AMENDMENTS TO THE
PENNSYLVANIA CONSOLIDATED STATUTES
WITH
COMMITTEE COMMENTS

ADOPTING

PROVISIONS RELATING TO
THE INCORPORATION AND GOVERNANCE OF BENEFIT
CORPORATIONS

AS CHAPTER 33 OF TITLE 15

PREPARED BY THE
TITLE 15 / BUSINESS ASSOCIATIONS COMMITTEE
OF THE
SECTION ON BUSINESS LAW
OF THE
PENNSYLVANIA BAR ASSOCIATION

To accompany 2011 House Bill 1616 (P.N. 3330)

September 18, 2012
PENNSYLVANIA BAR ASSOCIATION  
SECTION ON BUSINESS LAW  
TITLE 15 / BUSINESS ASSOCIATIONS COMMITTEE  

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CHAPTER 33
Benefit Corporations

Subchapter
A. Preliminary Provisions
B. Corporate Purposes
C. Accountability
D. Transparency

Subchapter A
Preliminary Provisions

§ 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 a provision of this chapter.

Committee Comment:

This chapter authorizes the organization of a form of business corporation that offers entrepreneurs and investors the option to build, and invest in, businesses that operate in a socially and environmentally responsible manner. Enforcement of those responsibilities comes not from governmental oversight, but rather from new provisions on transparency
and accountability included in this chapter.

The last sentence of subsection (c) makes clear that a corporation subject to one or more other chapters of Article C, such as a statutory close corporation subject to Chapter 23, a registered (or publicly traded) corporation subject to Chapter 25, and an insurance corporation subject to Chapter 31 may also be a benefit corporation. In the case of a professional corporation subject to Chapter 29, 15 Pa.C.S. § 3311(e) provides a special rule that eliminates any conflict between this chapter and 15 Pa.C.S. § 2922(a) regarding the purposes of a professional corporation.

As a result of subsection (d), a corporation that elects to be subject to this chapter will be subject to all of the provisions of the chapter and will not be able to vary their application to the corporation.

The Committee Comments to Chapter 33 are intended to form part of the legislative history of Chapter 33 and to be citable as such under 1 Pa.C.S. § 1939.

The following terms used in this section are defined in 15 Pa.C.S. § 1103:

“articles”
“business corporation”
“bylaws”
“relax”

The term “benefit corporation” used in this section is defined in 15 Pa.C.S. § 3302.

§ 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.” Any 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, 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 shall be entitled 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) conferring any other particular benefit on 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) Business 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.

Committee Comment:

“Benefit corporation.” The provisions of this chapter apply to a business corporation while it has the status of a benefit corporation because its articles contain a statement that it is a benefit corporation. If that statement is deleted under 15 Pa.C.S. § 3305, the corporation will cease to be a benefit corporation immediately upon the effectiveness of the deletion.

“Benefit director.” The second part of this definition recognizes that a corporation may provide that the functions of the board of directors will be discharged by persons other than directors pursuant to either 15 Pa.C.S. § 1721 with respect to business corporations generally or 15 Pa.C.S. §§ 2331 and 2332 with respect to statutory close corporations. See 15 Pa.C.S. § 3331(a)(8) which requires a benefit corporation that has so varied its governance to describe the alternative arrangements in its annual benefit report.

“Benefit enforcement proceeding.” This definition not only describes the action that may be brought under 15 Pa.C.S. § 3325, but it also has the effect of excluding other actions against a benefit corporation and its directors and officers because 15 Pa.C.S. § 3325(a)(1) provides that “no person may bring an action or assert a claim against a benefit corporation or its directors or officers” with respect to violation of the provisions of this chapter except in a benefit enforcement proceeding.

The obligations that may be enforced through a benefit enforcement proceeding include the obligations of a benefit corporation under 15 Pa.C.S. § 3331 to post its benefit reports on its Internet website and to supply copies of its benefit report if it does not have an Internet website. In the case of a failure to provide a copy of a benefit report, a benefit enforcement proceeding to enforce that obligation may only be brought by the persons listed in 15 Pa.C.S. § 3325(b) and not by the person requesting the copy of the report.

“General public benefit.” By requiring that the impact of a business on society and the environment be looked at “as a whole,” the concept of general public benefit requires consideration of all of the effects of the business on society and the environment. What is involved in creating general public benefit is informed by 15 Pa.C.S. § 3321(a)(1) which lists the specific interests that the directors of a benefit corporation are required to consider.

“Minimum status vote.” An amendment of the articles or a fundamental change that has the effect of changing the status of a corporation so that it either becomes a benefit corporation or ceases to be a benefit corporation must be approved by the minimum status vote. See 15 Pa.C.S. §§ 3304 and 3305. This definition is patterned generally after the
The purpose of requiring a two-thirds vote under this chapter and Chapter 23 is to ensure that there is broader shareholder support for an action than the usual rule in Title 15 that action by the shareholders requires approval of a majority of the votes cast.

The second paragraph of the definition extends the policy of requiring a supermajority vote to other forms of entities so that, for example, a merger of a limited liability company into a benefit corporation must be approved by the members of the limited liability company by at least a two-thirds vote.

The two-thirds vote required by the definition is in addition to any other vote required in the case of any particular corporation or other form of association. If the articles of a corporation were to require, for example, an 80% supermajority vote to approve a merger, a 70% vote to approve a merger of the corporation into a benefit corporation would be sufficient to satisfy the requirement that the merger be approved by the minimum status vote but would not be sufficient for valid approval of the merger.

“Specific public benefit.” Every benefit corporation has the purpose under 15 Pa.C.S. § 3311(a) of creating general public benefit. A benefit corporation may also elect to pursue one or more specific public benefit purposes. Since the creation of specific public benefit is optional, paragraph (8) of this definition permits a benefit corporation to identify a specific public benefit that is different from those listed in paragraphs (1) through (7).

“Third-party standard.” The requirement in 15 Pa.C.S. § 3331 that a benefit corporation prepare an annual benefit report that assesses its performance in creating general public benefit against a third-party standard provides an important protection against the abuse of benefit corporation status. The performance of a regular business corporation is measured by the financial statements that the corporation prepares. See 15 Pa.C.S. §§ 1554 and 2511. But the performance of a benefit corporation in creating general or specific public benefit will not be readily apparent from those financial statements. The annual benefit report is intended to permit an evaluation of that performance so that the shareholders can judge how the directors have discharged their responsibility to manage the corporation and thus whether they should be retained in office. The annual benefit report is also intended to reduce “greenwashing” (the phenomenon of businesses seeking the cachet of being more environmentally and socially responsible than they actually are) by giving consumers and the general public a means of judging whether a business is living up to its claimed status as a benefit corporation.

§ 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.
This section provides for how a corporation that is being newly formed may elect to be a benefit corporation. Existing corporations may become benefit corporations in the manner provided in 15 Pa.C.S. § 3304.

This chapter only applies to domestic business corporations. A foreign business corporation that has a status in its home jurisdiction similar to the status of a benefit corporation under this chapter is not subject to this chapter and has the status simply of a foreign business corporation for purposes of 15 Pa.C.S. Subpart IIB.

The term “articles” used in this section is defined in 15 Pa.C.S. § 1103.

The term “benefit corporation” used in this section is defined in 15 Pa.C.S. § 3302.

§ 3304. Election of benefit corporation status.

(a) Amendment. – An existing business corporation may become a benefit corporation under this chapter 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.

Committee Comment:

This section provides the procedures for an existing corporation to become a benefit corporation. A corporation that is being newly formed may become a benefit corporation in the manner provided in 15 Pa.C.S. § 3303. Subsection (a) applies to a business corporation that is directly electing to be a benefit corporation by amending its articles of incorporation. Subsection (b) applies when a corporation is becoming a benefit corporation indirectly in the context of a fundamental transaction. In both cases, the change to benefit corporation status must be approved by at least the minimum status vote.

Subsection (b) also applies to an association that is not a corporation when the association is a party to a transaction that will result in a benefit corporation. In those situations, a supermajority vote of the owners of the association is required by subsection.
See 15 Pa.C.S. § 3311(d) with respect to changing the identification of a specific
corporation to pursue.

The following terms used in this section are defined in 15 Pa.C.S. § 1103:

“articles”
“business corporation”
“plan”

The following terms used in this section are defined in 15 Pa.C.S. § 3302:

“benefit corporation”
“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 by section 3304 (relating to election of an existing business corporation
to become a benefit corporation) 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.

Committee Comment:

This section provides the procedures for a benefit corporation to terminate
voluntarily its status as a benefit corporation. As with an election of benefit corporation
status under 15 Pa.C.S. § 3304, the termination may be accomplished either directly by an
amendment of the articles or indirectly through a fundamental transaction.

The last sentence of subsection (b) provides a special rule for a sale of all or
substantially all of the assets of a benefit corporation. Such a transaction will not result in
a termination of the status of the corporation as a benefit corporation, but will have
effectively the same result since it will terminate the operations of the business. Thus it
was considered appropriate to require approval of a sale of assets by the minimum status
vote. Whether a sale of assets is in the usual and regular course will be determined under
the same standards as apply under 15 Pa.C.S. § 1932.

The following terms used in this section are defined in 15 Pa.C.S. § 1103:

“articles”
“business corporation”
“plan”

The following terms used in this section are defined in 15 Pa.C.S. § 3302:

“benefit corporation”
“minimum status vote”

Subchapter B
Corporate Purposes

Section 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 public benefit 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.
Committee Comment:

Every benefit corporation has the corporate purpose of creating general public benefit. A benefit corporation may also elect to pursue specific public benefits under subsection (b).

Subsection (c) confirms that pursuing general and specific public benefit is in the best interests of the benefit corporation. Because the basic duty of a director is to act in a manner that the director reasonably believes to be in the best interests of the corporation, decisions by the board of directors that promote the creation of general or specific public benefit will satisfy the requirement to act in the best interests of the corporation. If an ordinary business corporation includes in its articles of incorporation a statement of a specific purpose, it is by definition in the best interests of the corporation for the directors to pursue that purpose. Thus the rule in subsection (c) would apply in any event in the case of a corporation that included in its articles a purpose to pursue a specific public benefit. The Committee concluded that the rule in subsection (c) was important with respect to the pursuit of general public benefit because that pursuit is focused more on how the corporation conducts its business, as opposed to specific activities that it is the purpose of the corporation to engage in.

15 Pa.C.S. § 2922(a) provides that a professional corporation may “not engage in any business other than the rendering of the professional service or services for which it was specifically incorporated.” Subsection (e) makes clear that the limitation in 15 Pa.C.S. § 2922(a) will not interfere with a professional corporation electing to be a benefit corporation. In such a case, the professional corporation (such as a law firm, accounting firm, or medical practice) will be limited to providing the professional services for which it was incorporated, but it will be able to provide those services in a manner that creates general public benefit or a specific public benefit (for example, a medical practice that focuses on providing care for low-income individuals).

The following term used in this section are defined in 15 Pa.C.S. § 1103.

“articles”
“professional corporation”

The following terms used in this section are defined in 15 Pa.C.S. § 3302:

“benefit corporation”
“general public benefit”
“minimum status vote”
“specific public benefit”

Subchapter C
Accountability
§ 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 generally. –

(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 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.

Committee Comment:

This section is at the heart of what it means to be a benefit corporation. By requiring the consideration of interests of constituencies other than the shareholders, the section rejects the holdings in Dodge v. Ford, 170 N.W. 668 (Mich. 1919), and eBay Domestic Holdings, Inc. v. Newmark, 16 A.3d 1 (Del. Ch. 2010), that directors must maximize the financial value of a corporation. Since the adoption by Pennsylvania in 1983 of the first “constituency statute,” the directors of Pennsylvania corporations have been authorized to consider the interests of corporate constituencies other than the shareholders, but the directors have not been required to do so. Subsection (a) makes it mandatory for the directors of a benefit corporation to consider certain interests and factors that they would otherwise simply be permitted to consider in their discretion under 15 Pa.C.S. §§ 1715 and 1716.

Subsection (b) makes clear that the provisions of 15 Pa.C.S. § 1715(b) – (e) apply to

Subsection (d) makes clear that the policy of 15 Pa.C.S. § 1717 to negate any duty of directors to non-shareholder constituents also applies to benefit corporations. But see 15 Pa.C.S. § 3325(b) which permits a benefit corporation to provide in its articles that an identified category of persons may bring a benefit enforcement proceeding. If a benefit corporation were to do so, the identified non-shareholder constituents would be able to allege a breach of duty by the directors under this chapter for failing to pursue or create general or specific public benefit, but subsection (d) would prevent those constituents from alleging a breach of duty to them.

The term “act” used in this section is defined in 15 Pa.C.S. § 103 to include failure to act.

The following terms used in this section are defined in 15 Pa.C.S. § 1103:

- “board of directors”
- “director”
- “shareholders”

The following terms used in this section are defined in 15 Pa.C.S. § 3302:

- “benefit corporation”
- “benefit enforcement proceeding”
- “general public benefit”
- “specific public benefit”
- “subsidiary”

§ 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 to comply.

(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 Chapter 17 Subchapter C (relating to directors and officers) 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 an 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.

Committee Comment:

The statement of the benefit director required by subsection (c) is an important part
of the transparency required under this chapter. The perspective of the benefit director on
whether the corporation has been successful in creating general or specific public benefit
will be an important source of information for the shareholders as to whether the directors
have adequately discharged their stewardship of the benefit corporation and its resources.

Subsection (d) makes clear that the actions of a benefit director are actions of a
director of the benefit corporation and are subject to the same standards as actions of
directors generally.

Subsection (e) recognizes that the 1988 BCL authorizes a business corporation to
vary the usual functions of the board of directors. See 15 Pa.C.S. §§ 1721, 2331, and 2332.
If a benefit corporation chooses to vary the usual governance paradigm under one of those
sections, subsection (e) explains how this section will apply to the corporation. See 15
Pa.C.S. § 3331(a)(8) which requires a benefit corporation that has so varied its governance
to describe the alternative arrangements in its annual benefit report.

Subsection (f) is patterned after 15 Pa.C.S. § 1713, but unlike that section it does not
require the benefit corporation to adopt an implementing bylaw. Instead the liability shield
provided by subsection (f) automatically applies to all benefit directors.

The term “act” used in this section is defined in 15 Pa.C.S. § 103 to include failure to
act.

The following terms used in this section are defined in 15 Pa.C.S. § 1103:
articles
“board of directors”
“bylaws”
“director”
“officers”
The following terms used in this section are defined in 15 Pa.C.S. § 3302:

“benefit corporation”
“benefit director”
“benefit enforcement proceeding”
“benefit officer”
“general public benefit”
“independent”
“specific public benefit”

§ 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.

Committee Comment:
As an agent of the corporation, an officer is generally required to follow the instructions of his or her principal. But in those instances where an officer has discretion to act with respect to a matter, subsection (a) requires the officer to consider the interests of the benefit corporation’s constituencies in the same manner as required of the directors by 15 Pa.C.S. § 3321(a).

This section applies to all of the officers of the benefit corporation and is not limited just to the benefit officer, if any, of the benefit corporation.

Subsection (d) extends the policy of 15 Pa.C.S. § 1717 to the officers of a benefit corporation. *See further* the Committee Comment to 15 Pa.C.S. § 3321(d).

The term “act” used in this section is defined in 15 Pa.C.S. § 103 to include failure to act.

The term “officer” used in this section is defined in 15 Pa.C.S.§ 1103.

The following terms used in this section are defined in 15 Pa.C.S. § 3302:

“benefit corporation”
“benefit enforcement proceeding”
“benefit officer”
“general public benefit”
“specific public benefit”

§ 3324. Benefit officer.

A benefit corporation may have an officer designated as the benefit 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).

*Committee Comment:*

The designation of a benefit officer is optional. But if a benefit officer is designated, one of the duties of that officer will be to prepare the annual benefit report required by 15 Pa.C.S. § 3331.

The authority and duties of a benefit officer may be set forth in the articles instead of,
or in addition to, the bylaws. See 15 Pa.C.S. § 1504(c).

The following terms used in this section are defined in 15 Pa.C.S. § 1103:

“board of directors”
“bylaws”
“officer”

The following terms used in this section are defined in 15 Pa.C.S. § 3302:

“benefit corporation”
“benefit officer”
“general public benefit”
“specific public benefit”

§ 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.

Committee Comment:

Standing in actions against directors and officers of a business corporation that is not a benefit corporation for breach of duty is limited by 15 Pa.C.S. § 1717 just to the corporation or shareholders bringing a derivative suit. This section provides a similar limitation on standing in actions to enforce this chapter, except that the grant of standing to a director or 5% shareholder of a parent association is new. The limitation on standing in 15 Pa.C.S. § 1717 will continue to apply to actions against the directors and officers of a benefit corporation to the extent the action is not seeking to enforce this chapter.

This section only applies to actions or claims relating to the duties of directors and officers under this chapter, and the general and specific public benefit purposes of a benefit corporation. Lawsuits for breach of contract by directors, officers, or the benefit corporation, as well as lawsuits for breach of duties not arising under this chapter, are not subject to this section.

The cross reference in subsection (c) is a reminder that the provisions on derivative actions in 15 Pa.C.S. Subch. 17F will apply to a derivative action under this section. See 15 Pa.C.S. § 3301(c).

The term “association” used in this section is defined in 15 Pa.C.S. § 102.

The following terms used in this section are defined in 15 Pa.C.S. § 1103:

“articles”
“bylaws”
“directors”
“officers”
“shareholder”

The following terms used in this section are defined in 15 Pa.C.S. § 3302:

“benefit corporation”
“benefit enforcement proceeding”
“general public benefit”
“specific public benefit”
Subchapter D
Transparency

§ 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 reports 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.
Committee Comment:

A benefit corporation may change from year to year the standard it uses under subsection (a)(2) for assessing its performance. But if a benefit corporation uses the same standard for assessing its performance in more than one year, the standard must either be applied consistently or the benefit corporation must provide an explanation of the reasons for any inconsistent use of the standard.

Subsection (a)(5) requires the disclosure of all record shareholders that own 5% or more of the benefit corporation. The benefit corporation must also disclose in its annual benefit report any beneficial owners of 5% or more that are known to the benefit corporation, but it does not have an obligation to inquire as to the existence of any such owners.

The term “department” used in this section is defined in 15 Pa.C.S. § 102.

The following terms used in this section are defined in 15 Pa.C.S. § 1103:

“articles”
“director”
“shareholder”
“shares”

The following terms used in this section are defined in 15 Pa.C.S. § 3302:

“benefit corporation”
“benefit director”
“general public benefit”
“specific public benefit”
“third-party standard”