

1 SB14  
2 141571-1  
3 By Senator Ward  
4 RFD: Judiciary  
5 First Read: 05-FEB-13  
6 PFD: 09/18/2012

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8 SYNOPSIS: Under existing law, the Alabama Business  
9 Corporation Law authorizes and regulates the  
10 formation and governance of general corporations.  
11 The Alabama Nonprofit Corporation Law authorizes  
12 the formation and governs the nonprofit  
13 corporation.

14 This bill would authorize and regulate the  
15 formation of a benefit corporation.

16 This bill would define terms.

17 This bill would permit an existing  
18 corporation to become a benefit corporation.

19 This bill would provide standards of conduct  
20 for directors and officers.

21  
22 A BILL

23 TO BE ENTITLED

24 AN ACT

25  
26 Relating to corporations; to authorize and regulate  
27 the formation of a benefit corporation; to define terms; to

1 permit an existing corporation to become a benefit  
2 corporation; and to provide standards of conduct for directors  
3 and officers.

4 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

5 Section 1. (a) The provisions of this act shall be  
6 applicable to all benefit corporations.

7 (b) The existence of a provision of this act shall  
8 not of itself create any implication that a contrary or  
9 different rule of law is or would be applicable to a business  
10 corporation that is not a benefit corporation. This act shall  
11 not affect any statute or rule of law that is or would be  
12 applicable to a business corporation that is not a benefit  
13 corporation.

14 (c) The provisions of the Alabama Business  
15 Corporation Law shall apply to benefit corporations, except  
16 where these provisions are in conflict with or inconsistent  
17 with the provisions of this act. Except as otherwise provided  
18 in this act, this section shall be generally applicable to all  
19 benefit corporations. The specific provisions of this act  
20 shall control over the general provisions of this section. A  
21 benefit corporation may be simultaneously subject to this act  
22 and one or more other acts of the Code of Alabama.

23 Section 2. (a) The following terms shall have the  
24 following meanings:

25 (1) BENEFIT CORPORATION. A business corporation that  
26 has elected to become subject to this act and whose status as

1 a benefit corporation has not been terminated as provided in  
2 this act.

3 (2) BENEFIT DIRECTOR. The director designated as the  
4 benefit director of a benefit corporation as provided in this  
5 act.

6 (3) BENEFIT ENFORCEMENT PROCEEDING. A claim or  
7 action brought directly by a benefit corporation, or  
8 derivatively on behalf of a benefit corporation, against a  
9 director or officer for:

10 a. Failure to pursue the general public benefit  
11 purpose of the benefit corporation or any specific public  
12 benefit purpose set forth in its articles.

13 b. Violation of a duty or standard of conduct under  
14 this act.

15 (4) BENEFIT OFFICER. The officer of a benefit  
16 corporation.

17 (5) GENERAL PUBLIC BENEFIT. A material positive  
18 impact on society and the environment by the operations of a  
19 benefit corporation taken as a whole, as measured by a  
20 third-party standard, through activities that promote some  
21 combination of specific public benefits.

22 (6) INDEPENDENT. A person has no relationship with a  
23 benefit corporation or any of its subsidiaries, other than the  
24 relationship of serving as the benefit director or benefit  
25 officer, either directly or as a shareholder, partner, member,  
26 or other owner or a director, officer, or other manager of an  
27 association that has a material relationship with the benefit

1 corporation or any of its subsidiaries. A material  
2 relationship between an individual and a benefit corporation  
3 or any of its subsidiaries will be conclusively presumed to  
4 exist if:

5 a. The person is, or has been within the last three  
6 years, an employee of the benefit corporation or any of its  
7 subsidiaries, other than as a benefit officer.

8 b. An immediate family member of the person is, or  
9 has been within the last three years, an executive officer,  
10 other than a benefit officer, of the benefit corporation or  
11 any of its subsidiaries.

12 c. The person, or an association of which the person  
13 is a director, officer, or other manager or in which the  
14 person owns beneficially or of record five percent or more of  
15 the outstanding equity interests, owns beneficially or of  
16 record five percent or more of the outstanding shares of the  
17 benefit corporation.

18 (7) MINIMUM STATUS VOTE. In addition to any other  
19 approval or vote required by this act or a bylaw adopted by  
20 the shareholders:

21 a. The holders of shares of every class or series  
22 shall be entitled to vote in the corporate action regardless  
23 of any limitation stated in the articles of incorporation or  
24 bylaws on the voting rights of any class or series.

25 b. The corporate action must be approved by vote of  
26 the shareholders of each class or series entitled to cast at

1 least two-thirds of the votes that all shareholders of the  
2 class or series are entitled to cast thereon.

3 (8) SPECIFIC PUBLIC BENEFIT includes:

4 a. Providing low-income or underserved individuals  
5 or communities with beneficial products or services.

6 b. Promoting economic opportunity for individuals or  
7 communities beyond the creation of jobs in the normal course  
8 of business.

9 c. Preserving the environment.

10 d. Improving human health.

11 e. Promoting the arts, sciences, faith, or  
12 advancement of knowledge.

13 f. Increasing the flow of capital to entities with a  
14 public benefit purpose.

15 g. The accomplishment of any other particular  
16 benefit for society or the environment.

17 (9) SUBSIDIARY. An association in which the person  
18 owns beneficially or of record 50 percent or more of the  
19 outstanding equity interests.

20 (10) THIRD-PARTY STANDARD. A recognized standard for  
21 defining, reporting, and assessing corporate social and  
22 environmental performance that is:

23 a. Developed by a person that is independent of the  
24 benefit corporation.

25 b. Transparent because the following information  
26 about the standard is publicly available:

1           1. The factors considered when measuring the  
2 performance of a business.

3           2. The relative weightings of those factors.

4           3. The identity of the persons who developed and  
5 control changes to the standard and the process by which those  
6 changes are made.

7           (b) For purposes of the definitions of "independent"  
8 and "subsidiary" in this section, a percentage of ownership in  
9 an association shall be calculated as if all outstanding  
10 rights to acquire equity interests in the association had been  
11 exercised.

12           Section 3. (a) A business corporation may become a  
13 benefit corporation under this act by amending its certificate  
14 of formation so that it contains a statement that the  
15 corporation is a benefit corporation. The amendment shall not  
16 be effective unless it is adopted by at least the minimum  
17 status vote.

18           (b) If a corporation that is not a benefit  
19 corporation is a party to a merger, consolidation, or division  
20 or is the exchanging corporation in a share exchange, and the  
21 surviving, new, or any resulting corporation in the merger,  
22 consolidation, division, or share exchange is to be a benefit  
23 corporation, then the plan of merger, consolidation, division,  
24 or share exchange shall not be effective unless it is adopted  
25 by the corporation by at least the minimum status vote.

26           Section 4. (a) A benefit corporation may terminate  
27 its status as such and cease to be subject to this act by

1 amending its articles to delete the provision required by  
2 Section 2 to be stated in the articles of a benefit  
3 corporation. The amendment shall not be effective unless it is  
4 adopted by at least the minimum status vote.

5 (b) If a plan would have the effect of terminating  
6 the status of a business corporation as a benefit corporation,  
7 the plan shall be effective unless it is adopted by at least  
8 the minimum status vote.

9 Section 5. (a) Every benefit corporation shall have  
10 the purpose of creating general public benefit. This purpose  
11 is in addition to, and may be a limitation on, its purpose  
12 under Section 10A-2-3.01, Code of Alabama 1975.

13 (b) The articles of a benefit corporation may  
14 identify one or more specific public benefits that it is the  
15 purpose of the benefit corporation to create in addition to  
16 its purposes under Section 10A-2-3.01, Code of Alabama 1975.

17 (c) The identification of a specific public benefit  
18 under this section does not limit the obligation of a benefit  
19 corporation to create general public benefit. The creation of  
20 general and specific public benefit as provided in this  
21 section is in the best interests of the benefit corporation.

22 (d) A benefit corporation may amend its articles to  
23 add, amend, or delete the identification of a specific public  
24 benefit that it is the purpose of the benefit corporation to  
25 create. The amendment shall not be effective unless it is  
26 adopted by at least the minimum status vote.



1           Section 6. (a) In discharging the duties of their  
2           respective positions, the board of directors, committees of  
3           the board, and individual directors of a benefit corporation,  
4           in considering the best interest of the benefit corporation,

5           (1) Shall consider the effects of any action upon:

6           a. The shareholders of the benefit corporation;

7           b. The employees and workforce of the benefit  
8           corporation and its subsidiaries and suppliers;

9           c. The interests of customers as beneficiaries of  
10          the general or specific public benefit purposes of the benefit  
11          corporation;

12          d. Community and societal considerations, including  
13          those of any community in which offices or facilities of the  
14          benefit corporation or its subsidiaries or suppliers are  
15          located;

16          e. The local and global environments; and

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

22          (2) May consider:

23          a. The resources, intent and conduct, past, stated  
24          and potential, of any person seeking to acquire control of the  
25          corporation; and

26          b. Any other pertinent factors or the interests of  
27          any other group that they deem appropriate.

1           (3) Shall not be required to give priority to the  
2 interests of any particular person or group referred to in  
3 subdivisions (1) and (2) over the interests of any other  
4 person or group unless the benefit corporation has stated its  
5 intention to give priority to interests related to a specific  
6 public benefit purpose identified in its articles.

7           (b) The consideration of interests and factors in  
8 the manner required by subsection (a):

9           (1) Shall not constitute a violation of Section  
10 10A-2-8.30, Code of Alabama 1975; and

11           (2) Failure of the benefit corporation to pursue or  
12 create general public benefit or specific public benefit.

13           (c) A director is not personally liable for monetary  
14 damages for:

15           (1) Any action taken as a director if the director  
16 performed the duties of office in compliance with Section  
17 10A-2-8.30, Code of Alabama 1975; or

18           (2) Failure of the benefit corporation to pursue or  
19 create general public benefit or specific public benefit.

20           Section 7. (a) The governing persons of a benefit  
21 corporation shall include one director who shall be designated  
22 the "benefit director" and shall have, in addition to all of  
23 the powers, duties, rights, and immunities of the other  
24 directors of the benefit corporation, the powers, duties,  
25 rights, and immunities provided in this act.

26           (b) The benefit director shall be elected, and may  
27 be removed, in the manner provided by Section 3 and shall be

1 an individual who is independent. The benefit director may  
2 serve as the benefit officer at the same time as serving as  
3 the benefit director. The governing documents of a benefit  
4 corporation may prescribe additional qualifications of the  
5 benefit director not inconsistent with this act.

6 (c) The benefit director shall prepare, and the  
7 benefit corporation shall include in the annual benefit report  
8 to shareholders required by Section 10, a statement whether,  
9 in the opinion of the benefit director, the benefit  
10 corporation acted in accordance with its general, and any  
11 specific, public benefit purpose in all material respects  
12 during the period covered by the report and whether the  
13 governing officers complied with Sections 5 and 7,  
14 respectively. If, in the opinion of the benefit director the  
15 benefit corporation or its directors or officers failed so to  
16 act, then the statement of the benefit director shall include  
17 a description of the ways in which the benefit corporation or  
18 its directors or officers failed so to act.

19 (d) The acts of an individual in the capacity of a  
20 benefit director shall constitute for all purposes acts of  
21 that individual in the capacity of a director of the benefit  
22 corporation.

23 (e) (1) The bylaws of a benefit corporation must  
24 provide that the persons or shareholders who perform the  
25 duties of the board of directors include a person with the  
26 powers, duties, rights, and immunities of a benefit director  
27 if either of the following applies:

1           a. The bylaws of a benefit corporation provide that  
2 the powers and duties conferred or imposed upon the board of  
3 directors shall be exercised or performed by a person other  
4 than the directors.

5           b. The bylaws of a statutory close corporation that  
6 is a benefit corporation provide that the business and affairs  
7 of the corporation shall be managed by or under the direction  
8 of the shareholders.

9           (2) A person that exercises one or more of the  
10 powers, duties, or rights of a benefit director under this  
11 subsection:

12           a. Does not need to be independent of the benefit  
13 corporation;

14           b. Shall have the immunities of a benefit director;

15           c. May share the powers, duties, and rights of a  
16 benefit director with one or more other persons; and

17           d. Shall not be subject to the procedures for  
18 election or removal of directors in this act unless:

19           1. The person is also a director of the benefit  
20 corporation; or

21           2. The bylaws make those procedures applicable.

22           (f) Regardless of whether the bylaws of a benefit  
23 corporation include a provision eliminating or limiting the  
24 personal liability of directors authorized, a benefit director  
25 shall not be personally liable for any act or omission in the  
26 capacity of a benefit director unless the act or omission

1 constitutes self-dealing, willful misconduct, or a knowing  
2 violation of law.

3 Section 8. (a) Each officer of a benefit corporation  
4 shall consider the interests and factors described in  
5 subsection (a) of Section 5 when:

6 (1) The officer has discretion to act with respect  
7 to a matter;

8 (2) It reasonably appears to the officer that the  
9 matter may have a material effect on:

10 a. The creation of general or specific public  
11 benefit by the benefit corporation; or

12 b. Any of the interests or factors referred to in  
13 subsection (a) of Section 5.

14 (b) The consideration of interests and factors in  
15 the manner described in subsection (a) shall not constitute a  
16 violation of Section 10A-2-8.42, Code of Alabama 1975.

17 (c) An officer is not personally liable, as such,  
18 for monetary damages for any action taken as an officer if the  
19 officer performed the duties of the position in compliance  
20 with Section 10A-2-8.42, Code of Alabama 1975, and this  
21 section.

22 Section 9. A benefit corporation may have an officer  
23 designated the "benefit officer" who shall have such authority  
24 and shall perform such duties in the management of the benefit  
25 corporation relating to the purpose of the corporation to  
26 create general or specific public benefit as may be provided  
27 by or pursuant to the bylaws or, in the absence of controlling

1 provisions in the bylaws, as may be determined by or pursuant  
2 to resolutions or orders of the board of directors. If a  
3 benefit corporation has a benefit officer, the duties of the  
4 benefit officer shall include preparing the benefit report  
5 required by Section 10.

6 Section 10. (a) The duties of directors and officers  
7 under this act, and the general and any specific public  
8 benefit purpose of a benefit corporation, may be enforced only  
9 in a benefit enforcement proceeding. No person may bring an  
10 action or assert a claim against a benefit corporation or its  
11 directors or officers with respect to the duties of directors  
12 and officers under this act and the general and any specific  
13 public benefit purpose of the benefit corporation except in a  
14 benefit enforcement proceeding.

15 (b) A benefit enforcement proceeding may be  
16 commenced or maintained only:

17 (1) Directly by the benefit corporation; or

18 (2) Derivatively by:

19 a. A shareholder;

20 b. A director;

21 c. A person or group of persons that owns  
22 beneficially or of record 10 percent or more of the equity  
23 interests in an association of which the benefit corporation  
24 is a subsidiary; or

25 d. Such other persons as may be specified in the  
26 articles or bylaws of the benefit corporation.

1           Section 11. (a) A benefit corporation must deliver  
2 to each shareholder an annual benefit report including:

3           (1) A narrative description of:

4           a. The ways in which the benefit corporation pursued  
5 general public benefit during the year and the extent to which  
6 general public benefit was created;

7           b. The ways in which the benefit corporation pursued  
8 any specific public benefit that the articles state it is the  
9 purpose of the benefit corporation to create and the extent to  
10 which that specific public benefit was created; and

11           c. Any circumstances that have hindered the creation  
12 by the benefit corporation of general or specific public  
13 benefit;

14           (2) An assessment of the social and environmental  
15 performance of the benefit corporation, prepared in accordance  
16 with a third-party standard applied consistently with any  
17 application of that standard in prior benefit reports or  
18 accompanied by an explanation of the reasons for any  
19 inconsistent application;

20           (3) The name of the benefit director and the benefit  
21 officer, if any, and the address to which correspondence to  
22 each of them may be directed;

23           (4) The compensation paid by the benefit corporation  
24 during the year to each director in that capacity;

25           (5) The name of each person that owns five percent  
26 or more of the outstanding shares of the benefit corporation  
27 either beneficially, to the extent known to the benefit

1 corporation without independent investigation, or of record;  
2 and

3 (6) The statement of the benefit director described  
4 in Section 6.

5 (b) The benefit report must be sent annually to each  
6 shareholder within 120 days following the end of the fiscal  
7 year of the benefit corporation or at the same time that the  
8 benefit corporation delivers any other annual report to its  
9 shareholders.

10 (c) A benefit corporation must post its most recent  
11 benefit report on the public portion of its website, if any,  
12 except that the compensation paid to directors and any  
13 financial or proprietary information included in the benefit  
14 report may be omitted from the benefit report as posted.

15 (d) Concurrently with the delivery of the benefit  
16 report to shareholders pursuant to subsection (b), the benefit  
17 corporation must deliver a copy of the benefit report to the  
18 Secretary of State for filing, except that the compensation  
19 paid to directors and any financial or proprietary information  
20 included in the benefit report may be omitted from the benefit  
21 report as filed under this section. The Secretary of State  
22 shall charge a fee of seventy dollars (\$70) for filing a  
23 benefit report.

24 (e) If a benefit corporation has not delivered a  
25 benefit report to the Secretary of State for a period of two  
26 years, the Secretary of State may prepare and file a statement  
27 that the corporation has forfeited its status as a benefit



1 corporation and is no longer subject to this act. If the  
2 corporation subsequently delivers a benefit report to the  
3 Secretary of State for filing, the status of the corporation  
4 as a benefit corporation shall be automatically reinstated  
5 upon the filing of the benefit report by the Secretary of  
6 State and the corporation shall again be subject to this act.

7 Section 12. This act shall become effective on the  
8 first day of the third month following its passage and  
9 approval by the Governor, or its otherwise becoming law.