

THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 433 Session of 2011

INTRODUCED BY LEACH, M. WHITE, STACK, FONTANA, FERLO, WASHINGTON, BROWNE AND FARNESE, FEBRUARY 11, 2011

SENATOR GREENLEAF, JUDICIARY, AS AMENDED, OCTOBER 25, 2011

AN ACT

1 Amending Title 15 (Corporations and Unincorporated Associations)
2 of the Pennsylvania Consolidated Statutes, authorizing
3 incorporation of benefit corporations; providing for rights,
4 duties and obligations of benefit corporations and their
5 shareholders, directors and officers; and imposing powers and
6 duties on the Department of State.

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

9 Section 1. Title 15 of the Pennsylvania Consolidated
10 Statutes is amended by adding a chapter to read:

11 CHAPTER 33

12 BENEFIT CORPORATIONS

13 Subchapter

14 A. Preliminary Provisions

15 B. Corporate Purposes

16 C. Accountability

17 D. Transparency

18 SUBCHAPTER A

19 PRELIMINARY PROVISIONS

20 Sec.

1 3301. Application and effect of chapter.

2 3302. Definitions.

3 3303. Formation of benefit corporations.

4 3304. Election of status.

5 3305. Termination of status.

6 § 3301. Application and effect of chapter.

7 (a) General rule.--This chapter shall be applicable to all
8 benefit corporations.

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

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

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

25 § 3302. Definitions.

26 (a) Defined terms.--The following words and phrases when
27 used in this chapter shall have the meanings given to them in
28 this section unless the context clearly indicates otherwise:

29 "Benefit corporation." A business corporation:

30 (1) which has elected to become subject to this chapter;

1 and

2 (2) the status of which as a benefit corporation has not
3 been terminated under section 3305 (relating to termination
4 of status).

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

8 "BENEFIT DIRECTOR." EITHER: ←

9 (1) THE DIRECTOR DESIGNATED AS THE BENEFIT DIRECTOR OF A
10 BENEFIT CORPORATION UNDER SECTION 3322 (RELATING TO BENEFIT
11 DIRECTOR); OR

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

15 "Benefit enforcement proceeding." Any claim or action
16 ~~brought directly by a benefit corporation, or derivatively on~~ ←
17 ~~behalf of a benefit corporation, against a director or officer~~
18 for:

19 ~~(1) failure to pursue the general public benefit purpose~~ ←
20 ~~of the benefit corporation or a specific public benefit~~
21 ~~purpose set forth in its articles; or~~

22 (1) FAILURE OF A BENEFIT CORPORATION TO PURSUE OR CREATE ←
23 GENERAL PUBLIC BENEFIT OR A SPECIFIC PUBLIC BENEFIT PURPOSE
24 SET FORTH IN ITS ARTICLES; OR

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

27 "Benefit officer." The individual designated as the benefit
28 officer of a benefit corporation under section 3324 (relating to
29 benefit officer).

30 "General public benefit." A material positive impact on

1 ~~society and the environment, taken as a whole, as measured by~~ ←
2 ~~ASSESSED AGAINST a third-party standard, from the business and~~ ←
3 ~~operations of a benefit corporation.~~

4 "Independent." Having no material relationship with a
5 benefit corporation or a subsidiary of the benefit corporation.
6 Serving as benefit director or benefit officer does not make a
7 person not independent. A material relationship between a person
8 and a benefit corporation or any of its subsidiaries will be
9 conclusively presumed to exist if any of the following apply:

10 (1) The person is, or has been within the last three
11 years, an employee other than a benefit officer of the
12 benefit corporation or a subsidiary of the benefit
13 corporation.

14 (2) An immediate family member of the person is, or has
15 been within the last three years, an executive officer other
16 than a benefit officer of the benefit corporation or its
17 subsidiary.

18 (3) There is beneficial or record ownership of 5% or
19 more of the outstanding shares of the benefit corporation by:

20 (i) the person; or

21 (ii) an association:

22 (A) of which the person is a director, an
23 officer or a manager; or

24 (B) in which the person owns beneficially or of
25 record 5% or more of the outstanding equity
26 interests.

27 This definition is subject to subsection (b).

28 ~~"Minimum status vote." In addition to any other approval or~~ ←
29 ~~vote required by this subpart or a bylaw adopted by the~~
30 ~~shareholders, the satisfaction of the following conditions:~~

1 ~~(1) The shareholders of every class or series must be~~
2 ~~entitled to vote on the corporate action regardless of a~~
3 ~~limitation stated in the articles of incorporation or bylaws~~
4 ~~on the voting rights of any class or series.~~

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

9 "MINIMUM STATUS VOTE."

10 (1) IN THE CASE OF A BUSINESS CORPORATION, IN ADDITION
11 TO ANY OTHER REQUIRED APPROVAL OR VOTE, THE SATISFACTION OF
12 THE FOLLOWING CONDITIONS:

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

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

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

27 (I) THE HOLDERS OF EVERY CLASS OR SERIES OF EQUITY
28 INTEREST IN THE ASSOCIATION THAT ARE ENTITLED TO RECEIVE
29 A DISTRIBUTION OF ANY KIND FROM THE ASSOCIATION MUST BE
30 ENTITLED AS A CLASS TO VOTE ON OR CONSENT TO THE ACTION



1 REGARDLESS OF ANY OTHERWISE APPLICABLE LIMITATION ON THE
2 VOTING OR CONSENT RIGHTS OF ANY CLASS OR SERIES.

3 (II) THE ACTION MUST BE APPROVED BY VOTE OR CONSENT
4 OF THE HOLDERS DESCRIBED IN SUBPARAGRAPH (I) ENTITLED TO
5 CAST AT LEAST TWO-THIRDS OF THE VOTES OR CONSENTS THAT
6 ALL OF THOSE HOLDERS ARE ENTITLED TO CAST ON THE ACTION.

7 "Specific public benefit." Includes:

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

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

13 (3) preserving the environment;

14 (4) improving human health;

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

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

19 (7) conferring any other particular benefit on society
20 or the environment.

21 "Subsidiary." In relation to a person, an association in
22 which the person owns beneficially or of record 50% or more of
23 the outstanding equity interests. This definition is subject to
24 subsection (b).

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

28 (1) Comprehensive in that it assesses the effect of the
29 business and its operations upon the interests listed in
30 section 3321(a)(1)(ii), (iii), (iv) and (v) (relating to

1 standard of conduct for directors).

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

5 (i) Not more than one-third of the members of the
6 governing body of the organization are representatives of
7 either ANY OF THE FOLLOWING: ←

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

11 ~~(B) Businesses whose performance is measured by~~ ←
12 ~~the standard.~~

13 (B) BUSINESSES FROM A SPECIFIC INDUSTRY OR AN ←
14 ASSOCIATION OF BUSINESSES IN THAT INDUSTRY.

15 (C) BUSINESSES WHOSE PERFORMANCE IS ASSESSED
16 AGAINST THE STANDARD.

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

19 (3) Credible because the standard is developed by a
20 person ~~who~~ THAT both: ←

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

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

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

28 (i) About the standard:

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

1 business.

2 (B) The relative weightings of those criteria.

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

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

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

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

17 (b) Computation of ownership.--For purposes of the
18 definitions of "independent" and "subsidiary" in subsection (a),
19 a percentage of ownership in an association shall be calculated
20 as if all outstanding rights to acquire equity interests in the
21 association had been exercised.

22 § 3303. Formation of benefit corporations.

23 A benefit corporation must be formed in accordance with
24 Article B (relating to domestic business corporations
25 generally), but its articles must also state that it is a
26 benefit corporation.

27 § 3304. Election of status.

28 (a) Amendment.--~~A~~ AN EXISTING business corporation may
29 become a benefit corporation under this chapter by amending its
30 articles so that they contain, in addition to the requirements



1 of section 1911(b) (relating to amendment of articles
2 authorized), a statement that the corporation is a benefit
3 corporation. In order to be effective, the amendment must be
4 adopted by the minimum status vote.

5 (b) Fundamental transactions.--

6 (1) This subsection applies if all of the following
7 subparagraphs apply:

8 (i) ~~A corporation~~ AN ASSOCIATION that is not a ←
9 benefit corporation is:

10 (A) a party to a merger, consolidation or
11 division; or

12 (B) the exchanging ~~corporation~~ ASSOCIATION in a ←
13 share exchange.

14 (ii) The surviving, new or any resulting ~~corporation~~ ←
15 ASSOCIATION in the merger, consolidation, division or ←
16 share exchange is to be a benefit corporation.

17 (2) In order to be effective, a plan of merger,
18 consolidation, division or share exchange subject to this
19 subsection must be adopted by the minimum status vote.

20 § 3305. Termination of status.

21 (a) Amendment.--A benefit corporation may terminate its
22 status as such and cease to be subject to this chapter by
23 amending its articles to delete the provision required by
24 section 3304 (relating to election of status) to be stated in
25 the articles of a benefit corporation. In order to be effective,
26 the amendment must be adopted by the minimum status vote.

27 (b) Fundamental transactions.--If a plan would have the
28 effect of terminating the status of a business corporation as a
29 benefit corporation, in order to be effective, the plan must be
30 adopted by the minimum status ~~vote.~~ ←

1 ~~(c) Cross reference. See section 3331 (relating to annual~~
2 ~~benefit report).~~ VOTE. ANY SALE, LEASE, EXCHANGE OR OTHER ←
3 DISPOSITION OF ALL OR SUBSTANTIALLY ALL OF THE ASSETS OF A
4 BENEFIT CORPORATION, UNLESS THE TRANSACTION IS IN THE USUAL AND
5 REGULAR COURSE OF BUSINESS, SHALL NOT BE EFFECTIVE UNLESS THE
6 TRANSACTION IS APPROVED BY AT LEAST THE MINIMUM STATUS VOTE.

7 SUBCHAPTER B

8 CORPORATE PURPOSES

9 Sec.

10 3311. Corporate purposes.

11 § 3311. Corporate purposes.

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

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

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

26 (d) Amendment.--A benefit corporation may amend its articles
27 to add, amend or delete the identification of a specific public
28 benefit that it is the purpose of the benefit corporation to
29 create. In order to be effective, the amendment must be adopted
30 by the minimum status vote.



1 (E) PROFESSIONAL CORPORATIONS.--A PROFESSIONAL CORPORATION
2 THAT IS A BENEFIT CORPORATION DOES NOT VIOLATE SECTION 2922(A)
3 (RELATING TO STATED PURPOSES) BY HAVING THE PURPOSE TO CREATE
4 GENERAL PUBLIC BENEFIT OR A SPECIFIC PUBLIC BENEFIT.

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 and in considering the best interests of the benefit
19 corporation, the board of directors, committees of the board and
20 individual directors of a 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, its subsidiaries and its suppliers;

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

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

1 are located;
2 (v) the local and global environment;
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 and

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

12 (2) may consider:

13 (i) matters listed in section 1715(a)(3); and
14 (ii) other pertinent factors or the interests of any
15 other group which they deem appropriate; but

16 (3) need not give priority to the interests of a
17 particular person or group referred to in paragraph (1) or
18 (2) over the interests of another person or group unless the
19 benefit corporation has stated IN ITS ARTICLES its intention ←
20 to give priority to CERTAIN interests related to ITS ←
21 ACCOMPLISHMENT OF ITS GENERAL PUBLIC BENEFIT PURPOSE OR OF a
22 specific public benefit purpose identified in its articles.

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

26 (1) does not constitute a violation of section 1712
27 (relating to standard of care and justifiable reliance); and
28 (2) is in addition to the ability of directors to
29 consider interests and factors as provided in section 1715 or
30 1716.

1 (c) Exoneration from personal liability generally.--A
2 director is not personally liable for monetary damages for:

3 (1) action taken as a director if the director performed
4 the duties of office in compliance with section 1712 and this
5 section; or

6 (2) failure of the benefit corporation to create general
7 public benefit or a specific public benefit.

8 (d) Limitation on standing.--A director does not have a
9 fiduciary duty to a person that is a beneficiary of the general ←
10 or specific public benefit purposes PUBLIC BENEFIT PURPOSE OR A ←
11 SPECIFIC PUBLIC BENEFIT PURPOSE of a benefit corporation arising
12 from the status of the person as a beneficiary.

13 § 3322. Benefit director.

14 (a) General rule.--The board of directors of a benefit
15 corporation shall include one director, who:

16 (1) shall be designated the benefit director; and
17 (2) shall have, in addition to the powers, duties,
18 rights and immunities of the other directors of the benefit
19 corporation, the powers, duties, rights and immunities
20 provided in this subchapter.

21 (b) Election, removal and qualifications.--The benefit
22 director shall be elected, and may be removed, in the manner
23 provided by Ch. 17 Subch. C (relating to directors and
24 officers), and shall be an individual who is independent. The
25 benefit director may serve as the benefit officer at the same
26 time as serving as the benefit director. The articles or bylaws
27 of a benefit corporation may prescribe additional qualifications
28 of the benefit director not inconsistent with this subsection.

29 (c) Annual compliance statement.--The benefit director shall
30 prepare, and the benefit corporation shall include in the annual

1 benefit report to shareholders required by section 3331
2 (relating to annual benefit report), the opinion of the benefit
3 director on all of the following:

4 (1) Whether the benefit corporation acted in accordance
5 with its general public benefit purpose and any specific
6 public benefit purpose in all material respects during the
7 period covered by the report.

8 (2) Whether the directors and officers complied with
9 sections 3321(a) (relating to standard of conduct for
10 directors) and 3323(a) (relating to standard of conduct for
11 officers), respectively.

12 (3) If, in the opinion of the benefit director, the
13 benefit corporation or its directors or officers failed to
14 comply with paragraph (2), a description of the ways in which
15 the benefit corporation or its directors or officers failed
16 to comply.

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

21 ~~(c) Alternative governance arrangements. The bylaws of a~~ ←

22 ~~(E) ALTERNATIVE GOVERNANCE ARRANGEMENTS.--~~ ←

23 (1) THE BYLAWS OF A benefit corporation must provide
24 that the persons or ~~share holders~~ SHAREHOLDERS who perform ←
25 the duties of the board of directors include a person with
26 the powers, duties, rights and immunities of a benefit
27 director if any of the following apply:

28 ~~(1) The bylaws of a benefit corporation provide that the~~ ←

29 (I) THE BYLAWS OF A BENEFIT CORPORATION PROVIDE THAT ←

30 THE powers and duties conferred or imposed upon the board

1 of directors SHALL be exercised or performed by a person ←
2 other than the directors under section 1721(a) (relating
3 to board of directors).

4 ~~(2) The bylaws of a statutory close corporation that is~~ ←

5 (II) THE BYLAWS OF A STATUTORY CLOSE CORPORATION ←
6 THAT IS a benefit corporation provide that the business
7 and affairs of the corporation SHALL be managed by or ←
8 under the direction of the shareholders.

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

11 (I) DOES NOT NEED TO BE INDEPENDENT OF THE BENEFIT
12 CORPORATION;

13 (II) SHALL HAVE THE IMMUNITIES OF A BENEFIT
14 DIRECTOR;

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

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

20 (A) THE PERSON IS ALSO A DIRECTOR OF THE BENEFIT
21 CORPORATION; OR

22 (B) THE BYLAWS MAKE THOSE PROCEDURES APPLICABLE.

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

1 § 3323. Standard of conduct for officers.

2 (a) General rule.--Each officer of a benefit corporation
3 shall consider the interests and factors described in section
4 3321(a) (relating to standard of conduct for directors) in the
5 manner provided in that subsection if:

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

8 (2) it reasonably appears to the officer that the matter
9 may have a material effect on the creation BY THE BENEFIT ←
10 CORPORATION of general public benefit or a specific public
11 benefit by 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) Exoneration from personal liability.--An officer is not
18 personally liable for monetary damages for:

19 (1) action taken as an officer if the officer performed
20 the duties of the position in compliance with section 1712(c)
21 and this section; or

22 (2) failure of the benefit corporation to PURSUE OR ←
23 create general public benefit or specific public benefit.

24 (d) Limitation on standing.--An officer does not have a
25 fiduciary duty to a person that is a beneficiary of the general ←
26 or specific public benefit purposes PUBLIC BENEFIT PURPOSE OR A ←
27 SPECIFIC PUBLIC BENEFIT PURPOSE of a benefit corporation arising
28 from the status of the person as a beneficiary.

29 § 3324. Benefit officer.

30 (a) Designation.--A benefit corporation may have an officer

1 designated the benefit officer.

2 (b) Functions.--A benefit officer shall have:

3 (1) powers and duties relating to the purpose of the
4 corporation to create general public benefit or specific
5 public benefit provided:

6 (i) by the bylaws; or

7 (ii) absent controlling provisions in the bylaws, by
8 resolutions or orders of the board of directors.

9 (2) the duty to prepare the benefit report required by
10 section 3331 (relating to annual benefit report).

11 § 3325. Right of action.

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

22 (A) LIMITATIONS.-- ←

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

27 (I) FAILURE TO PURSUE OR CREATE GENERAL PUBLIC
28 BENEFIT OR A SPECIFIC PUBLIC BENEFIT SET FORTH IN ITS
29 ARTICLES; OR

30 (II) VIOLATION OF A DUTY OR STANDARD OF CONDUCT

1 UNDER THIS CHAPTER.

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

6 (b) Standing.--A benefit enforcement proceeding may be
7 commenced or maintained only:

8 (1) directly by the benefit corporation; or

9 (2) derivatively by:

10 (i) a shareholder;

11 (ii) a director;

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

16 (iv) other persons as specified in the articles or
17 bylaws of the benefit corporation.

18 (c) Cross reference.--See Subchapter F of Chapter 17
19 (relating to derivative actions).

20 SUBCHAPTER D

21 TRANSPARENCY

22 Sec.

23 3331. Annual benefit report.

24 § 3331. Annual benefit report.

25 (a) Contents.--A benefit corporation shall prepare an annual
26 benefit report including all of the following:

27 (1) A narrative description of all of the following:

28 (i) The ways in which the benefit corporation
29 pursued general public benefit during the year and the
30 extent to which general public benefit was created.

1 (ii) Both:

2 (A) the ways in which the benefit corporation
3 pursued a specific public benefit which the articles
4 state it is the purpose of the benefit corporation to
5 create; and

6 (B) the extent to which that specific public
7 benefit was created.

8 (iii) Any circumstances that have hindered the
9 creation by the benefit corporation of general public
10 benefit or specific public benefit.

11 (2) An assessment of the overall social and
12 environmental performance of the benefit corporation. ~~The~~ ←
13 assessment shall be prepared in accordance with AGAINST a ←
14 third-party standard:

15 (i) applied consistently with any application of
16 that standard in prior benefit reports; or

17 (ii) accompanied by an explanation of the reasons
18 for any inconsistent application.

19 (3) The name of the benefit director and the benefit
20 officer, IF ANY, and the address to which correspondence to ←
21 each of them may be directed.

22 (4) The compensation paid by the benefit corporation
23 during the year to each director in the capacity of a
24 director.

25 (5) The name of each person that owns 5% or more of the
26 outstanding shares of the benefit corporation either:

27 (i) beneficially, to the extent known to the benefit
28 corporation without independent investigation; or

29 (ii) of record.

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 shall be sent~~ ←
3 ~~annually to each shareholder:~~

4 (7) A STATEMENT OF ANY CONNECTION BETWEEN THE ←
5 ORGANIZATION THAT ESTABLISHED THE THIRD-PARTY STANDARD, OR
6 ITS DIRECTORS, OFFICERS OR MATERIAL OWNERS, AND THE BENEFIT
7 CORPORATION OR ITS DIRECTORS, OFFICERS OR MATERIAL
8 SHAREHOLDERS, INCLUDING ANY FINANCIAL OR GOVERNANCE
9 RELATIONSHIP WHICH MIGHT MATERIALLY AFFECT THE CREDIBILITY OF
10 THE USE OF THE THIRD-PARTY STANDARD.

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

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

17 (II) THE BENEFIT DIRECTOR, AS REQUIRED BY SECTION
18 3322(E).

19 (B) TIMING OF REPORT.--A BENEFIT CORPORATION SHALL ANNUALLY
20 SEND A BENEFIT REPORT TO EACH SHAREHOLDER:

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

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

25 (c) Internet website posting.--A benefit corporation shall
26 ~~post its most recent benefit report~~ ALL OF ITS BENEFIT REPORTS ←
27 on the public portion of its Internet website, if any; but the ←
28 compensation paid to directors and financial or proprietary
29 information included in the benefit ~~report~~ REPORTS may be ←
30 omitted from the benefit ~~report~~ REPORTS as posted. ←

1 (D) AVAILABILITY OF COPIES.--IF A BENEFIT CORPORATION DOES ←
2 NOT HAVE AN INTERNET WEBSITE, THE BENEFIT CORPORATION SHALL
3 PROVIDE A COPY OF ITS MOST RECENT BENEFIT REPORT, WITHOUT
4 CHARGE, TO ANY PERSON THAT REQUESTS A COPY.

5 ~~(d)~~ (E) Filing of report.-- ←

6 (1) Concurrently with the delivery of the benefit report
7 to shareholders under subsection (b), the benefit corporation
8 shall deliver a copy of the benefit report to the department
9 for filing, but the compensation paid to directors and
10 financial or proprietary information included in the benefit
11 report may be omitted from the benefit report as delivered to
12 the department.

13 (2) The department shall charge a fee of \$70 for filing
14 a benefit report.

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