
THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 1616 Session of
2011

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BRIGGS, COHEN, CREIGHTON, DALEY, FLECK, GABLER, GEIST, GROVE,
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SWANGER AND WAGNER, JUNE 2, 2011

REFERRED TO COMMITTEE ON JUDICIARY, JUNE 2, 2011

AN ACT

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

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

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

9 CHAPTER 33

10 BENEFIT CORPORATIONS

11 Subchapter

12 A. Preliminary Provisions

13 B. Corporate Purposes

14 C. Accountability

15 D. Transparency

16 SUBCHAPTER A

17 PRELIMINARY PROVISIONS

1 Sec.

2 3301. Application and effect of chapter.

3 3302. Definitions.

4 3303. Formation of benefit corporations.

5 3304. Election of an existing business corporation to become a
6 benefit corporation.

7 3305. Termination of benefit corporation status.

8 § 3301. Application and effect of chapter.

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

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

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

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

27 § 3302. Definitions.

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

1 "Benefit corporation." A business corporation that has
2 elected to become subject to this chapter and whose status as a
3 benefit corporation has not been terminated as provided in this
4 chapter.

5 "Benefit director." The director designated as the benefit
6 director of a benefit corporation as provided in section 3322
7 (relating to benefit director).

8 "Benefit enforcement proceeding." A claim or action brought
9 directly by a benefit corporation, or derivatively on behalf of
10 a benefit corporation, against a director or officer for:

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

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

16 "Benefit officer." The officer of a benefit corporation, if
17 any, designated as the benefit officer as provided in section
18 3324 (relating to benefit officer).

19 "General public benefit." A material positive impact on
20 society and the environment by the operations of a benefit
21 corporation taken as a whole, as measured by a third-party
22 standard, through activities that promote some combination of
23 specific public benefits.

24 "Independent." When a person has no material relationship
25 with a benefit corporation or any of its subsidiaries, other
26 than the relationship of serving as the benefit director or
27 benefit officer, either directly or as a shareholder, partner,
28 member or other owner or a director, officer or other manager of
29 an association that has a material relationship with the benefit
30 corporation or any of its subsidiaries. A material relationship

1 between an individual and a benefit corporation or any of its
2 subsidiaries will be conclusively presumed to exist if:

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

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

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

18 "Minimum status vote." When in addition to any other
19 approval or vote required by this subpart or a bylaw adopted by
20 the shareholders:

21 (1) The holders of shares of every class or series shall
22 be entitled to vote on the corporate action regardless of any
23 limitation stated in the articles of incorporation or bylaws
24 on the voting rights of any class or series.

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

29 "Specific public benefit." Includes the following:

30 (1) providing low-income or underserved individuals or

1 communities with beneficial products or services;

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

5 (3) preserving the environment;

6 (4) improving human health;

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

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

11 (7) the accomplishment of any other particular benefit
12 for society or the environment.

13 "Subsidiary." An association in which a person owns
14 beneficially or of record 50% or more of the outstanding equity
15 interests. The percentage of ownership in an association shall
16 be calculated as if all outstanding rights to acquire equity
17 interests in the association had been exercised.

18 "Third-party standard." A recognized standard for defining,
19 reporting and assessing corporate social and environmental
20 performance that is:

21 (1) developed by a person that is independent of the
22 benefit corporation; and

23 (2) transparent because the following information about
24 the standard is publicly available:

25 (i) the factors considered when measuring the
26 performance of a business;

27 (ii) the relative weightings of those factors; and

28 (iii) the identity of the persons who developed and
29 control changes to the standard and the process by which
30 those changes are made.

1 § 3303. Formation of benefit corporations.

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

6 § 3304. Election of an existing business corporation to become
7 a benefit corporation.

8 (a) Amendment.--A business corporation may become a benefit
9 corporation by amending its articles so that they contain, in
10 addition to the requirements of section 1911(b) (relating to
11 amendment of articles authorized), a statement that the
12 corporation is a benefit corporation. The amendment shall not be
13 effective unless it is adopted by at least the minimum status
14 vote.

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

23 § 3305. Termination of benefit corporation status.

24 (a) Amendment.--A benefit corporation may terminate its
25 status as a benefit corporation and cease to be subject to this
26 chapter by amending its articles to delete the provision
27 required under section 3304 (relating to election of an existing
28 business corporation to become a benefit corporation) to be
29 stated in the articles of a benefit corporation. The amendment
30 shall not be effective unless it is adopted by at least the

1 minimum status vote.

2 (b) Fundamental transactions.--If a plan would have the
3 effect of terminating the status of a business corporation as a
4 benefit corporation, the plan shall not be effective unless it
5 is adopted by at least the minimum status vote.

6 (c) Involuntary termination.--The status of a corporation as
7 a benefit corporation may be terminated involuntarily under
8 section 3331(e) (relating to annual benefit report) if it fails
9 to file an annual benefit report.

10 SUBCHAPTER B

11 CORPORATE PURPOSES

12 Sec.

13 3311. Corporate purposes.

14 § 3311. Corporate purposes.

15 (a) General public benefit purpose.--A benefit corporation
16 shall have the purpose of creating general public benefit. This
17 purpose is in addition to, and may be a limitation on, its
18 purpose under section 1301 (relating to purposes) and any
19 specific purpose set forth in its articles under subsection (b).

20 (b) Optional specific public benefit purpose.--The articles
21 of a benefit corporation may identify one or more specific
22 public benefits that it is the purpose of the benefit
23 corporation to create in addition to its purposes under section
24 1301 and subsection (a). The identification of a specific public
25 benefit does not limit the obligation of a benefit corporation
26 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 corporation.

30 (d) Amendment.--A benefit corporation may amend its articles

1 to add, amend or delete the identification of a specific public
2 benefit that it is the purpose of the benefit corporation to
3 create. The amendment shall not be effective unless it is
4 adopted by at least the minimum status vote.

5 SUBCHAPTER C

6 ACCOUNTABILITY

7 Sec.

8 3321. Standard of conduct for directors.

9 3322. Benefit director.

10 3323. Standard of conduct for officers.

11 3324. Benefit officer.

12 3325. Right of action.

13 § 3321. Standard of conduct for directors.

14 (a) Required considerations.--Without regard to whether the
15 benefit corporation is subject to section 1715 (relating to
16 exercise of powers generally) or 1716 (relating to alternative
17 standard), in discharging the duties of their respective
18 positions, the board of directors, committees of the board and
19 individual directors of a benefit corporation, in considering
20 the best interest of the benefit corporation:

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

22 (i) the shareholders of the benefit corporation;

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

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

28 (iv) community and societal considerations,
29 including those of any community in which offices or
30 facilities of the benefit corporation or its subsidiaries

1 or suppliers are located;

2 (v) the local and global environment; and

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

8 (2) may consider:

9 (i) the resources, intent and conduct, whether past,
10 stated or potential, of any person seeking to acquire
11 control of the corporation; and

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

14 (3) shall not be required to give priority to the
15 interests of any person or group referred to in paragraphs
16 (1) and (2) over the interests of any other person or group
17 unless the benefit corporation has stated its intention to
18 give priority to interests related to a specific public
19 benefit purpose identified in its articles.

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

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

25 (2) is in addition to the ability of directors to
26 consider interests and factors as provided in section 1715 or
27 1716.

28 (c) Personal liability of directors.--A director shall not
29 be personally liable, as such, for monetary damages for any
30 action taken as a director if the director performed the duties

1 of his or her office in compliance with section 1712 and this
2 section.

3 § 3322. Benefit director.

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

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

19 (c) Annual compliance statement.--The benefit director shall
20 prepare, and the benefit corporation shall include in the annual
21 benefit report to shareholders required under section 3331
22 (relating to annual benefit report), a statement whether, in the
23 opinion of the benefit director, the benefit corporation acted
24 in accordance with its general and any specific public benefit
25 purpose in all material respects during the period covered by
26 the report and whether the directors and officers complied with
27 sections 3321(a) (relating to standard of conduct for directors)
28 and 3323(a) (relating to standard of conduct for officers),
29 respectively. If, in the opinion of the benefit director, the
30 benefit corporation or its directors or officers failed so to

1 act, then the statement of the benefit director shall include a
2 description of the ways in which the benefit corporation or its
3 directors or officers failed so to act.

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

8 (e) Alternative governance arrangements.--If the bylaws of a
9 benefit corporation provide that the powers and duties conferred
10 or imposed upon the board of directors shall be exercised or
11 performed by a person or persons other than the directors
12 pursuant to section 1721(a) (relating to board of directors) or
13 the bylaws of a statutory close corporation that is a benefit
14 corporation provide that the business and affairs of the
15 corporation shall be managed by or under the direction of the
16 shareholders, then the bylaws of the benefit corporation must
17 provide that the person or persons or shareholders who perform
18 the duties of a board of directors shall include a person with
19 the powers, duties, rights and immunities of a benefit director.

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

28 § 3323. Standard of conduct for officers.

29 (a) General rule.--Each officer of a benefit corporation
30 shall consider the interests and factors described in section

1 3321(a) (relating to standard of conduct for directors) in the
2 manner provided in that subsection when:

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:

7 (i) the creation of general or specific public
8 benefit by the benefit corporation; or

9 (ii) any of the interests or factors referred to in
10 section 3321(a).

11 (b) Coordination with other provisions of law.--The
12 consideration of interests and factors in the manner described
13 in subsection (a) shall not constitute a violation of section
14 1712(c) (relating to standard of care and justifiable reliance).

15 (c) Personal liability of officers.--An officer shall not be
16 personally liable, as such, for monetary damages for any action
17 taken as an officer if the officer performed the duties of the
18 position in compliance with section 1712(c) and this section.

19 § 3324. Benefit officer.

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

1 § 3325. Right of action.

2 (a) General rule.--The duties of directors and officers
3 under this chapter, and the general and any specific public
4 benefit purpose of a benefit corporation, may be enforced only
5 in a benefit enforcement proceeding. No person may bring an
6 action or assert a claim against a benefit corporation or its
7 directors or officers with respect to the duties of directors
8 and officers under this chapter, and the general and any
9 specific public benefit purpose of the benefit corporation,
10 except in a benefit enforcement proceeding.

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

13 (1) directly by the benefit corporation; or

14 (2) derivatively by:

15 (i) a shareholder;

16 (ii) a director;

17 (iii) a person or group of persons that owns
18 beneficially or of record 10% or more of the equity
19 interests in an association of which the benefit
20 corporation is a subsidiary; or

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

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

26 SUBCHAPTER D

27 TRANSPARENCY

28 Sec.

29 3331. Annual benefit report.

30 § 3331. Annual benefit report.

1 (a) General rule.--A benefit corporation must deliver to
2 each shareholder an annual benefit report including:

3 (1) a narrative description of:

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

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

12 (iii) any circumstances that have hindered the
13 creation by the benefit corporation of general or
14 specific public benefit.

15 (2) an assessment of the social and environmental
16 performance of the benefit corporation, prepared in
17 accordance with a third-party standard applied consistently
18 with any application of that standard in prior benefit
19 reports or accompanied by an explanation of the reasons for
20 any inconsistent application;

21 (3) the name of the benefit director and the benefit
22 officer, if any, and the address to which correspondence to
23 each of them may be directed;

24 (4) the compensation paid by the benefit corporation
25 during the year to each director in that capacity;

26 (5) the name of each person that owns 5% or more of the
27 outstanding shares of the benefit corporation either
28 beneficially, to the extent known to the benefit corporation
29 without independent investigation, or of record; and

30 (6) the statement of the benefit director described in

1 section 3322(c) (relating to benefit director).

2 (b) Timing of report.--The benefit report must be sent
3 annually to each shareholder within 120 days following the end
4 of the fiscal year of the benefit corporation or at the same
5 time that the benefit corporation delivers any other annual
6 report to its shareholders.

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

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

21 (e) Failure to file report.--If a benefit corporation has
22 not delivered a benefit report to the department for a period of
23 two years, the department may prepare and file a statement that
24 the corporation has forfeited its status as a benefit
25 corporation and is no longer subject to this chapter. If the
26 corporation subsequently delivers a benefit report to the
27 department for filing, the status of the corporation as a
28 benefit corporation shall be automatically reinstated upon the
29 filing of the benefit report by the department, and the
30 corporation shall again be subject to this chapter.

1 Section 2. This act shall take effect in 60 days.