

HOUSE BILL No. 1015

DIGEST OF INTRODUCED BILL

Citations Affected: IC 23-1-18-3; IC 23-1.3; IC 34-30-2.

Synopsis: Benefit corporations. Allows a business entity to incorporate as a benefit corporation under Indiana law.

Effective: July 1, 2015.

Cox

January 6, 2015, read first time and referred to Committee on Judiciary.



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 BILL No. 1015



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

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

1 SECTION 1. IC 23-1-18-3, AS AMENDED BY P.L.63-2014,
2 SECTION 2, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
3 JULY 1, 2015]: Sec. 3. (a) The secretary of state shall collect the
4 following fees when the documents described in this subsection are
5 delivered to the secretary of state for filing:

	Document	Electronic Filing Fee	Fee (Other than electronic filing)
10	(1) Articles of incorporation	\$75	\$90
11	(2) Application for use of		
12	indistinguishable name	\$10	\$20
13	(3) Application for reserved name	\$10	\$20
14	(4) Application for renewal		
15	of reservation	\$10	\$20



1	(5)	Notice of transfer of		
2		reserved name	\$10	\$20
3	(6)	Application for registered		
4		name	\$20	\$30
5	(7)	Application for renewal of		
6		registered name	\$20	\$30
7	(8)	Corporation's statement of		
8		change of registered agent		
9		or registered office or both	No Fee	No Fee
10	(9)	Agent's statement of change		
11		of registered office for each		
12		affected corporation	No Fee	No Fee
13	(10)	Agent's statement of		
14		resignation	No Fee	No Fee
15	(11)	Amendment of articles of		
16		incorporation	\$20	\$30
17	(12)	Restatement of articles of		
18		incorporation	\$20	\$30
19		with amendment of articles	\$20	\$30
20	(13)	Articles of merger or share		
21		exchange	\$75	\$90
22	(14)	Articles of dissolution	\$20	\$30
23	(15)	Articles of revocation of		
24		dissolution	\$20	\$30
25	(16)	Certificate of administrative		
26		dissolution	No Fee	No Fee
27	(17)	Application for reinstatement		
28		following administrative		
29		dissolution	\$20	\$30
30	(18)	Certificate of reinstatement	No Fee	No Fee
31	(19)	Certificate of judicial		
32		dissolution	No Fee	No Fee
33	(20)	Application for certificate of		
34		authority	\$75	\$90
35	(21)	Application for amended		
36		certificate of authority	\$20	\$30
37	(22)	Application for certificate of		
38		withdrawal	\$20	\$30
39	(23)	Certificate of revocation of		
40		authority to transact business	No Fee	No Fee
41	(24)	Biennial report	\$20	\$30
42	(25)	Articles of correction	\$20	\$30



1	(26)	Application for certificate		
2		of existence or authorization	\$15	\$15
3	(27)	Annual benefit report	\$10	\$15
4	(27) (28)	Any other document		
5		required or permitted to		
6		be filed by this article,		
7		including an application		
8		for any other certificates		
9		or certification certificate		
10		(except for any such other		
11		certificates that the secretary		
12		of state may determine to		
13		issue without additional fee		
14		in connection with particular		
15		filings) and a request for		
16		other facts of record under		
17		section 9(b)(6) of this		
18		chapter	\$20	\$30

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

22 (b) The fee set forth in subsection (a)(24) for filing a biennial report
 23 is:

- 24 (1) fifteen dollars (\$15) per year, for a filing in writing; and
 - 25 (2) ten dollars (\$10) per year, for a filing by electronic means;
- 26 to be paid biennially.

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

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

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

37 SECTION 2. IC 23-1.3 IS ADDED TO THE INDIANA CODE AS
 38 A NEW ARTICLE TO READ AS FOLLOWS [EFFECTIVE JULY 1,
 39 2015]:

40 **ARTICLE 1.3. BENEFIT CORPORATIONS**
 41 **Chapter 1. Application**
 42 **Sec. 1. This article is applicable to all benefit corporations.**



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

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

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

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

11 **Chapter 2. Definitions**

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

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

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

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

20 **(2) The status of the corporation as a benefit corporation has**
 21 **not been terminated.**

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

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

26 **(1) the failure of a benefit corporation to pursue or create:**

27 **(A) general public benefit; or**

28 **(B) a specific public benefit if the benefit corporation**
 29 **identified a specific public benefit purpose in its articles of**
 30 **incorporation; or**

31 **(2) a violation of any obligation, duty, or standard of conduct**
 32 **under this article.**

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

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

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

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



1 (1) For a corporation, in addition to any other required
2 approval or vote, a vote in which:

3 (A) the shareholders of every class or series of shares are
4 entitled to vote as a separate voting group on the corporate
5 action regardless of a limitation stated in the articles of
6 incorporation or bylaws on the voting rights of any class or
7 series; and

8 (B) the corporate action is approved by vote of the
9 shareholders of each class or series of shares entitled to
10 cast at least two-thirds (2/3) of the votes that all
11 shareholders of the class or series are entitled to cast on
12 the action.

13 (2) For a domestic business entity other than a corporation, in
14 addition to any other required approval, vote, or consent, a
15 vote in which:

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

21 (B) the action is approved by vote or consent of the holders
22 described in clause (A) entitled to cast at least two-thirds
23 (2/3) of the votes or consents that all of the holders are
24 entitled to cast on the action.

25 Sec. 10. "Publicly traded corporation" means a corporation that
26 has shares:

27 (1) listed on a national securities exchange; or

28 (2) traded in a market maintained by one (1) or more
29 members of a national securities association.

30 Sec. 11. (a) "Specific public benefit" means a benefit that serves:

31 (1) one (1) or more public welfare, religious, charitable,
32 scientific, literary, or educational purposes; or

33 (2) other purposes or benefits beyond the strict interests of the
34 shareholders of the benefit corporation.

35 (b) The term includes the following:

36 (1) Providing low income or underserved individuals or
37 communities with beneficial products or services.

38 (2) Promoting economic opportunity for individuals or
39 communities beyond the creation of jobs in the normal course
40 of business.

41 (3) Protecting or restoring the environment.

42 (4) Improving human health.



1 (5) Promoting the arts, sciences, or advancement of
2 knowledge.

3 (6) Increasing the flow of capital to entities with a purpose to
4 benefit society or the environment.

5 (7) Conferring any other particular benefit on society or the
6 environment.

7 Sec. 12. "Subsidiary" means, in relation to a person, a business
8 entity in which the person owns at least fifty percent (50%) of the
9 outstanding equity interests, calculated as if all outstanding rights
10 to acquire equity interests in the entity had been exercised.

11 Sec. 13. "Third party standard" means a recognized standard
12 for defining, reporting, and assessing corporate social and
13 environmental performance that is:

14 (1) comprehensive because it assesses the effect of the benefit
15 corporation and the benefit corporation's operations upon the
16 interests listed in IC 23-1.3-5-1(1)(B) through
17 IC 23-1.3-5-1(1)(E);

18 (2) developed by an entity that is not controlled by a benefit
19 corporation;

20 (3) developed by an entity that:

21 (A) has access to necessary expertise to assess overall
22 corporate social and environmental performance; and

23 (B) uses a balanced multistakeholder approach to develop
24 the standard, including a reasonable public comment
25 period; and

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

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

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

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

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

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

42 Chapter 3. Benefit Corporation Status



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

4 **Sec. 2. (a) Subject to subsection (b), an existing corporation may**
5 **become a benefit corporation under this article by amending its**
6 **articles of incorporation to contain, in addition to any content**
7 **requirements for articles of incorporation under IC 23-1, a**
8 **statement that the corporation is a benefit corporation.**

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

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

15 **(b) If:**

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

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

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

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

25 **Sec. 4. (a) Subject to subsection (b), a benefit corporation may**
26 **terminate its status as a benefit corporation and cease to be subject**
27 **to this article by amending its articles of incorporation to delete the**
28 **statement in its articles of incorporation required under sections**
29 **1 and 2 of this chapter.**

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

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

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

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



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

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

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

6 **Sec. 1.** A benefit corporation shall have a purpose of creating
7 general public benefit. The purpose under this section is in addition
8 to a benefit corporation's purpose under IC 23-1-21-2.

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

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

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

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

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

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

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

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

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

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

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

40 **(i)** benefit corporation;

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

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



- 1 **(C) The interests of customers as beneficiaries of the**
 2 **general public benefit or specific public benefit purposes of**
 3 **the benefit corporation.**
- 4 **(D) Community and societal factors, including the factors**
 5 **of each community in which:**
 6 **(i) offices or facilities;**
 7 **(ii) subsidiaries; or**
 8 **(iii) suppliers;**
 9 **of the benefit corporation are located.**
- 10 **(E) The local and global environment.**
- 11 **(F) The short term and long term interests of the benefit**
 12 **corporation, including benefits that may accrue to the**
 13 **benefit corporation from its long term plans and the**
 14 **possibility that the interests may be best served by the**
 15 **continued independence of the benefit corporation.**
- 16 **(G) The ability of the benefit corporation to accomplish its**
 17 **general public benefit purpose and any specific public**
 18 **benefit purpose.**
- 19 **(2) The board of directors, committees of the board of**
 20 **directors, and individual directors may consider other**
 21 **pertinent factors or the interests of any other group that the**
 22 **board of directors, committees of the board of directors, or**
 23 **individual directors consider appropriate.**
- 24 **(3) The board of directors, committees of the board of**
 25 **directors, and individual directors are not required to give**
 26 **priority to a particular interest or factor listed in subdivision**
 27 **(1) or (2) over any other interest or factor unless the benefit**
 28 **corporation has stated in its articles of incorporation its**
 29 **intention to give priority to certain interests or factors related**
 30 **to its accomplishment of its general public benefit purpose or**
 31 **of a specific public benefit purpose identified in its articles of**
 32 **incorporation.**
- 33 **Sec. 2. The consideration of interests and factors provided in**
 34 **section 1 of this chapter:**
 35 **(1) does not constitute a violation of IC 23-1-35; and**
 36 **(2) is in addition to the ability of directors to consider**
 37 **interests and factors under IC 23-1-35-1.**
- 38 **Sec. 3. Except as otherwise provided in the bylaws of a benefit**
 39 **corporation, a director is not personally liable for monetary**
 40 **damages for:**
 41 **(1) any action or inaction in the course of performing the**
 42 **duties of a director under section 1 of this chapter if the**



1 director performed the duties in compliance with IC 23-1-35
2 and this chapter; or

3 (2) the failure of the benefit corporation to pursue or create
4 general public benefit or a specific public benefit.

5 Sec. 4. A director does not have a duty to a person that is a
6 beneficiary of the general public benefit purpose or a specific
7 public benefit purpose of a benefit corporation arising from the
8 status of the person as a beneficiary.

9 Sec. 5. A director who makes a business judgment in good faith
10 fulfills the duty under this chapter if the director:

11 (1) does not have an interest in the subject of the business
12 judgment;

13 (2) is informed with respect to the subject of the business
14 judgment to the extent that the director reasonably believes
15 to be appropriate under the circumstances; and

16 (3) rationally believes that the business judgment is in the best
17 interests of the benefit corporation.

18 **Chapter 6. Benefit Director**

19 Sec. 1. The board of directors of a benefit corporation that is a
20 publicly traded corporation shall, and the board of directors of any
21 other benefit corporation may, include a director who:

22 (1) is designated the benefit director; and

23 (2) has, in addition to the powers, duties, rights, and
24 immunities of the other directors of the benefit corporation,
25 the powers, duties, rights, and immunities provided in this
26 chapter.

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

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

33 (1) The individual:

34 (A) is; or

35 (B) has been within the past three (3) years;
36 an employee, other than a benefit officer, of the benefit
37 corporation or a subsidiary of the benefit corporation.

38 (2) An immediate family member of the individual:

39 (A) is; or

40 (B) has been within the past three (3) years;
41 an executive officer, other than a benefit officer, of the benefit
42 corporation or a subsidiary of the benefit corporation.



1 **(3) There is ownership of at least five percent (5%) of the**
 2 **outstanding shares of the benefit corporation, calculated as if**
 3 **all outstanding rights to acquire equity interests in the benefit**
 4 **corporation had been exercised, by:**

5 **(A) the individual; or**

6 **(B) an entity:**

7 **(i) of which the individual is a director, an officer, or a**
 8 **manager; or**

9 **(ii) in which the individual owns at least five percent**
 10 **(5%) of the outstanding equity interests, calculated as if**
 11 **all outstanding rights to acquire equity interests in the**
 12 **business entity had been exercised.**

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

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

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

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

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

29 **(2) Whether the:**

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

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

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

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

41 **Sec. 5. Regardless of whether the articles of incorporation or**
 42 **bylaws of a benefit corporation include a provision eliminating or**



1 limiting the personal liability of directors authorized by IC 23-1-37,
 2 a benefit director is not personally liable for an act or omission in
 3 the capacity of a benefit director unless the act or omission
 4 constitutes self-dealing, willful misconduct, or a knowing violation
 5 of law.

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

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

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

12 (1) the officer has discretion to act with respect to a matter;
 13 and

14 (2) it reasonably appears to the officer that the matter may
 15 have a material effect on the creation by the benefit
 16 corporation of general public benefit or a specific public
 17 benefit identified in the articles of incorporation of the benefit
 18 corporation.

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

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

25 (1) an action or inaction as an officer in the course of
 26 performing the duties of an officer under section 1 of this
 27 chapter if the officer performed the duties of the position in
 28 compliance with IC 23-1-36 and this chapter; or

29 (2) failure of the benefit corporation to pursue or create
 30 general public benefit or a specific public benefit.

31 Sec. 4. An officer does not have a duty to a person that is a
 32 beneficiary of the general public benefit purpose or a specific
 33 public benefit purpose of a benefit corporation arising from the
 34 status of the person as a beneficiary.

35 Sec. 5. An officer who makes a business judgment in good faith
 36 fulfills the duty under this chapter if the officer:

37 (1) does not have an interest in the subject of the business
 38 judgment;

39 (2) is informed with respect to the subject of the business
 40 judgment to the extent the officer reasonably believes to be
 41 appropriate under the circumstances; and

42 (3) rationally believes that the business judgment is in the best



1 interests of the benefit corporation.

2 **Chapter 8. Benefit Officer**

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

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

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

9 (A) by the bylaws; or

10 (B) absent controlling provisions in the bylaws, by
11 resolutions or orders of the board of directors; and

12 (2) the duty to prepare the benefit report required under
13 IC 23-1.3-10.

14 **Chapter 9. Right of Action**

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

19 (1) The failure to pursue or create:

20 (A) general public benefit; or

21 (B) a specific public benefit identified in the benefit
22 corporation's articles of incorporation.

23 (2) A violation of an obligation, duty, or standard of conduct
24 under this article.

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

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

30 (1) directly by the benefit corporation; or

31 (2) derivatively in accordance with IC 23-1-32 by:

32 (A) a person or group of persons that owned at least two
33 percent (2%) of the total number of shares of a class or
34 series outstanding at the time of the act or omission
35 complained of;

36 (B) a director;

37 (C) a person or group of persons that owned at least five
38 percent (5%) of the outstanding equity interests in an
39 entity of which the benefit corporation is a subsidiary at
40 the time of the act or omission complained of; or

41 (D) other persons as specified in the benefit corporation's
42 articles of incorporation or bylaws.



1 **Chapter 10. Annual Benefit Report**

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

4 **(1) A narrative description of:**

5 **(A) the ways in which the benefit corporation pursued**
 6 **general public benefit during the year and the extent to**
 7 **which general public benefit was created;**

8 **(B) both the:**

9 **(i) ways in which the benefit corporation pursued a**
 10 **specific public benefit that the articles of incorporation**
 11 **state is the purpose of the benefit corporation to create;**
 12 **and**

13 **(ii) extent to which that specific public benefit was**
 14 **created;**

15 **(C) any circumstances that have hindered the creation by**
 16 **the benefit corporation of general public benefit or a**
 17 **specific public benefit; and**

18 **(D) the process and rationale for selecting or changing the**
 19 **third party standard used to prepare the benefit report.**

20 **(2) An assessment of the overall social and environmental**
 21 **performance of the benefit corporation against a third party**
 22 **standard:**

23 **(A) applied consistently with any application of that**
 24 **standard in prior benefit reports; or**

25 **(B) accompanied by an explanation of the reasons for:**

26 **(i) any inconsistent application; or**

27 **(ii) the change to that standard from the standard used**
 28 **in the immediate prior report.**

29 **(3) The name of the benefit director and the benefit officer, if**
 30 **any, and the address to which correspondence to each of them**
 31 **may be directed.**

32 **(4) The compensation paid by the benefit corporation during**
 33 **the year to each director in the capacity of a director.**

34 **(5) The opinion of the benefit director described in**
 35 **IC 23-1.3-6-3.**

36 **(6) A statement regarding any connection between the**
 37 **organization that established the third party standard, or its**
 38 **directors, officers, or any holder of at least five percent (5%)**
 39 **of the governance interests in the organization, and the**
 40 **benefit corporation or its directors, officers, or any holder of**
 41 **at least five percent (5%) of the outstanding shares of the**
 42 **benefit corporation, including any financial or governance**



1 relationship that might materially affect the credibility of the
2 use of the third party standard.

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

4 (1) a benefit director:

5 (A) resigned from or refused to stand for reelection to the
6 position of benefit director; or

7 (B) was removed from the position of benefit director; and

8 (2) the benefit director furnished the benefit corporation with
9 any written correspondence concerning the circumstances
10 surrounding the resignation, refusal, or removal;

11 the benefit report must include the correspondence described in
12 subdivision (2) as an exhibit.

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

15 (1) The benefit report.

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

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

21 (1) one hundred twenty (120) days following the end of the
22 fiscal year of the benefit corporation; or

23 (2) the same date that the benefit corporation delivers any
24 other annual report to its shareholders.

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

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

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

40 SECTION 3. IC 34-30-2-88.2 IS ADDED TO THE INDIANA
41 CODE AS A NEW SECTION TO READ AS FOLLOWS
42 [EFFECTIVE JULY 1, 2015]: **Sec. 88.2. IC 23-1.3-6-5 (Concerning**



1 **personal liability of the directors of a benefit corporation).**
2 SECTION 4. IC 34-30-2-88.3 IS ADDED TO THE INDIANA
3 CODE AS A **NEW** SECTION TO READ AS FOLLOWS
4 [EFFECTIVE JULY 1, 2015]: **Sec. 88.3. IC 23-1.3-7-3 (Concerning**
5 **personal liability of the officers of a benefit corporation).**
6 SECTION 5. IC 34-30-2-88.4 IS ADDED TO THE INDIANA
7 CODE AS A **NEW** SECTION TO READ AS FOLLOWS
8 [EFFECTIVE JULY 1, 2015]: **Sec. 88.4. IC 23-1.3-9 (Concerning**
9 **action against a benefit corporation or its directors or officers).**

