

## AMENDMENTS TO HOUSE BILL NO. 1398

Sponsor: REPRESENTATIVE A. HARRIS

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1 Amend Bill, page 1, line 25, by inserting after "on"

2 derivative actions and

3 Amend Bill, page 2, lines 46 through 51; page 3, lines 1

4 through 8; by striking out all of said lines on said pages and

5 inserting

6 As to limited liability companies:

7 repealing existing Subchapters A, B, C, D, E, F, I

8 and K of Chapter 89 and replacing them with a new Chapter

9 88 relating to:

10 general provisions;

11 formation and filings;

12 relations of members and managers to persons

13 dealing with limited liability company;

14 relations of members to each other and to limited

15 liability company;

16 transferable interests and rights of transferees

17 and creditors;

18 dissociation;

19 dissolution and winding up; and

20 actions by members;

21 and

22 revising provisions on restricted professional

23 companies.

24 Amend Bill, page 7, line 5, by striking out ", AMENDED OR

25 ADDED OCTOBER 22, 2014 (P.L.2640, NO.172),"

26 Amend Bill, page 8, line 13, by striking out "OPTIONAL"

27 Amend Bill, page 8, line 18, by striking out "OPTIONAL"

28 Amend Bill, page 14, line 30, by inserting after "(6)"

29 , 368(j)

30 Amend Bill, page 15, line 1, by striking out ", ADDED OCTOBER

1 22, 2014 (P.L.2640, NO.172),"

2 Amend Bill, page 15, by inserting between lines 19 and 20

3 § 368. Allocation of liabilities in division.

4 \* \* \*

5 (j) Taxes.--Any taxes, interest, penalties and public  
6 accounts of the Commonwealth claimed against the dividing  
7 association for periods prior to the effective date of the  
8 division that are settled, assessed or determined prior to or  
9 after the division shall be the liability of all of the  
10 resulting associations and, together with interest thereon,  
11 shall be a lien against the franchises and property of each  
12 resulting association. Upon the application of the dividing  
13 association, the Department of Revenue, with the concurrence of  
14 the Department of Labor and Industry, shall release one or more,  
15 but less than all, of the resulting associations from liability  
16 and liens for all taxes, interest, penalties and public accounts  
17 of the dividing association due the Commonwealth for periods  
18 prior to the effective date of the division if those departments  
19 are satisfied that the public revenues will be adequately  
20 secured.

21 Amend Bill, page 29, line 13, by striking out all of said  
22 line and inserting

23 Section 6.1. Sections 1971(a) and 3301(d) of Title 15 are  
24 amended to read:

25 § 1971. Voluntary dissolution by shareholders or incorporators.

26 (a) General rule.--The shareholders or incorporators of a  
27 business corporation that has [not commenced business] never  
28 transacted business or held assets other than money received  
29 from subscriptions for shares may effect the dissolution of the  
30 corporation by filing articles of dissolution in the Department  
31 of State. The articles of dissolution shall be executed in the  
32 name of the corporation by a majority of the incorporators or a  
33 majority in interest of the shareholders and shall set forth:

34 (1) The name of the corporation and, subject to section  
35 109 (relating to name of commercial registered office  
36 provider in lieu of registered address), the address,  
37 including street and number, if any, of its registered  
38 office.

39 (2) The statute under which the corporation was  
40 incorporated and the date of incorporation.

41 (3) That the corporation has [not commenced business]  
42 never transacted business or held assets other than money  
43 received from subscriptions for shares.

44 (4) That the amount, if any, actually paid in on  
45 subscriptions for its shares, less any part thereof disbursed  
46 for necessary expenses, has been returned to those entitled

thereto.

(5) That all liabilities of the corporation have been discharged or that adequate provision has been made therefor.

(6) That a majority of the incorporators or a majority in interest of the shareholders elect that the corporation be dissolved.

\* \* \*

§ 3301. Application and effect of chapter.

\* \* \*

(d) Organic [records] rules may not be inconsistent.--A provision of the articles or bylaws of a benefit corporation may not relax, be inconsistent with or supersede any provision of this chapter.

Section 6.2. The definitions of "benefit corporation," "independent," "minimum status vote" and "subsidiary" in section 3302 of Title 15 are amended to read:

§ 3302. Definitions.

The following words and phrases when used in this chapter shall have the meanings given to them in this section unless the context clearly indicates otherwise:

"Benefit corporation." A business corporation that [has elected to become] is subject to this chapter [and whose status as a benefit corporation has not been terminated].

\* \* \*

"Independent." When a person has no material relationship with a benefit corporation or any of its subsidiaries, other than the relationship of serving as the benefit director or benefit officer. A material relationship between an individual and a benefit corporation or any of its subsidiaries will be conclusively presumed to exist if:

(1) the person is or has been within the last three years an employee of the benefit corporation or any of its subsidiaries, other than as a benefit officer;

(2) an immediate family member of the person is or has been within the last three years an executive officer, other than a benefit officer, of the benefit corporation or any of its subsidiaries; or

(3) the person, or an association of which the person is a [director, officer or other manager] governor or officer or in which the person owns beneficially or of record 5% or more of the outstanding [equity] interests, owns beneficially or of record 5% or more of the outstanding shares of the benefit corporation. The percentage of ownership in an association shall be calculated as if all outstanding rights to acquire [equity] interests in the association had been exercised.

"Minimum status vote." As follows:

(1) In the case of a business corporation, in addition to any other required approval or vote, the satisfaction of the following conditions:

(i) The shareholders of every class or series must

1 be entitled, as a class, to vote on the corporate action  
2 regardless of a limitation stated in the articles of  
3 incorporation or bylaws on the voting rights of any class  
4 or series.

5 (ii) The corporate action must be approved by a vote  
6 of the shareholders of each class or series entitled to  
7 cast at least two-thirds of the votes that all  
8 shareholders of the class or series are entitled to cast  
9 on the action.

10 (2) In the case of a domestic association other than a  
11 business corporation, in addition to any other required  
12 approval, vote or consent, the satisfaction of the following  
13 conditions:

14 (i) The holders of every class or series of [equity]  
15 interest in the association that are entitled to receive  
16 a distribution of any kind from the association must be  
17 entitled as a class to vote on or consent to the action  
18 regardless of any otherwise applicable limitation on the  
19 voting or consent rights of any class or series.

20 (ii) The action must be approved by vote or consent  
21 of the holders described in subparagraph (i) entitled to  
22 cast at least two-thirds of the votes or consents that  
23 all of those holders are entitled to cast on the action.

24 \* \* \*

25 "Subsidiary." An association in which a person owns  
26 beneficially or of record 50% or more of the outstanding  
27 [equity] interests. The percentage of ownership in an  
28 association shall be calculated as if all outstanding rights to  
29 acquire [equity] interests in the association had been  
30 exercised.

31 \* \* \*

32 Section 7. Sections 3321(c), 3322(e), 3323(c), 3325(b) and  
33 4146 of Title 15 are amended to read:

34 § 3321. Standard of conduct for directors.

35 \* \* \*

36 (c) Exoneration from personal liability.--

37 (1) A director shall not be personally liable, as such,  
38 for monetary damages for any action taken as a director [if  
39 the director performed the duties of his or her office in  
40 compliance with section 1712 and this section.] in the course  
41 of performing the duties specified in subsection (a) unless  
42 the action constitutes self-dealing, willful misconduct or a  
43 knowing violation of law.

44 (2) A director shall not be personally liable for  
45 monetary damages for failure of the benefit corporation to  
46 pursue or create general public benefit or a specific public  
47 benefit.

48 \* \* \*

49 § 3322. Benefit director.

50 \* \* \*

51 [(e) Alternative governance arrangements.--

1 (1) The bylaws of a benefit corporation must provide  
2 that the persons or shareholders who perform the duties of  
3 the board of directors include a person with the powers,  
4 duties, rights and immunities of a benefit director if any of  
5 the following apply:

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

11 (ii) The bylaws of a statutory close corporation  
12 that is a benefit corporation provide that the business  
13 and affairs of the corporation shall be managed by or  
14 under the direction of the shareholders.

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

17 (i) does not need to be independent of the benefit  
18 corporation;

19 (ii) shall have the immunities of a benefit  
20 director;

21 (iii) may share the powers, duties and rights of a  
22 benefit director with one or more other persons; and

23 (iv) shall not be subject to the procedures for  
24 election or removal of directors in Subchapter C of  
25 Chapter 17 unless:

26 (A) the person is also a director of the benefit  
27 corporation; or

28 (B) the bylaws make those procedures  
29 applicable.]

30 \* \* \*

31 § 3323. Standard of conduct for officers.

32 \* \* \*

33 (c) Exoneration from personal liability.--

34 (1) An officer shall not be personally liable, as such,  
35 for monetary damages for any action taken as an officer [if  
36 the officer performed the duties of the position in  
37 compliance with section 1712(c) and this section.] in the  
38 course of performing the duties specified in subsection (a)  
39 unless the action constitutes self-dealing, willful  
40 misconduct or a knowing violation of law.

41 (2) An officer shall not be personally liable for  
42 monetary damages for failure of the benefit corporation to  
43 pursue or create general public benefit or a specific public  
44 benefit.

45 \* \* \*

46 § 3325. Right of action.

47 \* \* \*

48 (b) Parties with standing.--A benefit enforcement proceeding  
49 may be commenced or maintained only:

50 (1) directly by the benefit corporation; or

51 (2) derivatively by:

(i) a shareholder that owned at least 2% of the total number of shares of a class or series outstanding at the time of the act complained of;

(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 at the time of the act complained of; or

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

\* \* \*

Amend Bill, page 38, line 13, by striking out "ANOTHER" and inserting

an other

Amend Bill, page 38, line 20, by striking out "ANOTHER" and inserting

an other

Amend Bill, page 40, line 29, by inserting after "REMITTED "

immediately

Amend Bill, page 49, line 24, by striking out ", assessment"

Amend Bill, page 71, line 17, by striking out "2015" and inserting

2016

Amend Bill, page 71, line 18, by striking out "July 1, 2016" and inserting

April 1, 2017

Amend Bill, page 71, line 30, by striking out "July 1, 2016" and inserting

April 1, 2017

Amend Bill, page 72, line 7, by striking out "July 1, 2016" and inserting

April 1, 2017

Amend Bill, page 72, line 15, by striking out "July 1, 2016" and inserting

April 1, 2017

Amend Bill, page 76, line 13, by striking out "optional"

Amend Bill, page 80, line 13, by striking out "optional"

Amend Bill, page 84, line 17, by striking out "optional"

Amend Bill, page 87, lines 29 and 30; page 88, lines 1 through 28; by striking out all of said lines on said pages and inserting

§ 8423. Partnership property.

Property owned by a partnership is partnership property and is not owned by the partners individually.

§ 8424. When property is partnership property.

(a) General rule.--Property is owned by a partnership and not by the partners individually if the property is acquired in the name of:

(1) the partnership by a transfer to:

(i) the partnership in its name; or

(ii) one or more partners in their capacity as partners in the partnership, if the name of the partnership is indicated in the instrument transferring title to the property; or

(2) one or more partners with an indication in the instrument transferring title to the property of the person's capacity as a partner or of the existence of a partnership but without an indication of the name of the partnership.

(b) Property purchased with partnership assets.--Property is presumed to be partnership property if purchased with partnership assets, even if not acquired in the name of the partnership or of one or more partners with an indication in the instrument transferring title to the property of the person's capacity as a partner or of the existence of a partnership.

(c) Property acquired in name of partner.--Property acquired in the name of one or more of the partners is presumed to be separate property owned by the individual partner or partners, even if used for partnership purposes, if the property is acquired without:

(1) an indication in the instrument transferring title to the property of the person's capacity as a partner or of the existence of a partnership; and

(2) use of partnership assets.

Amend Bill, page 96, line 1, by striking out "optional"

Amend Bill, page 102, line 28, by inserting a comma after "indemnification"

1 Amend Bill, page 120, line 22, by striking out "optional"

2 Amend Bill, page 127, line 20, by striking out "optional"

3 Amend Bill, page 129, line 23, by striking out "optional"

4 Amend Bill, page 135, line 19, by striking out "optional"

5 Amend Bill, page 139, line 22, by striking out "2015" and

6 inserting

7 2016

8 Amend Bill, page 139, line 23, by striking out "July 1, 2016"

9 and inserting

10 April 1, 2017

11 Amend Bill, page 140, line 5, by striking out "July 1, 2016"

12 and inserting

13 April 1, 2017

14 Amend Bill, page 141, line 12, by striking out "July 1, 2016"

15 and inserting

16 April 1, 2017

17 Amend Bill, page 141, line 20, by striking out "July 1, 2016"

18 and inserting

19 April 1, 2017

20 Amend Bill, page 146, line 3, by striking out "8682(b)(2)

21 (vi)" and inserting

22 8682(e)

23 Amend Bill, page 146, line 4, by striking out "optional"

24 Amend Bill, page 149, lines 4 through 7, by striking out "TO

25 A PERSON FROM," in line 4, all of lines 5 and 6 and "VIOLATION

26 OF LAW" in line 7

27 Amend Bill, page 149, line 22, by striking out "requirement"

28 and inserting



1       requirements

2       Amend Bill, page 149, line 23, by striking out "as"

3       Amend Bill, page 149, line 24, by striking out "and (d)" and  
4 inserting

5       , (d) and (e)

6       Amend Bill, page 149, line 24, by striking out "optional"

7       Amend Bill, page 153, line 28, by striking out "WRITING" and  
8 inserting

9       record form

10       Amend Bill, page 160, line 25, by striking out "optional"

11       Amend Bill, page 162, line 13, by striking out "optional"

12       Amend Bill, page 169, line 8, by striking out ", limited to  
13 the costs of labor and materials"

14       Amend Bill, page 199, line 1, by striking out "8663(1)" and  
15 inserting

16       8663(a)(1)

17       Amend Bill, page 199, line 12, by striking out "8663(5)" and  
18 inserting

19       8663(a)(5)

20       Amend Bill, page 199, line 14, by striking out "8663(6)" and  
21 inserting

22       8663(a)(6)

23       Amend Bill, page 207, line 18, by striking out "optional"

24       Amend Bill, page 210, line 10, by striking out "not commenced  
25 business" and inserting

26       never transacted business or held assets other than money  
27 received as capital contributions

28       Amend Bill, page 210, line 19, by striking out "not commenced  
29 business" and inserting

1 never transacted business or held assets other than  
2 money received as capital contributions

3 Amend Bill, page 211, line 9, by striking out "optional"

4 Amend Bill, page 212, line 1, by inserting after  
5 "proceedings;"

6 and

7 Amend Bill, page 212, lines 2 through 12, by striking out all  
8 of lines 2 through 11 and "(vii)" in line 12 and inserting

9 (vi)

10 Amend Bill, page 213, by inserting between lines 15 and 16

11 (e) Certificate of termination.--When all debts, obligations  
12 and other liabilities of the limited partnership have been paid  
13 and discharged or adequate provision has been made therefor and  
14 all of the remaining property and assets of the partnership have  
15 been distributed to the partners, a certificate of termination  
16 shall be delivered to the department for filing along with the  
17 certificates required by section 139 (relating to tax clearance  
18 of certain fundamental transactions). The certificate of  
19 termination shall set forth:

20 (1) The name of the limited partnership.

21 (2) Subject to section 109 (relating to name of  
22 commercial registered office provider in lieu of registered  
23 address), the address, including street and number, if any,  
24 of the registered office of the partnership.

25 (3) That all debts, obligations and other liabilities of  
26 the partnership have been paid and discharged or that  
27 adequate provision has been made therefor.

28 (4) That all the remaining property and assets of the  
29 partnership have been distributed among its partners in  
30 accordance with their respective rights and interests.

31 (5) That there are no actions pending against the  
32 partnership in any court or that adequate provision has been  
33 made for the satisfaction of any judgment that may be entered  
34 against it in any pending action.

35 (6) That the partnership is terminated.

36 Amend Bill, page 213, line 16, by striking out "(e)" and  
37 inserting

38 (f)

39 Amend Bill, page 228, line 16, by inserting a comma after  
40 "shown,"

1 Amend Bill, page 234, line 20, by striking out "29 Title"  
2 and inserting  
3 29. Title  
4 Amend Bill, page 235, by inserting between lines 4 and 5  
5 I. Benefit Companies  
6 Amend Bill, page 235, line 19, by striking out "2015" and  
7 inserting  
8 2016  
9 Amend Bill, page 235, line 20, by striking out "July 1, 2016"  
10 and inserting  
11 April 1, 2017  
12 Amend Bill, page 236, line 2, by striking out "July 1, 2016"  
13 and inserting  
14 April 1, 2017  
15 Amend Bill, page 240, line 1, by striking out "optional"  
16 Amend Bill, page 240, line 4, by striking out "8872(b)(2)  
17 (vi)" and inserting  
18 8872(f)  
19 Amend Bill, page 243, lines 6 and 7, by striking out  
20 "(relating to standards of conduct for members)"  
21 Amend Bill, page 243, lines 10 and 11, by striking out  
22 "(relating to standards of conduct for managers)"  
23 Amend Bill, page 243, line 21, by striking out "requirement"  
24 and inserting  
25 requirements  
26 Amend Bill, page 243, line 22, by striking out "as"  
27 Amend Bill, page 243, line 23, by striking out "and" where it  
28 occurs the first time  
29 Amend Bill, page 243, line 23, by inserting after "(e)"

1           and (f)  
2       Amend Bill, page 243, line 23, by striking out "optional"

3       Amend Bill, page 244, by inserting between lines 1 and 2  
4           (19) Vary a provision of Subchapter I (relating to  
5           benefit companies).

6       Amend Bill, page 244, line 2, by striking out "(19)" and  
7       inserting

8           (20)

9       Amend Bill, page 254, line 4, by striking out "optional"

10      Amend Bill, page 286, line 1, by striking out ", limited to  
11 the costs of labor and material"

12      Amend Bill, page 292, line 27, by striking out "and" and  
13      inserting

14           or

15      Amend Bill, page 296, line 17, by striking out "optional"

16      Amend Bill, page 297, line 30, by striking out "optional"

17      Amend Bill, page 298, lines 28 through 30; page 299, lines 1  
18 through 19; by striking out all of lines 28 through 30 on page  
19 298, all of lines 1 through 18 and "(vii)" in line 19 on page  
20 299 and inserting

21           (vi)

22      Amend Bill, page 301, by inserting between lines 3 and 4

23      (f) Certificate of termination.--When all debts, obligations  
24 and other liabilities of the limited liability company have been  
25 paid and discharged or adequate provision has been made therefor  
26 and all of the remaining property and assets of the company have  
27 been distributed to the members, a certificate of termination  
28 shall be delivered to the department for filing along with the  
29 certificates required by section 139 (relating to tax clearance  
30 of certain fundamental transactions). The certificate of  
31 termination shall set forth:

32           (1) The name of the limited liability company.

33           (2) Subject to section 109 (relating to name of  
34 commercial registered office provider in lieu of registered

address), the address, including street and number, if any,  
of the registered office of the company.

(3) That all debts, obligations and other liabilities of  
the company have been paid and discharged or that adequate  
provision has been made therefor.

(4) That all the remaining property and assets of the  
company have been distributed among its members in accordance  
with their respective rights and interests.

(5) That there are no actions pending against the  
company in any court or that adequate provision has been made  
for the satisfaction of any judgment that may be entered  
against it in any pending action.

(6) That the company is terminated.

Amend Bill, page 301, line 4, by striking out "(f)" and  
inserting

(g)

Amend Bill, page 307, line 12, by striking out "not commenced  
business" and inserting

never transacted business or held assets other than money  
received as capital contributions

Amend Bill, page 307, line 22, by striking out "not commenced  
business" and inserting

never transacted business or held assets other than  
money received as capital contributions

Amend Bill, page 309, lines 20 and 21, by striking out "UNLESS DEMAND IS EXCUSED UNDER SUBSECTION (B)"

Amend Bill, page 317, by inserting between lines 12 and 13

SUBCHAPTER I  
BENEFIT COMPANIES

Sec.

8891. Application and effect of subchapter.

8892. Definitions.

8893. Benefit company status.

8894. Purposes.

8895. Standard of conduct for members.

8896. Standard of conduct for managers and officers.

8897. Right of action.

8898. Annual benefit report.

§ 8891. Application and effect of subchapter.

(a) General rule.--This subchapter shall apply to all  
benefit companies.

(b) Limited application of subchapter.--The existence of a

provision of this subchapter shall not of itself create any implication that a contrary or different rule of law is or would be applicable to a limited liability company that is not a benefit company. This subchapter shall not affect any statute or rule of law that is or would be applicable to a limited liability company that is not a benefit company.

(c) Laws applicable to benefit companies.--Except as otherwise provided in this subchapter, the provisions of Part I (relating to preliminary provisions) and this chapter shall apply generally to benefit companies. The provisions of this subchapter shall control over inconsistent provisions of this title.

(d) Organic rules may not be inconsistent.--See section 8815(c)(19) (relating to contents of operating agreement). § 8892. Definitions.

The following words and phrases when used in this subchapter shall have the meanings given to them in this section unless the context clearly indicates otherwise:

"Benefit company." A limited liability company that is subject to this subchapter.

"Benefit enforcement proceeding." A claim or action for:

(1) failure to pursue or create the general public benefit purpose of the benefit company or any specific public benefit purpose set forth in its certificate of organization; or

(2) violation of any obligation, duty or standard of conduct under this subchapter.

"General public benefit." A material positive impact on society and the environment, taken as a whole and assessed against a third-party standard, from the business and operations of a benefit company.

"Independent." When a person has no material relationship with a benefit company or any of its subsidiaries. A material relationship between an individual and a benefit company or any of its subsidiaries will be conclusively presumed to exist if:

(1) the person is or has been within the last three years an employee of the benefit company or any of its subsidiaries;

(2) an immediate family member of the person is or has been within the last three years an executive officer of the benefit company or any of its subsidiaries; or

(3) the person, or an association of which the person is a governor or officer or in which the person owns beneficially or of record 5% or more of the outstanding interests, owns beneficially or of record 5% or more of the outstanding interests of the benefit company. The percentage of ownership in an association shall be calculated as if all outstanding rights to acquire interests in the association had been exercised.

"Minimum status vote." As follows:

(1) In the case of a limited liability company, in

1 addition to any other required approval or vote, the  
2 satisfaction of the following conditions:

3 (i) The members of every class or series must be  
4 entitled, as a class, to vote on the action regardless of  
5 a limitation stated in the certificate of organization or  
6 operating agreement on the voting rights of any class or  
7 series.

8 (ii) The action must be approved by a vote of the  
9 members of each class or series entitled to cast at least  
10 two-thirds of the votes that all members of the class or  
11 series are entitled to cast on the action.

12 (2) In the case of a domestic association other than a  
13 limited liability company, in addition to any other required  
14 approval, vote or consent, the satisfaction of the following  
15 conditions:

16 (i) The holders of every class or series of interest  
17 in the association that are entitled to receive a  
18 distribution of any kind from the association must be  
19 entitled as a class to vote on or consent to the action  
20 regardless of any otherwise applicable limitation on the  
21 voting or consent rights of any class or series.

22 (ii) The action must be approved by vote or consent  
23 of the holders described in subparagraph (i) entitled to  
24 cast at least two-thirds of the votes or consents that  
25 all of those holders are entitled to cast on the action.

26 "Specific public benefit." The term shall have the meaning  
27 specified in section 3302 (relating to definitions).

28 "Subsidiary." The term shall have the meaning specified in  
29 section 3302.

30 "Third-party standard." A standard for defining, reporting  
31 and assessing overall social and environmental performance which  
32 is:

33 (1) Comprehensive in that it assesses the effect of the  
34 business and its operations upon the interests listed in  
35 section 8895(a)(1)(ii), (iii), (iv) and (v) (relating to  
36 standard of conduct for members).

37 (2) Developed by an organization that is independent of  
38 the benefit company and satisfies the following requirements:

39 (i) Not more than one-third of the members of the  
40 governing body of the organization are representatives of  
41 any of the following:

42 (A) An association of businesses operating in a  
43 specific industry the performance of whose members is  
44 measured by the standard.

45 (B) Businesses from a specific industry or an  
46 association of businesses in that industry.

47 (C) Businesses whose performance is assessed  
48 against the standard.

49 (ii) The organization is not materially financed by  
50 an association or business described in subparagraph (i).

51 (3) Credible because the standard is developed by a

1 person that both:

2 (i) Has access to necessary expertise to assess  
3 overall social and environmental performance.

4 (ii) Uses a balanced multistakeholder approach,  
5 including a public comment period of at least 30 days to  
6 develop the standard.

7 (4) Transparent because the following information is  
8 publicly available:

9 (i) About the standard:

10 (A) The criteria considered when measuring the  
11 overall social and environmental performance of a  
12 business.

13 (B) The relative weightings, if any, of those  
14 criteria.

15 (ii) About the development and revision of the  
16 standard:

17 (A) The identity of the directors, officers,  
18 material owners and the governing body of the  
19 organization that developed and controls revisions to  
20 the standard.

21 (B) The process by which revisions to the  
22 standard and changes to the membership of the  
23 governing body are made.

24 (C) An accounting of the sources of financial  
25 support for the organization, with sufficient detail  
26 to disclose any relationships that could reasonably  
27 be considered to present a potential conflict of  
28 interest.

29 § 8893. Benefit company status.

30 (a) Formation of benefit company.--A benefit company shall  
31 be formed in accordance with section 8821 (relating to formation  
32 of limited liability company and certificate of organization)  
33 except that its certificate of organization shall also state  
34 that it is a benefit company.

35 (b) Election of benefit company status.--An existing limited  
36 liability company may elect to become a benefit company by  
37 amending its certificate of organization so that it contains, in  
38 addition to the requirements of section 8821, a statement that  
39 the company is a benefit company. The amendment shall not be  
40 effective unless it is adopted by at least the minimum status  
41 vote.

42 (c) Election of status in a fundamental transaction.--If an  
43 association that is not a benefit company is a party to a merger  
44 or division or is the exchanging association in an interest  
45 exchange, and the surviving, new or any resulting association in  
46 the merger, division or interest exchange is to be a benefit  
47 company, then the plan of merger, division or interest exchange  
48 shall not be effective unless it is adopted by the association  
49 by at least the minimum status vote.

50 (d) Termination of benefit company status.--A benefit  
51 company may terminate its status as a benefit company and cease



1 to be subject to this subchapter by amending its certificate of  
2 organization to delete the provision required by subsection (a)  
3 or (b) to be stated in the certificate of organization of a  
4 benefit company. The amendment shall not be effective unless it  
5 is adopted by at least the minimum status vote.

6 (e) Termination of status in a fundamental transaction.--If  
7 a plan would have the effect of terminating the status of a  
8 limited liability company as a benefit company, the plan shall  
9 not be effective unless it is adopted by at least the minimum  
10 status vote. Any sale, lease, exchange or other disposition of  
11 all or substantially all of the assets of a benefit company,  
12 unless the transaction is in the usual and regular course of  
13 business, shall not be effective unless the transaction is  
14 approved by at least the minimum status vote.

15 § 8894. Purposes.

16 (a) General public benefit purpose.--A benefit company shall  
17 have a purpose of creating general public benefit. This purpose  
18 is in addition to its purpose under section 8818(b) (relating to  
19 characteristics of limited liability company).

20 (b) Optional specific public benefit purpose.--The  
21 certificate of organization of a benefit company may identify  
22 one or more specific public benefits that it is the purpose of  
23 the benefit company to create in addition to its purposes under  
24 subsection (a) and section 8818(b). The identification of a  
25 specific public benefit does not limit the obligation of a  
26 benefit company to create general public benefit.

27 (c) Effect of purposes.--The creation of general and  
28 specific public benefit as provided in subsections (a) and (b)  
29 is in the best interests of the benefit company.

30 (d) Amendment.--A benefit company may amend its certificate  
31 of organization to add, amend or delete the identification of a  
32 specific public benefit that it is the purpose of the benefit  
33 company to create. The amendment shall not be effective unless  
34 it is adopted by at least the minimum status vote.

35 (e) Professional companies.--A professional company that is  
36 a benefit company does not violate a restriction on its  
37 permissible purposes or activities by having the purpose to  
38 create general public benefit or a specific public benefit.

39 § 8895. Standard of conduct for members.

40 (a) Consideration of interests.--The members of a member-  
41 managed limited liability company that is a benefit company,  
42 when discharging their duties under this title or under the  
43 operating agreement:

44 (1) shall consider the effects of any action upon:

45 (i) the members of the benefit company;

46 (ii) the employees and work force of the benefit  
47 company and its subsidiaries and suppliers;

48 (iii) the interests of customers as beneficiaries of  
49 the general or specific public benefit purposes of the  
50 benefit company;

51 (iv) community and societal considerations,

1 including those of any community in which offices or  
2 facilities of the benefit company or its subsidiaries or  
3 suppliers are located;

4 (v) the local and global environment;

5 (vi) the short-term and long-term interests of the  
6 benefit company, including benefits that may accrue to  
7 the benefit company from its long-term plans and the  
8 possibility that these interests may be best served by  
9 the continued independence of the benefit company; and

10 (vii) the ability of the benefit company to  
11 accomplish its general public benefit purpose and any  
12 specific public benefit purpose; and

13 (2) may consider any other pertinent factors or the  
14 interests of any other group that they deem appropriate; but

15 (3) shall not be required to give priority to the  
16 interests of any person or group referred to in paragraph (1)  
17 or (2) over the interests of any other person or group unless  
18 the benefit company has stated in its certificate of  
19 organization its intention to give priority to certain  
20 interests related to its accomplishment of its general public  
21 benefit purpose or of a specific public benefit purpose  
22 identified in the certificate.

23 (b) Coordination with other provisions of law.--The  
24 consideration of interests and factors in the manner required  
25 under subsection (a) shall not constitute a violation of section  
26 8849.1 (relating to standards of conduct for members).

27 (c) Exoneration from personal liability.--

28 (1) A member shall not be personally liable for monetary  
29 damages for any action taken as a member of a member-managed  
30 limited liability company in the course of performing the  
31 duties specified in subsection (a) unless the action  
32 constitutes self-dealing, willful misconduct or a knowing  
33 violation of law.

34 (2) A member shall not be personally liable for monetary  
35 damages for failure of the benefit company to pursue or  
36 create general public benefit or a specific public benefit.

37 (d) Limitation on standing.--A member of a member-managed  
38 limited liability company that is a benefit company does not  
39 have a duty to a person that is a beneficiary of the general  
40 public benefit purpose or a specific public benefit purpose of  
41 the benefit company arising from the status of the person as a  
42 beneficiary.

43 § 8896. Standard of conduct for managers and officers.

44 (a) Managers.--Each manager of a manager-managed limited  
45 liability company that is a benefit company shall consider the  
46 interests and factors described in section 8895(a) (relating to  
47 standard of conduct for members) when discharging his or her  
48 duties under this title and under the operating agreement.

49 (b) Officers.--If a benefit company has a person serving in  
50 the capacity of an officer, the person shall consider the  
51 interests and factors described in section 8895(a) when

1 discharging the person's duties under this title and under the  
2 operating agreement if:

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

5 (2) it reasonably appears to the officer that the matter  
6 may have a material effect on the creation by the benefit  
7 company of general public benefit or a specific public  
8 benefit identified in the certificate of organization of the  
9 benefit company.

10 (c) Coordination with other provisions of law.--The  
11 consideration of interests and factors by a manager in the  
12 manner described in subsection (a) shall not constitute a  
13 violation of section 8849.2 (relating to standards of conduct  
14 for managers).

15 (d) Exoneration from personal liability.--

16 (1) A manager or officer shall not be personally liable,  
17 as such, for monetary damages for any action taken as a  
18 manager or officer in the course of performing the duties  
19 specified in subsection (a) or (b) unless the action  
20 constitutes self-dealing, willful misconduct or a knowing  
21 violation of law.

22 (2) A manager or officer shall not be personally liable  
23 for monetary damages for failure of the benefit company to  
24 pursue or create general public benefit or a specific public  
25 benefit.

26 (e) Limitation on standing.--A manager or officer does not  
27 have a duty to a person that is a beneficiary of the general  
28 public benefit purpose or a specific public benefit purpose of a  
29 benefit company arising from the status of the person as a  
30 beneficiary.

31 § 8897. Right of action.

32 (a) Limitations.--

33 (1) Except in a benefit enforcement proceeding, no  
34 person may bring an action or assert a claim against a  
35 benefit company or its members, managers or officers with  
36 respect to:

37 (i) failure to pursue or create general public  
38 benefit or a specific public benefit set forth in its  
39 certificate of organization; or

40 (ii) violation of a duty or standard of conduct  
41 under this chapter.

42 (2) A benefit company shall not be liable for monetary  
43 damages under this chapter for any failure of the benefit  
44 company to pursue or create general public benefit or a  
45 specific public benefit.

46 (b) Parties with standing.--A benefit enforcement proceeding  
47 may be commenced or maintained only:

48 (1) directly by the benefit company; or

49 (2) derivatively by:

50 (i) a member that owned at least 2% of the total  
51 number of interests of a class or series outstanding at

1 the time of the act complained of;

2 (ii) a manager of a manager-managed limited  
3 liability company;

4 (iii) a person or group of persons that owns  
5 beneficially or of record 5% or more of the interests in  
6 an association of which the benefit company is a  
7 subsidiary at the time of the act complained of; or

8 (iv) such other persons as may be specified in the  
9 certificate of organization or operating agreement of the  
10 benefit company.

11 (c) Cross reference.--The provisions of Subchapter H  
12 (relating to actions by members) shall apply to derivative  
13 actions under this section.

14 § 8898. Annual benefit report.

15 (a) Contents.--A benefit company must deliver to each member  
16 an annual benefit report, including:

17 (1) A narrative description of:

18 (i) the ways in which the benefit company pursued  
19 general public benefit during the year and the extent to  
20 which general public benefit was created;

21 (ii) the ways in which the benefit company pursued  
22 any specific public benefit that the certificate of  
23 organization states is the purpose of the benefit company  
24 to create and the extent to which that specific public  
25 benefit was created;

26 (iii) any circumstances that have hindered the  
27 creation by the benefit company of general or specific  
28 public benefit; and

29 (iv) the process and rationale for selecting or  
30 changing the third-party standard used to prepare the  
31 benefit report.

32 (2) An assessment of the overall social and  
33 environmental performance of the benefit company against a  
34 third-party standard applied consistently with any  
35 application of that standard in prior benefit reports or  
36 accompanied by an explanation of the reasons for any  
37 inconsistent application. The assessment does not need to be  
38 audited or certified by a third-party standards provider.

39 (3) A statement of any connection between the  
40 organization that established the third-party standard, or  
41 its directors, officers or any holder of 5% or more of the  
42 governance interests in the organization, and the benefit  
43 company or its members, managers or officers or any holder of  
44 5% or more of the outstanding interests in the benefit  
45 company, including any financial or governance relationship  
46 which might materially affect the credibility of the use of  
47 the third-party standard.

48 (b) Timing of report.--A benefit company shall annually send  
49 a benefit report to each member either:

50 (1) within 120 days following the end of the fiscal year  
51 of the benefit company; or

1       (2) at the same time that the benefit company delivers  
2       any other annual report to its members.  
3       (c) Internet website posting.--A benefit company must post  
4       all of its benefit reports on the public portion of its Internet  
5       website, if any, except that any financial or proprietary  
6       information included in the benefit report may be omitted from  
7       the benefit report as posted.  
8       (d) Availability of copies.--If a benefit company does not  
9       have an Internet website, the benefit company shall provide a  
10       copy of its most recent benefit report, without charge, to any  
11       person that requests a copy, but any financial or proprietary  
12       information included in the benefit report may be omitted from  
13       the copy of the benefit report provided.  
14       (e) Filing of report.--Concurrently with the delivery of the  
15       benefit report to members pursuant to subsection (b), the  
16       benefit company must deliver a copy of the benefit report to the  
17       department for filing, except that any financial or proprietary  
18       information included in the benefit report may be omitted from  
19       the benefit report as filed under this section. The department  
20       shall charge a fee of \$70 for filing a benefit report.

21       Amend Bill, page 318, line 7, by inserting after "(2) "

22               Subchapters A, B, C, D, E, F, I and K of

23       Amend Bill, page 318, line 7, by striking out "is" and  
24       inserting

25               are

26       Amend Bill, page 318, line 8, by striking out "Section" where  
27       it occurs the second time and inserting

28               Sections 8995(c), (d) and (e), 8997, 8998(g) and

29       Amend Bill, page 318, by inserting between lines 8 and 9  
30       § 8995. Application and effect of subchapter.

31       \* \* \*

32       (c) Laws applicable to restricted professional companies.--  
33       Except as otherwise provided in this subchapter, [this chapter]  
34       Chapter 88 (relating to limited liability companies) shall be  
35       generally applicable to all restricted professional companies.  
36       The specific provisions of this subchapter shall control over  
37       the general provisions of [this chapter] Chapter 88.

38       (d) Election of restricted professional company status.--At  
39       the time an existing limited liability company that has  
40       previously conducted a business not involving the rendering of a  
41       restricted professional service begins to render one or more  
42       restricted professional services, the company shall amend its  
43       certificate of organization to include [the statement required  
44       by section 8913(7) (relating to certificate of organization)] a

1 statement that it is a restricted professional company. For  
2 purposes of sections [8925] 8835 (relating to taxation of  
3 limited liability companies) and 8997, the company shall be  
4 deemed to have become a restricted professional company on the  
5 first day of the taxable year of the company following the  
6 taxable year in which the amendment of its certificate of  
7 organization required by this subsection is filed.

8 (e) Termination of restricted professional company status.--  
9 Except as provided in this subsection, the status of a  
10 restricted professional company as such shall terminate, and the  
11 company shall cease to be subject to this subchapter, at such  
12 time as it ceases to render any restricted professional  
13 services. Upon ceasing to render any restricted professional  
14 services, the company shall amend its certificate of  
15 organization to delete the statement required by [section  
16 8913(7)] subsection (d). For purposes of sections [8925] 8835  
17 and 8997, the company shall be deemed to have ceased being a  
18 restricted professional company on the first day of the taxable  
19 year of the company following the taxable year in which it  
20 ceased to render any restricted professional services.  
21 § 8997. Taxation of restricted professional companies.

22 (a) General rule.--Except as provided in subsection (b) [and  
23 in section 8925(b) (relating to taxation of limited liability  
24 companies)], for the purposes of the imposition by the  
25 Commonwealth or any political subdivision of any tax or license  
26 fee on or with respect to any income, property, privilege,  
27 transaction, subject or occupation, a domestic or qualified  
28 foreign restricted professional company shall be deemed to be a  
29 limited partnership organized and existing under Chapter [85] 86  
30 (relating to limited partnerships), and a member of such a  
31 company, as such, shall be deemed a limited partner of a limited  
32 partnership.

33 (b) Exception.--A domestic or qualified foreign restricted  
34 professional company shall be subject to section [8925(a)]  
35 8835(a), instead of subsection (a), for the whole of any taxable  
36 year of the company during any part of which the company has:

37 (1) engaged in any business not permitted by section  
38 8996(a) (relating to purposes of restricted professional  
39 companies);

40 (3) been a member of a limited liability company.  
41 § 8998. Annual registration.

42 \* \* \*

43 (g) Cross [references.--See section 8907 (relating to  
44 execution of documents) and] reference.--See 18 Pa.C.S. § 4904  
45 (relating to unsworn falsification to authorities).