THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 433

Session of 2011

INTRODUCED BY LEACH, M. WHITE, STACK, FONTANA AND FERLO, FEBRUARY 11, 2011

REFERRED TO JUDICIARY, FEBRUARY 11, 2011

20

Sec.

AN ACT

1 2 3 4 5 6	Amending Title 15 (Corporations and Unincorporated Associations) of the Pennsylvania Consolidated Statutes, authorizing incorporation of benefit corporations; providing for rights, duties and obligations of benefit corporations and their shareholders, directors and officers; and imposing powers and duties on the Department of State.
7	The General Assembly of the Commonwealth of Pennsylvania
8	hereby enacts as follows:
9	Section 1. Title 15 of the Pennsylvania Consolidated
10	Statutes is amended by adding a chapter to read:
11	CHAPTER 33
12	BENEFIT CORPORATIONS
13	Subchapter
14	A. Preliminary Provisions
15	B. Corporate Purposes
16	C. Accountability
17	D. Transparency
18	SUBCHAPTER A
19	PRELIMINARY PROVISIONS

- 1 3301. Application and effect of chapter.
- 2 3302. Definitions.
- 3 3303. Formation of benefit corporations.
- 4 3304. Election of status.
- 5 <u>3305</u>. <u>Termination of status</u>.
- 6 § 3301. Application and effect of chapter.
- 7 (a) General rule. -- This chapter shall be applicable to all
- 8 benefit corporations.
- 9 (b) Application of business corporation law generally.--The
- 10 existence of a provision of this chapter shall not of itself
- 11 <u>create an implication that a contrary or different rule of law</u>
- 12 <u>is applicable to a business corporation which is not a benefit</u>
- 13 corporation. This chapter shall not affect a statute or rule of
- 14 <u>law which is applicable to a business corporation that is not a</u>
- 15 <u>benefit corporation</u>.
- 16 <u>(c) Laws applicable.--Except as otherwise provided in this</u>
- 17 chapter, this subpart shall be generally applicable to all
- 18 benefit corporations. The specific provisions of this chapter
- 19 shall control over the general provisions of this subpart. A
- 20 benefit corporation may be simultaneously subject to this
- 21 <u>chapter and one or more other chapters of this article.</u>
- 22 (d) Organic records. -- A provision of the articles or bylaws
- 23 of a benefit corporation may not relax, be inconsistent with or
- 24 supersede a provision of this chapter.
- 25 § 3302. Definitions.
- 26 (a) Defined terms. -- The following words and phrases when
- 27 <u>used in this chapter shall have the meanings given to them in</u>
- 28 this section unless the context clearly indicates otherwise:
- 29 "Benefit corporation." A business corporation:
- 30 (1) which has elected to become subject to this chapter;

- 1 and
- 2 (2) the status of which as a benefit corporation has not
- 3 been terminated under section 3305 (relating to termination
- 4 <u>of status</u>).
- 5 <u>"Benefit director." The director designated as the benefit</u>
- 6 <u>director of a benefit corporation under section 3322 (relating</u>
- 7 to benefit director).
- 8 "Benefit enforcement proceeding." Any claim or action
- 9 brought directly by a benefit corporation, or derivatively on
- 10 behalf of a benefit corporation, against a director or officer
- 11 for:
- 12 (1) failure to pursue the general public benefit purpose
- of the benefit corporation or a specific public benefit
- 14 <u>purpose set forth in its articles; or</u>
- 15 (2) violation of a duty or standard of conduct under
- 16 <u>this chapter.</u>
- 17 "Benefit officer." The individual designated as the benefit
- 18 officer of a benefit corporation under section 3324 (relating to
- 19 benefit officer).
- 20 "General public benefit." A material positive impact on
- 21 society and the environment, taken as a whole, as measured by a
- 22 third-party standard, from the business and operations of a
- 23 <u>benefit corporation</u>.
- 24 "Independent." Having no material relationship with a
- 25 benefit corporation or a subsidiary of the benefit corporation.
- 26 Serving as benefit director or benefit officer does not make a
- 27 <u>person not independent. A material relationship between a person</u>
- 28 and a benefit corporation or any of its subsidiaries will be
- 29 <u>conclusively presumed to exist if any of the following apply:</u>
- 30 (1) The person is, or has been within the last three

Τ	<u>years, an employee other than a benefit officer of the</u>
2	benefit corporation or a subsidiary of the benefit
3	corporation.
4	(2) An immediate family member of the person is, or has
5	been within the last three years, an executive officer other
6	than a benefit officer of the benefit corporation or its
7	subsidiary.
8	(3) There is beneficial or record ownership of 5% or
9	more of the outstanding shares of the benefit corporation by:
10	(i) the person; or
11	(ii) an association:
12	(A) of which the person is a director, an
13	officer or a manager; or
14	(B) in which the person owns beneficially or of
15	record 5% or more of the outstanding equity
16	<u>interests.</u>
17	This definition is subject to subsection (b).
18	"Minimum status vote." In addition to any other approval or
19	vote required by this subpart or a bylaw adopted by the
20	shareholders, the satisfaction of the following conditions:
21	(1) The shareholders of every class or series must be
22	entitled to vote on the corporate action regardless of a
23	limitation stated in the articles of incorporation or bylaws
24	on the voting rights of any class or series.
25	(2) The corporate action must be approved by vote of the
26	shareholders of each class or series entitled to cast at
27	least two-thirds of the votes that all shareholders of the
28	class or series are entitled to cast on the action.
29	"Specific public benefit." Includes:
30	(1) providing low-income or underserved individuals or

1	communities with beneficial products or services;
2	(2) promoting economic opportunity for individuals or
3	communities beyond the creation of jobs in the normal course
4	of business;
5	(3) preserving the environment;
6	(4) improving human health;
7	(5) promoting the arts, sciences or advancement of
8	knowledge;
9	(6) increasing the flow of capital to entities with a
0	<pre>public benefit purpose; and</pre>
1	(7) conferring any other particular benefit on society
.2	or the environment.
_3	"Subsidiary." In relation to a person, an association in
4	which the person owns beneficially or of record 50% or more of
.5	the outstanding equity interests. This definition is subject to
. 6	subsection (b).
_7	"Third-party standard." A standard for defining, reporting
8_	and assessing overall corporate social and environmental
_9	<pre>performance which is:</pre>
20	(1) Comprehensive in that it assesses the effect of the
21	business and its operations upon the interests listed in
22	section 3321(a)(1)(ii), (iii), (iv) and (v) (relating to
23	standard of conduct for directors).
24	(2) Developed by an organization that is independent of
25	the benefit corporation and satisfies the following
26	<pre>requirements:</pre>
27	(i) Not more than one-third of the members of the
28	governing body of the organization are representatives of
29	<pre>either:</pre>
30	(A) An association of businesses operating in a

1	specific industry the performance of whose members is
2	measured by the standard.
3	(B) Businesses whose performance is measured by
4	the standard.
5	(ii) The organization is not materially financed by
6	an association or business described in subparagraph (i).
7	(3) Credible because the standard is developed by a
8	<pre>person who both:</pre>
9	(i) Has access to necessary expertise to assess
10	overall corporate social and environmental performance.
11	(ii) Uses a balanced multistakeholder approach,
12	including a public comment period of at least 30 days to
13	develop the standard.
14	(4) Transparent because the following information is
15	<pre>publicly available:</pre>
16	(i) About the standard:
17	(A) The criteria considered when measuring the
18	overall social and environmental performance of a
19	business.
20	(B) The relative weightings of those criteria.
21	(ii) About the development and revision of the
22	<pre>standard:</pre>
23	(A) The identity of the directors, officers,
24	material owners and the governing body of the
25	organization that developed and controls revisions to
26	the standard.
27	(B) The process by which revisions to the
28	standard and changes to the membership of the
29	governing body are made.
30	(C) An accounting of the sources of financial

1	support for the organization, with sufficient detail
2	to disclose any relationships that could reasonably
3	be considered to present a potential conflict of
4	<u>interest.</u>
5	(b) Computation of ownership For purposes of the
6	definitions of "independent" and "subsidiary" in subsection (a),
7	a percentage of ownership in an association shall be calculated
8	as if all outstanding rights to acquire equity interests in the
9	association had been exercised.
10	§ 3303. Formation of benefit corporations.
11	A benefit corporation must be formed in accordance with
12	Article B (relating to domestic business corporations
13	generally), but its articles must also state that it is a
14	benefit corporation.
15	§ 3304. Election of status.
16	(a) AmendmentA business corporation may become a benefit
17	corporation under this chapter by amending its articles so that
18	they contain, in addition to the requirements of section 1911(b)
19	(relating to amendment of articles authorized), a statement that
20	the corporation is a benefit corporation. In order to be
21	effective, the amendment must be adopted by the minimum status
22	vote.
23	(b) Fundamental transactions
24	(1) This subsection applies if all of the following
25	subparagraphs apply:
26	(i) A corporation that is not a benefit corporation
27	<u>is:</u>
28	(A) a party to a merger, consolidation or
29	division; or
30	(B) the exchanging corporation in a share

- 1 <u>exchange.</u>
- 2 (ii) The surviving, new or any resulting corporation
- 3 in the merger, consolidation, division or share exchange
- 4 <u>is to be a benefit corporation.</u>
- 5 (2) In order to be effective, a plan of merger,
- 6 consolidation, division or share exchange subject to this
- 7 <u>subsection must be adopted by the minimum status vote.</u>
- 8 § 3305. Termination of status.
- 9 (a) Amendment.--A benefit corporation may terminate its
- 10 status as such and cease to be subject to this chapter by
- 11 <u>amending its articles to delete the provision required by</u>
- 12 <u>section 3304 (relating to election of status) to be stated in</u>
- 13 the articles of a benefit corporation. In order to be effective,
- 14 the amendment must be adopted by the minimum status vote.
- 15 (b) Fundamental transactions. -- If a plan would have the
- 16 <u>effect of terminating the status of a business corporation as a</u>
- 17 benefit corporation, in order to be effective, the plan must be
- 18 adopted by the minimum status vote.
- 19 (c) Cross reference. -- See section 3331 (relating to annual
- 20 benefit report).
- 21 SUBCHAPTER B
- 22 CORPORATE PURPOSES
- 23 Sec.
- 24 3311. Corporate purposes.
- 25 § 3311. Corporate purposes.
- 26 (a) General public benefit purpose. -- A benefit corporation
- 27 shall have the purpose of creating general public benefit. This
- 28 purpose is in addition to its purpose under section 1301
- 29 <u>(relating to purposes).</u>
- 30 (b) Optional specific public benefit purpose. -- The articles

- 1 of a benefit corporation may identify one or more specific
- 2 <u>public benefits that it is the purpose of the benefit</u>
- 3 corporation to create in addition to its purposes under section
- 4 1301 and subsection (a). The identification of a specific public
- 5 benefit under this subsection does not limit the obligation of a
- 6 benefit corporation under subsection (a).
- 7 (c) Effect of purposes. -- The creation of general public
- 8 benefit and specific public benefit under subsections (a) and
- 9 (b) is in the best interests of the benefit corporation.
- 10 (d) Amendment. -- A benefit corporation may amend its articles
- 11 to add, amend or delete the identification of a specific public
- 12 benefit that it is the purpose of the benefit corporation to
- 13 <u>create. In order to be effective, the amendment must be adopted</u>
- 14 by the minimum status vote.
- 15 <u>SUBCHAPTER C</u>
- 16 <u>ACCOUNTABILITY</u>
- 17 Sec.
- 18 3321. Standard of conduct for directors.
- 19 3322. Benefit director.
- 20 3323. Standard of conduct for officers.
- 21 3324. Benefit officer.
- 22 3325. Right of action.
- 23 § 3321. Standard of conduct for directors.
- 24 (a) Required considerations. -- Without regard to whether the
- 25 benefit corporation is subject to section 1715 (relating to
- 26 exercise of powers generally) or 1716 (relating to alternative
- 27 standard), in discharging the duties of their respective
- 28 positions and in considering the best interests of the benefit
- 29 corporation, the board of directors, committees of the board and
- 30 <u>individual directors of a benefit corporation:</u>

Τ	(1) shall consider the effects of any action upon:
2	(i) the shareholders of the benefit corporation;
3	(ii) the employees and work force of the benefit
4	corporation, its subsidiaries and its suppliers;
5	(iii) the interests of customers as beneficiaries of
6	the general public benefit or specific public benefit
7	purposes of the benefit corporation;
8	(iv) community and societal factors, including those
9	of each community in which offices or facilities of the
10	benefit corporation, its subsidiaries or its suppliers
11	are located;
12	(v) the local and global environment;
13	(vi) the short-term and long-term interests of the
14	benefit corporation, including benefits that may accrue
15	to the benefit corporation from its long-term plans and
16	the possibility that these interests may be best served
17	by the continued independence of the benefit corporation;
18	<u>and</u>
19	(vii) the ability of the benefit corporation to
20	accomplish its general public benefit purpose and any
21	specific public benefit purpose; and
22	(2) may consider:
23	(i) matters listed in section 1715(a)(3); and
24	(ii) other pertinent factors or the interests of any
25	other group which they deem appropriate; but
26	(3) need not give priority to the interests of a
27	particular person or group referred to in paragraph (1) or
28	(2) over the interests of another person or group unless the
29	benefit corporation has stated its intention to give priority
30	to interests related to a specific public benefit purpose

- 1 identified in its articles.
- 2 (b) Coordination with other provisions of law.--The
- 3 consideration of interests and factors in the manner required by
- 4 subsection (a):
- 5 (1) does not constitute a violation of section 1712
- 6 (relating to standard of care and justifiable reliance); and
- 7 (2) is in addition to the ability of directors to
- 8 <u>consider interests and factors as provided in section 1715 or</u>
- 9 <u>1716.</u>
- 10 (c) Exoneration from personal liability generally. -- A
- 11 <u>director</u> is not personally liable for monetary damages for:
- 12 (1) action taken as a director if the director performed
- the duties of office in compliance with section 1712 and this
- 14 section; or
- 15 (2) failure of the benefit corporation to create general
- 16 <u>public benefit or a specific public benefit.</u>
- 17 (d) Limitation on standing. -- A director does not have a
- 18 fiduciary duty to a person that is a beneficiary of the general
- 19 or specific public benefit purposes of a benefit corporation
- 20 arising from the status of the person as a beneficiary.
- 21 § 3322. Benefit director.
- 22 (a) General rule. -- The board of directors of a benefit
- 23 <u>corporation shall include one director, who:</u>
- 24 (1) shall be designated the benefit director; and
- 25 (2) shall have, in addition to the powers, duties,
- rights and immunities of the other directors of the benefit
- 27 <u>corporation, the powers, duties, rights and immunities</u>
- 28 provided in this subchapter.
- 29 (b) Election, removal and qualifications. -- The benefit
- 30 director shall be elected, and may be removed, in the manner

- 1 provided by Ch. 17 Subch. C (relating to directors and
- 2 officers), and shall be an individual who is independent. The
- 3 benefit director may serve as the benefit officer at the same
- 4 time as serving as the benefit director. The articles or bylaws
- 5 of a benefit corporation may prescribe additional qualifications
- 6 of the benefit director not inconsistent with this subsection.
- 7 (c) Annual compliance statement. -- The benefit director shall
- 8 prepare, and the benefit corporation shall include in the annual
- 9 <u>benefit report to shareholders required by section 3331</u>
- 10 (relating to annual benefit report), the opinion of the benefit
- 11 director on all of the following:
- 12 (1) Whether the benefit corporation acted in accordance
- with its general public benefit purpose and any specific
- 14 <u>public benefit purpose in all material respects during the</u>
- period covered by the report.
- 16 (2) Whether the directors and officers complied with
- 17 sections 3321(a) (relating to standard of conduct for
- directors) and 3323(a) (relating to standard of conduct for
- 19 officers), respectively.
- 20 (3) If, in the opinion of the benefit director, the
- 21 benefit corporation or its directors or officers failed to
- 22 comply with paragraph (2), a description of the ways in which
- 23 the benefit corporation or its directors or officers failed
- to comply.
- 25 (d) Status of actions. -- The acts of an individual in the
- 26 capacity of a benefit director shall constitute for all purposes
- 27 <u>acts of that individual in the capacity of a director of the</u>
- 28 benefit corporation.
- 29 <u>(e) Alternative governance arrangements.--The bylaws of a</u>
- 30 benefit corporation must provide that the persons or share

- 1 holders who perform the duties of the board of directors include
- 2 a person with the powers, duties, rights and immunities of a
- 3 benefit director if any of the following apply:
- 4 (1) The bylaws of a benefit corporation provide that the
- 5 powers and duties conferred or imposed upon the board of
- 6 <u>directors be exercised or performed by a person other than</u>
- 7 <u>the directors under section 1721(a) (relating to board of</u>
- 8 <u>directors</u>).
- 9 (2) The bylaws of a statutory close corporation that is
- 10 <u>a benefit corporation provide that the business and affairs</u>
- of the corporation be managed by or under the direction of
- 12 <u>the shareholders.</u>
- (f) Exoneration from personal liability.--Regardless of
- 14 whether the bylaws of a benefit corporation include a provision
- 15 <u>eliminating or limiting the personal liability of directors</u>
- 16 <u>authorized by section 1713 (relating to personal liability of</u>
- 17 directors), a benefit director shall not be personally liable
- 18 for an act or omission in the capacity of a benefit director
- 19 unless the act or omission constitutes self-dealing, willful
- 20 misconduct or a knowing violation of law.
- 21 § 3323. Standard of conduct for officers.
- 22 (a) General rule. -- Each officer of a benefit corporation
- 23 <u>shall consider the interests and factors described in section</u>
- 24 3321(a) (relating to standard of conduct for directors) in the
- 25 manner provided in that subsection if:
- 26 (1) the officer has discretion to act with respect to a
- 27 matter; and
- 28 (2) it reasonably appears to the officer that the matter
- 29 may have a material effect on the creation of general public
- 30 benefit or a specific public benefit by the benefit

- 1 <u>corporation</u>.
- 2 (b) Coordination with other provisions of law.--The
- 3 consideration of interests and factors in the manner described
- 4 <u>in subsection (a) shall not constitute a violation of section</u>
- 5 1712(c) (relating to standard of care and justifiable reliance).
- 6 (c) Exoneration from personal liability. -- An officer is not
- 7 personally liable for monetary damages for:
- 8 (1) action taken as an officer if the officer performed
- 9 the duties of the position in compliance with section 1712(c)
- 10 and this section; or
- 11 (2) failure of the benefit corporation to create general
- 12 <u>public benefit or specific public benefit.</u>
- 13 (d) Limitation on standing. -- An officer does not have a
- 14 fiduciary duty to a person that is a beneficiary of the general
- 15 or specific public benefit purposes of a benefit corporation
- 16 arising from the status of the person as a beneficiary.
- 17 § 3324. Benefit officer.
- 18 (a) Designation. -- A benefit corporation may have an officer
- 19 designated the benefit officer.
- 20 (b) Functions. -- A benefit officer shall have:
- 21 (1) powers and duties relating to the purpose of the
- 22 corporation to create general public benefit or specific
- 23 public benefit provided:
- (i) by the bylaws; or
- 25 (ii) absent controlling provisions in the bylaws, by
- 26 resolutions or orders of the board of directors.
- 27 (2) the duty to prepare the benefit report required by
- section 3331 (relating to annual benefit report).
- 29 § 3325. Right of action.
- 30 (a) Type of proceeding. -- The duties of directors and

- 1 officers under this chapter, and the general public benefit
- 2 purpose and any specific public benefit purpose of a benefit
- 3 corporation, may be enforced only in a benefit enforcement
- 4 proceeding. No person may bring an action or assert a claim
- 5 against a benefit corporation or its directors or officers with
- 6 respect to the duties of directors and officers under this
- 7 <u>chapter and the general public benefit purpose and any specific</u>
- 8 <u>public benefit purpose of the benefit corporation except in a</u>
- 9 <u>benefit enforcement proceeding.</u>
- 10 (b) Standing. -- A benefit enforcement proceeding may be
- 11 commenced or maintained only:
- 12 (1) directly by the benefit corporation; or
- 13 (2) derivatively by:
- 14 (i) a shareholder;
- (ii) a director;
- 16 (iii) a person or group of persons that owns
- beneficially or of record 5% or more of the equity
- interests in an association of which the benefit
- 19 corporation is a subsidiary; or
- 20 (iv) other persons as specified in the articles or
- 21 bylaws of the benefit corporation.
- 22 (c) Cross reference. -- See Subchapter F of Chapter 17
- 23 (relating to derivative actions).
- 24 <u>SUBCHAPTER D</u>
- 25 TRANSPARENCY
- 26 Sec.
- 27 3331. Annual benefit report.
- 28 § 3331. Annual benefit report.
- 29 (a) Contents. -- A benefit corporation shall prepare an annual
- 30 benefit report including all of the following:

1	(1) A narrative description of all of the following:
2	(i) The ways in which the benefit corporation
3	pursued general public benefit during the year and the
4	extent to which general public benefit was created.
5	(ii) Both:
6	(A) the ways in which the benefit corporation
7	pursued a specific public benefit which the articles
8	state it is the purpose of the benefit corporation to
9	<pre>create; and</pre>
10	(B) the extent to which that specific public
11	benefit was created.
12	(iii) Any circumstances that have hindered the
13	creation by the benefit corporation of general public
14	benefit or specific public benefit.
15	(2) An assessment of the overall social and
16	environmental performance of the benefit corporation. The
17	assessment shall be prepared in accordance with a third-party
18	standard:
19	(i) applied consistently with any application of
20	that standard in prior benefit reports; or
21	(ii) accompanied by an explanation of the reasons
22	for any inconsistent application.
23	(3) The name of the benefit director and the benefit
24	officer and the address to which correspondence to each of
25	them may be directed.
26	(4) The compensation paid by the benefit corporation
27	during the year to each director in the capacity of a
28	director.
29	(5) The name of each person that owns 5% or more of the
30	outstanding shares of the benefit corporation either:

1	(i) beneficially, to the extent known to the benefit
2	corporation without independent investigation; or
3	(ii) of record.
4	(6) The statement of the benefit director described in
5	section 3322(c) (relating to benefit director).
6	(b) Timing of report The benefit report shall be sent
7	annually to each shareholder:
8	(1) within 120 days following the end of the fiscal year
9	of the benefit corporation; or
10	(2) at the same time that the benefit corporation
11	delivers any other annual report to its shareholders.
12	(c) Internet website posting A benefit corporation shall
13	post its most recent benefit report on the public portion of its
14	Internet website, if any, but the compensation paid to directors
15	and financial or proprietary information included in the benefit
16	report may be omitted from the benefit report as posted.
17	(d) Filing of report
18	(1) Concurrently with the delivery of the benefit report
19	to shareholders under subsection (b), the benefit corporation
20	shall deliver a copy of the benefit report to the department
21	for filing, but the compensation paid to directors and
22	financial or proprietary information included in the benefit
23	report may be omitted from the benefit report as delivered to
24	the department.
25	(2) The department shall charge a fee of \$70 for filing
26	a benefit report.
27	Section 2. This act shall take effect in 60 days.