

1 State of Arkansas *As Engrossed: H3/11/13 H3/18/13 S4/5/13*

2 89th General Assembly

# A Bill

3 Regular Session, 2013

HOUSE BILL 1510

4

5 By: Representatives D. Whitaker, Ferguson, *Copenhaver, Jett, Leding, Magie, Richey, Sabin, Wardlaw,*  
6 *Williams*

7 *By: Senator D. Johnson*

8

9

## For An Act To Be Entitled

11 AN ACT TO ESTABLISH THE ARKANSAS BENEFIT CORPORATION  
12 ACT; AND FOR OTHER PURPOSES.

13

14

15

### Subtitle

16

TO ESTABLISH THE ARKANSAS BENEFIT  
17 CORPORATION ACT.

18

19

20 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

21

22 SECTION 1. Arkansas Code Title 4, is amended to add an additional  
23 chapter to read as follows:

24

#### CHAPTER 36

25

#### ARKANSAS BENEFIT CORPORATION ACT

26

#### Subchapter 1 – Preliminary Provisions

27

28 4-36-101. Title.

29 This chapter shall be known and may be cited as the "Arkansas Benefit  
30 Corporation Act".

31

32 4-36-102. Application of chapter.

33 (a) This chapter shall apply to all benefit corporations.

34 (b) This chapter does not imply that a contrary statute or rule of law  
35 applies to a business corporation that is not a benefit corporation.

36 (c)(1) Except as otherwise provided in this chapter, the Arkansas



1 Business Corporation Act, § 4-27-101 et seq., is generally applicable to a  
2 benefit corporation.

3 (2) Specific provisions of this chapter shall control over the  
4 general provisions of the Arkansas Business Corporation Act, § 4-27-101 et  
5 seq.

6 (3) A benefit corporation may be simultaneously subject to this  
7 chapter and other statutes that provide for the incorporation of a specific  
8 type of business corporation.

9 (d) The articles of incorporation or bylaws of a benefit corporation  
10 shall not limit, relax, be inconsistent with, or supersede this chapter.

11  
12 4-36-103. Definitions.

13 (a) As used in this chapter:

14 (1) "Benefit corporation" means a business corporation that is  
15 subject to this chapter;

16 (2) "Benefit director" means the director designated as the  
17 benefit director of a benefit corporation under § 4-36-302;

18 (3) "Benefit enforcement proceeding" means a claim or action  
19 for:

20 (A) Failure of a benefit corporation to pursue or create a  
21 general public benefit or a specific public benefit purpose as stated in its  
22 articles of incorporation; or

23 (B) Violation of an obligation, duty, or standard of  
24 conduct under this chapter;

25 (4) "Benefit officer" means the individual designated as the  
26 benefit officer of a benefit corporation under § 4-36-304;

27 (5) "General public benefit" means a material positive impact on  
28 society and the environment, taken as a whole, assessed against a third-party  
29 standard, from the business and operations of a benefit corporation;

30 (6)(A) "Independent" means having no material relationship with  
31 a benefit corporation or a subsidiary of the benefit corporation.

32 (B) A person shall be independent even if serving as  
33 benefit director or benefit officer.

34 (C) A material relationship between a person and a benefit  
35 corporation or its subsidiaries is conclusively presumed to exist if:

36 (i) The person is, or has been in the last three (3)

1 years, an employee other than a benefit officer of the benefit corporation or  
2 a subsidiary of the benefit corporation;

3 (ii) An immediate family member of the person is, or  
4 has been in the last three (3) years, an executive officer other than a  
5 benefit officer of the benefit corporation or its subsidiary; or

6 (iii) There is beneficial or record ownership of  
7 five percent (5%) or more of the outstanding shares of the benefit  
8 corporation by the person or an association:

9 (a) Of which the person is a director, an  
10 officer, or a manager; or

11 (b) In which the person owns beneficially or  
12 of record five percent (5%) or more of the outstanding equity interests;

13 (7) "Minimum status vote" means:

14 (A) In the case of a business corporation, in addition to  
15 any other required approval or vote, the satisfaction of the following  
16 conditions:

17 (i) The shareholders of a class or series may vote  
18 as a class on the corporate action regardless of a limitation stated in the  
19 articles of incorporation or bylaws on the voting rights of the class or  
20 series; and

21 (ii) The corporate action shall be approved by vote  
22 of the shareholders of each class or series entitled to cast at least two-  
23 thirds (2/3) of the votes that all shareholders of the class or series are  
24 entitled to cast on the action.

25 (B) In the case of a domestic entity other than a business  
26 corporation, in addition to any other required approval, vote, or consent,  
27 the satisfaction of the following conditions:

28 (i) The holders of a class or series of equity  
29 interest in the entity that are entitled to receive a distribution from the  
30 entity may vote on or consent to the action regardless of an otherwise  
31 applicable limitation on the voting or consent rights of the class or series;  
32 and

33 (ii) The action shall be approved by vote or consent  
34 of the holders described in subdivision (7)(B)(i) of this section entitled to  
35 cast at least two-thirds (2/3) of the votes or consents that all of those  
36 holders are entitled to cast on the action;

1 (8) "Specific public benefit" means:

2 (A) Providing low-income or underserved individuals or  
3 communities with beneficial products or services;

4 (B) Promoting economic opportunity for individuals or  
5 communities beyond the creation of jobs in the normal course of business;

6 (C) Preserving the environment;

7 (D) Improving human health;

8 (E) Promoting the arts, sciences, or advancement of  
9 knowledge;

10 (F) Increasing the flow of capital to entities with a  
11 public benefit purpose; and

12 (G) Conferring any other particular benefit on society or  
13 the environment;

14 (9) "Subsidiary" means in relation to a person, an association  
15 in which the person owns beneficially or of record fifty percent (50%) or  
16 more of the outstanding equity interests; and

17 (10) "Third-party standard" means a recognized standard for  
18 defining, reporting, and assessing corporate social and environmental  
19 performance that is:

20 (A) Comprehensive in that it assesses the effect of the  
21 business and its operations on the interests listed in § 4-36-301(a)(1)(B) -  
22 (E);

23 (B) Developed by an organization that is independent of  
24 the benefit corporation and satisfies the following:

25 (i) Not more than one-third (1/3) of the members of  
26 the governing body of the organization are representatives of:

27 (a) An association of businesses operating in  
28 a specific industry, the performance of whose members is measured by the  
29 standard;

30 (b) Businesses from a specific industry or an  
31 association of businesses in that industry; or

32 (c) A business whose performance is assessed  
33 against the standard; and

34 (ii) The organization is not materially financed by  
35 an association or business described in subdivision (10)(B)(i) of this  
36 section;

1 (C) Credible because the standard is developed by a person  
2 that both:

3 (i) Has access to necessary expertise to assess  
4 overall corporate social and environmental performance; and

5 (ii) Uses a balanced multistakeholder approach,  
6 including a public comment period of at least thirty (30) days to develop the  
7 standard; and

8 (D) Transparent because the following information is  
9 publicly available:

10 (i) The standard criteria considered if measuring  
11 the overall social and environmental performance of a business;

12 (ii) The relative weighting factor of those  
13 criteria;

14 (iii) The development and revision of the *standard*,  
15 *including:*

16 (a) The identity of the directors, officers,  
17 material owners, and the governing body of the organization that developed  
18 and controls revisions to the standard; and

19 (b) The process by which revisions to the  
20 standard and changes to the membership of the governing body are made; and

21 (iv) An accounting of the sources of financial  
22 support for the organization, with sufficient detail to disclose a  
23 relationship that could reasonably be considered to present a potential  
24 conflict of interest.

25 (b) For purposes of the definitions of “independent” and “subsidiary”  
26 in subsection (a) of this section, a percentage of ownership in an entity is  
27 computed as if all outstanding rights to acquire equity interests in the  
28 association had been exercised.

29  
30 4-36-104. *Formation – Fees.*

31 (a) A benefit corporation shall be formed under the Arkansas Business  
32 Corporation Act, § 4-27-101 et seq., and its articles of incorporation shall  
33 state that it is a benefit corporation.

34 (b) The Secretary of State shall collect filing fees, service fees,  
35 and fees for copying when documents are delivered to him or her to be filed  
36 under this subchapter and under § 4-27-122.

1 4-36-105. Election of status.

2 (a) An existing business corporation may become a benefit corporation  
3 under this chapter by amending its articles of incorporation so that they  
4 contain, in addition to the requirements of § 4-27-202, a statement that the  
5 corporation is a benefit corporation.

6 (b) To be effective, an amendment shall be adopted by at least the  
7 minimum status vote.

8 (c) If an entity is not a benefit corporation but is a constituent  
9 corporation or organization in a merger or conversion with a benefit  
10 corporation, the merger or conversion shall be approved by at least the  
11 minimum status vote.

12  
13 4-36-106. Termination of status.

14 (a) A benefit corporation may end its benefit corporation status and  
15 not be subject to this chapter by amending its articles of incorporation to  
16 delete the statement in the articles of incorporation required by § 4-36-104  
17 or § 4-36-105 to be stated in the articles of incorporation of a benefit  
18 corporation.

19 (b) To be effective, the amendment shall be adopted by at least the  
20 minimum status vote.

21 (c) If a merger or conversion would have the effect of terminating the  
22 status of a business corporation as a benefit corporation, to be effective,  
23 the merger or conversion shall be approved by at least the minimum status  
24 vote.

25 (d) A sale, lease, exchange, or other disposition of all or a  
26 substantial part of the assets of a benefit corporation, unless the  
27 transaction is in the usual and regular course of business, shall not be  
28 effective unless the transaction is approved by at least the minimum status  
29 vote.

30  
31 Subchapter 2 – Corporate Purposes

32 4-36-201. Corporate purposes.

33 (a) A benefit corporation shall have a purpose of creating a general  
34 public benefit and it is in addition to its purpose under § 4-36-103(a)(5).

35 (b)(1) The articles of incorporation of a benefit corporation may  
36 identify one (1) or more specific public benefits that it is the purpose of

1 the benefit corporation to pursue in addition to its purposes under § 4-36-  
2 103(a)(5) and subsection (a) of this section.

3 (2) The identification of a specific public benefit under this  
4 subsection does not limit the obligation of a benefit corporation under  
5 subsection (a) of this section.

6 (c) The creation of a general public benefit and a specific public  
7 benefit under subsections (a) and (b) of this section is in the best  
8 interests of the benefit corporation.

9 (d)(1) A benefit corporation may amend its articles of incorporation  
10 to add, amend, or delete the identification of a specific public benefit that  
11 it is the purpose of the benefit corporation to pursue.

12 (2) To be effective, the amendment shall be adopted by at least  
13 the minimum status vote.

14 (e) A professional corporation that is a benefit corporation does not  
15 violate the Arkansas Professional Corporation Act, § 4-29-201 et seq., by  
16 having the purpose to pursue a general public benefit or a specific public  
17 benefit.

18  
19 Subchapter 3 – Accountability

20 4-36-301. 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 an action or inaction on:

26 (A) The shareholders of the benefit corporation;

27 (B) The employees and work force of the benefit  
28 corporation, its subsidiaries, and its suppliers;

29 (C) The interests of customers as beneficiaries of the  
30 general public benefit or specific public benefit purposes of the benefit  
31 corporation;

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

35 (E) The local and global environment;

36 (F) The short-term and long-term interests of the benefit

1 corporation, including benefits that may accrue to the benefit corporation  
2 from its long-term plans and the possibility that these interests may be best  
3 served by the continued independence of the benefit corporation; and

4 (G) The ability of the benefit corporation to accomplish  
5 its general public benefit purpose and a specific public benefit purpose;

6 (2) May consider other pertinent factors or the interests of a  
7 group that they consider appropriate; and

8 (3) Need not give priority to the interests of a particular  
9 person or group referred to in subsection (a)(1) or (a)(2) of this section  
10 over the interests of *another person* or group unless the benefit corporation  
11 has stated in its articles of incorporation its intention to give priority to  
12 certain interests related to its accomplishment of its general public benefit  
13 purpose or of a specific public benefit purpose identified in its articles of  
14 incorporation.

15 (b) The consideration of interests and factors required by subsection  
16 (a) of this section does not constitute a violation of § 4-27-801.

17 (c) A director is not personally liable for monetary damages for:

18 (1) Action taken as a director if the director performed the  
19 duties of office in compliance with § 4-27-801; or

20 (2) Failure of the benefit corporation to pursue a general  
21 public benefit or a specific public benefit.

22 (d) A director does not have a duty to a person that is a beneficiary  
23 of a general public benefit purpose or a specific public benefit purpose of a  
24 benefit corporation arising from the status of the person as a beneficiary.

25  
26 4-36-302. Benefit director.

27 (a) The board of directors of a benefit corporation may include a  
28 director who:

29 (1) Is designated the benefit director; and

30 (2) Has the powers, duties, rights, and immunities provided in  
31 this subchapter in addition to the powers, duties, rights, and immunities of  
32 the other directors of the benefit corporation.

33 (b)(1) The benefit director is elected and may be removed under § 4-  
34 27-803.

35 (2) The benefit director shall be an independent individual.

36 (c) The benefit director may serve concurrently as the benefit officer



1 and the benefit director.

2 (d) The articles of incorporation or bylaws of a benefit corporation  
3 may prescribe additional qualifications of the benefit director not  
4 inconsistent with this section.

5 (e) The benefit director shall prepare and the benefit corporation  
6 shall include in the annual benefit report to shareholders as required by §  
7 4-36-401 the opinion of the benefit director on:

8 (1) Whether the benefit corporation acted under its general  
9 public benefit purpose and a specific public benefit purpose in all material  
10 respects during the period covered by the report;

11 (2) Whether the directors complied with § 4-36-301(a) and the  
12 officers complied with § 4-36-303(a); and

13 (3) Whether the benefit corporation or its directors or officers  
14 failed to comply with this section, including a description of the ways in  
15 which the benefit corporation or its directors or officers failed to comply.

16 (f) The action or inaction of an individual in the capacity of a  
17 benefit director is an action or inaction of that individual in the capacity  
18 of a director of the benefit corporation.

19 (g) Regardless of whether the bylaws of a benefit corporation include  
20 a provision eliminating or limiting the personal liability of directors  
21 authorized by § 4-26-811, a benefit director shall not be personally liable  
22 for an act or omission in the capacity of a benefit director unless the act  
23 or omission constitutes self dealing, willful misconduct, or a knowing  
24 violation of law.

25 (h) The benefit director of a professional corporation does not need  
26 to be independent.

27  
28 4-36-303. Standard of conduct for officers.

29 (a) An officer of a benefit corporation shall consider the interests  
30 and factors described in § 4-36-301 if:

31 (1) The officer has discretion to act with respect to a matter;  
32 and

33 (2) It reasonably appears to the officer that the matter may  
34 have a material effect on the creation by the benefit corporation of a  
35 general public benefit or a specific public benefit identified in the  
36 articles of incorporation of the benefit corporation.

1 (b) The consideration of interests and factors described in subsection  
2 (a) of this section shall not constitute a violation of § 4-27-841.

3 (c) An officer is not personally liable for monetary damages for:

4 (1) An action or omission as an officer if the officer performed  
5 the duties of the position in compliance with § 4-27-841 and this section; or

6 (2) Failure of the benefit corporation to pursue a general  
7 public benefit or a specific public benefit.

8 (d) An officer does not have a duty to a person that is a beneficiary  
9 of a general public benefit purpose or a specific public benefit purpose of a  
10 benefit corporation arising from the status of the person as a beneficiary.

11  
12 4-36-304. Benefit officer.

13 (a) A benefit corporation may have an officer designated as the  
14 benefit officer.

15 (b) A benefit officer shall have:

16 (1) The powers and duties relating to the purpose of the  
17 corporation to pursue a general public benefit or a specific public benefit  
18 provided:

19 (A) By the bylaws; or

20 (B) Absent controlling provisions in the bylaws, by  
21 resolutions or orders of the board of directors; and

22 (2) The duty to prepare the benefit report required by § 4-36-  
23 401.

24  
25 4-36-305. Right of action.

26 (a) Except in a benefit enforcement proceeding, a person may not bring  
27 an action or assert a claim against a benefit corporation or its directors or  
28 officers with respect to:

29 (1) Failure to pursue or create a general public benefit or a  
30 specific public benefit stated in its articles of incorporation; or

31 (2) Violation of a duty or standard of conduct under this  
32 chapter.

33 (b) A benefit corporation shall not be liable for monetary damages  
34 under this chapter for the failure of the benefit corporation to pursue a  
35 general public benefit or a specific public benefit.

36 (c) A benefit enforcement proceeding may begin and be maintained only:

1 (1) Directly by the benefit corporation; or

2 (2) Derivatively by:

3 (A) A shareholder;

4 (B) A director;

5 (C) A person or group of persons that owns beneficially or  
6 of record five percent (5%) or more of the equity interest in an entity of  
7 which the benefit corporation is a subsidiary at the time of the action or  
8 inaction complained of; or

9 (D) Other persons as named in the articles of  
10 incorporation or bylaws of the benefit corporation.

11  
12 Subchapter 4 – Transparency

13 4-36-401. Annual reports.

14 (a)(1) A benefit corporation shall prepare an annual benefit report  
15 and an annual franchise tax report under § 26-54-104.

16 (2) An annual benefit report shall include:

17 (A) A narrative description of:

18 (i) The ways in which the benefit corporation pursued the  
19 general public benefit during the year and the extent to which the general  
20 public benefit was pursued;

21 (ii) Both:

22 (a) The ways in which the benefit corporation  
23 pursued a specific public benefit that the articles of incorporation state is  
24 the purpose of the benefit corporation to pursue; and

25 (b) The extent to which that specific public benefit  
26 was pursued;

27 (iii) Circumstances that have hindered the creation by the  
28 benefit corporation of a general public benefit or a specific public benefit;  
29 and

30 (iv) The process and rationale for selecting or changing  
31 the third-party standard used to prepare the benefit report;

32 (B)(i) An assessment of the overall social and environmental  
33 performance of the benefit corporation against a third-party standard:

34 (a) Applied consistently with an application of that  
35 standard in earlier benefit reports; or

36 (b) Accompanied by an explanation of the reasons for

1 an inconsistent application.

2 (ii) The assessment does not need to be performed ,  
3 audited, or certified by a third-party standards provider;

4 (C) The name of the benefit director and the benefit officer and  
5 the address to which correspondence to each of them may be directed;

6 (D) The compensation paid by the benefit corporation during the  
7 year to each director for serving in the capacity of a director;

8 (E) The statement of the benefit director described in § 4-36-  
9 302; and

10 (F) A statement of the connection between the organization that  
11 established the third-party standard or its directors, officers, or a holder  
12 of five percent (5%) or more of the governance interests in the organization,  
13 and the benefit corporation or its directors, officers, or a holder of five  
14 percent (5%) or more of the outstanding shares of the benefit corporation,  
15 including a financial or governance relationship that may materially affect  
16 the credibility of the use of the third-party standard.

17 (b) A benefit corporation shall send a benefit report to each  
18 shareholder annually:

19 (1) Before the stated due date of an annual franchise tax under  
20 § 26-54-104; or

21 (2) When the benefit corporation delivers an annual financial  
22 report to its shareholders.

23 (c)(1) A benefit corporation shall post all of its benefit reports on  
24 the public part of its Internet website.

25 (2) The compensation paid to a director and a financial or  
26 proprietary informationist included in the benefit reports may be omitted  
27 from the benefit reports as posted.

28 (d)(1) If a benefit corporation does not have a website, the benefit  
29 corporation shall provide a copy of its most recent benefit report, without  
30 charge, to a person who requests a copy.

31 (2) The compensation paid to directors and the financial or  
32 proprietary informationist included in the benefit report may be omitted from  
33 the copy of the benefit report provided.

34 (e)(1) Concurrently with the delivery of the benefit report to  
35 shareholders under subsection (b) of this section, the benefit corporation  
36 shall deliver a copy of the benefit report to the Secretary of State for

1 filing.

2 (2) The compensation paid to directors and the financial or  
3 proprietary informationist included in the benefit report may be omitted from  
4 the benefit report as delivered to the Secretary of State.

5 (3) The Secretary of State shall charge a fee of seventy dollars  
6 (\$70.00) for filing a benefit report.

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10 */s/D. Whitaker*

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13 **APPROVED: 04/19/2013**

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