

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 1616 Session of 2011

INTRODUCED BY DENLINGER, DePASQUALE, CUTLER, BLOOM, BOYD, BRIGGS, COHEN, CREIGHTON, DALEY, FLECK, GABLER, GEIST, GROVE, HICKERNELL, KILLION, LONGIETTI, MILNE, MURT, PYLE, RAPP, SWANGER, WAGNER AND PAYTON, JUNE 2, 2011

AS REPORTED FROM COMMITTEE ON COMMERCE, HOUSE OF REPRESENTATIVES, AS AMENDED, APRIL 2, 2012

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 "BENEFIT DIRECTOR." EITHER: ←

7 (1) THE DIRECTOR DESIGNATED AS THE BENEFIT director of a
8 benefit corporation as provided in section 3322 (relating to ←
9 benefit director). (RELATING TO BENEFIT DIRECTOR); OR ←

10 (2) A PERSON WITH ONE OR MORE OF THE POWERS, DUTIES OR
11 RIGHTS OF A BENEFIT DIRECTOR TO THE EXTENT PROVIDED IN THE
12 BYLAWS UNDER SECTION 3322.

13 "Benefit enforcement proceeding." A claim or action brought ←
14 directly by a benefit corporation, or derivatively on behalf of
15 a benefit corporation, against a director or officer for:

16 (1) failure to pursue OR CREATE the general public ←
17 benefit purpose of the benefit corporation or any specific
18 public benefit purpose set forth in its articles; or

19 (2) violation of a ANY OBLIGATION, duty or standard of ←
20 conduct under this chapter.

21 "Benefit officer." The officer of a benefit corporation ←
22 INDIVIDUAL, if any, designated as the benefit officer OF A ←
23 BENEFIT CORPORATION as provided in section 3324 (relating to
24 benefit officer).

25 "General public benefit." A material positive impact on
26 society and the environment by the operations of a benefit ←
27 corporation taken as a whole, as measured by, TAKEN AS A WHOLE, ←
28 ASSESSED AGAINST a third-party standard, through activities that ←
29 promote some combination of specific public benefits FROM THE ←
30 BUSINESS AND OPERATIONS OF A BENEFIT CORPORATION.

1 "Independent." When a person has no material relationship
2 with a benefit corporation or any of its subsidiaries, other
3 than the relationship of serving as the benefit director or
4 benefit officer, either directly or as a shareholder, partner, ←
5 member or other owner or a director, officer or other manager of
6 an association that has a material relationship with the benefit
7 corporation or any of its subsidiaries. A material relationship
8 between an individual and a benefit corporation or any of its
9 subsidiaries will be conclusively presumed to exist if:

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

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

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

25 "Minimum status vote." When in addition to any other ←
26 approval or vote required by this subpart or a bylaw adopted by
27 the shareholders:

28 (1) The holders of shares of every class or series shall
29 be entitled to vote on the corporate action regardless of any
30 limitation stated in the articles of incorporation or bylaws

1 ~~on the voting rights of any class or series.~~

2 ~~(2) The corporate action must be approved by vote of the~~
3 ~~shareholders of each class or series entitled to cast at~~
4 ~~least two thirds of the votes that all shareholders of the~~
5 ~~class or series are entitled to cast on the corporate action.~~

6 "MINIMUM STATUS VOTE." ←

7 (1) IN THE CASE OF A BUSINESS CORPORATION, IN ADDITION
8 TO ANY OTHER REQUIRED APPROVAL OR VOTE, THE SATISFACTION OF
9 THE FOLLOWING CONDITIONS:

10 (I) THE SHAREHOLDERS OF EVERY CLASS OR SERIES MUST
11 BE ENTITLED, AS A CLASS, TO VOTE ON THE CORPORATE ACTION
12 REGARDLESS OF A LIMITATION STATED IN THE ARTICLES OF
13 INCORPORATION OR BYLAWS ON THE VOTING RIGHTS OF ANY CLASS
14 OR SERIES.

15 (II) THE CORPORATE ACTION MUST BE APPROVED BY A VOTE
16 OF THE SHAREHOLDERS OF EACH CLASS OR SERIES ENTITLED TO
17 CAST AT LEAST TWO-THIRDS OF THE VOTES THAT ALL
18 SHAREHOLDERS OF THE CLASS OR SERIES ARE ENTITLED TO CAST
19 ON THE ACTION.

20 (2) IN THE CASE OF A DOMESTIC ASSOCIATION OTHER THAN A
21 BUSINESS CORPORATION, IN ADDITION TO ANY OTHER REQUIRED
22 APPROVAL, VOTE OR CONSENT, THE SATISFACTION OF THE FOLLOWING
23 CONDITIONS:

24 (I) THE HOLDERS OF EVERY CLASS OR SERIES OF EQUITY
25 INTEREST IN THE ASSOCIATION THAT ARE ENTITLED TO RECEIVE
26 A DISTRIBUTION OF ANY KIND FROM THE ASSOCIATION MUST BE
27 ENTITLED AS A CLASS TO VOTE ON OR CONSENT TO THE ACTION
28 REGARDLESS OF ANY OTHERWISE APPLICABLE LIMITATION ON THE
29 VOTING OR CONSENT RIGHTS OF ANY CLASS OR SERIES.

30 (II) THE ACTION MUST BE APPROVED BY VOTE OR CONSENT

1 OF THE HOLDERS DESCRIBED IN SUBPARAGRAPH (I) ENTITLED TO
2 CAST AT LEAST TWO-THIRDS OF THE VOTES OR CONSENTS THAT
3 ALL OF THOSE HOLDERS ARE ENTITLED TO CAST ON THE ACTION.

4 "Specific public benefit." Includes the following: ←

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

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

10 (3) preserving the environment;

11 (4) improving human health;

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

14 (6) PROMOTING ECONOMIC DEVELOPMENT THROUGH SUPPORT OF ←
15 INITIATIVES THAT INCREASE ACCESS TO CAPITAL FOR EMERGING AND
16 GROWING TECHNOLOGY ENTERPRISES, FACILITATE THE TRANSFER AND
17 COMMERCIAL ADOPTION OF NEW TECHNOLOGIES, PROVIDE TECHNICAL
18 AND BUSINESS SUPPORT TO EMERGING AND GROWING TECHNOLOGY
19 ENTERPRISES OR FORM SUPPORT PARTNERSHIPS THAT SUPPORT THOSE
20 OBJECTIVES;

21 ~~(6)~~ (7) increasing the flow of capital to entities with ←
22 a public benefit purpose; and

23 ~~(7)~~ (8) the accomplishment of any other particular ←
24 benefit for society or the environment.

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

30 ~~"Third party standard." A recognized standard for defining,~~ ←

1 ~~reporting and assessing corporate social and environmental~~
2 ~~performance that is:~~

3 ~~(1) developed by a person that is independent of the~~
4 ~~benefit corporation; and~~

5 ~~(2) transparent because the following information about~~
6 ~~the standard is publicly available:~~

7 ~~(i) the factors considered when measuring the~~
8 ~~performance of a business;~~

9 ~~(ii) the relative weightings of those factors; and~~

10 ~~(iii) the identity of the persons who developed and~~
11 ~~control changes to the standard and the process by which~~
12 ~~those changes are made.~~

13 "THIRD-PARTY STANDARD." A STANDARD FOR DEFINING, REPORTING
14 AND ASSESSING OVERALL CORPORATE SOCIAL AND ENVIRONMENTAL
15 PERFORMANCE WHICH IS:



16 (1) COMPREHENSIVE IN THAT IT ASSESSES THE EFFECT OF THE
17 BUSINESS AND ITS OPERATIONS UPON THE INTERESTS LISTED IN
18 SECTION 3321 (A) (1) (II), (III), (IV) AND (V) (RELATING TO
19 STANDARD OF CONDUCT FOR DIRECTORS).

20 (2) DEVELOPED BY AN ORGANIZATION THAT IS INDEPENDENT OF
21 THE BENEFIT CORPORATION AND SATISFIES THE FOLLOWING
22 REQUIREMENTS:

23 (I) NOT MORE THAN ONE-THIRD OF THE MEMBERS OF THE
24 GOVERNING BODY OF THE ORGANIZATION ARE REPRESENTATIVES OF
25 ANY OF THE FOLLOWING:

26 (A) AN ASSOCIATION OF BUSINESSES OPERATING IN A
27 SPECIFIC INDUSTRY THE PERFORMANCE OF WHOSE MEMBERS IS
28 MEASURED BY THE STANDARD.

29 (B) BUSINESSES FROM A SPECIFIC INDUSTRY OR AN
30 ASSOCIATION OF BUSINESSES IN THAT INDUSTRY.

1 (C) BUSINESSES WHOSE PERFORMANCE IS ASSESSED
2 AGAINST THE STANDARD.

3 (II) THE ORGANIZATION IS NOT MATERIALLY FINANCED BY
4 AN ASSOCIATION OR BUSINESS DESCRIBED IN SUBPARAGRAPH (I).

5 (3) CREDIBLE BECAUSE THE STANDARD IS DEVELOPED BY A
6 PERSON THAT BOTH:

7 (I) HAS ACCESS TO NECESSARY EXPERTISE TO ASSESS
8 OVERALL CORPORATE SOCIAL AND ENVIRONMENTAL PERFORMANCE.

9 (II) USES A BALANCED MULTISTAKEHOLDER APPROACH,
10 INCLUDING A PUBLIC COMMENT PERIOD OF AT LEAST 30 DAYS TO
11 DEVELOP THE STANDARD.

12 (4) TRANSPARENT BECAUSE THE FOLLOWING INFORMATION IS
13 PUBLICLY AVAILABLE:

14 (I) ABOUT THE STANDARD:

15 (A) THE CRITERIA CONSIDERED WHEN MEASURING THE
16 OVERALL SOCIAL AND ENVIRONMENTAL PERFORMANCE OF A
17 BUSINESS.

18 (B) THE RELATIVE WEIGHTINGS, IF ANY, OF THOSE
19 CRITERIA.

20 (II) ABOUT THE DEVELOPMENT AND REVISION OF THE
21 STANDARD:

22 (A) THE IDENTITY OF THE DIRECTORS, OFFICERS,
23 MATERIAL OWNERS AND THE GOVERNING BODY OF THE
24 ORGANIZATION THAT DEVELOPED AND CONTROLS REVISIONS TO
25 THE STANDARD.

26 (B) THE PROCESS BY WHICH REVISIONS TO THE
27 STANDARD AND CHANGES TO THE MEMBERSHIP OF THE
28 GOVERNING BODY ARE MADE.

29 (C) AN ACCOUNTING OF THE SOURCES OF FINANCIAL
30 SUPPORT FOR THE ORGANIZATION, WITH SUFFICIENT DETAIL

1 TO DISCLOSE ANY RELATIONSHIPS THAT COULD REASONABLY
2 BE CONSIDERED TO PRESENT A POTENTIAL CONFLICT OF
3 INTEREST.

4 § 3303. Formation of benefit corporations.

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

9 § 3304. Election of an existing business corporation to become ←
10 a benefit corporation BENEFIT CORPORATION STATUS. ←

11 (a) Amendment.--A AN EXISTING business corporation may ←
12 become a benefit corporation by amending its articles so that
13 they contain, in addition to the requirements of section 1911(b) ←
14 (relating to amendment of articles authorized) 1306(A) (RELATING ←
15 TO ARTICLES OF INCORPORATION), a statement that the corporation
16 is a benefit corporation. The amendment shall not be effective
17 unless it is adopted by at least the minimum status vote.

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

27 § 3305. Termination of benefit corporation status.

28 (a) Amendment.--A benefit corporation may terminate its
29 status as a benefit corporation and cease to be subject to this
30 chapter by amending its articles to delete the provision

1 required under section 3304 (relating to election of an existing
2 business corporation to become a benefit corporation) to be
3 stated in the articles of a benefit corporation. The amendment
4 shall not be effective unless it is adopted by at least the
5 minimum status vote.

6 (b) Fundamental transactions.--If a plan would have the
7 effect of terminating the status of a business corporation as a
8 benefit corporation, the plan shall not be effective unless it
9 is adopted by at least the minimum status vote. ANY SALE, LEASE, ←
10 EXCHANGE OR OTHER DISPOSITION OF ALL OR SUBSTANTIALLY ALL OF THE
11 ASSETS OF A BENEFIT CORPORATION, UNLESS THE TRANSACTION IS IN
12 THE USUAL AND REGULAR COURSE OF BUSINESS, SHALL NOT BE EFFECTIVE
13 UNLESS THE TRANSACTION IS APPROVED BY AT LEAST THE MINIMUM
14 STATUS VOTE.

15 (c) Involuntary termination. The status of a corporation as ←
16 a benefit corporation may be terminated involuntarily under
17 section 3331(e) (relating to annual benefit report) if it fails
18 to file an annual benefit report.

19 SUBCHAPTER B

20 CORPORATE PURPOSES

21 Sec.

22 3311. Corporate purposes.

23 § 3311. Corporate purposes.

24 (a) General public benefit purpose.--A benefit corporation
25 shall have the A purpose of creating general public benefit. ←
26 This purpose is in addition to, and may be a limitation on, its ←
27 purpose under section 1301 (relating to purposes) and any ←
28 specific purpose set forth in its articles under subsection (b).

29 (b) Optional specific public benefit purpose.--The articles
30 of a benefit corporation may identify one or more specific

1 public benefits that it is the purpose of the benefit
2 corporation to create in addition to its purposes under section
3 1301 and subsection (a). The identification of a specific public
4 benefit does not limit the obligation of a benefit corporation
5 to create general public benefit.

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

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

14 (E) PROFESSIONAL CORPORATIONS.--A PROFESSIONAL CORPORATION ←
15 THAT IS A BENEFIT CORPORATION DOES NOT VIOLATE SECTION 2922(A)
16 (RELATING TO STATED PURPOSES) BY HAVING THE PURPOSE TO CREATE
17 GENERAL PUBLIC BENEFIT OR A SPECIFIC PUBLIC BENEFIT.

18 SUBCHAPTER C

19 ACCOUNTABILITY

20 Sec.

21 3321. Standard of conduct for directors.

22 3322. Benefit director.

23 3323. Standard of conduct for officers.

24 3324. Benefit officer.

25 3325. Right of action.

26 § 3321. Standard of conduct for directors.

27 (a) ~~Required considerations~~ CONSIDERATION OF INTERESTS.-- ←
28 Without regard to whether the benefit corporation is subject to
29 section 1715 (relating to exercise of powers generally) or 1716
30 (relating to alternative standard), in discharging the duties of

1 their respective positions, the board of directors, committees
2 of the board and individual directors of a benefit corporation,
3 in considering the best interest of the benefit corporation:

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

5 (i) the shareholders of the benefit corporation;

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

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

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

15 (v) the local and global environment; and ←

16 (vi) the short-term and long-term interests of the
17 benefit corporation, including benefits that may accrue
18 to the benefit corporation from its long-term plans and
19 the possibility that these interests may be best served
20 by the continued independence of the benefit corporation. ←

21 CORPORATION; AND ←

22 (VII) THE ABILITY OF THE BENEFIT CORPORATION TO
23 ACCOMPLISH ITS GENERAL PUBLIC BENEFIT PURPOSE AND ANY
24 SPECIFIC PUBLIC BENEFIT PURPOSE; AND

25 (2) may consider:

26 (i) ~~the resources, intent and conduct, whether past,~~ ←
27 ~~stated or potential, of any person seeking to acquire~~
28 ~~control of the corporation~~ MATTERS LISTED IN SECTION ←

29 1715(A); and

30 (ii) any other pertinent factors or the interests of

1 any other group that they deem appropriate; and BUT ←
2 (3) shall not be required to give priority to the
3 interests of any person or group referred to in paragraphs ←
4 (1) and PARAGRAPH (1) OR (2) over the interests of any other ←
5 person or group unless the benefit corporation has stated IN ←
6 ITS ARTICLES its intention to give priority to CERTAIN ←
7 interests related to ITS ACCOMPLISHMENT OF ITS GENERAL PUBLIC ←
8 BENEFIT PURPOSE OR OF a specific public benefit purpose
9 identified in its articles.

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

13 (1) shall not constitute a violation of section 1712
14 (relating to standard of care and justifiable reliance); and
15 (2) is in addition to the ability of directors to
16 consider interests and factors as provided in section 1715 or
17 1716.

18 ~~(c) Personal liability of directors. A director shall not~~ ←
19 (C) EXONERATION FROM PERSONAL LIABILITY.-- ←

20 (1) A DIRECTOR SHALL NOT be personally liable, as such,
21 for monetary damages for any action taken as a director if
22 the director performed the duties of his or her office in
23 compliance with section 1712 and this section.

24 (2) A DIRECTOR SHALL NOT BE PERSONALLY LIABLE FOR ←
25 MONETARY DAMAGES FOR FAILURE OF THE BENEFIT CORPORATION TO
26 CREATE GENERAL PUBLIC BENEFIT OR A SPECIFIC PUBLIC BENEFIT.

27 (D) LIMITATION ON STANDING.--A DIRECTOR DOES NOT HAVE A
28 DUTY TO A PERSON THAT IS A BENEFICIARY OF THE GENERAL PUBLIC
29 BENEFIT PURPOSE OR A SPECIFIC PUBLIC BENEFIT PURPOSE OF A
30 BENEFIT CORPORATION ARISING FROM THE STATUS OF THE PERSON AS A

1 BENEFICIARY.

2 § 3322. Benefit director.

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

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

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

1 description of the ways in which the benefit corporation or its
2 directors or officers failed so to act.

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

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

19 (E) ALTERNATIVE GOVERNANCE ARRANGEMENTS.-- ←

20 (1) THE BYLAWS OF A BENEFIT CORPORATION MUST PROVIDE
21 THAT THE PERSONS OR SHAREHOLDERS WHO PERFORM THE DUTIES OF
22 THE BOARD OF DIRECTORS INCLUDE A PERSON WITH THE POWERS,
23 DUTIES, RIGHTS AND IMMUNITIES OF A BENEFIT DIRECTOR IF ANY OF
24 THE FOLLOWING APPLY:

25 (I) THE BYLAWS OF A BENEFIT CORPORATION PROVIDE THAT
26 THE POWERS AND DUTIES CONFERRED OR IMPOSED UPON THE BOARD
27 OF DIRECTORS SHALL BE EXERCISED OR PERFORMED BY A PERSON
28 OTHER THAN THE DIRECTORS UNDER SECTION 1721(A) (RELATING
29 TO BOARD OF DIRECTORS).

30 (II) THE BYLAWS OF A STATUTORY CLOSE CORPORATION

1 THAT IS A BENEFIT CORPORATION PROVIDE THAT THE BUSINESS
2 AND AFFAIRS OF THE CORPORATION SHALL BE MANAGED BY OR
3 UNDER THE DIRECTION OF THE SHAREHOLDERS.

4 (2) A PERSON THAT EXERCISES ONE OR MORE OF THE POWERS,
5 DUTIES OR RIGHTS OF A BENEFIT DIRECTOR UNDER THIS SUBSECTION:

6 (I) DOES NOT NEED TO BE INDEPENDENT OF THE BENEFIT
7 CORPORATION;

8 (II) SHALL HAVE THE IMMUNITIES OF A BENEFIT
9 DIRECTOR;

10 (III) MAY SHARE THE POWERS, DUTIES AND RIGHTS OF A
11 BENEFIT DIRECTOR WITH ONE OR MORE OTHER PERSONS; AND

12 (IV) SHALL NOT BE SUBJECT TO THE PROCEDURES FOR
13 ELECTION OR REMOVAL OF DIRECTORS IN CHAPTER 17 SUBCHAPTER
14 C (RELATING TO DIRECTORS AND OFFICERS) UNLESS:

15 (A) THE PERSON IS ALSO A DIRECTOR OF THE BENEFIT
16 CORPORATION; OR

17 (B) THE BYLAWS MAKE THOSE PROCEDURES APPLICABLE.

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

27 § 3323. Standard of conduct for officers.

28 (a) General rule.--Each officer of a benefit corporation
29 shall consider the interests and factors described in section
30 3321(a) (relating to standard of conduct for directors) in the

1 manner provided in that subsection when:

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

4 (2) it reasonably appears to the officer that the matter
5 may have a material effect on: ←

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

8 ~~(ii) any of the interests or factors referred to in~~
9 ~~section 3321(a).~~ ON THE CREATION BY THE BENEFIT ←
10 CORPORATION OF GENERAL PUBLIC BENEFIT OR A SPECIFIC
11 PUBLIC BENEFIT IDENTIFIED IN THE ARTICLES OF THE BENEFIT
12 CORPORATION.

13 (b) Coordination with other provisions of law.--The
14 consideration of interests and factors in the manner described
15 in subsection (a) shall not constitute a violation of section
16 1712(c) (relating to standard of care and justifiable reliance).

17 ~~(c) Personal liability of officers. An officer shall not be~~ ←
18 (C) EXONERATION FROM PERSONAL LIABILITY.-- ←

19 (1) AN OFFICER SHALL NOT BE personally liable, as such,
20 for monetary damages for any action taken as an officer if
21 the officer performed the duties of the position in
22 compliance with section 1712(c) and this section.

23 (2) AN OFFICER SHALL NOT BE PERSONALLY LIABLE FOR ←
24 MONETARY DAMAGES FOR FAILURE OF THE BENEFIT CORPORATION TO
25 PURSUE OR CREATE GENERAL PUBLIC BENEFIT OR A SPECIFIC PUBLIC
26 BENEFIT.

27 (D) LIMITATION ON STANDING.--AN OFFICER DOES NOT HAVE A DUTY
28 TO A PERSON THAT IS A BENEFICIARY OF THE GENERAL PUBLIC BENEFIT
29 PURPOSE OR A SPECIFIC PUBLIC BENEFIT PURPOSE OF A BENEFIT
30 CORPORATION ARISING FROM THE STATUS OF THE PERSON AS A

1 BENEFICIARY.

2 § 3324. Benefit officer.

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

14 § 3325. Right of action.

15 ~~(a) General rule. The duties of directors and officers~~ ←
16 ~~under this chapter, and the general and any specific public~~
17 ~~benefit purpose of a benefit corporation, may be enforced only~~
18 ~~in a benefit enforcement proceeding. No person may bring an~~
19 ~~action or assert a claim against a benefit corporation or its~~
20 ~~directors or officers with respect to the duties of directors~~
21 ~~and officers under this chapter, and the general and any~~
22 ~~specific public benefit purpose of the benefit corporation,~~
23 ~~except in a benefit enforcement proceeding.~~

24 (A) LIMITATIONS.-- ←

25 (1) EXCEPT IN A BENEFIT ENFORCEMENT PROCEEDING, NO
26 PERSON MAY BRING AN ACTION OR ASSERT A CLAIM AGAINST A
27 BENEFIT CORPORATION OR ITS DIRECTORS OR OFFICERS WITH RESPECT
28 TO:

29 (I) FAILURE TO PURSUE OR CREATE GENERAL PUBLIC
30 BENEFIT OR A SPECIFIC PUBLIC BENEFIT SET FORTH IN ITS

1 ARTICLES; OR
2 (II) VIOLATION OF A DUTY OR STANDARD OF CONDUCT
3 UNDER THIS CHAPTER.

4 (2) A BENEFIT CORPORATION SHALL NOT BE LIABLE FOR
5 MONETARY DAMAGES UNDER THIS CHAPTER FOR ANY FAILURE OF THE
6 BENEFIT CORPORATION TO PURSUE OR CREATE GENERAL PUBLIC
7 BENEFIT OR A SPECIFIC PUBLIC BENEFIT.

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

10 (1) directly by the benefit corporation; or

11 (2) derivatively by:

12 (i) a shareholder;

13 (ii) a director;

14 (iii) a person or group of persons that owns
15 beneficially or of record 10% 5% or more of the equity ←
16 interests in an association of which the benefit
17 corporation is a subsidiary; or

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

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

23 SUBCHAPTER D

24 TRANSPARENCY

25 Sec.

26 3331. Annual benefit report.

27 § 3331. Annual benefit report.

28 (a) ~~General rule~~ CONTENTS.--A benefit corporation must ←
29 deliver to each shareholder an annual benefit report including:

30 (1) a A narrative description of: ←

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

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

9 (iii) any circumstances that have hindered the
10 creation by the benefit corporation of general or
11 specific public benefit; AND ←

12 (IV) THE PROCESS AND RATIONALE FOR SELECTING OR
13 CHANGING THE THIRD-PARTY STANDARD USED TO PREPARE THE
14 BENEFIT REPORT.

15 (2) an AN assessment of the OVERALL social and ←
16 environmental performance of the benefit corporation; ←
17 ~~prepared in accordance with~~ AGAINST a third-party standard ←
18 applied consistently with any application of that standard in
19 prior benefit reports or accompanied by an explanation of the
20 reasons for any inconsistent application. THE ASSESSMENT ←
21 DOES NOT NEED TO BE AUDITED OR CERTIFIED BY A THIRD-PARTY
22 STANDARDS PROVIDER.

23 (3) ~~the~~ THE name of the benefit director and the benefit ←
24 officer, if any, and the address to which correspondence to
25 each of them may be directed. ←

26 (4) ~~the~~ THE compensation paid by the benefit corporation ←
27 during the year to each director in that capacity. ←

28 (5) ~~the~~ THE name of each person that owns 5% or more of ←
29 the outstanding shares of the benefit corporation either
30 beneficially, to the extent known to the benefit corporation

1 without independent investigation, or of record, and. ←

2 (6) ~~the~~ THE statement of the benefit director described ←
3 in section 3322(c) (relating to benefit director).

4 (7) A STATEMENT OF ANY CONNECTION BETWEEN THE ←
5 ORGANIZATION THAT ESTABLISHED THE THIRD-PARTY STANDARD, OR
6 ITS DIRECTORS, OFFICERS OR ANY HOLDER OF 5% OR MORE OF THE
7 GOVERNANCE INTERESTS IN THE ORGANIZATION, AND THE BENEFIT
8 CORPORATION OR ITS DIRECTORS, OFFICERS OR ANY HOLDER OF 5% OR
9 MORE OF THE OUTSTANDING SHARES OF THE BENEFIT CORPORATION,
10 INCLUDING ANY FINANCIAL OR GOVERNANCE RELATIONSHIP WHICH
11 MIGHT MATERIALLY AFFECT THE CREDIBILITY OF THE USE OF THE
12 THIRD-PARTY STANDARD.

13 (8) IF THE BENEFIT CORPORATION HAS DISPENSED WITH, OR
14 RESTRICTED THE DISCRETION OR POWERS OF, THE BOARD OF
15 DIRECTORS, A DESCRIPTION OF:

16 (I) THE PERSONS THAT EXERCISE THE POWERS, DUTIES AND
17 RIGHTS AND WHO HAVE THE IMMUNITIES OF THE BOARD OF
18 DIRECTORS; AND

19 (II) THE BENEFIT DIRECTOR, AS REQUIRED BY SECTION
20 3322(E).

21 (b) Timing of report.--~~The benefit report must be sent~~ ←
22 annually to each shareholder A BENEFIT CORPORATION SHALL ←
23 ANNUALLY SEND A BENEFIT REPORT TO EACH SHAREHOLDER EITHER:

24 (1) within 120 days following the end of the fiscal year
25 of the benefit corporation ~~or at the same~~; OR ←

26 (2) AT THE SAME time that the benefit corporation
27 delivers any other annual report to its shareholders.

28 (c) Internet website posting.--A benefit corporation must
29 post ~~its most recent benefit report~~ ALL OF ITS BENEFIT REPORTS ←
30 on the public portion of its Internet website, if any, except

1 that the compensation paid to directors and any financial or
2 proprietary information included in the benefit report may be
3 omitted from the benefit report as posted.

4 (D) AVAILABILITY OF COPIES.--IF A BENEFIT CORPORATION DOES ←
5 NOT HAVE AN INTERNET WEBSITE, THE BENEFIT CORPORATION SHALL
6 PROVIDE A COPY OF ITS MOST RECENT BENEFIT REPORT, WITHOUT
7 CHARGE, TO ANY PERSON THAT REQUESTS A COPY, BUT THE COMPENSATION
8 PAID TO DIRECTORS AND FINANCIAL OR PROPRIETARY INFORMATION
9 INCLUDED IN THE BENEFIT REPORT MAY BE OMITTED FROM THE COPY OF
10 THE BENEFIT REPORT PROVIDED.

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

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

30 Section 2. This act shall take effect in 60 90 days. ←