

1 SB427
2 201346-2
3 By Senator Ward
4 RFD: Fiscal Responsibility and Economic Development
5 First Read: 22-MAY-19

SYNOPSIS: This bill would add to Alabama's entity laws the ability to create benefit corporations and benefit limited liability companies, and would provide for the governance of these benefit entities.

 The bill would also extend certain business incentives to benefit entities.

A BILL
TO BE ENTITLED
AN ACT

 Relating to business entities; to add a new Chapter 12 to Title 10A of the Code of Alabama 1975, to allow for the creation of benefit corporations and benefit limited liability companies; to provide for the governance of these benefit entities; to extend certain business incentives to benefit entities; and to amend Section 10A-1-1.08 Code of Alabama 1975, to make conforming changes.

BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

1 Section 1. A new Chapter 12 is added to Title 10A of
2 the Code of Alabama 1975, to read as follows:

3 §10A-12-1.01.

4 This chapter and the provisions of Chapter 1, to the
5 extent applicable to benefit entities, may be cited as the
6 Alabama Benefit Entities Law.

7 §10A-12-1.02.

8 (a) (1) The provisions of the Alabama Business
9 Corporation Law shall apply to benefit corporations, domestic
10 and foreign, except to the extent the provisions of such law
11 are inconsistent with the provisions of this chapter.

12 (2) Benefit corporations shall be deemed a type of
13 business corporation for purposes of this chapter as well as
14 for Chapters 1 and 2.

15 (b) (1) The provisions of the Alabama Limited
16 Liability Company Law shall apply to benefit limited liability
17 companies, domestic and foreign, except to the extent the
18 provisions of such law are inconsistent with the provisions of
19 this chapter.

20 (2) Benefit limited liability companies shall be
21 deemed a type of limited liability company for purposes of
22 this chapter as well as for Chapters 1 and 5A.

23 §10A-12-1.03.

24 As used in this chapter, unless the context
25 otherwise requires, the following terms have the following
26 meanings:

1 (1) BENEFIT CORPORATION. A business corporation that
2 has elected to become subject to this chapter and whose status
3 as a benefit corporation has not been terminated as provided
4 in this chapter.

5 (2) BENEFIT ENFORCEMENT PROCEEDING. A claim or
6 action brought directly by a benefit entity, or derivatively
7 on behalf of a benefit entity, against a benefit manager for:

8 a. Failure to pursue the purposes set forth as
9 provided in Section 10A-12-2.02(b).

10 b. Violation of a duty or standard of conduct under
11 Section 10A-12-2.03.

12 (3) BENEFIT ENTITY. A benefit corporation or benefit
13 limited liability company.

14 (4) BENEFIT LIMITED LIABILITY COMPANY. A limited
15 liability company that has elected to become subject to this
16 chapter and whose status as a benefit limited liability
17 company has not been terminated as provided in this chapter.

18 (5) BENEFIT MANAGERS. The officers and directors of
19 a benefit corporation and the persons in authority as to a
20 benefit limited liability company.

21 (6) DESIGNATED BENEFIT MANAGER. The benefit manager
22 designated as provided in Section 10A-12-3.01.

23 (7) DOMESTIC BENEFIT ENTITY. A benefit entity that
24 is formed and exists under this chapter.

25 (8) EFFECTS. Items which are of an artistic,
26 charitable, cultural, economic, educational, environmental,

1 literary, medical, religious, scientific, technological, or
2 other nature.

3 (9) GENERAL PUBLIC BENEFIT. A positive effect, or
4 the reduction of a negative effect on the general public.

5 (10) OPERATING DOCUMENT. As to a business
6 corporation, its bylaws and, as to a limited liability
7 company, its limited liability company agreement.

8 (11) ORGANIZING DOCUMENT. As to a business
9 corporation, its articles of incorporation and, as to a
10 limited liability company, its certificate of formation.

11 (12) SPECIFIC PUBLIC BENEFIT. A positive effect, or
12 the reduction of a negative effect, on one or more specified
13 categories of persons. A specific public benefit may not be
14 provided solely to owners of the entity at issue.

15 (13) THIRD-PARTY STANDARD. A publicly available
16 standard or guideline for defining, reporting, and assessing
17 the performance of a benefit entity promulgated by a person
18 who is not described in Section 10A-12-3.01(b).

19 §10A-12-2.01.

20 A domestic benefit entity may be organized under
21 this chapter to provide a general public benefit, a specific
22 public benefit, or both.

23 §10A-12-2.02.

24 (a) To be a benefit entity, a business corporation
25 or limited liability company, as the case may be, shall state
26 in its organizing document that it is a benefit corporation or
27 benefit limited liability company, as the case may be.

1 (b) The organizing document shall further state
2 whether the benefit entity is pursuing a general public
3 benefit, a specific public benefit, or both. If the benefit
4 entity is pursuing a specific public benefit, the organizing
5 document shall further state the category of persons who are
6 the intended beneficiaries of the specific public benefit.

7 (c) The general public benefit or specific public
8 benefit purpose specified in a benefit entity's organizing
9 document need not be the exclusive purpose of the benefit
10 entity.

11 (d) A benefit entity which removes from its
12 organizing document the statements required in subsection (a)
13 shall thereafter no longer be subject to this chapter and
14 shall thereafter be a business corporation subject to Chapter
15 2 or a limited liability company subject to Chapter 5A, as the
16 case may be.

17 (e) Any foreign benefit entity that is transacting
18 business in this state shall be subject to this chapter.

19 (f) The inclusion of the statements provided for in
20 subsection (a) in a benefit entity's organizing document shall
21 not create in any person or class of persons any rights as to
22 the benefit entity, except as provided in the benefit entity's
23 organizing document or as provided in this chapter.

24 §10A-12-2.03.

25 In addition to considering the pecuniary interests
26 of the owners of the benefit entity, the benefit managers may
27 consider the effects of any proposed, contemplated, or actual

1 conduct on the general public benefit, the specific public
2 benefit, or both the general public benefit and the specific
3 public benefit specified in the benefit entity's organizing
4 document in determining any of the following:

5 (1) Whether a director of a benefit corporation has
6 satisfied the standards specified in Section 10A-2-8.30.

7 (2) Whether an officer of a benefit corporation has
8 satisfied the standards of conduct specified in Section
9 10A-2-8.42.

10 (3) Whether a person in a position of authority
11 within a benefit limited liability company has satisfied the
12 duties specified in Section 10A-5A-4.08.

13 §10A-12-3.01.

14 (a) Each benefit corporation shall designate one
15 director as the designated benefit manager. Each benefit
16 limited liability company shall designate one person having
17 direction and oversight of such entity as the designated
18 benefit manager.

19 (b) No person shall be the designated benefit
20 manager, if he or she, or his or her parents, siblings,
21 spouse, children, and grandchildren shall be any of the
22 following as to a benefit entity:

23 (1) An employee of the benefit entity or its
24 affiliates at any time in the three years prior to the
25 designation of the designated benefit manager.

26 (2) An owner of at least five percent of the benefit
27 entity's profits interest.

1 (3) An owner of at least 50 percent of the profits
2 interest in an entity described in subdivision (2).

3 (c) The operating document may specify additional
4 limitations on eligibility to serve as a designated benefit
5 manager.

6 §10A-12-3.02.

7 (a) This section applies to each of the following:

8 (1) A vote to amend a benefit entity's organizing
9 document or operating document.

10 (2) A vote to dissolve the benefit entity.

11 (3) A vote as to a conversion of the benefit entity.

12 (4) A vote as to a merger of the benefit entity.

13 (b) A vote on any of the matters specified in
14 subsection (a) shall not be effective unless the benefit
15 entity's designated benefit manager votes in the affirmative.

16 (c) In the event that a benefit entity's designated
17 benefit manager does not vote in the affirmative as to a
18 matter specified in subsection (a), such action may only take
19 effect if at least two-thirds of all owners vote in the
20 affirmative.

21 §10A-12-3.03.

22 (a) By April 1 of each year, each benefit entity
23 shall produce an annual report containing the information
24 described in subsection (b), certified as provided in
25 subsection (c), and published as provided in subsection (d).
26 The filing requirement applies to any business corporation or
27 limited liability company which was a benefit entity for any

1 part of the 12-month period ending on the most immediately
2 preceding December 31.

3 (b) An annual report shall contain the following
4 information:

5 (1) The name of the benefit entity.

6 (2) Information about the activities of the benefit
7 entity during the 12-month period ending on the most
8 immediately preceding December 31 which activities furthered
9 the purposes specified in Section 10A-12-2.02(b).

10 (3) An unaudited balance sheet and statement of
11 revenue and expenses, both for the 12-month period ending on
12 the most immediately preceding December 31.

13 (4) The third-party standard adopted by the benefit
14 entity.

15 (5) The application of the third-party standard to
16 the activities described in subdivision (2).

17 (6) The signatures of the benefit entity's president
18 and designated benefit manager.

19 (c) The designated benefit manager shall include in
20 the annual report a statement whether, in such person's
21 opinion, the benefit entity acted in accordance with the
22 purpose specified in Section 10A-12-2.02(b). If the designated
23 benefit manager determines that the benefit entity failed to
24 act in accordance with such purposes, the designated benefit
25 manager shall include his or her recommendations about steps
26 the benefit entity could take to improve in the future.

1 (d) The annual report shall be published through
2 each of the following means:

3 (1)a. A copy of the annual report shall be submitted
4 to the Secretary of State by April 1, who shall maintain such
5 reports in a searchable database on its website.

6 b. The annual report submitted to the Secretary of
7 State shall have redacted from it the financial information
8 described in subdivision (3) of subsection (b).

9 c. To defray the costs of maintaining the website,
10 the Secretary of State may charge a fee of thirty-five dollars
11 (\$35) for each submission.

12 (2) The annual report shall be distributed to each
13 owner of the benefit entity using the last known email
14 addresses on file with the benefit entity for such owners.

15 (3)a. The annual report shall be posted for public
16 view on the benefit entity's website.

17 b. The annual report posted on the benefit entity's
18 website shall have redacted from it the financial information
19 described in paragraph (1)b. of this subsection.

20 §10A-12-4.01.

21 (a) A benefit enforcement proceeding may be brought
22 to enforce either of the following:

23 (1) The failure of the benefit entity to pursue the
24 purposes set forth as provided in Section 10A-12-2.02(b).

25 (2) A violation by a benefit manager of a duty or
26 standard of conduct under Section 10A-12-2.03.

1 (b) A benefit enforcement proceeding may be brought
2 by any of the following persons:

3 (1) The benefit entity.

4 (2) A benefit manager.

5 (3) An owner of the benefit entity.

6 (4) If the benefit entity stated a specific public
7 benefit in its organizing document, any person from the
8 category of persons who are the intended beneficiaries of the
9 specified public benefit.

10 (c) A benefit manager may be held personally liable
11 in an enforcement proceeding only if the act or omission
12 constitutes self-dealing, willful misconduct, or a knowing
13 violation of law.

14 §10A-12-4.02.

15 (a) A benefit entity which fails timely to submit an
16 annual report to the Secretary of State by April 1 of any
17 given year shall have its status as a benefit entity revoked
18 by the Secretary of State, and the benefit entity shall be
19 treated as a business corporation or limited liability
20 company, as the case may be. Such revocation shall take effect
21 on the date the Secretary of State places a filing in the
22 records of the benefit entity stating that the revocation is
23 effective; provided, however, that the filing shall not be
24 made by the Secretary of State if an annual report is
25 submitted prior to the filing.

26 (b) A business corporation or limited liability
27 company which has its status as a benefit entity revoked

1 pursuant to subsection (a) may reinstate its status as a
2 benefit corporation by doing all of the following:

3 (1) Submitting the annual report, with allowed
4 redactions, to the Secretary of State and as provided in
5 Section 10A-12-3.03(d) (2) and (3).

6 (2) Complying with Section 10A-12-2.02.

7 (3) Paying a reinstatement fee of five hundred
8 dollars (\$500) to the Secretary of State.

9 §10A-12-5.01.

10 A benefit entity shall be considered an industrial
11 or research enterprise for purposes of Chapter 9B of Title 40,
12 an approved activity for purposes of Chapter 9G of Title 40,
13 and shall be deemed to be conducting a qualifying project for
14 purposes of Article 16 of Chapter 18 of Title 40.

15 Section 2. Section 10A-1-1.08, Code of Alabama 1975,
16 is amended to read as follows:

17 "§10A-1-1.08.

18 "(a) The provisions of this title as described by
19 this section may be cited as provided by this section.

20 "(b) Chapter 2 and the provisions of Chapter 1 to
21 the extent applicable to business corporations may be cited as
22 the Alabama Business Corporation Law.

23 "(c) Chapter 3 and the provisions of Chapter 1 to
24 the extent applicable to nonprofit corporations may be cited
25 as the Alabama Nonprofit Corporation Law.

1 "(d) Chapter 4 and the provisions of Chapter 1 to
2 the extent applicable to professional corporations may be
3 cited as the Alabama Professional Corporation Law.

4 "(e) Chapter 5A and the provisions of Chapter 1 to
5 the extent applicable to limited liability companies may be
6 cited as the Alabama Limited Liability Company Law.

7 "(f) Chapter 8A and the provisions of Chapter 1 to
8 the extent applicable to general partnerships may be cited as
9 the Alabama Partnership Law.

10 "(g) Chapter 9A and the provisions of Chapter 1 to
11 the extent applicable to limited partnerships may be cited as
12 the Alabama Limited Partnership Law.

13 "(h) Chapter 10 and the provisions of Chapter 1 to
14 the extent applicable to real estate investment trusts may be
15 cited as the Alabama Real Estate Investment Trust Law.

16 "(i) Chapter 11 and the provisions of Chapter 1 and
17 Chapter 2 to the extent applicable to employee cooperative
18 corporations may be cited as the Alabama Employee Cooperative
19 Corporations Law.

20 "(j) Chapter 12 and the provisions of Chapter 1 to
21 the extent applicable to benefit entities, as defined in
22 Chapter 12, may be cited as the Alabama Benefit Entities Law.

23 "k Chapter 17 may be cited as the Alabama
24 Unincorporated Nonprofit Association Law."

25 Section 3. If a court of competent jurisdiction
26 adjudges invalid or unconstitutional any clause, sentence,
27 paragraph, section, or part of this act, that judgment or

1 decree shall not affect, impair, invalidate, or nullify the
2 remainder of this act, but the effect of that decision shall
3 be confined to the clause, sentence, paragraph, section, or
4 part of this act adjudged to be invalid or unconstitutional.

5 Section 4. All laws or parts of laws which conflict
6 with this act are repealed.

7 Section 5. This act shall become effective 90 days
8 following its passage and approval by the Governor, or its
9 otherwise becoming law.