

ASSOCIATIONS CODE (15 PA.C.S.) - BENEFIT CORPORATIONS

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No. 2012-152

HB 1616

AN ACT

Amending Title 15 (Corporations and Unincorporated Associations) of the Pennsylvania Consolidated Statutes, further providing for benefit corporations.

The General Assembly of the Commonwealth of Pennsylvania hereby enacts as follows:

Section 1. Article C of Subpart B of Title 15 of the Pennsylvania Consolidated Statutes is amended by adding a chapter to read:

**CHAPTER 33
BENEFIT CORPORATIONS**

Subchapter

- A. Preliminary Provisions**
- B. Corporate Purposes**
- C. Accountability**
- D. Transparency**

**SUBCHAPTER A
PRELIMINARY PROVISIONS**

Sec.

- 3301. Application and effect of chapter.**
- 3302. Definitions.**
- 3303. Formation of benefit corporations.**
- 3304. Election of benefit corporation status.**
- 3305. Termination of benefit corporation status.**

§ 3301. Application and effect of chapter.

(a) General rule.--This chapter shall apply to all benefit corporations.

(b) Application of business corporation law generally.--The existence of a provision of this chapter shall not of itself create any implication that a contrary or different rule of law is or would be applicable to a business corporation that is not a benefit corporation. This chapter shall not affect any statute or rule of law that is or would be applicable to a business corporation that is not a benefit corporation.

(c) Laws applicable to benefit corporations.--Except as otherwise provided in this chapter, this subpart shall apply generally to benefit corporations. The specific provisions of this chapter shall control over the general provisions of this subpart. A benefit corporation may be simultaneously subject to this chapter and one or more other chapters of this article.

(d) Organic records 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.

§ 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 subject to this chapter and whose status as a benefit corporation has not been terminated .

"Benefit director." Either:

(1) the director designated as the benefit director of a benefit corporation as provided in section 3322 (relating to benefit director); or

(2) a person with one or more of the powers, duties or rights of a benefit director to the extent provided in the bylaws under section 3322.

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

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

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

"Benefit officer." The individual, if any, designated as the benefit officer of a benefit corporation as provided in section 3324 (relating to benefit officer).

"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 corporation.

"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 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."

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

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

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

(i) The holders of every class or series of equity interest in the association that are entitled to receive a distribution of any kind from the association must be

entitled as a class to vote on or consent to the action regardless of any otherwise applicable limitation on the voting or consent rights of any class or series.

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

"Specific public benefit." Includes:

(1) providing low-income or underserved individuals or communities with beneficial products or services;

(2) promoting economic opportunity for individuals or communities beyond the creation of jobs in the normal course of business;

(3) preserving the environment;

(4) improving human health;

(5) promoting the arts, sciences or advancement of knowledge;

(6) promoting economic development through support of initiatives that increase access to capital for emerging and growing technology enterprises, facilitate the transfer and commercial adoption of new technologies, provide technical and business support to emerging and growing technology enterprises or form support partnerships that support those objectives;

(7) increasing the flow of capital to entities with a public benefit purpose; and

(8) the accomplishment of any other particular benefit for society or the environment.

"Subsidiary." An association in which a person owns beneficially or of record 50% or more of the outstanding equity interests. 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.

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

(1) Comprehensive in that it assesses the effect of the business and its operations upon the interests listed in section 3321(a)(1)(ii), (iii), (iv) and (v) (relating to standard of conduct for directors).

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

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

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

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

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

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

(3) Credible because the standard is developed by a person that both:

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

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

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

(i) About the standard:

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

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

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

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

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

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

§ 3303. Formation of benefit corporations.

A benefit corporation shall be formed in accordance with Article B (relating to domestic business corporations generally) except that its articles shall also state that it is a benefit corporation.

§ 3304. Election of benefit corporation status .

(a) Amendment.-- An existing business corporation may become a benefit corporation by amending its articles so that they contain, in addition to the requirements of section 1306(a) (relating to articles of incorporation) , a statement that the corporation is a benefit corporation. The amendment shall not be effective unless it is adopted by at least the minimum status vote.

(b) Fundamental transactions.--If an association that is not a benefit corporation is a party to a merger, consolidation or division or is the exchanging association in a share exchange, and the surviving, new or any resulting association in the merger, consolidation, division or share exchange is to be a benefit corporation, then the plan of merger, consolidation, division or share exchange shall not be effective unless it is adopted by the corporation by at least the minimum status vote.

§ 3305. Termination of benefit corporation status.

(a) Amendment.--A benefit corporation may terminate its status as a benefit corporation and cease to be subject to this chapter by amending its articles to delete the provision required under section 3304 (relating to election of benefit corporation status) to be stated in the articles of a benefit corporation. The amendment shall not be effective unless it is adopted by at least the minimum status vote.

(b) Fundamental transactions.--If a plan would have the effect of terminating the status of a business corporation as a benefit corporation, the plan shall not be effective unless it is adopted by at least the minimum status vote. Any sale, lease, exchange or other disposition of all or substantially all of the assets of a benefit corporation, unless the

transaction is in the usual and regular course of business, shall not be effective unless the transaction is approved by at least the minimum status vote.

SUBCHAPTER B CORPORATE PURPOSES

Sec.

3311. Corporate purposes.

§ 3311. Corporate purposes.

(a) General public benefit purpose.--A benefit corporation shall have a purpose of creating general public benefit. This purpose is in addition to its purpose under section 1301 (relating to purposes) .

(b) Optional specific public benefit purpose.--The articles of a benefit corporation may identify one or more specific public benefits that it is the purpose of the benefit corporation to create in addition to its purposes under section 1301 and subsection (a). The identification of a specific public benefit does not limit the obligation of a benefit corporation to create general public benefit.

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

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

(e) Professional corporations.--A professional corporation that is a benefit corporation does not violate section 2922(a) (relating to stated purposes) by having the purpose to create general public benefit or a specific public benefit.

SUBCHAPTER C ACCOUNTABILITY

Sec.

3321. Standard of conduct for directors.

3322. Benefit director.

3323. Standard of conduct for officers.

3324. Benefit officer.

3325. Right of action.

§ 3321. Standard of conduct for directors.

(a) Consideration of interests .--Without regard to whether the benefit corporation is subject to section 1715 (relating to exercise of powers generally) or 1716 (relating to alternative standard), in discharging the duties of their respective positions, the board of directors, committees of the board and individual directors of a benefit corporation, in considering the best interest of the benefit corporation:

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

(i) the shareholders of the benefit corporation;

(ii) the employees and work force of the benefit corporation and its subsidiaries and suppliers;

(iii) the interests of customers as beneficiaries of the general or specific public benefit purposes of the benefit corporation;

(iv) community and societal considerations, including those of any community in which offices or facilities of the benefit corporation or its subsidiaries or suppliers are located;

(v) the local and global environment;

(vi) the short-term and long-term interests of the benefit corporation, including benefits that may accrue

to the benefit corporation from its long-term plans and the possibility that these interests may be best served by the continued independence of the benefit corporation; and

(vii) the ability of the benefit corporation to accomplish its general public benefit purpose and any specific public benefit purpose; and

(2) may consider:

(i) matters listed in section 1715(a) ; and

(ii) any other pertinent factors or the interests of any other group that they deem appropriate; but

(3) shall not be required to give priority to the interests of any person or group referred to in paragraph (1) or (2) over the interests of any other person or group unless the benefit corporation has stated in its articles its intention to give priority to certain interests related to its accomplishment of its general public benefit purpose or of a specific public benefit purpose identified in its articles.

(b) Coordination with other provisions of law.--The consideration of interests and factors in the manner required under subsection (a):

(1) shall not constitute a violation of section 1712 (relating to standard of care and justifiable reliance); and

(2) is in addition to the ability of directors to consider interests and factors as provided in section 1715 or 1716.

(c) Exoneration from personal liability.--

(1) A director shall not be personally liable, as such, for monetary damages for any action taken as a director if the director performed the duties of his or her office in compliance with section 1712 and this section.

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

(d) Limitation on standing.--A director does not have a duty to a person that is a beneficiary of the general public benefit purpose or a specific public benefit purpose of a benefit corporation arising from the status of the person as a beneficiary.

§ 3322. Benefit director.

(a) General rule.--The board of directors of a benefit corporation shall include a director who shall be designated as the benefit director and shall have, in addition to all of the powers, duties, rights and immunities of the other directors of the benefit corporation, the powers, duties, rights and immunities provided in this subchapter.

(b) Election, removal and qualifications.--The benefit director shall be elected and may be removed in the manner provided under Subchapter C of Chapter 17 (relating to directors and officers) and shall be an individual who is independent. The benefit director may serve as the benefit officer at the same time as serving as the benefit director. The articles or bylaws of a benefit corporation may prescribe additional qualifications of the benefit director not inconsistent with this subsection.

(c) Annual compliance statement.--The benefit director shall prepare, and the benefit corporation shall include in the annual benefit report to shareholders required under section 3331 (relating to annual benefit report), a statement whether, in the opinion of the benefit director, the benefit corporation

acted in accordance with its general and any specific public benefit purpose in all material respects during the period covered by the report and whether the directors and officers complied with sections 3321(a) (relating to standard of conduct for directors) and 3323(a) (relating to standard of conduct for officers), respectively. If, in the opinion of the benefit director, the benefit corporation or its directors or officers failed so to act, then the statement of the benefit director shall include a description of the ways in which the benefit corporation or its directors or officers failed so to act.

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

(e) Alternative governance arrangements.--

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

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

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

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

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

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

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

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

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

(B) the bylaws make those procedures applicable.

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

§ 3323. Standard of conduct for officers.

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

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

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

benefit identified in the articles of the benefit corporation.

(b) Coordination with other provisions of law.--The consideration of interests and factors in the manner described in subsection (a) shall not constitute a violation of section 1712(c) (relating to standard of care and justifiable reliance).

(c) Exoneration from personal liability.--

(1) An officer shall not be personally liable, as such, for monetary damages for any action taken as an officer if the officer performed the duties of the position in compliance with section 1712(c) and this section.

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

(d) Limitation on standing.--An officer does not have a duty to a person that is a beneficiary of the general public benefit purpose or a specific public benefit purpose of a benefit corporation arising from the status of the person as a beneficiary.

§ 3324. Benefit officer.

A benefit corporation may have an officer designated as the benefits officer who shall have such authority and shall perform such duties in the management of the benefit corporation relating to the purpose of the corporation to create general or specific public benefit as may be provided by or pursuant to the bylaws or, in the absence of controlling provisions in the bylaws, as may be determined by or pursuant to resolutions or orders of the board of directors. If a benefit corporation has a benefit officer, the duties of the benefit officer shall include preparing the benefit report required under section 3331 (relating to annual benefit report).

§ 3325. Right of action.

(a) Limitations.--

(1) Except in a benefit enforcement proceeding, no person may bring an action or assert a claim against a benefit corporation or its directors or officers with respect to:

(i) failure to pursue or create general public benefit or a specific public benefit set forth in its articles; or

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

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

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

(1) directly by the benefit corporation; or

(2) derivatively by:

(i) a shareholder;

(ii) a director;

(iii) a person or group of persons that owns beneficially or of record 5% or more of the equity interests in an association of which the benefit corporation is a subsidiary; or

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

(c) Cross reference.--The provisions of Subchapter F of Chapter 17 (relating to derivative actions) shall apply to derivative actions under this section.

SUBCHAPTER D
TRANSPARENCY

Sec.

3331. Annual benefit report.

§ 3331. Annual benefit report.

(a) Contents.--A benefit corporation must deliver to each shareholder an annual benefit report including:

(1) A narrative description of:

(i) the ways in which the benefit corporation pursued general public benefit during the year and the extent to which general public benefit was created;

(ii) the ways in which the benefit corporation pursued any specific public benefit that the articles state is the purpose of the benefit corporation to create and the extent to which that specific public benefit was created;

(iii) any circumstances that have hindered the creation by the benefit corporation of general or specific public benefit ; and

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

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

(3) The name of the benefit director and the benefit officer, if any, and the address to which correspondence to each of them may be directed .

(4) The compensation paid by the benefit corporation during the year to each director in that capacity .

(5) The name of each person that owns 5% or more of the outstanding shares of the benefit corporation either beneficially, to the extent known to the benefit corporation without independent investigation, or of record .

(6) The statement of the benefit director described in section 3322(c) (relating to benefit director).

(7) A statement of any connection between the organization that established the third-party standard, or its directors, officers or any holder of 5% or more of the governance interests in the organization, and the benefit corporation or its directors, officers or any holder of 5% or more of the outstanding shares of the benefit corporation, including any financial or governance relationship which might materially affect the credibility of the use of the third-party standard.

(8) If the benefit corporation has dispensed with, or restricted the discretion or powers of, the board of directors, a description of:

(i) the persons that exercise the powers, duties and rights and who have the immunities of the board of directors; and

(ii) the benefit director, as required by section 3322(e).

(b) Timing of report.-- A benefit corporation shall annually send a benefit report to each shareholder either:

(1) within 120 days following the end of the fiscal year of the benefit corporation ; or

(2) at the same time that the benefit corporation delivers any other annual report to its shareholders.

(c) Internet website posting.--A benefit corporation must post all of its benefit reports on the public portion of its Internet website, if any, except that the compensation paid to directors and any financial or proprietary information included in the benefit report may be omitted from the benefit report as posted.

(d) Availability of copies.--If a benefit corporation does not have an Internet website, the benefit corporation shall provide a copy of its most recent benefit report, without charge, to any person that requests a copy, but the compensation paid to directors and financial or proprietary information included in the benefit report may be omitted from the copy of the benefit report provided.

(e) Filing of report.--Concurrently with the delivery of the benefit report to shareholders pursuant to subsection (b), the benefit corporation must deliver a copy of the benefit report to the department for filing, except that the compensation paid to directors and any financial or proprietary information included in the benefit report may be omitted from the benefit report as filed under this section. The department shall charge a fee of \$70 for filing a benefit report.

Section 2. This act shall take effect in 90 days.

APPROVED--The 24th day of October, A.D. 2012.

TOM CORBETT