

1 STATE OF OKLAHOMA

2 1st Session of the 56th Legislature (2017)

3 SENATE BILL 343

By: Holt

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5
6 AS INTRODUCED

7 An Act relating to corporations; creating the
8 Oklahoma Benefit Corporation Act; providing short
9 title; stating applicability; stating resolution for
10 conflicting laws; prohibiting inconsistent provisions
11 in the certificate or bylaws; defining terms;
12 requiring benefit corporation to comply with the
13 Oklahoma General Corporation Act; prescribing
14 statement for certificate of incorporation; providing
15 for certificate amendment to become benefit
16 corporation; requiring minimum vote for amendment;
17 mandating minimum vote for merger, consolidation, or
18 conversion; providing exception; allowing certificate
19 amendment to terminate status as benefit corporation;
20 requiring minimum vote for amendment; providing
21 exception; mandating minimum vote for sale or
22 disposition of all assets; directing benefit
23 corporation to have a purpose; authorizing
24 certificate to identify purpose; permitting
certificate amendment to change purpose; requiring
minimum vote for amendment; construing provision;
listing duties for benefit corporation directors;
limiting personal liability for directors; exempting
director duty to individual beneficiary; clarifying
good-faith standard for benefit corporation director;
outlining benefit director position and duties;
directing election of benefit director in manner
prescribed; requiring benefit director to be
independent; providing exception; permitting dual
service; allowing additional qualifications of
benefit director; limiting liability of benefit
director; providing exception; listing duties for
benefit corporation officers; limiting personal
liability of officers; exempting officer duty to
individual beneficiary; specifying good-faith
standard for officers; authorizing designation of

1 benefit officer; providing powers and duties of
2 benefit officer; prohibiting actions against a
3 benefit corporation or its directors or officers;
4 providing exception; excluding money damages for
5 failure to pursue or create benefit; specifying
6 conditions for benefit enforcement proceeding;
7 specifying contents of annual benefit report;
8 exempting audit requirement; directing report to be
9 sent to each shareholder; prescribing timing for
10 report; providing for codification; and providing an
11 effective date.

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

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

16 A. This act shall be known and may be cited as the "Oklahoma
17 Benefit Corporation Act". This act shall be applicable to all
18 benefit corporations.

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

24 C. Except as otherwise provided in this act, the Oklahoma
General Corporation Act shall be generally applicable to all benefit
corporations. A benefit corporation may be subject simultaneously
to this act and the Oklahoma General Corporation Act, Professional
Entity Act, and other applicable business formation statutes;

1 however, the provisions of this act shall control over the
2 provisions of the Oklahoma General Corporation Act, Professional
3 Entity Act, and other applicable business formation statutes where
4 there is a conflict.

5 D. A provision of the certificate of incorporation or bylaws of
6 a benefit corporation shall not limit, be inconsistent with, or
7 supersede a provision of this act.

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

11 As used in the Oklahoma Benefit Corporation Act:

12 1. "Benefit corporation" means:

13 a. a business corporation that is subject to the Oklahoma
14 Benefit Corporation Act, and

15 b. the status of which as a benefit corporation has not
16 been terminated;

17 2. "Benefit director" means the director designated as the
18 benefit director of a benefit corporation under Section 8 of this
19 act;

20 3. "Benefit enforcement proceeding" means any claim or action
21 or proceeding for:

22 a. failure of a benefit corporation to pursue or create
23 general public benefit or a specific public benefit
24 purpose set forth in its certificate, or

1 b. violation of any obligation, duty, or standard of
2 conduct under this act;

3 4. "Benefit officer" means the individual designated as the
4 benefit officer of a benefit corporation under Section 10 of this
5 act;

6 5. "General public benefit" means a material positive impact on
7 society and the environment, taken as a whole, assessed against a
8 third-party standard, from the business and operations of a benefit
9 corporation;

10 6. "Independent" means having no material relationship with a
11 benefit corporation or a subsidiary of the benefit corporation.
12 Serving as benefit director or benefit officer does not make an
13 individual not independent. A material relationship between an
14 individual and a benefit corporation or any of its subsidiaries will
15 be conclusively presumed to exist if any of the following apply:

16 a. the individual is, or has been within the last three
17 (3) years, an employee other than a benefit officer of
18 the benefit corporation or a subsidiary,

19 b. an immediate family member of the individual is, or
20 has been within the last three (3) years, an executive
21 officer other than a benefit officer of the benefit
22 corporation or a subsidiary, or

23 c. there is beneficial or record ownership of five
24 percent (5%) or more of the outstanding shares of the

1 benefit corporation, calculated as if all outstanding
2 rights to acquire equity interests in the benefit
3 corporation had been exercised, by:

4 (1) the individual, or

5 (2) an entity:

6 (a) of which the individual is a director, an
7 officer or a manager, or

8 (b) in which the individual owns beneficially or
9 of record five percent (5%) or more of the
10 outstanding equity interests, calculated as
11 if all outstanding rights to acquire equity
12 interests in the entity had been exercised;

13 7. "Minimum status vote" means:

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

17 (1) the shareholders of every class or series shall
18 be entitled to vote as a class on the corporate
19 action regardless of a limitation stated in the
20 certificate of incorporation or bylaws on the
21 voting rights of any class or series, and

22 (2) the corporate action shall be approved by the
23 affirmative vote of the shareholders of each
24 class or series entitled to cast at least two-

1 thirds of the votes that all shareholders of the
2 class or series are entitled to cast on the
3 action,

4 b. in the case of a domestic entity other than a
5 corporation, in addition to any other required
6 approval, vote or consent, the satisfaction of the
7 following conditions:

8 (1) the holders of every class or series of equity
9 interest in the entity that are entitled to
10 receive a distribution of any kind from the
11 entity shall be entitled to vote on or consent to
12 the action regardless of any otherwise applicable
13 limitation on the voting or consent rights of any
14 class or series, and

15 (2) the action shall be approved by the affirmative
16 vote or consent of the holders described in
17 division (1) of this subparagraph entitled to
18 cast at least two-thirds of the votes or consents
19 that all of those holders are entitled to cast on
20 the action;

21 8. "Specific public benefit" includes:

22 a. providing low-income or underserved individuals or
23 communities with beneficial products or services,
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- b. promoting economic opportunity for individuals or communities beyond the creation of jobs in the normal course of business,
- c. protecting or restoring the environment,
- d. improving human health,
- e. promoting the arts, sciences or advancement of knowledge,
- f. increasing the flow of capital to entities with a purpose to benefit society or the environment, and
- g. conferring any other particular benefit on society or the environment; and

9. "Subsidiary" means in relation to a person, an entity in which the person owns beneficially or of record fifty percent (50%) or more of the outstanding equity interests, calculated as if all outstanding rights to acquire equity interests in the entity had been exercised.

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

A benefit corporation shall be incorporated in accordance with the Oklahoma General Corporation Act pursuant to Section 1005 of Title 18 of the Oklahoma Statutes, but its certificate of incorporation shall also state that it is a benefit corporation.

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

4 A. An existing business corporation may become a benefit
5 corporation under the Oklahoma Benefit Corporation Act by amending
6 its certificate of incorporation so that it contains, in addition to
7 the requirements of Section 1006 of Title 18 of the Oklahoma
8 Statutes, a statement that the corporation is a benefit corporation.
9 In order to be effective, the amendment shall be adopted by at least
10 the minimum status vote.

11 B. 1. Except as provided in paragraph 2 of this subsection, if
12 a domestic entity that is not a benefit corporation is a party to a
13 merger, consolidation, or conversion and the surviving, new, or
14 resulting entity in the merger, consolidation, or conversion is to
15 be a benefit corporation, the plan of merger, consolidation, or
16 conversion shall be adopted or approved by the domestic entity by at
17 least the minimum status vote.

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

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

1 A. A benefit corporation may terminate its status and cease to
2 be subject to the Oklahoma Benefit Corporation Act by amending its
3 certificate of incorporation to delete the provision required by
4 Sections 3 and 4 of this act to be stated in the certificate of a
5 benefit corporation. In order to be effective, the amendment shall
6 be adopted by at least the minimum status vote.

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

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

16 3. Any sale, lease, exchange or other disposition of all or
17 substantially all of the assets of a benefit corporation, unless the
18 transaction is in the usual and regular course of business, shall
19 not be effective unless the transaction is approved by at least the
20 minimum status vote.

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

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1 A. A benefit corporation shall have a purpose of creating
2 general public benefit. This purpose is in addition to its purpose
3 under the Oklahoma General Corporation Act.

4 B. The certificate of incorporation of a benefit corporation
5 may identify one or more specific public benefits that it is the
6 purpose of the benefit corporation to create in addition to its
7 purposes under the Oklahoma General Corporation Act and subsection A
8 of this section. The identification of a specific public benefit
9 under this subsection does not limit the purpose of a benefit
10 corporation to create general public benefit under subsection A of
11 this section.

12 C. The creation of general public benefit and specific public
13 benefit under subsections A and B of this section shall be in the
14 best interests of the benefit corporation.

15 D. A benefit corporation may amend its certificate of
16 incorporation to add, amend or delete the identification of a
17 specific public benefit that it is the purpose of the benefit
18 corporation to create. In order to be effective, the amendment
19 shall be adopted by at least the minimum status vote.

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

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

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

- 8 1. Shall consider the effects of any action or inaction upon:
 - 9 a. the shareholders of the benefit corporation,
 - 10 b. the employees and work force of the benefit
11 corporation, its subsidiaries and its suppliers,
 - 12 c. the interests of customers as beneficiaries of the
13 general public benefit or a specific public benefit
14 purpose of the benefit corporation,
 - 15 d. community and societal factors, including those of
16 each community in which offices or facilities of the
17 benefit corporation, its subsidiaries or its suppliers
18 are located,
 - 19 e. the local and global environment,
 - 20 f. the short-term and long-term interests of the benefit
21 corporation, including benefits that may accrue to the
22 benefit corporation from its long-term plans and the
23 possibility that these interests may be best served by
24

1 the continued independence of the benefit corporation,
2 and

3 g. the ability of the benefit corporation to accomplish
4 its general public benefit purpose and any specific
5 public benefit purpose; and

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

8 3. Need not give priority to a particular interest or factor
9 referred to in paragraphs 1 or 2 of this subsection over any other
10 interest or factor unless the benefit corporation has stated in its
11 certificate of incorporation its intention to give priority to
12 certain interests or factors related to the accomplishment of its
13 general public benefit purpose or of a specific public benefit
14 purpose identified in its certificate.

15 B. The consideration of interests and factors in the manner
16 provided by subsection A of this section shall not constitute a
17 violation of the duties of directors under the Oklahoma General
18 Corporation Act.

19 C. Except as provided in the certificate of incorporation or
20 bylaws, a director is not personally liable for monetary damages
21 for:

22 1. Any action or inaction in the course of performing the
23 duties of a director under subsection A of this section if the
24

1 director was not interested with respect to the action or inaction;
2 or

3 2. Failure of the benefit corporation to pursue or create
4 general public benefit or specific public benefit.

5 D. A director shall 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 E. A director who makes a business judgment in good faith
10 fulfills the duty under this section if the director:

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

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

15 3. Rationally believes that the business judgment is in the
16 best interests of the benefit corporation.

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

20 A. The board of directors of a benefit corporation may include
21 a director who:

22 1. Shall be designated the benefit director; and

23 2. Shall have, in addition to the powers, duties, rights and
24 immunities of the other directors of the benefit corporation, the

1 powers, duties, rights and immunities provided in the Oklahoma
2 Benefit Corporation Act.

3 B. The benefit director shall be elected, and may be removed,
4 in the manner provided by Section 1027 of Title 18 of the Oklahoma
5 Statutes. Except as provided in subsection F of this section, the
6 benefit director shall be an individual who is independent. The
7 benefit director may serve as the benefit officer at the same time
8 as serving as the benefit director. The certificate of
9 incorporation or bylaws of a benefit corporation may prescribe
10 additional qualifications of the benefit director not inconsistent
11 with this subsection.

12 C. The benefit director shall prepare, and the benefit
13 corporation shall include in the annual benefit report to
14 shareholders required by Section 12 of this act, a report of the
15 benefit director on all of the following:

16 1. Whether the benefit corporation acted in accordance with its
17 general public benefit purpose and any specific public benefit
18 purpose in all material respects during the period covered by the
19 report;

20 2. Whether the directors and officers complied with subsection
21 A of Section 7 and subsection A of Section 9 of this act,
22 respectively; and

23 3. If, in the opinion of the benefit director, the benefit
24 corporation or its directors or officers failed to act or comply in

1 the manner described in paragraphs 1 and 2 of this subsection, a
2 description of the ways in which the benefit corporation or its
3 directors or officers failed to act or comply.

4 D. The action or inaction of an individual in the capacity of a
5 benefit director shall constitute for all purposes an action or
6 inaction of that individual in the capacity of a director of the
7 benefit corporation.

8 E. Regardless of whether the certificate of incorporation or
9 bylaws of a benefit corporation include a provision eliminating or
10 limiting the personal liability of directors, a benefit director
11 shall not be personally liable for an act or omission in the
12 capacity of a benefit director unless the act or omission
13 constitutes self-dealing, willful misconduct or a knowing violation
14 of law.

15 F. The benefit director of a professional corporation organized
16 under the Professional Entity Act does not need to be independent.

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

20 A. Each officer of a benefit corporation shall consider the
21 interests and factors described in paragraph 1 of subsection A of
22 Section 7 of this act in the manner provided in paragraph 3 of
23 subsection A of Section 7 of this act if:

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

3 2. It reasonably appears to the officer that the matter may
4 have a material effect on the creation by the benefit corporation of
5 general public benefit or a specific public benefit identified in
6 the certificate of incorporation of the benefit corporation.

7 B. The consideration of interests and factors in the manner
8 provided in subsection A of this section shall not constitute a
9 violation of the duties of an officer.

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

13 1. An action or inaction as an officer in the course of
14 performing the duties of an officer under subsection A of this
15 section if the officer was not interested with respect to the action
16 or inaction; or

17 2. Failure of the benefit corporation to pursue or create
18 general public benefit or specific public benefit.

19 D. An officer shall not have a duty to a person that is a
20 beneficiary of the general public benefit purpose or a specific
21 public benefit purpose of a benefit corporation arising from the
22 status of the person as a beneficiary.

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

- 1 1. Is not interested in the subject of the business judgment;
- 2 2. Is informed with respect to the subject of the business
- 3 judgment to the extent the officer reasonably believes to be
- 4 appropriate under the circumstances; and
- 5 3. Rationally believes that the business judgment is in the
- 6 best interests of the benefit corporation.

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

10 A. A benefit corporation may have an officer designated the
11 benefit officer.

12 B. A benefit officer shall have:

13 1. The powers and duties relating to the purpose of the
14 corporation to create general public benefit or specific public
15 benefit provided:

- 16 a. by the bylaws, or
- 17 b. absent controlling provisions in the bylaws, by
- 18 resolution or order of the board of directors; and

19 2. The duty to prepare the benefit report required by Section
20 12 of this act.

21 SECTION 11. NEW LAW A new section of law to be codified
22 in the Oklahoma Statutes as Section 1211 of Title 18, unless there
23 is created a duplication in numbering, reads as follows:

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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.

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

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

15 1. Directly by the benefit corporation; or

16 2. Derivatively in accordance with Section 1126 of Title 18 of
17 the Oklahoma Statutes by:

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

22 b. a director,

23 c. a person or group of persons that owned beneficially
24 or of record five percent (5%) or more of the

1 outstanding equity interests in an entity of which the
2 benefit corporation is a subsidiary at the time of the
3 act or omission complained of, or

4 d. other persons as specified in the certificate of
5 incorporation or bylaws of the benefit corporation.

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

10 SECTION 12. NEW LAW A new section of law to be codified
11 in the Oklahoma Statutes as Section 1212 of Title 18, unless there
12 is created a duplication in numbering, reads as follows:

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

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

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

22 3. Objective factual information based on those standards
23 regarding the corporation's success in meeting the objectives for
24

1 promoting general public benefit and any specific public benefit;
2 and

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

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

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

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

14 C. Neither the benefit report nor the assessment of the
15 performance of the benefit corporation in the benefit report
16 required by paragraph 2 of subsection A of this section needs to be
17 audited or certified by a third party.

18 SECTION 13. NEW LAW A new section of law to be codified
19 in the Oklahoma Statutes as Section 1213 of Title 18, unless there
20 is created a duplication in numbering, reads as follows:

21 A benefit corporation shall send its annual benefit report to
22 each shareholder on the earlier of:

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

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

3 SECTION 14. This act shall become effective November 1, 2017.
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