

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

1 thereto.

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

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

7 * * *

8 § 3301. Application and effect of chapter.

9 * * *

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

14 Section 6.2. The definitions of "benefit corporation,"
15 "independent," "minimum status vote" and "subsidiary" in section
16 3302 of Title 15 are amended to read:

17 § 3302. Definitions.

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

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

24 * * *

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

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

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

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

47 "Minimum status vote." As follows:

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

51 (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:

- 1 (i) a shareholder that owned at least 2% of the
2 total number of shares of a class or series outstanding
3 at the time of the act complained of;
4 (ii) a director;
5 (iii) a person or group of persons that owns
6 beneficially or of record 5% or more of the [equity]
7 interests in an association of which the benefit
8 corporation is a subsidiary at the time of the act
9 complained of; or
10 (iv) such other persons as may be specified in the
11 articles or bylaws of the benefit corporation.

12 * * *

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

15 an other

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

18 an other

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

20 immediately

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

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

24 2016

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

27 April 1, 2017

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

30 April 1, 2017

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

33 April 1, 2017

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

1 April 1, 2017

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

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

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

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

8 § 8423. Partnership property.

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

11 § 8424. When property is partnership property.

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

15 (1) the partnership by a transfer to:

16 (i) the partnership in its name; or

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

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

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

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

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

39 (2) use of partnership assets.

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

41 Amend Bill, page 102, line 28, by inserting a comma after
42 "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

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

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

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

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

13 (6) That the company is terminated.

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

16 (g)

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

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

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

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

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

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

28 SUBCHAPTER I
29 BENEFIT COMPANIES

30 Sec.

31 8891. Application and effect of subchapter.

32 8892. Definitions.

33 8893. Benefit company status.

34 8894. Purposes.

35 8895. Standard of conduct for members.

36 8896. Standard of conduct for managers and officers.

37 8897. Right of action.

38 8898. Annual benefit report.

39 § 8891. Application and effect of subchapter.

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

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

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

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

13 (d) Organic rules may not be inconsistent.--See section
14 8815(c)(19) (relating to contents of operating agreement).
15 § 8892. Definitions.

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

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

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

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

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

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

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

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

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

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

50 "Minimum status vote." As follows:

51 (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).