosures required under subsection D, paragraph 1 of this
9 section.

10 F. If within sixty days after delivering the articles of incorporation
11 and certificate of disclosure to the commission any person becomes an
12 officer, director or trustee and the person was not the subject of the
13 disclosures set forth in the certificate of disclosure, the incorporator or
14 incorporators or, if the organization of the corporation has been completed
15 as provided in section 10-3205, the corporation shall execute and deliver to
16 the commission within the sixty-day period a declaration, sworn to under
17 penalty of law, setting forth all information required by subsection D,
18 paragraph 1 of this section, regarding the person. If the incorporator or
19 incorporators or, as applicable, the corporation fails to comply with this
20 subsection, the commission may administratively dissolve the corporation
21 pursuant to section 10-11421.

22 G. If any of the persons described in subsection D, paragraph 1 of
23 this section have been convicted of the crimes or are the subject of the
24 judicial action described in subsection D, paragraph 1 of this section, the
25 commission may direct detailed interrogatories to the persons requiring any
26 additional relevant information deemed necessary by the commission. The
27 interrogatories shall be completely answered within thirty days after mailing
28 of the interrogatories. With respect to corporations incorporating or
29 seeking authority to conduct affairs, articles of incorporation or an
30 application for authority shall not be filed until all outstanding
31 interrogatories have been answered to the satisfaction of the commission.
32 With respect to existing domestic and foreign corporations, if the
33 interrogatories are not answered as provided in this subsection or the

1 answers to the interrogatories otherwise indicate proper grounds for an
2 administrative dissolution, the commission shall initiate an administrative
3 dissolution in accordance with chapters 24 through 40 of this title.

4 H. On a quarterly updated basis, the commission shall provide to the
5 attorney general a list of all persons who are convicted of the crimes or who
6 are the subject of the judicial action described in subsection D, paragraph 1
7 of this section as indicated by the certificate of disclosure filed during
8 the preceding three months.

9 I. Any person who executed or contributed information for a
10 certificate of disclosure and who intentionally makes any untrue statement of
11 material fact or withholds any material fact with regard to the information
12 required in subsection D, paragraph 1 of this section is guilty of a class 6
13 felony.

14 Sec. 26. Title 29, chapter 4, article 12, Arizona Revised Statutes, is
15 amended by adding section 29-858, to read:

16 29-858. Civil liability for false filings: exceptions

17 A. EXCEPT AS PROVIDED IN SUBSECTION C OR D OF THIS SECTION, ANY PERSON
18 THAT AUTHORIZES OR SIGNS A REPORT, CERTIFICATE, NOTICE OR OTHER DOCUMENT WITH
19 RESPECT TO A LIMITED LIABILITY COMPANY THAT IS DELIVERED FOR FILING WITH THE
20 COMMISSION PURSUANT TO THIS CHAPTER AND THAT HAS KNOWLEDGE AT THE TIME OF
21 DELIVERY TO THE COMMISSION FOR FILING THAT THE INFORMATION CONTAINED IN THAT
22 REPORT, CERTIFICATE, NOTICE OR OTHER DOCUMENT IS MATERIALLY FALSE OR
23 MISLEADING IS LIABLE TO THE LIMITED LIABILITY COMPANY AND ITS CREDITORS AND
24 MEMBERS FOR ALL DAMAGES RESULTING. THE PREVAILING PARTY IN AN ACTION FOR
25 LIABILITY IMPOSED BY THIS SUBSECTION IS ENTITLED TO AN AWARD FOR ITS COSTS
26 AND REASONABLE ATTORNEY FEES.

27 B. AN ACTION FOR THE LIABILITY IMPOSED BY SUBSECTION A OF THIS SECTION
28 MUST BE COMMENCED WITHIN TWO YEARS AFTER DISCOVERY OF THE FALSE STATEMENT OR
29 THE TIME A REASONABLE PERSON WOULD HAVE DISCOVERED IT, BUT NOT LATER THAN SIX
30 YEARS AFTER THE REPORT, CERTIFICATE, NOTICE OR OTHER DOCUMENT WAS FILED OR
31 RECEIVED BY THE COMMISSION.

32 C. THIS SECTION DOES NOT APPLY TO ANY FILING MADE BY A LIMITED
33 LIABILITY COMPANY WHOSE MEMBERSHIP INTERESTS ARE LISTED OR APPROVED FOR

1 LISTING ON ANY STOCK EXCHANGE OR NATIONAL MARKET SYSTEM OF A NATIONAL
2 SECURITIES ASSOCIATION SPECIFIED IN SECTION 44-1843, SUBSECTION A, PARAGRAPH
3 7 OR THE RULES OF THE CORPORATION COMMISSION RELATING TO THAT PARAGRAPH OR
4 WHOSE SECURITIES ARE ISSUED BY AN ENTITY THAT IS EXEMPT FROM SECTION 44-1841
5 PURSUANT TO SECTION 44-1843, SUBSECTION A, PARAGRAPH 2 OR 3 OR THE RULES OF
6 THE CORPORATION COMMISSION RELATING TO THOSE PARAGRAPHS.

7 D. EXECUTION OF A CONSENT TO SERVE AS A STATUTORY AGENT DOES NOT BY
8 ITSELF CONSTITUTE A CERTIFICATION OF THE TRUTH OR ACCURACY OF THE INFORMATION
9 CONTAINED IN A REPORT, CERTIFICATE, NOTICE OR OTHER DOCUMENT WITH RESPECT TO
10 THE LIMITED LIABILITY COMPANY EVEN IF THE CONSENT IS ATTACHED TO ANOTHER
11 FILING.

12 E. THIS SECTION DOES NOT PREVENT THE AWARD OF EQUITABLE REMEDIES, IF
13 APPROPRIATE.

14 Sec. 27. Arizona business entities competitive omnibus act

15 This act shall be known as and may be cited as the "Arizona business
16 entities competitive omnibus act"."

17 Amend title to conform

BOB WORSLEY

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