Senate Engrossed

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MICHELE REAGAN
SECRETARY OF STATE

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CHAPTER 354

SENATE BILL 1356

AN ACT

AMENDING SECTIONS 10-140, 10-202, 10-204, 10-302, 10-304, 10-704, 10-708, 10-722, 10-732, 10-821 AND 10-830, ARIZONA REVISED STATUTES; AMENDING TITLE 10, CHAPTER 8, ARTICLE 3, ARIZONA REVISED STATUTES, BY ADDING SECTION 10-831; AMENDING SECTION 10-842, ARIZONA REVISED STATUTES; AMENDING TITLE 10, CHAPTER 8, ARTICLE 4, ARIZONA REVISED STATUTES, BY ADDING SECTIONS 10-845 AND 10-846; AMENDING SECTIONS 10-1407, 10-1503, 10-1504, 10-1506 AND 10-1531, ARIZONA REVISED STATUTES; AMENDING TITLE 10, CHAPTER 16, ARTICLE 3, ARIZONA REVISED STATUTES, BY ADDING SECTION 10-1636; AMENDING SECTIONS 10-1702, 10-2401, 10-2431, 10-2432, 10-2702 AND 10-3202, ARIZONA REVISED STATUTES; AMENDING TITLE 29, CHAPTER 4, ARTICLE 12, ARIZONA REVISED STATUTES, BY ADDING SECTION 29-858; RELATING TO BUSINESS ENTITIES.

(TEXT OF BILL BEGINS ON NEXT PAGE)

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

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

10-140. Definitions

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

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

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

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

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

3. "Act of the shareholders" means either:

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

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

4. "Address" means a mailing address.

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

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

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

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

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

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

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

12. "Commission" means the Arizona corporation commission.

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

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

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

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

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

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

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

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

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

(a) A declaration or payment of a dividend.

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

(c) A distribution of indebtedness.

(d) Otherwise.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

~~38.~~ 39. "Principal office" means the office, in or out of this state, so designated in the annual report where the principal executive offices of a domestic or foreign corporation are located or in any other document executed by the corporation by an officer and delivered to the commission for filing.

If an office has not been so designated, principal office means the known place of business of the corporation.

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

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

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

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

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

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

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

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

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

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

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

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

incorporation or chapters 1 through 17 of this title to vote generally on the matter are for that purpose a single voting group.

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

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

10-202. Articles of incorporation; violation; classification

A. The articles of incorporation shall set forth:

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

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

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

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

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

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

7. The name and address of each incorporator.

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

9. The signatures of all incorporators.

B. The articles of incorporation may set forth:

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

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

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

(c) A violation of section 10-833.

(d) An intentional violation of criminal law.

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

3. Any other provision, not inconsistent with law.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(b) The state in which each corporation:
(i) Was incorporated.
(ii) Transacted business.
(c) The dates of corporate operation.
3. The signatures of all of the incorporators.
4. The date of its execution, which shall be not more than thirty days before its delivery to the commission.
5. A declaration by each signer that he swears to its contents under penalty of law.
E. The certificate of disclosure may set forth the name and address of any other person whom the incorporators elect to be the subject of those disclosures required under subsection D, paragraph 1 of this section.
F. If within sixty days after delivering the articles of incorporation and certificate of disclosure to the commission any person becomes an officer, director, trustee or person controlling or holding over ten ~~per cent~~ PERCENT of the issued and outstanding shares or ten ~~per cent~~ PERCENT of any other proprietary, beneficial or membership interest in the corporation and the person was not the subject of the disclosures set forth in the certificate of disclosure, the incorporators or, if the organization of the corporation has been completed as provided in section 10-205, the corporation shall execute and deliver to the commission within the sixty-day period a declaration, sworn to under penalty of law, setting forth all information required by subsection D, paragraph 1 of this section regarding the person. If the incorporators or, as applicable, the corporation fail to comply with this subsection, the commission may administratively dissolve the corporation pursuant to section 10-1421.
G. If any of the persons described in subsection D, paragraph 1 of this section have been convicted of the crimes or are the subject of the judicial action described in subsection D, paragraph 1 of this section, the commission may direct detailed interrogatories to the persons requiring any additional relevant information deemed necessary by the commission. The interrogatories shall be completely answered within thirty days after mailing of the interrogatories. With respect to corporations incorporating or seeking authority to transact business, articles of incorporation or an application for authority shall not be filed until all outstanding interrogatories have been answered to the satisfaction of the commission. With respect to existing domestic and foreign corporations, if the interrogatories are not answered as provided in this subsection or the answers to the interrogatories otherwise indicate proper grounds for an administrative dissolution, the commission shall initiate an administrative dissolution in accordance with chapters 1 through 17 of this title.
H. On a quarterly updated basis, the commission shall provide to the attorney general a list of all persons who are convicted of the crimes or who are the subject of the judicial action described in subsection D, paragraph 1

of this section as indicated by the certificates of disclosure filed during the preceding three months.

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

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

10-204. Actions before incorporation; liability

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

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

10-302. General powers

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

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

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

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

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

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

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

7. Make contracts and guarantees, incur liabilities, borrow monies, issue its notes, bonds and other obligations, which may be convertible into or include the option to purchase other securities of the corporation, and secure any of its obligations by mortgage, deed of trust, security agreement, pledge or other encumbrance of any of its property, franchises or income.

8. Issue any bond, debenture or debt security of the corporation by causing one or more officers designated in the bylaws or by the board of directors to sign the bond, debenture or debt security either manually or in facsimile and, if deemed necessary or appropriate by the officers, by causing

its authentication, countersignature or registration, either manually or in facsimile, by a trustee, transfer agent or registrar other than the corporation itself or an employee of the corporation. If an officer who has signed, either manually or in facsimile, a bond, debenture or debt security as provided in this paragraph ceases for any reason to be an officer before the security is issued, the corporation may issue the security with the same effect as if the officer were still in office at the date of issue.

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

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

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

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

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

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

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

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

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

18. TAKE ANY ACTION TO PURSUE ANY PURPOSE, INCLUDING A NONMONETARY PURPOSE AS DEFINED IN SECTION 10-846 OR TO CREATE ANY PRIVATE OR PUBLIC BENEFIT.

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

10-304. <u>Validity of actions</u>

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

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

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

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

3. In a proceeding by the attorney general as provided in chapters 1 through 17 of this title to dissolve the corporation or in a proceeding by

the attorney general to enjoin the corporation from the transaction of unauthorized business.

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

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

Sec. 6. Section 10-704, Arizona Revised Statutes, is amended to read:

10-704. Action by shareholders without meeting; notice

A. EXCEPT AS PROVIDED IN SUBSECTION B OF THIS SECTION, AN action required or permitted by chapters 1 through 17 of this title to be taken at a shareholders' meeting may be taken without a meeting if ~~the action is taken by all of the shareholders entitled to vote on the action~~ THERE IS WRITTEN CONSENT BY THE HOLDERS OF OUTSTANDING SHARES THAT ARE ENTITLED TO AT LEAST THE MINIMUM NUMBER OF VOTES NECESSARY TO AUTHORIZE OR TAKE THE ACTION AT A MEETING AT WHICH ALL SHARES ENTITLED TO VOTE ON THE ACTION ARE PRESENT AND VOTED. The action TAKEN BY THE WRITTEN CONSENT OF THE SHAREHOLDERS must be evidenced by one or more written consents describing the action taken~~,~~ AND signed by ~~all of the shareholders entitled to vote on the action and~~ HOLDERS OF OUTSTANDING SHARES THAT ARE ENTITLED TO AT LEAST THE MINIMUM NUMBER OF VOTES NECESSARY TO AUTHORIZE OR TAKE THE ACTION AT A MEETING AT WHICH ALL SHARES ENTITLED TO VOTE ON THE ACTION ARE PRESENT AND VOTED. THE WRITTEN CONSENTS TO THE ACTION MUST BE delivered to the corporation for inclusion in the minutes or filing with the corporate records.

B. AN ACTION TAKEN BY SHAREHOLDERS WITHOUT A SHAREHOLDERS' MEETING MUST BE TAKEN BY ALL SHAREHOLDERS AND MUST BE EVIDENCED BY WRITTEN CONSENT OF ALL SHAREHOLDERS OF THE CORPORATION IF ANY OF THE FOLLOWING APPLIES:

1. THE ACTION INVOLVES THE ELECTION OF DIRECTORS OR THE REMOVAL OF ONE OR MORE DIRECTORS.

2. THE ARTICLES OF INCORPORATION OR BYLAWS OF THE CORPORATION REQUIRE THAT AN ACTION TAKEN BY SHAREHOLDERS WITHOUT A SHAREHOLDERS' MEETING MUST BE TAKEN BY ALL SHAREHOLDERS OF THE CORPORATION.

3. THE CORPORATION IS AN ISSUING PUBLIC CORPORATION, AS DEFINED IN SECTION 10-2701, UNLESS OTHERWISE PROVIDED IN ITS ARTICLES OF INCORPORATION OR BYLAWS.

4. THE CORPORATION WAS FORMED IN THIS STATE BEFORE THE EFFECTIVE DATE OF THIS AMENDMENT TO THIS SECTION UNLESS ITS ARTICLES OF INCORPORATION OR

BYLAWS ARE AMENDED AFTER THE EFFECTIVE DATE OF THIS AMENDMENT TO THIS SECTION TO PROVIDE THAT ANY ACTION THAT IS REQUIRED OR ALLOWED TO BE TAKEN AT A SHAREHOLDERS' MEETING MAY BE TAKEN WITHOUT A MEETING IF THERE IS WRITTEN CONSENT SETTING FORTH THE ACTION BY THE HOLDERS OF OUTSTANDING SHARES THAT HAVE AT LEAST THE MINIMUM NUMBER OF VOTES NECESSARY TO AUTHORIZE OR TAKE THE ACTION AT A MEETING AT WHICH ALL SHARES ENTITLED TO VOTE ON THE ACTION ARE PRESENT AND VOTED. FOR THE PURPOSES OF THIS PARAGRAPH, A CORPORATION THAT BECOMES A CORPORATION IN THIS STATE BY DOMESTICATION, CONVERSION OR DIVISION BEFORE THE EFFECTIVE DATE OF THIS AMENDMENT TO THIS SECTION IS DEEMED FORMED IN THIS STATE BEFORE THE EFFECTIVE DATE OF THIS AMENDMENT TO THIS SECTION.

C. THE WRITTEN CONSENTS DESCRIBED IN SUBSECTIONS A AND B OF THIS SECTION INCLUDE ELECTRONIC TRANSMISSION. ALL WRITTEN CONSENTS MUST BE INCLUDED IN THE MINUTES OR FILED WITH THE CORPORATE RECORDS. THE FILING MUST BE IN A PAPER FORMAT IF THE MINUTES ARE MAINTAINED IN A PAPER FORMAT AND MUST BE IN AN ELECTRONIC FORMAT IF THE MINUTES ARE MAINTAINED IN AN ELECTRONIC FORMAT.

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

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

~~D.~~ F. Unless otherwise specified in the ~~consent or~~ consents, the action is effective on the date that the ~~last shareholder signs the consent or~~ consents AS PRESCRIBED BY SUBSECTION A OR B OF THIS SECTION HAVE BEEN DELIVERED TO THE CORPORATION, except that if chapters 1 through 17 of this title require that notice of proposed actions be given to shareholders not entitled to vote and the action is to be taken by unanimous consent of the shareholders entitled to vote, the effective date is not before ten days after the corporation gives its shareholders not entitled to vote written notice of the proposed action. The notice must contain or be accompanied by the same material that under chapters 1 through 17 of this title would have been required to be sent to shareholders not entitled to vote in a notice of meeting at which the proposed action would have been submitted to the shareholders for action.

~~E.~~ G. Any shareholder may revoke ~~its~~ THE SHAREHOLDER'S consent by delivering a signed revocation of the consent to the president or secretary before the date that the ~~last shareholder signs the consent or~~ consents AS PRESCRIBED BY SUBSECTION A OR B OF THIS SECTION HAVE BEEN DELIVERED TO THE CORPORATION.

H. NOTICE OF THE TAKING OF A CORPORATE ACTION WITHOUT A MEETING MUST BE GIVEN WITHIN THIRTY DAYS AFTER THE EFFECTIVE DATE OF THE CORPORATE ACTION TO BOTH OF THE FOLLOWING:

1. EACH SHAREHOLDER OF RECORD ON THE RECORD DATE FOR DETERMINING SHAREHOLDERS WHO ARE ENTITLED TO TAKE THE ACTION PURSUANT TO SUBSECTION D OF THIS SECTION AND WHO DID NOT CONSENT TO THE ACTION IN WRITING.

2. EACH SHAREHOLDER WHO, IF THE ACTION HAD BEEN TAKEN AT A MEETING, WOULD HAVE BEEN ENTITLED TO NOTICE OF THE MEETING IF THE RECORD DATE FOR NOTICE OF THE MEETING HAD BEEN THE DATE THAT WRITTEN CONSENTS SIGNED BY A SUFFICIENT NUMBER OF HOLDERS TO TAKE THE ACTION WERE DELIVERED TO THE CORPORATION PURSUANT TO SUBSECTION A OF THIS SECTION.

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

10-708. Participation in shareholders' meetings; remote communication

A. Unless the articles of incorporation or bylaws provide otherwise, the board of directors may permit any or all shareholders to participate in an annual or special shareholders' meeting by or conduct the meeting through use of any means of REMOTE communication ~~by which all shareholders participating may simultaneously hear each other during the meeting~~. If the board of directors ~~in its sole discretion~~ elects to permit participation by ~~such~~ means of REMOTE communication, the notice of the meeting shall specify how a shareholder may participate in the meeting by ~~such~~ means of REMOTE communication. ~~The~~ Participation may be limited by the board of directors ~~in its sole discretion~~ to specified locations or means of ~~communications. A shareholder participating in a meeting by this means is deemed to be present in person at the meeting~~ COMMUNICATION.

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

1. PARTICIPATE IN A MEETING OF SHAREHOLDERS.

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

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

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

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

C. ALL VOTES OF SHAREHOLDERS MUST BE IN WRITING, UNLESS OTHERWISE PROVIDED FOR IN THE ARTICLES OF INCORPORATION OR BYLAWS. IF AUTHORIZED BY THE ARTICLES OF INCORPORATION, BYLAWS OR BOARD OF DIRECTORS, THE REQUIREMENT

OF A WRITING MAY BE SATISFIED BY A VOTE SUBMITTED BY ELECTRONIC TRANSMISSION IF THE ELECTRONIC TRANSMISSION IS EITHER SET FORTH OR IS SUBMITTED WITH INFORMATION FROM WHICH IT CAN BE DETERMINED THAT THE ELECTRONIC TRANSMISSION WAS AUTHORIZED BY THE SHAREHOLDER.

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

10-722. Proxies

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

B. ~~Each~~ A shareholder ~~who is entitled to vote at a meeting of shareholders or to express consent or dissent to corporate action without a meeting may in writing authorize another person or persons~~ OR THE SHAREHOLDER'S AGENT OR ATTORNEY-IN-FACT APPOINTS A PROXY to VOTE OR OTHERWISE act for the shareholder by ~~proxy. The person or persons shall not vote or act on the proxy twelve months or more after the date on the proxy statement~~ SIGNING AN APPOINTMENT FORM OR BY AN ELECTRONIC TRANSMISSION. AN ELECTRONIC TRANSMISSION MUST CONTAIN OR BE ACCOMPANIED BY INFORMATION FROM WHICH THE RECIPIENT CAN DETERMINE THE DATE OF THE TRANSMISSION AND THAT THE TRANSMISSION WAS AUTHORIZED BY THE SENDER OR THE SENDER'S AGENT OR ATTORNEY-IN-FACT.

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

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

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

~~2. A shareholder may authorize another person or persons to act for the shareholder as a proxy by transmitting or authorizing the transmission of a telegram, cablegram or other means of electronic transmission to the person who will be the holder of the proxy or to a proxy solicitation firm, proxy support service organization or a similar agent that is authorized by the person who will be the holder of the proxy to receive the transmission. Any telegram, cablegram or other means of electronic transmission shall include information that demonstrates that the shareholder authorized the telegram, cablegram or other means of electronic transmission. The inspector or, if there is no inspector, any other person who makes a determination that the telegram, cablegram or other means of electronic transmission is valid shall~~

~~specify the information on which the inspector or other person relied to make the validity determination.~~

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

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

1. A pledgee.

2. A person who purchased, agreed to purchase, holds an option to purchase or holds any other right to acquire the shares.

3. A creditor of the corporation who extended or continued credit to the corporation under terms requiring the appointment.

4. An employee of the corporation whose employment contract requires the appointment.

5. A party to a voting agreement created under section 10-731.

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

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

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

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

~~J.~~ I. Notwithstanding the other provisions of this section, a water users' association may provide in its articles of incorporation the qualifications of shareholders to vote, eliminate the right to vote by proxy,

specify the locations where votes may be cast and limit voting to natural persons. A water users' association may adopt bylaws for the registration of voters and method of holding elections.

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

10-732. Shareholder agreements

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

1. Restricts the discretion or powers of the board of directors.

2. Governs the authorization or making of distributions whether or not in proportion to ownership of shares, subject to the limitations in section 10-640.

3. Establishes who shall be directors or officers of the corporation, their terms and conditions of office or employment or their manner of selection or removal.

4. Governs, in general or in regard to specific matters, the exercise or division of voting power by or between the shareholders and directors or by or among any of them, including use of weighted voting rights or director proxies.

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

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

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

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

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

10. Restricts the transfer of shares.

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

B. An agreement authorized by this section shall be:

1. Set forth either:

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

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

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

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

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

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

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

F. The existence or performance of an agreement authorized by this section is not a ground for imposing personal liability on any shareholder for the acts or debts of the corporation even if the agreement or its performance treats the corporation as if it were a partnership or results in

failure to observe the corporate formalities otherwise applicable to the matters governed by the agreement.

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

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

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

10-821. Action by directors without meeting

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

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

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

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

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

10-830. General standards of conduct for directors

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

1. In good faith.

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

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

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

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

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

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

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

~~D. 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 this section. In any proceeding commenced under this section or any other provision of 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 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. <u>Standards of liability for directors; presumption</u>

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.

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

10-842. Standards of conduct for officers

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

1. In good faith.

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

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

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

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

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

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

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

Sec. 14. Title 10, chapter 8, article 4, Arizona Revised Statutes, is amended by adding sections 10-845 and 10-846, to read:

10-845. Standards of liability for officers; presumption

AN OFFICER IS NOT LIABLE FOR ANY ACTION TAKEN AS AN OFFICER OR ANY FAILURE TO TAKE ANY ACTION IF THE OFFICER'S DUTIES WERE PERFORMED IN COMPLIANCE WITH SECTION 10-842. IN ANY PROCEEDING COMMENCED UNDER THIS CHAPTER, AN OFFICER HAS ALL OF THE DEFENSES AND PRESUMPTIONS ORDINARILY AVAILABLE TO AN OFFICER. AN OFFICER IS PRESUMED IN ALL CASES TO HAVE ACTED, FAILED TO ACT OR OTHERWISE DISCHARGED THE OFFICER'S DUTIES PURSUANT TO SECTION 10-842. THE BURDEN IS ON THE PARTY CHALLENGING AN OFFICER'S ACTION,

FAILURE TO ACT OR OTHER DISCHARGE OF DUTIES TO ESTABLISH BY CLEAR AND CONVINCING EVIDENCE FACTS REBUTTING THE PRESUMPTIONS.

10-846. Enforcement proceedings; liability for monetary damages; definitions

A. EXCEPT AS PROVIDED IN SUBSECTION B OF THIS SECTION, A PERSON MAY NOT BRING AN ACTION OR ASSERT A CLAIM AGAINST A CORPORATION OR ITS DIRECTORS OR OFFICERS WITH RESPECT TO EITHER OF THE FOLLOWING:

1. THE DECISION OR FAILURE OF THE CORPORATION TO PURSUE OR CREATE A NONMONETARY PURPOSE, WHETHER OR NOT THE PURPOSE IS SET FORTH IN ITS ARTICLES OF INCORPORATION.

2. A DIRECTOR'S OR OFFICER'S VIOLATION OF AN OBLIGATION, DUTY OR STANDARD OF CONDUCT TO CONSIDER, OR THE FAILURE TO CONSIDER, THE EFFECT OF AN ACT, OMISSION OR DECISION BY A CORPORATION ON A NONMONETARY PURPOSE, WHETHER OR NOT THE PURPOSE IS SET FORTH IN ITS ARTICLES OF INCORPORATION.

B. AN ENFORCEMENT PROCEEDING AGAINST A CORPORATION OR ITS DIRECTORS OR OFFICERS WITH RESPECT TO SUBSECTION A OF THIS SECTION MAY BE COMMENCED OR MAINTAINED ONLY AS FOLLOWS:

1. DIRECTLY BY THE CORPORATION.

2. DERIVATIVELY PURSUANT TO CHAPTER 7, ARTICLE 4 OF THIS TITLE BY A SHAREHOLDER OF THE CORPORATION.

3. BY OTHER PERSONS AS SPECIFIED IN THE ARTICLES OF INCORPORATION OR BYLAWS OF THE CORPORATION.

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

D. FOR THE PURPOSES OF THIS SECTION:

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

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

Sec. 15. Section 10-1407, Arizona Revised Statutes, is amended to read:

10-1407. Unknown claims against dissolved corporation

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

B. The notice shall:

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

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

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

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

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

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

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

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

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

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

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

Sec. 16. Section 10-1503, Arizona Revised Statutes, is amended to read:

10-1503. <u>Application for authority to transact business</u>

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

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

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

3. Its date of incorporation and period of duration.

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

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

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

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

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

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

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

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

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

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

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

Sec. 17. Section 10-1504, Arizona Revised Statutes, is amended to read:

10-1504. <u>Delivery of changes; changes requiring amended authority</u>

A. Whenever the articles of incorporation of a foreign corporation authorized to transact business in this state are amended or restated by

merger or otherwise, within sixty days after the amendment or restatement becomes effective, the foreign corporation shall deliver to the commission a copy of the amendment or restatement duly authenticated by the secretary of state or other official having custody of corporate records in the state or country where the foreign corporation is incorporated.

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

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

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

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

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

Sec. 18. Section 10-1506, Arizona Revised Statutes, is amended to read:

10-1506. Corporate name of foreign corporation

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

1. Shall either:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Sec. 19. Section 10-1531, Arizona Revised Statutes, is amended to read:

10-1531. Procedure for and effect of revocation; reinstatement

A. If the commission determines that one or more grounds exist under section 10-1530 for revocation of a grant of authority, the commission shall serve the foreign corporation with written notice of the determination under section 10-1510.

B. If the foreign corporation does not correct each ground for revocation or demonstrate to the reasonable satisfaction of the commission that each ground determined by the commission does not exist within sixty days after service of the notice is perfected under section 10-1510, the

commission may revoke the foreign corporation's grant of authority by signing a certificate of revocation that recites the ground or grounds for revocation and its effective date. The commission shall file the original of the certificate and serve a copy on the foreign corporation under section 10-1510.

C. The authority of a foreign corporation to transact business in this state ceases on the date shown on the certificate revoking its grant of authority.

D. The commission's revocation of a foreign corporation's grant of authority appoints the commission the foreign corporation's agent for service of process in any proceeding based on a cause of action that arose during the time the foreign corporation was authorized to transact business in this state. Service of process on the commission under this subsection is service on the foreign corporation. On receipt of process, the commission shall mail a copy of the process to the secretary of the foreign corporation at its principal office shown in its most recent annual report or in any subsequent communication received from the foreign corporation stating the current mailing address of its principal office, or, if none is on file, in its application for authority.

E. Revocation of a foreign corporation's grant of authority does not terminate the authority of the statutory agent of the foreign corporation.

F. A foreign corporation whose authority was revoked pursuant to this section may apply to the commission for reinstatement within six years after the effective date of the revocation. The application shall state both:

1. The name of the foreign corporation and the effective date of the foreign corporation's revocation of authority.

2. That the ground or grounds for the revocation either did not exist or have been eliminated.

G. If the commission determines that the application contains the information prescribed in subsection F of this section and that the information is correct, the commission shall do all of the following:

1. Cancel the certificate of revocation.

2. Prepare a certificate of reinstatement that states the determination and the effective date of the reinstatement.

3. File the original of the certificate of reinstatement.

4. Serve a copy on the foreign corporation pursuant to section 10-1510.

H. Once the reinstatement is effective, the reinstatement relates back to and takes effect as of the effective date of the revocation and the foreign corporation shall resume its business as if the revocation had never occurred.

I. If the corporation has not applied for reinstatement within six months after the effective date of the dissolution, the commission shall release the corporation name for use pursuant to chapters 1 through 17 of this title or by a person intending to register the name as a trade name

pursuant to title 44, chapter 10, article 3.1. If another corporation has adopted the name of the foreign corporation or another person has adopted the name of the foreign corporation as a trade name, the foreign corporation shall attach to the application for reinstatement an application for ~~new~~ AMENDED authority and adopt a fictitious name for use in this state that satisfies the requirements of sections 10-1504 and 10-1506.

Sec. 20. Title 10, chapter 16, article 3, Arizona Revised Statutes, is amended by adding section 10-1636, to read:

10-1636. Civil liability for false filings; exceptions

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

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

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

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

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

Sec. 21. Section 10-1702, Arizona Revised Statutes, is amended to read:

10-1702. Application to qualified foreign corporations

A foreign corporation authorized to transact business in this state on January 1, 1996 is subject to chapters 1 through 17 of this title but is not required to obtain a new certificate of authority to transact business under chapters 1 through 17 of this title~~, except as provided in section 10-1504~~.

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

10-2401. Application and effect of chapter

A. This chapter is applicable to all benefit corporations.

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

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

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

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

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

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

10-2431. Standard of conduct for directors

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

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

(a) The shareholders of the benefit corporation.

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

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

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

(e) The local and global environment.

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

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

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

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

C. EXCEPT AS OTHERWISE PROVIDED IN THIS SECTION, THE STANDARDS OF CONDUCT AND PRESUMPTIONS PRESCRIBED IN CHAPTER 8 OF THIS TITLE APPLY TO DIRECTORS OF BENEFIT CORPORATIONS.

~~C.~~ D. Except as provided in the articles of incorporation or bylaws ~~and in subsection E of this section~~, a director is not personally liable for monetary damages for~~:~~

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

~~2.~~ failure of the benefit corporation to pursue or create general public benefit or a specific public benefit.

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

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

Sec. 24. Section 10-2432, Arizona Revised Statutes, is amended to read:

10-2432. <u>Standard of conduct for officers</u>

A. Each officer of a benefit corporation shall consider the interests and factors described in section 10-2431, subsection A, in the manner provided in that subsection, if both of the following apply:

1. The officer has discretion to act with respect to a matter.

2. It reasonably appears to the officer that the matter may have a material effect on the general public benefit or specific public benefit identified in the articles of incorporation of the benefit corporation.

B. The consideration of interests and factors in the manner described in subsection A of this section does not constitute a violation of section 10-842.

C. EXCEPT AS OTHERWISE PROVIDED IN THIS SECTION, THE STANDARDS OF CONDUCT AND PRESUMPTIONS PRESCRIBED IN CHAPTER 8 OF THIS TITLE APPLY TO OFFICERS OF BENEFIT CORPORATIONS.

~~C.~~ D. Except as provided in the articles of incorporation or bylaws, an officer is not personally liable for monetary damages for ~~either of the following:~~

~~1. An action or inaction as an officer in the course of performing the duties of an officer under subsection A of this section if the officer performed the duties of the position in compliance with section 10-842 and this section.~~

~~2.~~ failure of the benefit corporation to pursue or create general public benefit or a specific public benefit.

~~D.~~ E. An officer does not have a duty to a person that is a beneficiary of the general public benefit purpose or the specific public benefit purpose of a benefit corporation arising from the status of the person as a beneficiary.

~~E.~~ F. An officer who makes a business judgment in good faith fulfills the duty under this section if all of the following apply:

1. The officer is not interested in the subject of the business judgment.

2. The officer is informed with respect to the subject of the business judgment to the extent the officer reasonably believes to be appropriate under the circumstances.

3. The officer rationally believes that the business judgment is in the best interests of the benefit corporation.

Sec. 25. Section 10-2702, Arizona Revised Statutes, is amended to read:

10-2702. <u>Duties of director</u>

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

Sec. 26. Section 10-3202, Arizona Revised Statutes, is amended to read:

10-3202. Articles of incorporation; violation; classification

A. The articles of incorporation shall set forth:

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

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

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

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

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

6. The name and address of each incorporator.

7. Whether or not the corporation will have members.

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

9. The signatures of all incorporators.

B. The articles of incorporation may set forth:

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

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

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

(c) A violation of section 10-3833.

(d) An intentional violation of criminal law.

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

3. Any other provision, not inconsistent with law.

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

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

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

(a) Whether any of the persons have been convicted of a felony involving a transaction in securities, consumer fraud or antitrust in any

state or federal jurisdiction within the ~~seven year~~ FIVE-YEAR period immediately preceding the execution of the certificate.

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

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

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

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

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

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

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

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

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

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

(b) The state in which each corporation:

(i) Was incorporated.

(ii) Transacted business.

(c) The dates of corporate operation.

3. The signatures of all the incorporators.

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

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

E. The certificate of disclosure may set forth the name and address of any other person whom the incorporator or incorporators choose to be the

subject of those disclosures required under subsection D, paragraph 1 of this section.

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

G. If any of the persons described in subsection D, paragraph 1 of this section have been convicted of the crimes or are the subject of the judicial action described in subsection D, paragraph 1 of this section, the commission may direct detailed interrogatories to the persons requiring any additional relevant information deemed necessary by the commission. The interrogatories shall be completely answered within thirty days after mailing of the interrogatories. With respect to corporations incorporating or seeking authority to conduct affairs, articles of incorporation or an application for authority shall not be filed until all outstanding interrogatories have been answered to the satisfaction of the commission. With respect to existing domestic and foreign corporations, if the interrogatories are not answered as provided in this subsection or the answers to the interrogatories otherwise indicate proper grounds for an administrative dissolution, the commission shall initiate an administrative dissolution in accordance with chapters 24 through 40 of this title.

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

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

Sec. 27. Title 29, chapter 4, article 12, Arizona Revised Statutes, is amended by adding section 29-858, to read:

29-858. <u>Civil liability for false filings; exceptions</u>

A. EXCEPT AS PROVIDED IN SUBSECTION C OR D OF THIS SECTION, ANY PERSON THAT AUTHORIZES OR SIGNS A REPORT, CERTIFICATE, NOTICE OR OTHER DOCUMENT WITH RESPECT TO A LIMITED LIABILITY COMPANY THAT IS DELIVERED FOR FILING WITH THE

1 COMMISSION PURSUANT TO THIS CHAPTER AND THAT HAS KNOWLEDGE AT THE TIME OF
2 DELIVERY TO THE COMMISSION FOR FILING THAT THE INFORMATION CONTAINED IN THAT
3 REPORT, CERTIFICATE, NOTICE OR OTHER DOCUMENT IS MATERIALLY FALSE OR
4 MISLEADING IS LIABLE TO THE LIMITED LIABILITY COMPANY AND ITS CREDITORS AND
5 MEMBERS FOR ALL DAMAGES RESULTING. THE PREVAILING PARTY IN AN ACTION FOR
6 LIABILITY IMPOSED BY THIS SUBSECTION IS ENTITLED TO AN AWARD FOR ITS COSTS
7 AND REASONABLE ATTORNEY FEES.
8 B. AN ACTION FOR THE LIABILITY IMPOSED BY SUBSECTION A OF THIS SECTION
9 MUST BE COMMENCED WITHIN TWO YEARS AFTER DISCOVERY OF THE FALSE STATEMENT OR
10 THE TIME A REASONABLE PERSON WOULD HAVE DISCOVERED IT, BUT NOT LATER THAN SIX
11 YEARS AFTER THE REPORT, CERTIFICATE, NOTICE OR OTHER DOCUMENT WAS FILED OR
12 RECEIVED BY THE COMMISSION.
13 C. THIS SECTION DOES NOT APPLY TO ANY FILING MADE BY A LIMITED
14 LIABILITY COMPANY WHOSE MEMBERSHIP INTERESTS ARE LISTED OR APPROVED FOR
15 LISTING ON ANY STOCK EXCHANGE OR NATIONAL MARKET SYSTEM OF A NATIONAL
16 SECURITIES ASSOCIATION SPECIFIED IN SECTION 44-1843, SUBSECTION A, PARAGRAPH
17 7 OR THE RULES OF THE CORPORATION COMMISSION RELATING TO THAT PARAGRAPH OR
18 WHOSE SECURITIES ARE ISSUED BY AN ENTITY THAT IS EXEMPT FROM SECTION 44-1841
19 PURSUANT TO SECTION 44-1843, SUBSECTION A, PARAGRAPH 2 OR 3 OR THE RULES OF
20 THE CORPORATION COMMISSION RELATING TO THOSE PARAGRAPHS.
21 D. EXECUTION OF A CONSENT TO SERVE AS A STATUTORY AGENT DOES NOT BY
22 ITSELF CONSTITUTE A CERTIFICATION OF THE TRUTH OR ACCURACY OF THE INFORMATION
23 CONTAINED IN A REPORT, CERTIFICATE, NOTICE OR OTHER DOCUMENT WITH RESPECT TO
24 THE LIMITED LIABILITY COMPANY EVEN IF THE CONSENT IS ATTACHED TO ANOTHER
25 FILING.
26 E. THIS SECTION DOES NOT PREVENT THE AWARD OF EQUITABLE REMEDIES, IF
27 APPROPRIATE.
28 Sec. 28. Short title
29 This act shall be known as and may be cited as the "Arizona business
30 entities competitive omnibus act".

APPROVED BY THE GOVERNOR MAY 19, 2016.

FILED IN THE OFFICE OF THE SECRETARY OF STATE MAY 19, 2016.

Passed the House May 7, 2016,

by the following vote: 42 Ayes,

13 Nays, 5 Not Voting

Speaker of the House

Jim Drake

Chief Clerk of the House

Passed the Senate February 18, 2016,

by the following vote: 27 Ayes,

2 Nays, 1 Not Voting

President of the Senate

Susan Aceves

Secretary of the Senate

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF GOVERNOR

This Bill was received by the Governor this

9th day of May, 2016,

at 10:07 o'clock A. M.

Tristan Lyman

Secretary to the Governor

Approved this 19th day of

May, 2016,

at 11:49 o'clock A. M.

Doug Ducey

Governor of Arizona

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF SECRETARY OF STATE

This Bill was received by the Secretary of State

this 19th day of May, 2016,

at 3:20 o'clock P M.

Michele Reagan

Secretary of State

S.B. 1356