

1 **HOUSE OF REPRESENTATIVES - FLOOR VERSION**

2 STATE OF OKLAHOMA

3 1st Session of the 57th Legislature (2019)

4 COMMITTEE SUBSTITUTE
5 FOR
6 HOUSE BILL NO. 2423

By: Moore and **Loring**

7
8 COMMITTEE SUBSTITUTE

9 An Act relating to corporations; enacting the
10 Oklahoma Benefit Corporation Act; stating
11 applicability; stating resolution for conflicting
12 laws; permitting state banks or trust companies to be
13 benefit corporations; clarifying applicability of
14 laws for state banks or trust companies; prohibiting
15 inconsistent provisions in the certificate or bylaws;
16 defining terms; requiring certain benefit corporation
17 to comply with the Oklahoma General Corporation Act;
18 prescribing statement for certificate of
19 incorporation; requiring bank or trust company
20 benefit corporation to comply with the Oklahoma
21 Banking Code; prescribing certificate statement;
22 providing for certificate amendment to become benefit
23 corporation; requiring minimum vote for amendment;
24 mandating minimum vote for merger, consolidation or
 conversion; providing exception; allowing certificate
 amendment to terminate status as benefit corporation;
 requiring minimum vote for amendment; providing
 exception; mandating minimum vote for sale or
 disposition of all assets; directing benefit
 corporation to have a purpose; authorizing
 certificate to identify purpose; permitting
 certificate amendment to change purpose; requiring
 minimum vote for amendment; construing provision;
 listing factors for directors to consider; exempting
 consideration from constituting certain violations;
 limiting personal liability for directors; exempting
 director duty to individual beneficiary; clarifying
 good-faith standard for benefit corporation director;
 listing duties for benefit corporation officers;

1 limiting personal liability of officers; exempting
2 officer duty to individual beneficiary; specifying
3 good-faith standard for officers; prohibiting actions
4 against a benefit corporation or its directors or
5 officers; providing exception; excluding money
6 damages for failure to pursue or create benefit;
7 specifying conditions for benefit enforcement
8 proceeding; directing benefit corporation to give
9 annual benefit statement to shareholders; specifying
10 contents of annual benefit statement; exempting audit
11 requirement for benefit statement; authorizing
12 certificate to require certain disclosures related to
13 the benefit statement; prescribing timing for benefit
14 statement; providing for codification; and providing
15 an effective date.

16 BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

17 SECTION 1. NEW LAW A new section of law to be codified
18 in the Oklahoma Statutes as Section 1201 of Title 18, unless there
19 is created a duplication in numbering, reads as follows:

20 A. This act shall be known and may be cited as the "Oklahoma
21 Benefit Corporation Act". This act shall be applicable to all
22 benefit corporations.

23 B. The existence of a provision of this act shall not of
24 itself create an implication that a contrary or different rule is
applicable to a corporation that is not a benefit corporation. This
act shall not affect a statute or rule that is applicable to a
corporation that is not a benefit corporation.

C. Except as otherwise provided in this act, the Oklahoma
General Corporation Act shall be generally applicable to all benefit

1 corporations that are not state banks or trust companies. A benefit
2 corporation that is not a state bank or trust company may be subject
3 simultaneously to this act and the Oklahoma General Corporation Act,
4 Professional Entity Act and other applicable business formation
5 statutes; however, the provisions of this act shall control over the
6 provisions of the Oklahoma General Corporation Act, Professional
7 Entity Act and other applicable business formation statutes where
8 there is a conflict.

9 D. Except as otherwise provided in this act, the Oklahoma
10 Banking Code shall be generally applicable to all benefit
11 corporations that are state banks or trust companies. A benefit
12 corporation that is a state bank or trust company may be subject
13 simultaneously to this act and the Oklahoma Banking Code; however,
14 the provisions of this act shall control over the provisions of the
15 Oklahoma Banking Code where there is a conflict.

16 E. A provision of the certificate of incorporation or bylaws
17 of a benefit corporation shall not limit, be inconsistent with or
18 supersede a provision of this act.

19 SECTION 2. NEW LAW A new section of law to be codified
20 in the Oklahoma Statutes as Section 1202 of Title 18, unless there
21 is created a duplication in numbering, reads as follows:

22 As used in the Oklahoma Benefit Corporation Act:

23 1. "Benefit corporation" means:
24

1 a. a business corporation incorporated under the Oklahoma
2 General Corporation Act that is subject to this act,
3 or

4 b. a state bank or trust company incorporated under Title
5 6 of the Oklahoma Statutes that is subject to this
6 act;

7 2. "Benefit enforcement proceeding" means any claim or action
8 or proceeding for:

9 a. failure of a benefit corporation to pursue or create
10 general public benefit or a specific public benefit
11 purpose set forth in its certificate of incorporation,
12 or

13 b. violation of any obligation, duty or standard of
14 conduct under this act;

15 3. "General public benefit" means a material positive impact on
16 society and the environment, taken as a whole, assessed against a
17 third-party standard, from the business and operations of a benefit
18 corporation;

19 4. "Minimum status vote" means:

20 a. in the case of a business corporation or a state bank
21 or trust company, in addition to any other required
22 approval or vote, the satisfaction of the following
23 conditions:
24

1 (1) the shareholders of every class or series shall
2 be entitled to vote as a class on the corporate
3 action regardless of a limitation stated in the
4 certificate of incorporation or bylaws on the
5 voting rights of any class or series, and

6 (2) the corporate action shall be approved by the
7 affirmative vote of the shareholders of each
8 class or series entitled to cast at least two-
9 thirds (2/3) of the votes that all shareholders
10 of the class or series are entitled to cast on
11 the action, or

12 b. in the case of a domestic entity other than a
13 corporation or state bank or trust company, in
14 addition to any other required approval, vote or
15 consent, the satisfaction of the following conditions:

16 (1) the holders of every class or series of equity
17 interest in the entity that are entitled to
18 receive a distribution of any kind from the
19 entity shall be entitled to vote on or consent to
20 the action regardless of any otherwise applicable
21 limitation on the voting or consent rights of any
22 class or series, and

23 (2) the action shall be approved by the affirmative
24 vote or consent of the holders described in

1 division (1) of this subparagraph entitled to
2 cast at least two-thirds (2/3) of the votes or
3 consents that all of those holders are entitled
4 to cast on the action; and

5 5. "Specific public benefit" includes:

- 6 a. providing low-income or underserved individuals or
7 communities with beneficial products or services,
- 8 b. promoting economic opportunity for individuals or
9 communities beyond the creation of jobs in the normal
10 course of business,
- 11 c. protecting or restoring the environment,
- 12 d. improving human health,
- 13 e. promoting the arts, sciences or advancement of
14 knowledge,
- 15 f. increasing the flow of capital to entities with a
16 purpose to benefit society or the environment, and
- 17 g. conferring any other particular benefit on society or
18 the environment.

19 SECTION 3. NEW LAW A new section of law to be codified
20 in the Oklahoma Statutes as Section 1203 of Title 18, unless there
21 is created a duplication in numbering, reads as follows:

22 A. A benefit corporation that is not a state bank or trust
23 company shall be incorporated in accordance with the Oklahoma
24

1 General Corporation Act, except that its certificate of
2 incorporation shall also state that it is a benefit corporation.

3 B. A benefit corporation that is a state bank or trust company
4 shall be incorporated in accordance with the Oklahoma Banking Code,
5 except that its certificate of incorporation shall also state that
6 it is a benefit corporation.

7 SECTION 4. NEW LAW A new section of law to be codified
8 in the Oklahoma Statutes as Section 1204 of Title 18, unless there
9 is created a duplication in numbering, reads as follows:

10 A. An existing business corporation may become a benefit
11 corporation under the Oklahoma Benefit Corporation Act by amending
12 its certificate of incorporation so that it contains, in addition to
13 the requirements of Title 6 or Title 18 of the Oklahoma Statutes, a
14 statement that the corporation is a benefit corporation. In order
15 to be effective, the amendment shall be adopted by at least the
16 minimum status vote.

17 B. 1. Except as provided in paragraph 2 of this subsection, if
18 a domestic entity that is not a benefit corporation is a party to a
19 merger, consolidation or conversion and the surviving, new or
20 resulting entity in the merger, consolidation or conversion is to be
21 a benefit corporation, the plan of merger, consolidation or
22 conversion shall be adopted or approved by the domestic entity by at
23 least the minimum status vote.

24

1 2. Paragraph 1 of this subsection shall not apply in the case
2 of a corporation that is a party to a merger if the shareholders of
3 the corporation are not entitled to vote on the merger pursuant to
4 Section 1083 of Title 18 of the Oklahoma Statutes.

5 SECTION 5. NEW LAW A new section of law to be codified
6 in the Oklahoma Statutes as Section 1205 of Title 18, unless there
7 is created a duplication in numbering, reads as follows:

8 A. A benefit corporation may terminate its status and cease to
9 be subject to the Oklahoma Benefit Corporation Act by amending its
10 certificate of incorporation to delete the provision required by
11 Sections 3 and 4 of the Oklahoma Benefit Corporation Act to be
12 stated in the certificate of a benefit corporation. In order to be
13 effective, the amendment shall be adopted by at least the minimum
14 status vote.

15 B. 1. Except as provided in paragraph 2 of this subsection, if
16 a plan of merger, consolidation or conversion would have the effect
17 of terminating the status of a business corporation as a benefit
18 corporation, the plan shall be adopted by at least the minimum
19 status vote in order to be effective.

20 2. Paragraph 1 of this subsection shall not apply in the case
21 of a corporation that is a party to a merger if the shareholders of
22 the corporation are not entitled to vote on the merger.

23 3. Any sale, lease, exchange or other disposition of all or
24 substantially all of the assets of a benefit corporation, unless the

1 transaction is in the usual and regular course of business, shall
2 not be effective unless the transaction is approved by at least the
3 minimum status vote.

4 SECTION 6. NEW LAW A new section of law to be codified
5 in the Oklahoma Statutes as Section 1206 of Title 18, unless there
6 is created a duplication in numbering, reads as follows:

7 A. A benefit corporation shall have a purpose of creating
8 general public benefit. This purpose is in addition to its purpose
9 under the Oklahoma General Corporation Act or the Oklahoma Banking
10 Code.

11 B. The certificate of incorporation of a benefit corporation
12 may identify one or more specific public benefits that it is the
13 purpose of the benefit corporation to create in addition to its
14 purposes under the Oklahoma General Corporation Act or the Oklahoma
15 Banking Code and subsection A of this section. The identification
16 of a specific public benefit under this subsection does not limit
17 the purpose of a benefit corporation to create general public
18 benefit under subsection A of this section.

19 C. The creation of general public benefit and specific public
20 benefit under subsections A and B of this section shall be in the
21 best interests of the benefit corporation.

22 D. A benefit corporation may amend its certificate of
23 incorporation to add, amend or delete the identification of a
24 specific public benefit that it is the purpose of the benefit

1 corporation to create. In order to be effective, the amendment
2 shall be adopted by at least the minimum status vote.

3 E. A professional corporation that is a benefit corporation
4 shall not violate the Professional Entity Act by having the purpose
5 to create general public benefit or a specific public benefit.

6 F. A state bank or trust company that is a benefit corporation
7 shall not violate the Oklahoma Banking Code by having the purpose to
8 create general public benefit or a specific public benefit, but
9 nothing in the Oklahoma Benefit Corporation Act shall eliminate,
10 diminish or supersede the duties of a benefit corporation that is a
11 state bank or trust company to operate safely and soundly in
12 accordance with applicable regulatory requirements.

13 SECTION 7. NEW LAW A new section of law to be codified
14 in the Oklahoma Statutes as Section 1207 of Title 18, unless there
15 is created a duplication in numbering, reads as follows:

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

- 20 1. Shall consider the effects of any action or inaction upon:
- 21 a. the shareholders of the benefit corporation,
 - 22 b. the employees and work force of the benefit
 - 23 corporation, its subsidiaries and its suppliers,
- 24

- 1 c. the interests of customers as beneficiaries of the
2 general public benefit or a specific public benefit
3 purpose of the benefit corporation,
4 d. community and societal factors, including those of
5 each community in which offices or facilities of the
6 benefit corporation, its subsidiaries or its suppliers
7 are located,
8 e. the local and global environment,
9 f. the short-term and long-term interests of the benefit
10 corporation, including benefits that may accrue to the
11 benefit corporation from its long-term plans and the
12 possibility that these interests may be best served by
13 the continued independence of the benefit corporation,
14 and
15 g. the ability of the benefit corporation to accomplish
16 its general public benefit purpose and any specific
17 public benefit purpose; and

18 2. May consider other pertinent factors or the interests of any
19 other group that they deem appropriate; but

20 3. Need not give priority to a particular interest or factor
21 referred to in paragraph 1 or 2 of this subsection over any other
22 interest or factor unless the benefit corporation has stated in its
23 certificate of incorporation its intention to give priority to
24 certain interests or factors related to the accomplishment of its

1 general public benefit purpose or of a specific public benefit
2 purpose identified in its certificate.

3 B. The consideration of interests and factors in the manner
4 provided by subsection A of this section shall not constitute a
5 violation of the duties of directors under the Oklahoma General
6 Corporation Act or, except as provided in subsection F of Section 6
7 of the Oklahoma Benefit Corporation Act, the Oklahoma Banking Code.

8 C. Except as provided in the certificate of incorporation or
9 bylaws, a director is not personally liable for monetary damages
10 for:

11 1. Any action or inaction in the course of performing the
12 duties of a director under subsection A of this section if the
13 director was not interested with respect to the action or inaction;
14 or

15 2. Failure of the benefit corporation to pursue or create
16 general public benefit or specific public benefit.

17 D. A director shall not have a duty to a person that is a
18 beneficiary of the general public benefit purpose or a specific
19 public benefit purpose of a benefit corporation arising from the
20 status of the person as a beneficiary.

21 E. A director who makes a business judgment in good faith
22 fulfills the duty under this section if the director:

23 1. Is not interested in the subject of the business judgment;
24

1 2. Is informed with respect to the subject of the business
2 judgment to the extent the director reasonably believes to be
3 appropriate under the circumstances; and

4 3. Rationally believes that the business judgment is in the
5 best interests of the benefit corporation.

6 SECTION 8. NEW LAW A new section of law to be codified
7 in the Oklahoma Statutes as Section 1208 of Title 18, unless there
8 is created a duplication in numbering, reads as follows:

9 A. Each officer of a benefit corporation shall consider the
10 interests and factors described in paragraph 1 of subsection A of
11 Section 7 of this act in the manner provided in paragraph 3 of
12 subsection A of Section 7 of the Oklahoma Benefit Corporation Act
13 if:

14 1. The officer has discretion to act with respect to a matter;
15 and

16 2. It reasonably appears to the officer that the matter may
17 have a material effect on the creation by the benefit corporation of
18 general public benefit or a specific public benefit identified in
19 the certificate of incorporation of the benefit corporation.

20 B. The consideration of interests and factors in the manner
21 provided in subsection A of this section shall not constitute a
22 violation of the duties of an officer, except as provided in
23 subsection F of Section 6 of this act.

24

1 C. Except as provided in the certificate of incorporation or
2 bylaws, an officer shall not be personally liable for monetary
3 damages for:

4 1. An action or inaction as an officer in the course of
5 performing the duties of an officer under subsection A of this
6 section if the officer was not interested with respect to the action
7 or inaction; or

8 2. Failure of the benefit corporation to pursue or create
9 general public benefit or specific public benefit.

10 D. An officer shall not have a duty to a person that is a
11 beneficiary of the general public benefit purpose or a specific
12 public benefit purpose of a benefit corporation arising from the
13 status of the person as a beneficiary.

14 E. An officer who makes a business judgment in good faith
15 fulfills the duty under this section if the officer:

16 1. Is not interested in the subject of the business judgment;

17 2. Is informed with respect to the subject of the business
18 judgment to the extent the officer reasonably believes to be
19 appropriate under the circumstances; and

20 3. Rationally believes that the business judgment is in the
21 best interests of the benefit corporation.

22 SECTION 9. NEW LAW A new section of law to be codified
23 in the Oklahoma Statutes as Section 1209 of Title 18, unless there
24 is created a duplication in numbering, reads as follows:

1 A. Except in a benefit enforcement proceeding, no person shall
2 bring an action or assert a claim against a benefit corporation or
3 its directors or officers with respect to:

4 1. Failure to pursue or create general public benefit or a
5 specific public benefit set forth in its certificate of
6 incorporation; or

7 2. Violation of an obligation, duty or standard of conduct
8 under the Oklahoma Benefit Corporation Act or the Oklahoma Banking
9 Code.

10 B. A benefit corporation shall not be liable for monetary
11 damages under the Oklahoma Benefit Corporation Act or the Oklahoma
12 Banking Code for any failure of the benefit corporation to pursue or
13 create general public benefit or a specific public benefit.

14 C. A benefit enforcement proceeding may be commenced or
15 maintained only:

16 1. Directly by the benefit corporation; or

17 2. Derivatively in accordance with the Oklahoma General
18 Corporation Act or the Oklahoma Banking Code, as applicable, by:

19 a. a person or group of persons that owned beneficially
20 or of record at least two percent (2%) of the total
21 number of shares of a class or series outstanding at
22 the time of the act or omission complained of,

23 b. a director,
24

1 c. a person or group of persons that owned beneficially
2 or of record five percent (5%) or more of the
3 outstanding equity interests in an entity of which the
4 benefit corporation is a subsidiary at the time of the
5 act or omission complained of, or

6 d. other persons as specified in the certificate of
7 incorporation or bylaws of the benefit corporation.

8 D. For purposes of this section, a person is the beneficial
9 owner of shares or equity interests if the shares or equity
10 interests are held in a voting trust or by a nominee on behalf of
11 the beneficial owner.

12 SECTION 10. NEW LAW A new section of law to be codified
13 in the Oklahoma Statutes as Section 1210 of Title 18, unless there
14 is created a duplication in numbering, reads as follows:

15 A. A benefit corporation shall annually provide its
16 shareholders with a statement as to the corporation's promotion of
17 general public benefit and any specific public benefit identified in
18 the certificate of incorporation. The statement shall include:

19 1. The objectives the board of directors has established to
20 promote general public benefit and any specific public benefit;

21 2. The standards the board of directors has adopted to measure
22 the corporation's progress in promoting general public benefit and
23 any specific public benefit;

1 3. Objective factual information based on those standards
2 regarding the corporation's success in meeting the objectives for
3 promoting general public benefit and any specific public benefit;
4 and

5 4. An assessment of the corporation's success in meeting the
6 objectives and promoting general public benefit and any specific
7 public benefit.

8 B. The certificate of incorporation or bylaws of a benefit
9 corporation may require that the corporation:

10 1. Make the statement described in subsection A of this section
11 available to the public; and

12 2. Use a third-party standard in connection with or attain a
13 periodic third-party certification addressing the corporation's
14 promotion of general public benefit and any specific public benefit
15 identified in the certificate of incorporation.

16 C. The benefit statement and the assessment of the performance
17 of the benefit corporation in the benefit statement required by
18 subsection A of this section are not required to be audited or
19 certified by a third party.

20 D. A benefit corporation shall send its annual benefit
21 statement to each shareholder on the earlier of:

22 1. One hundred twenty (120) days following the end of the
23 fiscal year of the benefit corporation; or

24

1 2. The same time that the benefit corporation delivers any
2 other annual report to its shareholders.

3 SECTION 11. This act shall become effective November 1, 2019.
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5 COMMITTEE REPORT BY: COMMITTEE ON JUDICIARY, dated 02/27/2019 - DO
6 PASS, As Amended and Coauthored.
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