

First Regular Session of the 119th General Assembly (2015)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2014 Regular Session and 2014 Second Regular Technical Session of the General Assembly.

## HOUSE ENROLLED ACT No. 1015

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AN ACT to amend the Indiana Code concerning business and other associations.

*Be it enacted by the General Assembly of the State of Indiana:*

SECTION 1. IC 23-1-18-3, AS AMENDED BY SEA 487-2015, SECTION 4, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2016]: Sec. 3. (a) The secretary of state shall collect the following fees when the documents described in this subsection are delivered to the secretary of state for filing:

	Document	Electronic Filing Fee	Fee (Other than electronic filing)
(1)	Articles of incorporation	\$75	\$90
(2)	Application for use of indistinguishable name	\$10	\$20
(3)	Application for reserved name	\$10	\$20
(4)	Application for renewal of reservation	\$10	\$20
(5)	Notice of transfer of reserved name	\$10	\$20
(6)	Corporation's statement of change of registered agent or registered office or both	No Fee	No Fee

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(7)	Agent's statement of change of registered office for each affected corporation	No Fee	No Fee
(8)	Agent's statement of resignation	No Fee	No Fee
(9)	Amendment of articles of incorporation	\$20	\$30
(10)	Restatement of articles of incorporation	\$20	\$30
	with amendment of articles	\$20	\$30
(11)	Articles of merger or share exchange	\$75	\$90
(12)	Articles of dissolution	\$20	\$30
(13)	Articles of revocation of dissolution	\$20	\$30
(14)	Certificate of administrative dissolution	No Fee	No Fee
(15)	Application for reinstatement following administrative dissolution	\$20	\$30
(16)	Certificate of reinstatement	No Fee	No Fee
(17)	Certificate of judicial dissolution	No Fee	No Fee
(18)	Application for certificate of authority	\$75	\$90
(19)	Application for amended certificate of authority	\$20	\$30
(20)	Application for certificate of withdrawal	\$20	\$30
(21)	Certificate of revocation of authority to transact business	No Fee	No Fee
(22)	Biennial report	\$20	\$30
(23)	Articles of correction	\$20	\$30
(24)	Application for certificate of existence or authorization	\$15	\$15
<b>(25)</b>	<b>Annual benefit report</b>	<b>\$10</b>	<b>\$15</b>
<del>(25)</del> <b>(26)</b>	Any other document required or permitted to be filed by this article, including an application for any other certificates or certification certificate		

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(except for any such other certificates that the secretary of state may determine to issue without additional fee in connection with particular filings) and a request for other facts of record under section 9(b)(6) of this chapter

\$20

\$30

The secretary of state shall prescribe the electronic means of filing documents to which the electronic filing fees set forth in this section apply.

(b) The fee set forth in subsection (a)(22) for filing a biennial report is:

- (1) fifteen dollars (\$15) per year, for a filing in writing; and
- (2) ten dollars (\$10) per year, for a filing by electronic means;

to be paid biennially.

(c) The secretary of state shall collect a fee of ten dollars (\$10) each time process is served on the secretary of state under this article. If the party to a proceeding causing service of process prevails in the proceeding, then that party is entitled to recover this fee as costs from the nonprevailing party.

(d) The secretary of state shall collect the following fees for copying and certifying the copy of any filed document relating to a domestic or foreign corporation:

- (1) Per page for copying \$ 1
- (2) For a certification stamp \$15

The fees under this subsection do not apply to any copies or certifications that are processed on the secretary of state's Internet web site.

SECTION 2. IC 23-1-44-8, AS AMENDED BY SEA 487-2015, SECTION 16, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2016]: Sec. 8. (a) A shareholder is entitled to dissent from, and obtain payment of the fair value of the shareholder's shares in the event of, any of the following corporate actions:

- (1) Consummation of a plan of merger to which the corporation is a party if:
  - (A) shareholder approval is required for the merger by IC 23-1-40 or the articles of incorporation; and
  - (B) the shareholder is entitled to vote on the merger.
- (2) Consummation of a plan of share exchange to which the corporation is a party as the corporation whose shares will be



acquired, if the shareholder is entitled to vote on the plan.

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

(4) The approval of a control share acquisition under IC 23-1-42.

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

**(6) Election to become a benefit corporation under IC 21-1.3-3-2.**

(b) This section does not apply to the holders of shares of any class or series if, on the date fixed to determine the shareholders entitled to receive notice of and vote at the meeting of shareholders at which the merger, plan of share exchange, or sale or exchange of property is to be acted on, the shares of that class or series were a covered security under Section 18(b)(1)(A) or 18(b)(1)(B) of the Securities Act of 1933, as amended.

(c) The articles of incorporation as originally filed or any amendment to the articles of incorporation may limit or eliminate the right to dissent and obtain payment for any class or series of preferred shares. However, any limitation or elimination contained in an amendment to the articles of incorporation that limits or eliminates the right to dissent and obtain payment for any shares:

- (1) that are outstanding immediately before the effective date of the amendment; or
- (2) that the corporation is or may be required to issue or sell after the effective date of the amendment under any exchange or other right existing immediately before the effective date of the amendment;

does not apply to any corporate action that becomes effective within one (1) year of the effective date of the amendment if the action would otherwise afford the right to dissent and obtain payment.

(d) A shareholder:

- (1) who is entitled to dissent and obtain payment for the shareholder's shares under this chapter; or

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(2) who would be so entitled to dissent and obtain payment but for the provisions of subsection (b);  
 may not challenge the corporate action creating (or that, but for the provisions of subsection (b), would have created) the shareholder's entitlement.

(e) Subsection (d) does not apply to a corporate action that was approved by less than unanimous consent of the voting shareholders under IC 23-1-29-4 if both of the following apply:

(1) The challenge to the corporate action is brought by a shareholder who did not consent and as to whom notice of the approval of the corporate action was not effective at least ten (10) days before the corporate action was effected.

(2) The proceeding challenging the corporate action is commenced not later than ten (10) days after notice of the approval of the corporate action is effective as to the shareholder bringing the proceeding.

SECTION 3. IC 23-1.3 IS ADDED TO THE INDIANA CODE AS A NEW ARTICLE TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2016]:

**ARTICLE 1.3. BENEFIT CORPORATIONS**

**Chapter 1. Application**

**Sec. 1. This article is applicable to all benefit corporations.**

**Sec. 2. This article does not of itself create an implication that a contrary or different rule of law is applicable to a corporation that is not a benefit corporation.**

**Sec. 3. This article does not affect a statute or rule of law that is applicable to a corporation that is not a benefit corporation.**

**Sec. 4. Except as otherwise provided in this article, IC 23-1 is generally applicable to all benefit corporations.**

**Sec. 5. The articles of incorporation or bylaws of a benefit corporation may not limit, be inconsistent with, or supersede this article.**

**Chapter 2. Definitions**

**Sec. 1. The definitions in IC 23-1-20 apply throughout this article.**

**Sec. 2. The definitions in this chapter apply throughout this article.**

**Sec. 3. "Benefit corporation" means a corporation to which both the following apply:**

(1) The corporation has elected to become subject to this article.

(2) The status of the corporation as a benefit corporation has



not been terminated.

**Sec. 4. "Benefit director"** refers to an individual designated as the benefit director of a benefit corporation under IC 23-1.3-6.

**Sec. 5. "Benefit enforcement proceeding"** means any claim, action, or proceeding for:

- (1) the failure of a benefit corporation to pursue or create:
  - (A) general public benefit; or
  - (B) a specific public benefit if the benefit corporation identified a specific public benefit purpose in its articles of incorporation; or
- (2) a violation of any obligation, duty, or standard of conduct under this article.

**Sec. 6. "Benefit officer"** means an individual designated as the benefit officer of a benefit corporation under IC 23-1.3-8.

**Sec. 7. "General public benefit"** means a material positive impact on society and the environment, taken as a whole, assessed against a third party standard, from the business and operations of a benefit corporation.

**Sec. 8. "Independent"** means a person that has no material relationship with a benefit corporation or a subsidiary of the benefit corporation.

**Sec. 9. "Minimum status vote"** means the following:

- (1) For a corporation, in addition to any other required approval or vote, a vote in which:
  - (A) the shareholders of every class or series of shares are entitled to vote as a separate voting group on the corporate action regardless of a limitation stated in the articles of incorporation or bylaws on the voting rights of any class or series; and
  - (B) the corporate action is approved by vote of the shareholders of each class or series of shares entitled to cast at least ninety percent (90%) of the votes that all shareholders of the class or series are entitled to cast on the action.
- (2) For a domestic business entity other than a corporation, in addition to any other required approval, vote, or consent, a vote in which:
  - (A) the holders of every class or series of equity interest in the entity that are entitled to receive a distribution of any kind from the entity are entitled to vote on or consent to the action regardless of any otherwise applicable limitation on the voting or consent rights of any class or series; and



**(B) the action is approved by vote or consent of the holders described in clause (A) entitled to cast at least ninety percent (90%) of the votes or consents that all of the holders are entitled to cast on the action.**

**Sec. 10. (a) "Specific public benefit" means a benefit that serves:**

- (1) one (1) or more public welfare, religious, charitable, scientific, literary, or educational purposes; or**
- (2) other purposes or benefits beyond the strict interests of the shareholders of the benefit corporation.**

**(b) The term includes the following:**

- (1) Providing low income or underserved individuals or communities with beneficial products or services.**
- (2) Promoting economic opportunity for individuals or communities beyond the creation of jobs in the normal course of business.**
- (3) Protecting or restoring the environment.**
- (4) Improving human health.**
- (5) Promoting the arts, sciences, or advancement of knowledge.**
- (6) Increasing the flow of capital to entities with a purpose to benefit society or the environment.**
- (7) Conferring any other particular benefit on society or the environment.**

**Sec. 11. "Subsidiary" means, in relation to a person, a business entity in which the person owns at least fifty percent (50%) of the outstanding equity interests, calculated as if all outstanding rights to acquire equity interests in the entity had been exercised.**

**Sec. 12. "Third party standard" means a recognized standard for defining, reporting, and assessing corporate social and environmental performance that is:**

- (1) comprehensive because it assesses the effect of the benefit corporation and the benefit corporation's operations upon the interests listed in IC 23-1.3-5-1(1)(B) through IC 23-1.3-5-1(1)(E);**
- (2) developed by an entity that is not controlled by a benefit corporation;**
- (3) developed by an entity that:**
  - (A) has access to necessary expertise to assess overall corporate social and environmental performance;**
  - (B) uses a balanced multistakeholder approach to develop the standard, including a reasonable public comment period;**



(C) was not materially financed by any of the following organizations and not more than one-third (1/3) of the members of the governing body of the entity are representatives of:

(i) associations or businesses operating in the same industry, the performance of whose members is measured by the standard; or

(ii) businesses from the same industry or an association of businesses in that industry; and

(4) transparent because all the following information is publicly available:

(A) The criteria considered when measuring the overall social and environmental performance of a business.

(B) The relative weightings, if any, of the criteria described in clause (A).

(C) The identity of the directors, officers, material owners, and governing body of the entity that developed and controls revisions to the standard.

(D) The process by which revisions to the standard and changes to the membership of the governing body are made.

(E) An accounting of the revenue and sources of financial support for the entity, with sufficient detail to disclose any relationships that could reasonably be considered to present a potential conflict of interest.

### Chapter 3. Benefit Corporation Status

Sec. 1. A benefit corporation shall be incorporated in accordance with IC 23-1-21, except that its articles of incorporation must state that it is a benefit corporation.

Sec. 2. (a) Subject to subsection (b), an existing corporation may become a benefit corporation under this article by amending its articles of incorporation to contain, in addition to any content requirements for articles of incorporation under IC 23-1, the following:

(1) A statement that the corporation is a benefit corporation.

(2) A statement reading "By enacting this article, the State of Indiana does not endorse any particular benefit corporation, or approve or disapprove any of the purposes of a benefit corporation or any claimed general public benefit or specific public benefit, and no inference should be drawn from the acceptance of any filings with respect to a benefit corporation under IC 23-1.3, that the benefit corporation has or will in





fact provide any general public benefit or specific public benefit.

(b) An amendment to the articles of incorporation under subsection (a) is not effective unless the amendment is adopted by at least a minimum status vote.

Sec. 3. (a) This section does not apply to a corporation that is a party to a merger if the shareholders of the corporation are not entitled to vote on the merger under IC 23-1-40.

(b) If:

(1) a domestic entity that is not a benefit corporation is a party to:

(A) a merger, consolidation, or conversion; or

(B) the exchanging entity in a share exchange; and

(2) the surviving entity in the merger, consolidation, conversion, or share exchange is to be a benefit corporation; the plan of merger, consolidation, conversion, or share exchange must be adopted by the domestic entity by at least the minimum status vote.

Sec. 4. (a) Subject to subsection (b), a benefit corporation may terminate its status as a benefit corporation and cease to be subject to this article by amending its articles of incorporation to delete the statement in its articles of incorporation required under sections 1 and 2 of this chapter.

(b) An amendment to the articles of incorporation under subsection (a) is not effective unless the amendment is adopted by at least a minimum status vote.

Sec. 5. (a) This section does not apply to a corporation that is a party to a merger if the shareholders of the corporation are not entitled to vote on the merger under IC 23-1-40.

(b) If a plan of merger, consolidation, conversion, or share exchange would have the effect of terminating the status of a corporation as a benefit corporation, the plan must be adopted by at least a minimum status vote in order to be effective.

Sec. 6. Any sale, lease, exchange, or other disposition of all or substantially all of the assets of a benefit corporation is not effective unless one (1) or more of the following apply:

(1) The transaction is in the usual and regular course of business.

(2) The transaction is approved by at least a minimum status vote.

#### **Chapter 4. Purpose of a Benefit Corporation**

Sec. 1. A benefit corporation shall have a purpose of creating



general public benefit. The purpose under this section is in addition to a benefit corporation's purpose under IC 23-1-21-2.

**Sec. 2. (a)** A benefit corporation may identify in its articles of incorporation one (1) or more specific public benefits that it is the purpose of the benefit corporation to create in addition to the benefit corporation's purposes under IC 23-1-21-2 and section 1 of this chapter.

**(b)** The identification of a specific public benefit under subsection (a) does not limit the purpose of a benefit corporation to create general public benefit under section 1 of this chapter.

**Sec. 3.** The creation of general public benefit and a specific public benefit under sections 1 and 2 of this chapter is in the best interests of a benefit corporation.

**Sec. 4. (a)** Subject to subsection (b), a benefit corporation may amend its articles of incorporation to add, amend, or delete the identification of a specific public benefit described in section 2 of this chapter.

**(b)** An amendment to the articles of incorporation under subsection (a) is not effective unless the amendment is adopted by a vote of the shareholders of each class or series of shares entitled to cast at least two-thirds (2/3) of the votes that all shareholders of the class or series are entitled to cast on the amendment.

**Sec. 5.** A professional corporation that is a benefit corporation does not violate IC 23-1.5-2-3 by having the purpose to create general public benefit or a specific public benefit.

#### **Chapter 5. Standard of Conduct for Directors**

**Sec. 1.** The following apply to the board of directors, committees of the board of directors, and individual directors of a benefit corporation in discharging the duties of their respective positions and in considering the best interests of the benefit corporation:

**(1)** The board of directors, committees of the board of directors, and individual directors shall consider the effects of any action or inaction upon all the following:

**(A)** The shareholders of the benefit corporation.

**(B)** The employees and workforce of the:

**(i)** benefit corporation;

**(ii)** subsidiaries of the benefit corporation; and

**(iii)** suppliers of the benefit corporation.

**(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 the factors



**of each community in which:**

- (i) offices or facilities;**
- (ii) subsidiaries; or**
- (iii) suppliers;**

**of the benefit corporation 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 the 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) The board of directors, committees of the board of directors, and individual directors may consider other pertinent factors or the interests of any other group that the board of directors, committees of the board of directors, or individual directors consider appropriate.**

**(3) The board of directors, committees of the board of directors, and individual directors are not required to give priority to a particular interest or factor listed in subdivision (1) or (2) over any other interest or factor unless the benefit corporation has stated in its articles of incorporation its intention to give priority to certain interests or factors related to its accomplishment of its general public benefit purpose or of a specific public benefit purpose identified in its articles of incorporation.**

**Sec. 2. The consideration of interests and factors provided in section 1 of this chapter:**

- (1) does not constitute a violation of IC 23-1-35; and**
- (2) is in addition to the ability of directors to consider interests and factors under IC 23-1-35-1.**

**Sec. 3. Except as otherwise provided in the bylaws of a benefit corporation, 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 section 1 of this chapter if the director performed the duties in compliance with IC 23-1-35 and this chapter; or**
- (2) the failure of the benefit corporation to pursue or create general public benefit or a specific public benefit.**



**Sec. 4. 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.**

**Chapter 6. Benefit Director**

**Sec. 1. The board of directors of a benefit corporation must include a director who:**

- (1) is designated the benefit director; and**
- (2) has, in addition to the powers, duties, rights, and immunities of the other directors of the benefit corporation, the powers, duties, rights, and immunities provided in this chapter.**

**Sec. 2. (a) A benefit director shall be elected, and may be removed, in the manner provided under IC 23-1-33.**

**(b) Except as provided in section 6 or 7 of this chapter, a benefit director shall be an individual who is independent. An individual is conclusively presumed not independent under this subsection if any of the following apply:**

- (1) The individual:**
  - (A) is; or**
  - (B) has been within the past three (3) years; an employee, other than a benefit officer, of the benefit corporation or a subsidiary of the benefit corporation.**
- (2) An immediate family member of the individual:**
  - (A) is; or**
  - (B) has been within the past three (3) years; an executive officer, other than a benefit officer, of the benefit corporation or a subsidiary of the benefit corporation.**
- (3) There is ownership of at least five percent (5%) of the outstanding shares of the benefit corporation, calculated as if all outstanding rights to acquire equity interests in the benefit corporation had been exercised, by:**
  - (A) the individual; or**
  - (B) an entity:**
    - (i) of which the individual is a director, an officer, or a manager; or**
    - (ii) in which the individual owns at least five percent (5%) of the outstanding equity interests, calculated as if all outstanding rights to acquire equity interests in the business entity had been exercised.**

**(c) An individual serving as a benefit director or benefit officer does not in itself make the individual not independent.**



(d) A benefit director may serve as the benefit officer at the same time as serving as the benefit director.

(e) A benefit corporation may prescribe in its articles of incorporation or bylaws additional qualification requirements for the benefit director if the additional qualification requirements are not inconsistent with this section.

Sec. 3. A benefit director shall prepare, and the benefit corporation shall include in the annual benefit report to shareholders required under IC 23-1.3-10, a report of the benefit director on all the following:

(1) Whether the benefit corporation acted in accordance with its general public benefit purpose and any specific public benefit purpose in all material respects during the period covered by the annual benefit report.

(2) Whether the:

(A) directors complied with IC 23-1.3-5-1; and

(B) officers complied with IC 23-1.3-7-1.

(3) If, in the opinion of the benefit director, the benefit corporation or its directors or officers failed to act or comply in the manner described in subdivision (1) or (2), a description of the ways in which the benefit corporation or its directors or officers failed to act or comply.

Sec. 4. The act or inaction of an individual in the individual's capacity as a benefit director shall constitute for all purposes an act or inaction of that individual in the capacity of a director of the benefit corporation.

Sec. 5. Regardless of whether the articles of incorporation or bylaws of a benefit corporation include a provision eliminating or limiting the personal liability of directors authorized by IC 23-1-37, a benefit director is not personally liable for an act or omission in the capacity of a benefit director unless the act or omission constitutes self-dealing (other than a conflict of interest transaction described in IC 23-1-35-2(a)), willful misconduct, recklessness, or a knowing violation of law.

Sec. 6. The benefit director of a professional corporation is not required to be independent.

Sec. 7. (a) The articles of incorporation or bylaws of a benefit corporation must provide that the persons or shareholders who perform the duties of the board of directors include a person with the powers, duties, rights, and immunities of a benefit director if the articles of incorporation of the benefit corporation provide that the powers and duties conferred or imposed upon the board of



directors shall be exercised or performed by a person other than the directors under IC 23-1-33-1(c).

(b) A person that exercises one (1) or more of the powers, duties, or rights of a benefit director under this section:

- (1) does not need to be independent of the benefit corporation;
- (2) has the immunities of a benefit director; and
- (3) may share the powers, duties, and rights of a benefit director with one (1) or more persons.

#### **Chapter 7. Standard of Conduct for Officers**

**Sec. 1.** Each officer of a benefit corporation shall consider the interests and factors of the persons listed in IC 23-1.3-5-1 in the manner provided under IC 23-1.3-5-1 if:

- (1) the officer has discretion to act with respect to a matter; and
- (2) it reasonably appears to the officer that the matter may have a material effect on the creation by the benefit corporation of general public benefit or a specific public benefit identified in the articles of incorporation of the benefit corporation.

**Sec. 2.** The consideration of interests and factors in the manner described in section 1 of this chapter does not constitute a violation of any duties of an officer.

**Sec. 3.** Except as provided in the bylaws of the benefit corporation, an officer is not personally liable for monetary damages for:

- (1) an action or inaction as an officer in the course of performing the duties of an officer under section 1 of this chapter if the officer performed the duties of the position in compliance with IC 23-1 and this chapter; or
- (2) failure of the benefit corporation to pursue or create general public benefit or a specific public benefit.

**Sec. 4.** An officer 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.

#### **Chapter 8. Benefit Officer**

**Sec. 1.** A benefit corporation may have an officer designated as the benefit officer.

**Sec. 2.** A benefit officer shall have:

- (1) the powers and duties relating to the purpose of the benefit corporation to create general public benefit or a specific public benefit provided:



- (A) by the bylaws; or
  - (B) absent controlling provisions in the bylaws, by resolutions or orders of the board of directors; and
- (2) the duty to prepare the benefit report required under IC 23-1.3-10.

**Chapter 9. Right of Action**

**Sec. 1.** A person may not, except in a benefit enforcement proceeding, bring an action or assert a claim against a benefit corporation or its directors or officers with respect to either of the following:

- (1) The failure to pursue or create:
  - (A) general public benefit; or
  - (B) a specific public benefit identified in the benefit corporation's articles of incorporation.
- (2) A violation of an obligation, duty, or standard of conduct under this article.

**Sec. 2.** A benefit corporation is not liable for monetary damages under this article for any failure of the benefit corporation to pursue or create general public benefit or a specific public benefit.

**Sec. 3.** A benefit enforcement proceeding may be commenced or maintained only:

- (1) directly by the benefit corporation; or
- (2) derivatively in accordance with IC 23-1-32 by:
  - (A) a person or group of persons that owned at least two percent (2%) of the total number of shares of a class or series outstanding at the time of the act or omission complained of;
  - (B) a director;
  - (C) a person or group of persons that owned at least five percent (5%) of the outstanding equity interests in an entity of which the benefit corporation is a subsidiary at the time of the act or omission complained of; or
  - (D) other persons as specified in the benefit corporation's articles of incorporation or bylaws.

**Chapter 10. Annual Benefit Report**

**Sec. 1.** A benefit corporation shall prepare an annual benefit report that includes all the following:

- (1) A narrative description of:
  - (A) the ways in which the benefit corporation pursued general public benefit during the year and the extent to which general public benefit was created;
  - (B) both the:



- (i) ways in which the benefit corporation pursued a specific public benefit that the articles of incorporation state is the purpose of the benefit corporation to create; and
  - (ii) extent to which that specific public benefit was created;
- (C) any circumstances that have hindered the creation by the benefit corporation of general public benefit or a specific public benefit; and
- (D) the process and rationale for selecting or changing the third party standard used to prepare the benefit report.
- (2) An assessment of the overall social and environmental performance of the benefit corporation against a third party standard:
- (A) applied consistently with any application of that standard in prior benefit reports; or
  - (B) accompanied by an explanation of the reasons for:
    - (i) any inconsistent application; or
    - (ii) the change to that standard from the standard used in the immediate prior report.
- (3) The name of the benefit director and the benefit officer, if any, and the address to which correspondence to each of them may be directed.
- (4) The compensation paid by the benefit corporation during the year to each director in the capacity of a director.
- (5) The report of the benefit director described in IC 23-1.3-6-3.
- (6) A statement regarding any connection between the organization that established the third party standard, or its directors, officers, or any holder of at least five percent (5%) of the governance interests in the organization, and the benefit corporation or its directors, officers, or any holder of at least five percent (5%) of the outstanding shares of the benefit corporation, including any financial or governance relationship that might materially affect the credibility of the use of the third party standard.

**Sec. 2. If, during the year covered by a benefit report:**

- (1) a benefit director:
  - (A) resigned from or refused to stand for reelection to the position of benefit director; or
  - (B) was removed from the position of benefit director; and
- (2) the benefit director furnished the benefit corporation with





any written correspondence concerning the circumstances surrounding the resignation, refusal, or removal; the benefit report must include the correspondence described in subdivision (2) as an exhibit.

**Sec. 3.** The following are not required to be audited or certified by a third party:

- (1) The benefit report.
- (2) The assessment of the performance of the benefit corporation in the benefit report described in section 1(2) of this chapter.

**Sec. 4.** A benefit corporation shall send its annual benefit report to each shareholder on the earlier of:

- (1) one hundred twenty (120) days following the end of the fiscal year of the benefit corporation; or
- (2) the same date that the benefit corporation delivers any other annual report to its shareholders.

**Sec. 5.** If a benefit corporation has an Internet web site, a benefit corporation shall post all of its benefit reports on the public part of its Internet web site. However, the compensation paid to directors and financial or proprietary information included in the benefit reports may be omitted from the benefit reports posted on the Internet web site.

**Sec. 6. (a)** The benefit corporation shall deliver, concurrently with the delivery of the benefit report to shareholders under section 4 of this chapter, a copy of the benefit report to the secretary of state for filing. However, the compensation paid to directors and financial or proprietary information included in the benefit report may be omitted from the benefit report as delivered to the secretary of state.

**(b)** The fee established in IC 23-1-18-3(a)(27) applies to an annual benefit report delivered for filing under this section.

SECTION 4. IC 34-30-2-88.2 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2016]: **Sec. 88.2. IC 23-1.3-6-5 (Concerning personal liability of the directors of a benefit corporation).**

SECTION 5. IC 34-30-2-88.3 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2016]: **Sec. 88.3. IC 23-1.3-7-3 (Concerning personal liability of the officers of a benefit corporation).**

SECTION 6. IC 34-30-2-88.4 IS ADDED TO THE INDIANA



CODE AS A NEW SECTION TO READ AS FOLLOWS  
[EFFECTIVE JANUARY 1, 2016]: **Sec. 88.4. IC 23-1.3-9**  
**(Concerning action against a benefit corporation or its directors or**  
**officers).**

**HEA 1015**



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Speaker of the House of Representatives

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President of the Senate

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President Pro Tempore

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Governor of the State of Indiana

Date: \_\_\_\_\_ Time: \_\_\_\_\_

**HEA 1015**

