

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 1578 Session of  
2011

INTRODUCED BY GERBER, BRIGGS, CALTAGIRONE, FABRIZIO, JOSEPHS,  
MURT, PAYTON, SANTARSIERO, STURLA AND WAGNER, MAY 23, 2011

REFERRED TO COMMITTEE ON COMMERCE, MAY 23, 2011

AN ACT

1 Amending Title 15 (Corporations and Unincorporated Associations)  
2 of the Pennsylvania Consolidated Statutes, authorizing  
3 incorporation of benefit corporations; providing for rights,  
4 duties and obligations of benefit corporations and their  
5 shareholders, directors and officers; and imposing powers and  
6 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

20 Sec.

1 3301. Application and effect of chapter.

2 3302. Definitions.

3 3303. Formation of benefit corporations.

4 3304. Election of status.

5 3305. Termination of status.

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 create an implication that a contrary or different rule of law  
12 is applicable to a business corporation which is not a benefit  
13 corporation. This chapter shall not affect a statute or rule of  
14 law which is applicable to a business corporation that is not a  
15 benefit corporation.

16 (c) Laws applicable.--Except as otherwise provided in this  
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 chapter and one or more other chapters of this article.

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 used in this chapter shall have the meanings given to them in  
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     of status).

5     "Benefit director." The director designated as the benefit  
6     director of a benefit corporation under section 3322 (relating  
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  
13    of the benefit corporation or a specific public benefit  
14    purpose set forth in its articles; or

15            (2) violation of a duty or standard of conduct under  
16    this chapter.

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     benefit corporation.

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     person not independent. A material relationship between a person  
28     and a benefit corporation or any of its subsidiaries will be  
29     conclusively presumed to exist if any of the following apply:

30            (1) The person is, or has been within the last three

1 years, an employee other than a benefit officer of the  
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 interests.

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  
10 public benefit purpose; and

11 (7) conferring any other particular benefit on society  
12 or the environment.

13 "Subsidiary." In relation to a person, an association in  
14 which the person owns beneficially or of record 50% or more of  
15 the outstanding equity interests. This definition is subject to  
16 subsection (b).

17 "Third-party standard." A standard for defining, reporting  
18 and assessing overall corporate social and environmental  
19 performance which is:

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 requirements:

27 (i) Not more than one-third of the members of the  
28 governing body of the organization are representatives of  
29 either:

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 person who both:

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 publicly available:

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 standard:

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 interest.

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) Amendment.--A 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 is:

28 (A) a party to a merger, consolidation or  
29 division; or

30 (B) the exchanging corporation in a share

1           exchange.

2           (ii) The surviving, new or any resulting corporation  
3           in the merger, consolidation, division or share exchange  
4           is to be a benefit corporation.

5           (2) In order to be effective, a plan of merger,  
6           consolidation, division or share exchange subject to this  
7           subsection must be adopted by the minimum status vote.

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          amending its articles to delete the provision required by  
12          section 3304 (relating to election of status) to be stated in  
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          effect of terminating the status of a business corporation as a  
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          (relating to purposes).

30          (b) Optional specific public benefit purpose.--The articles



1 of a benefit corporation may identify one or more specific  
2 public benefits that it is the purpose of the benefit  
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 create. In order to be effective, the amendment must be adopted  
14 by the minimum status vote.

#### 15 SUBCHAPTER C

#### 16 ACCOUNTABILITY

#### 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 individual directors of a benefit corporation:

1       (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       and

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 consider interests and factors as provided in section 1715 or  
9 1716.

10 (c) Exoneration from personal liability generally.--A  
11 director is not personally liable for monetary damages for:

12 (1) action taken as a director if the director performed  
13 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 public benefit or a specific public benefit.

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 corporation shall include one director, who:

24 (1) shall be designated the benefit director; and  
25 (2) shall have, in addition to the powers, duties,  
26 rights and immunities of the other directors of the benefit  
27 corporation, the powers, duties, rights and immunities  
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

provided by Ch. 17 Subch. C (relating to directors and officers), and shall be an individual who is independent. The benefit director may serve as the benefit officer at the same time as serving as the benefit director. The articles or bylaws of a benefit corporation may prescribe additional qualifications of the benefit director not inconsistent with this subsection.

(c) Annual compliance statement.--The benefit director shall prepare, and the benefit corporation shall include in the annual benefit report to shareholders required by section 3331 (relating to annual benefit report), the opinion of the benefit director on all of the following:

(1) Whether the benefit corporation acted in accordance with its general public benefit purpose and any specific public benefit purpose in all material respects during the period covered by the report.

(2) Whether the directors and officers complied with sections 3321(a) (relating to standard of conduct for directors) and 3323(a) (relating to standard of conduct for officers), respectively.

(3) If, in the opinion of the benefit director, the benefit corporation or its directors or officers failed to comply with paragraph (2), a description of the ways in which the benefit corporation or its directors or officers failed to comply.

(d) Status of actions.--The acts of an individual in the capacity of a benefit director shall constitute for all purposes acts of that individual in the capacity of a director of the benefit corporation.

(e) Alternative governance arrangements.--The bylaws of a benefit corporation must provide that the persons or share

holders who perform the duties of the board of directors include  
a person with the powers, duties, rights and immunities of a  
benefit director if any of the following apply:

(1) The bylaws of a benefit corporation provide that the  
powers and duties conferred or imposed upon the board of  
directors be exercised or performed by a person other than  
the directors under section 1721(a) (relating to board of  
directors).

(2) The bylaws of a statutory close corporation that is  
a benefit corporation provide that the business and affairs  
of the corporation be managed by or under the direction of  
the shareholders.

(f) Exoneration from personal liability.--Regardless of  
whether the bylaws of a benefit corporation include a provision  
eliminating or limiting the personal liability of directors  
authorized by section 1713 (relating to personal liability of  
directors), a benefit director shall not be personally liable  
for an act or omission in the capacity of a benefit director  
unless the act or omission constitutes self-dealing, willful  
misconduct or a knowing violation of law.

§ 3323. Standard of conduct for officers.

(a) General rule.--Each officer of a benefit corporation  
shall consider the interests and factors described in section  
3321(a) (relating to standard of conduct for directors) in the  
manner provided in that subsection if:

(1) the officer has discretion to act with respect to a  
matter; and

(2) it reasonably appears to the officer that the matter  
may have a material effect on the creation of general public  
benefit or a specific public benefit by the benefit

1 corporation.

2 (b) Coordination with other provisions of law.--The  
3 consideration of interests and factors in the manner described  
4 in subsection (a) shall not constitute a violation of section  
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 public benefit or specific public benefit.

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:

24 (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  
28 section 3331 (relating to annual benefit report).

29 § 3325. Right of action.

30 (a) Type of proceeding.--The duties of directors and

officers under this chapter, and the general public benefit purpose and any specific public benefit purpose of a benefit corporation, may be enforced only in a benefit enforcement proceeding. No person may bring an action or assert a claim against a benefit corporation or its directors or officers with respect to the duties of directors and officers under this chapter and the general public benefit purpose and any specific public benefit purpose of the benefit corporation except in a benefit enforcement proceeding.

(b) Standing.--A benefit enforcement proceeding may be commenced or maintained only:

(1) directly by the benefit corporation; or

(2) derivatively by:

(i) a shareholder;

(ii) a director;

(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 corporation is a subsidiary; or

(iv) other persons as specified in the articles or bylaws of the benefit corporation.

(c) Cross reference.--See Subchapter F of Chapter 17 (relating to derivative actions).

#### SUBCHAPTER D

#### TRANSPARENCY

Sec.

3331. Annual benefit report.

§ 3331. Annual benefit report.

(a) Contents.--A benefit corporation shall prepare an annual 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       create; and

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.