

This profile is part of a set of 51 profiles, including all U.S. states and the District of Columbia, which outlines state laws, regulations, and requirements that apply to charitable organizations. It covers six areas and highlights ways in which state laws differ from federal laws governing charitable organizations.



Formation, Elections, Operation, and Dissolution

Nonprofit Corporations

Nonprofit corporations are governed by The Arkansas Nonprofit Corporation Act of 1993. Ark. Code Ann. 4 Ch. 33.

The Arkansas Nonprofit Corporation Act of 1993 governs nonprofit corporations incorporated on or after January 1, 1994 or those incorporated prior to that date that have elected to be governed under the 1993 Act in amendments to their articles of incorporations. All other nonprofit corporations are governed under the old Arkansas Nonprofit Corporation Act, located at Ark. Code Ann. § 4-28. Ark. Code Ann. § 4-33-1701.

Nonprofit Unincorporated Associations

Nonprofit unincorporated associations are treated as 'entities' under Ark. Code Ann. § 4-33-140.

Election of Directors

There must be at least three directors. Ark. Code Ann. § 4-33-803.

The election of directors is governed by Ark. Code Ann. § 4-33-801 to 804.

Director Term

"The articles or bylaws must specify the term of directors. Except for designated or appointed directors, the terms of directors may not exceed the lesser of six years or the stated duration of the corporation. In the absence of any term specified in the articles or bylaws, the term of each director shall be one year. Directors may be

elected for successive terms, unless otherwise provided in the articles or bylaws." Ark. Code Ann. § 4-33-805. "The articles or bylaws may provide for staggering the terms of directors..." Ark. Code Ann. § 4-33-806.

Meeting and Quorum Requirements

Quorum (Members): Unless the articles of incorporation or bylaws provide otherwise, ten percent of the votes entitled to be cast on a matter constitutes a quorum. Ark. Code Ann. § 4-33-722.

Quorum (Directors): Except as otherwise provided in the articles of incorporation or bylaws, the majority of the directors in office immediately before a meeting begins constitutes a quorum. Ark. Code Ann. § 4-33-824.

Annual meeting required for corporations with members. Ark. Code Ann. § 4-33-701.

Officer Requirements

Unless otherwise provided in the articles or bylaws, the nonprofit corporation must have the officers who are appointed by the board. "The bylaws or the board shall delegate to one of the officers responsibility for preparing minutes of the directors' and members' meetings and for authenticating records of the corporation." Ark. Code Ann. § 4-33-840.

Officer Term

No relevant statute found.

Dissolution

Dissolution is governed by Ark. Code Ann. § 4-33-1401 to 1408, 1420 to 1423, 1430 to 1433, and 1440.

Duties, Indemnification, and Interested Transactions

Director Duties

The standards of conduct for directors state a director shall act: "(1) in good faith; (2) with the care an ordinarily prudent person in a like position would exercise under similar circumstances; and (3) in a manner the director reasonably believes to be in the best interests of the corporation." Ark. Code Ann. § 4-33-830. Directors' standards of conduct are further governed by Ark. Code Ann. § 4-33-833.

Officer Duties

The standards of conduct for officers state an officer shall act: "(1) in good faith; (2) with the care an ordinarily prudent person in a like position would exercise under similar circumstances; and (3) in a manner the officer reasonably believes to be in the best interests of the corporation and its members, if any." Ark. Code Ann. § 4-33-842.

Board Independence Requirements

No relevant statute found.

Interested Transactions

"A conflict of interest transaction is not voidable or the basis for imposing liability on the director if any of the following is true: (1) the transaction was fair to the corporation at the time it was entered into; (2) the material facts of the transaction and the director's interest were disclosed or known to the board of directors and the board authorized, approved, or ratified the transaction; or (3) the material facts of the transaction and the director's interest were disclosed or known to the members and they authorized, approved, or ratified the transaction." Ark. Code Ann. § 4-33-831.

Indemnification of Directors/Officers

"Unless limited by its articles of incorporation, a corporation shall indemnify a director who was wholly successful, on the merits or otherwise, in the defense of any proceeding to which the director was a party because he or she is or was a director of the corporation against reasonable expenses actually incurred by the director in connection with the proceeding." Ark. Code Ann. § 4-33-852. Unless limited by the articles of incorporation, an officer who is not a director is entitled to mandatory indemnification and is entitled to apply for court-ordered indemnification to the same extent as a director in each instance. Ark. Code Ann. § 4-33-856. Indemnification for officers and directors is further governed under Ark. Code Ann. § 4-33-850 to 856.

Loans to Directors, Officers, or Employees

"A corporation may not lend money to or guaranty the obligation of a director or officer of the corporation." Ark. Code Ann. § 4-33-832.

Notable Departures from Federal Law

Religious/Church Exemption

For property tax exemption, see Ark. Const. art. XVI, § 5; Ark. Code Ann. § 26-3-206 and 301. For income tax exemption, see Ark. Code Ann. § 26-51-206 and 303.

See tax sections below.

Healthcare "Plus Factors"

No relevant statute found.

General

Rebuttable Presumption of Reasonableness - Delegation to Disinterested "Others"

"A corporation may provide in its articles or bylaws for delegates having some or all of the authority of members." Ark. Code Ann. § 4-33-640.

Charitable Solicitation Requirements

Arkansas requires that all charitable organizations soliciting contributions from people in Arkansas must be registered and have "[p]rovided certain information concerning the solicitation, as required by this subchapter, on forms to be provided by the Attorney General, and [have] filed the information with the Attorney General." Ark. Code Ann. § 4-28-402. Charitable solicitations are further governed under Ark. Code Ann. § 4-28-401 to 416.

State-Specific Retention Policies

No relevant statute found.

Personal Information Collection and Protection Laws

The Personal Information Protection Act states: "A person or business that acquires, owns, or licenses personal information about an Arkansas resident shall implement and maintain reasonable security procedures and practices appropriate to the nature of the information to protect the personal information from unauthorized access, destruction, use, modification, or disclosure." Ark. Code Ann. § 4-110-104.

The Personal Information Protection Act can be found at Ark. Code Ann. § 4-110-101 to 108.

Whistleblower Protection

Arkansas recognizes a public policy exception to the at-will employment doctrine. The Arkansas Whistle-Blower Act prohibits public employers from retaliating against public employees who (1) communicate in good faith to an appropriate authority the waste of public resources or the violation or suspected violation of a law, rule, or regulation, (2) participate or give information in an investigation, legal proceeding or inquiry, or administrative review, or (3) refuse to carry out an order the employees reasonably believe violate a law, rule, or regulation a rule. Ark. Code Ann. § 21-1-603. A public employer includes a corporation "of a county government or a municipality or a district court, a county subordinate service district, a municipally owned utility, or a regional or joint governing body of one (1) or more counties or municipalities." Ark. Code Ann. § 21-1-602. The Arkansas Whistle-Blower Act is further governed under Ark. Code Ann. § 21-1-601 to 610.

State Volunteer Liability Law

Volunteers in state service are protected by the state's sovereign immunity to the same extent as paid staff. Ark. Code Ann. § 21-13-108.

Under the Arkansas Volunteer Immunity Act, a "qualified volunteer" is not liable for personal injury or property damages, except under certain circumstances. Ark. Code Ann. § 16-6-105. A "qualified volunteer" is "any person who of free will provides goods or services without financial compensation to or through any volunteer agency in connection with a volunteer program." Ark. Code Ann. § 16-6-103.

The Arkansas Volunteer Immunity Act is further governed under Ark. Code Ann. § 16-6-101 to 105.

Independent Audit Requirements

"Any nonprofit organization receiving state financial assistance shall be subject to audit of its receipt and expenditure of state financial assistance by the Division of Legislative Audit." Ark. Code Ann. § 4-28-104.

State Filing Requirements

An annual report must be filed with the Secretary of State by August 1. Ark. Code Ann. § 4-33-131. Requirements for filed documents are governed under Ark. Code Ann. § 4-33-120 to 129.

Model Acts

Uniform Prudent Management of Institutional Funds Act

Adopted

Uniform Prudent Investor Act

Adopted

Tax Exemptions

Income Tax

A corporation must be "organized and operated exclusively for religious, charitable, scientific, literary, or educational purposes, or for the prevention of cruelty to children or animals, no part of the net earnings of which inures to the benefit of any private shareholder or individual, no substantial part of the activities of which is carrying on propaganda or otherwise attempting to influence legislation, and which does not participate in, or intervene in, including the publishing or distributing of statements, any political campaign on behalf of or in opposition to any candidate for public office" to qualify for state income tax exemption. Ark. Code Ann. § 26-51-303.

Income from investments made by nonprofit organizations is exempt from state income tax "where the income is for the sole purpose of providing pension and annuity benefits to members of the nonprofit organizations." Ark. Code Ann. § 26-51-304.

Sales and Use Taxation

Nonprofit charitable organizations are exempt from tax on the gross receipts and gross proceeds from the sale of tangible personal property or service. Ark. Code Ann. § 26-52-401. Organizations exempt from the tax on gross receipts and gross proceeds on tangible personal property and services are also exempt from the compensating or use taxes on the same tangible personal property and services. Ark. Code Ann. § 26-53-112.

Property Tax Exemption

"[P]ublic property used exclusively for public purposes: churches used as such; cemeteries used exclusively as such; school buildings and apparatus; libraries and grounds used exclusively for school purposes; and buildings and grounds and materials used exclusively for public charity" are exempt from taxation. Ark. Const. art. XVI, § 5. "All buildings belonging to institutions of purely public charity,

together with the land actually occupied by these institutions, not leased or otherwise used with a view to profit, and all moneys and credits appropriated solely to sustaining, and belonging exclusively to, these institutions" are exempt from taxation. Ark. Code Ann. § 26-3-301.

Miscellaneous Exemptions

Hospital and medical service corporations "are exempt from state, county, district, municipal, and school tax, including the taxes prescribed by this code, and excepting only tax on net direct written premiums under § 23-75-119 and § 26-57-601 et seq. and applicable fees prescribed by § 23-61-401 and other sections of this code, or the Insurance Commissioner's rules and regulations applicable to hospital and medical service corporations, and taxes on real and tangible personal property situated in this state." Ark. Code Ann. § 23-75-120.

General Resource:

<http://law.justia.com/codes/arkansas/2010/title-4/subtitle-3/chapter-33>

Disclaimer

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