

**AMENDMENTS TO THE
PENNSYLVANIA CONSOLIDATED STATUTES
WITH
OFFICIAL SOURCE NOTES AND
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

The ideas and conclusions set forth in this draft, including the proposed statutory language and Committee Comments, have not been passed upon by the Pennsylvania Bar Association and do not necessarily reflect its views or policies.

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CHAPTER 33

Benefit Corporations

Subchapter

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

Subchapter A

Preliminary Provisions

Section

- 3301. Application and effect of chapter.
- 3302. Definitions.
- 3303. Formation of benefit corporations.
- 3304. Election of an existing business corporation to become a benefit corporation.
- 3305. Termination of benefit corporation status.

§ 3301. Application and effect of chapter.

(a) General rule. – This chapter shall be applicable 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 be generally applicable to all benefit corporations. The specific provisions of this chapter shall control over the general provisions of this subpart. A benefit corporation may be simultaneously subject to this chapter and one or more other chapters of this article.

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

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 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.

Subsection (d) makes clear that, if a corporation elects to be subject to this chapter, it will be subject to all of the provisions of the chapter and will not be able to vary their application to the corporation.

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.

(a) Defined terms. – As used in this chapter:

“Benefit corporation” means a business corporation that has elected to become subject to this chapter and whose status as a benefit corporation has not been terminated as provided in this chapter.

“Benefit director” means the director designated as the benefit director of a benefit corporation as provided in section 3322 (relating to benefit director).

“Benefit enforcement proceeding” means a claim or action brought directly by a benefit corporation, or derivatively on behalf of a benefit corporation, against a director or officer for:

- (1) failure to pursue the general public benefit purpose of the benefit corporation or any specific public benefit purpose set forth in its articles; or
- (2) violation of a duty or standard of conduct under this chapter.

“Benefit officer” means the officer of a benefit corporation, if any, designated as the

benefit officer as provided in section 3324 (relating to benefit officer).

“General public benefit” means a material positive impact on society and the environment by the operations of a benefit corporation taken as a whole, as measured by a third-party standard, through activities that promote some combination of specific public benefits.

“Independent” means that 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), either directly or as a shareholder, partner, member or other owner or a director, officer or other manager of an association that has a material relationship with the benefit corporation or any of its subsidiaries. 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.

“Minimum status vote” means that, in addition to any other approval or vote required by this subpart or a bylaw adopted by the shareholders:

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

(2) The corporate action must be approved by 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 thereon.

“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) increasing the flow of capital to entities with a public benefit purpose; and
- (7) the accomplishment of any other particular benefit for society or the environment.

“Subsidiary” of a person means an association in which the person owns beneficially or of record 50% or more of the outstanding equity interests.

“Third-party standard” means a recognized standard for defining, reporting and assessing corporate social and environmental performance that is:

- (1) developed by a person that is independent of the benefit corporation; and
- (2) transparent because the following information about the standard is publicly available:
 - (i) the factors considered when measuring the performance of a business;
 - (ii) the relative weightings of those factors; and
 - (iii) the identity of the persons who developed and control changes to the standard and the process by which those changes are made.

(b) Computation of ownership. – For purposes of the definitions of “independent” and “subsidiary” in subsection (a), a percentage of ownership in an association shall be calculated as if all outstanding rights to acquire equity interests in the association had been exercised.

Committee Comment:

“Benefit corporation.” The status of a benefit corporation as such may be terminated either voluntarily under 15 Pa.C.S. § 3305 (relating to termination of benefit corporation status) or involuntarily under 15 Pa.C.S. § 3331(e) (relating to 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 directors and officers of a benefit corporation because 15 Pa.C.S. § 3325(a) provides that “No person may bring an action or assert a claim against a benefit corporation or its directors or officers with respect to the duties of directors and officers under this chapter and the general and any specific public benefit purpose of the benefit corporation except in a benefit enforcement proceeding.”

“General public benefit.” The determination of whether a benefit corporation has created general public benefit looks at the operations of the business taken as a whole.

“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 after the definition of “minimum vote” in 15 Pa.C.S. § 2302. 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.

“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 (7) of this definition permits a benefit corporation to identify a specific public benefit that is different from those listed in paragraphs (1) through (6).

§ 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.

Committee Comment:

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 an existing business corporation to become a benefit corporation.

(a) Amendment. – A 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 1911(b) (relating to exceptions), 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 a corporation that is not a benefit corporation is a party to a merger, consolidation or division or is the exchanging corporation in a share exchange, and the surviving, new or any resulting corporation 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 corporations in the manner provided in 15 Pa.C.S. § 3303.

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

“articles”

“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 such and cease to be subject to this chapter by amending its articles to delete the provision required by section 3304 (relating to formation of benefit corporations) 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.

(c) Cross reference. – See section 3331(e) (relating to annual benefit report).

Committee Comment:

This section provides the procedures for a benefit corporation to terminate voluntarily its status as a benefit corporation.

The cross reference in subsection (c) to 15 Pa.C.S. § 3331(e) is a reminder that the status of a corporation as a benefit corporation may also be terminated involuntarily if it fails to file an annual benefit report

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

“articles”

“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. – Every benefit corporation shall have the purpose of creating general public benefit. This purpose is in addition to, and may be a limitation on, its purpose under section 1301 (relating to purposes) and any specific

purpose set forth in its articles under subsection (b).

(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 (relating to purposes) and subsection (a). The identification of a specific public benefit under this subsection does not limit the obligation of a benefit corporation to create general public benefit.

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

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

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 be the case in any event, but the Committee concluded it would be useful to state expressly the rule in subsection (c) because of the importance to the concept of a benefit corporation of the creation of public benefit.

The term “articles” 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”
- “general public benefit”
- “minimum status vote”
- “specific public benefit”

Subchapter C Accountability

Section

- 3321. Standard of conduct for directors.
- 3322. Benefit director.
- 3323. Standard of conduct for officers.
- 3324. Benefit officer.
- 3325. Right of action.

§ 3321. Standard of conduct for directors.

(a) Required considerations. – 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 interests of the benefit corporation,

- (1) shall consider the effects of any action upon:
 - (i) the shareholders of the benefit corporation;
 - (ii) the employees and workforce 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; and
 - (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;
- (2) may consider:

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

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

(3) shall not be required to give priority to the interests of any particular person or group referred to in paragraphs (1) and (2) over the interests of any other person or group unless the benefit corporation has stated its intention to give priority to interests related to 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 by 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 (relating to exercise of powers generally) or 1716 (relating to alternative standard).

(c) Exoneration from personal liability. – A director is not 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 (relating to standard of care and justifiable reliance) and this section.

Committee Comment:

Subsection (a) makes mandatory the consideration of certain interests and factors that would otherwise be permissive 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 a benefit corporation. Those provisions, among other things, make inapplicable to Pennsylvania corporations the holdings in *Revlon, Inc. v. MacAndrews & Forbes Holdings, Inc.*, 506 A.2d 173 (Del. 1986), and *Unocal Corp. v. Mesa Petroleum Co.*, 493 A.2d 946 (Del. 1985).

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 one director who shall be designated 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 by 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 by section 3331 (relating to annual benefit report), a statement whether, in the opinion of the benefit director, the benefit corporation acted in accordance with its general, and any specific, public benefit purpose in all material respects during the period covered by the report and whether the directors and officers complied with sections 3321(a) (relating to standard of conduct for directors) and 3323(a) (relating to standard of conduct for officers), respectively. If in the opinion of the benefit director the benefit corporation or its directors or officers failed so to act, then the statement of the benefit director shall include a description of the ways in which the benefit corporation or its directors or officers failed so to act.

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

(e) Alternative governance arrangements. – If 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 or persons other than the directors pursuant to

section 1721(a) (relating to board of directors) or 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, then the bylaws of the benefit corporation must provide that the person or persons or shareholders who perform the duties of a board of directors shall include a person with the powers, duties, rights and immunities of a benefit director.

(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 by section 1713 (relating to personal liability of directors), a benefit director shall not be personally liable for any act or omission in the capacity of a benefit director unless the act or omission constitutes self-dealing, willful misconduct or a knowing violation of law.

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.

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”
“shareholders”
“statutory close corporation”

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:
 - (i) the creation of general or specific public benefit by the benefit corporation; or
 - (ii) any of the interests or factors referred to in section 3321(a).

(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. – An officer is not 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) (relating to standard of care and justifiable reliance) and this section.

Committee Comment:

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.

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 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 by section 3331 (relating to annual benefit report).

Committee Comment:

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) General rule. – The duties of directors and officers under this chapter, and the general and any specific public benefit purpose of a benefit corporation, may be enforced only 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 the duties of directors and officers under this chapter and the general and any specific public benefit purpose of the benefit corporation except in a benefit enforcement proceeding.

(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 10% 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. – See Subchapter F of Chapter 17 (relating to derivative actions).

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, although slightly different, limitation on standing in actions to enforce this chapter. 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 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”
“subsidiary”

Subchapter D Transparency

Section

3331. Annual benefit report.

§ 3331. Annual benefit report.

(a) General rule. – 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 it is the purpose of the benefit corporation to create and the extent to which that specific public benefit was created; and

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

(2) an assessment of the social and environmental performance of the benefit corporation, prepared in accordance with 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;

(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; and

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

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

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

(d) 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.

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

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 is 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”