
THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 705 Session of
2015

INTRODUCED BY COHEN, FRANKEL, STURLA, BROWNLEE, M. DALEY,
DeLUCA, FREEMAN, KINSEY, McCARTER, O'BRIEN, RAVENSTAHL,
ROEBUCK, ROZZI, SCHLOSSBERG, SIMS, THOMAS AND YOUNGBLOOD,
MARCH 4, 2015

REFERRED TO COMMITTEE ON STATE GOVERNMENT, MARCH 4, 2015

AN ACT

1 Relating to corporate political accountability; and providing
2 for shareholder vote on corporate political activities, for
3 notification to shareholders of corporate political
4 activities, for public disclosure of corporate political
5 duties, for board approval for corporate political
6 expenditures and for applicability to foreign corporations.

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

9 Section 1. Short title.

10 This act shall be known and may be cited as the Corporate
11 Political Accountability Act.

12 Section 2. Declaration of policy.

13 The General Assembly finds and declares as follows:

14 (1) Although corporations cannot vote, corporations make
15 significant political contributions and expenditures that
16 directly or indirectly influence the election of candidates
17 and support or oppose political causes at the Federal, State
18 and local levels. Decisions to use corporate treasury funds
19 for political contributions and expenditures are currently

1 made by corporate boards and executives, often without the
2 knowledge or consent of shareholders.

3 (2) Corporations acting through their boards and
4 executives have a fiduciary duty to conduct business in the
5 best interests of the shareholders. Corporate boards and
6 executives that use corporate funds to support and oppose
7 political candidates, political parties and political causes
8 in opposition to the interests of many or all of their
9 shareholders may not be acting in the best interests of the
10 corporation.

11 (3) Historically, shareholders of corporations in the
12 United States have not had a way to know of or to influence
13 the political activities of corporations they own.

14 Shareholders and the public have a right to know how these
15 corporations are spending their funds to make political
16 contributions or expenditures benefiting candidates,
17 political parties and political causes.

18 (4) Corporations should be accountable to their
19 shareholders prior to making political contributions or
20 expenditures affecting Federal, State and local governance
21 and public policy. Requiring the express approval of a
22 corporation's shareholders prior to making political
23 contributions or expenditures will help establish
24 accountability.

25 (5) If corporations use corporate general treasury funds
26 for political expenditures, then those funds should be
27 clearly reported to shareholders, and shareholders should be
28 able to authorize the use of corporate general treasury funds
29 for political expenditures.

30 Section 3. Definitions.

1 The following words and phrases when used in this act shall
2 have the meanings given to them in this section unless the
3 context clearly indicates otherwise:

4 "Contribution" or "expenditure." Includes any monetary and
5 nonmonetary political contributions and expenditures not
6 deductible under section 162(e)(1)(B) of the Internal Revenue
7 Code of 1986 (Public Law 99-514, 26 U.S.C. § 162(e)(1)(B)),
8 including, but not limited to, contributions to or expenditures
9 on behalf of political candidates, political parties, political
10 committees and other political entities organized and operating
11 under section 527 of the Internal Revenue Code of 1986 (26
12 U.S.C. § 527), and any portion of any dues or similar payments
13 made to any tax exempt organization that is used for an
14 expenditure or contribution and that if made directly by the
15 corporation would not be deductible under section 162(e)(1)(B)
16 of the Internal Revenue Code of 1986, any contribution or
17 expenditure, as those terms are defined in section 301 of the
18 Federal Election Campaign Act of 1971 (Public Law 92-225, 52
19 U.S.C. § 30101), as well as any contribution or expenditure
20 defined under section 1621 of the act of June 3, 1937 (P.L.1333,
21 No.320), known as the Pennsylvania Election Code. The term also
22 includes any direct or indirect payment, distribution, loan,
23 advance, deposit or gift of money, or any services, or anything
24 of value, except a loan of money by a national or State bank
25 made in accordance with the applicable banking laws and
26 regulations and in the ordinary course of business, to any
27 candidate, campaign committee or political party or
28 organization, in connection with any election to any office. The
29 term does not include:

30 (1) Communications by a corporation to its stockholders

1 and executive or administrative personnel and their families
2 or by a labor organization to its members and their families
3 on any subject.

4 (2) Nonpartisan registration and get-out-the-vote
5 campaigns by a corporation aimed at its stockholders and
6 executive or administrative personnel and their families or
7 by a labor organization aimed at its members and their
8 families.

9 (3) The establishment, administration and solicitation
10 of contributions to a separate segregated fund to be utilized
11 for political purposes by a corporation, labor organization,
12 membership organization, cooperative or corporation without
13 capital stock.

14 "Department." The Department of State of the Commonwealth.

15 "General treasury funds." Money in possession of a
16 corporation incorporated under the laws of Pennsylvania in the
17 normal course of business, including funds from sales, accounts
18 payable, loans, investments, bonds or debt instruments.

19 "Issue advocacy campaign." Contributions or expenditures for
20 any communication to the general public intended to encourage
21 the public to contact a government official regarding pending
22 legislation, public policy or a government rule or regulation.
23 The term does not include contributions or expenditures for
24 registered lobbyists or other persons employed by the
25 corporation to lobby Federal or State government officials
26 directly.

27 "Known at the time of the authorization vote." At the time
28 the corporation seeks authorization from shareholders to spend
29 corporate funds for political activities:

30 (1) the corporation's officers, directors or employees

1 have identified a specific political activity for the
2 corporation to support or oppose;

3 (2) corporate officers, directors or employees have
4 taken steps to obligate funds to a political activity; or

5 (3) the corporation has a regularly scheduled payment to
6 a trade association or other entity to pay for a political
7 activity in the next 12 months.

8 "Majority of shareholders." Fifty percent plus one of all
9 outstanding voting securities. Shareholders not casting votes
10 shall not count toward affirmative authorization under this
11 section.

12 "Political activities." Any contributions or expenditures
13 made directly or indirectly to, or in support of or opposition
14 to, any candidate, political party, committee, electioneering
15 communication, ballot measure campaign or an issue advocacy
16 campaign. The term does not include activities defined as
17 lobbying under any Federal, State or local law.

18 "Separate segregated fund." A political action committee
19 formed by a corporation for the purpose of making contributions
20 to candidates for office or to political parties. A separate
21 segregated fund which supports Federal candidates shall have the
22 same meaning as that found in section 316 of the Federal
23 Election Campaign Act of 1971 (Public Law 92-225, 52 U.S.C. §
24 30118).

25 Section 4. Shareholder vote on corporate political activities.

26 (a) Annual vote.--

27 (1) Any corporation incorporated in this Commonwealth
28 that spends in the aggregate \$10,000 or more of corporate
29 treasury funds on all political activities must comply with
30 the requirements of this section.

1 (2) Any proxy or consent or authorization for an annual
2 meeting of the shareholders of a corporation incorporated in
3 this Commonwealth, or a special meeting in lieu of such
4 meeting, where proxies are solicited in respect of any
5 security occurring on or after six months following the date
6 on which final regulations are published under subsection (d)
7 shall provide for a separate resolution subject to
8 shareholder vote to approve any spending of \$10,000 or more
9 by the corporation for any political activity.

10 (3) Notwithstanding the requirement for an annual
11 shareholder vote to authorize any spending of \$10,000 or more
12 by the corporation for any political activity, a corporation
13 may request authorization for spending on political
14 activities on a more frequent basis. Any authorization
15 request by the corporation that is not made during an annual
16 authorization shall be deemed a special authorization.

17 (4) If a corporation spends less than an aggregate of
18 \$10,000 in a 12-month period for political activities, then
19 it does not have to seek shareholder authorization for such
20 spending.

21 (b) Shareholder approval.--

22 (1) When seeking shareholder authorization for
23 expenditures for political activities, the corporation shall
24 request the authority to spend a maximum dollar amount in the
25 next 12 months.

26 (2) If known at the time of the authorization vote, the
27 company shall articulate whether the corporate treasury funds
28 so authorized are intended to benefit or defeat specific
29 candidates, ballot measures or issue advocacy campaigns or
30 whether it will be paid to specific nonprofits or trade

1 associations for political activities. The following apply:

2 (i) To be effective, the authorization vote must
3 garner support from a majority of shareholders.

4 (ii) A vote by the shareholders to approve or
5 disapprove any spending of \$10,000 or more by a
6 corporation for a political activity shall be binding on
7 the corporation.

8 (iii) Notwithstanding the requirement for an annual
9 shareholder vote to authorize any spending of \$10,000 or
10 more by the corporation for any political activity, a
11 corporation may request a special authorization for
12 additional spending on political activities, provided
13 that:

14 (A) all spending on political activities of
15 \$10,000 or more must be authorized by a shareholder
16 majority vote; and

17 (B) for any special authorization, the company
18 shall articulate whether the corporate treasury funds
19 so authorized are intended to benefit or defeat
20 candidates, ballot measures or issue advocacy
21 campaigns or will be paid to specific nonprofits or
22 trade associations for political activities at the
23 time the special authorization is requested.

24 (c) Director liability.--If a corporation makes an
25 unauthorized contribution or expenditure for a political
26 activity, then the corporation's directors at the time that the
27 unauthorized contribution or expenditure was incurred are
28 jointly and severally liable to repay to the corporation the
29 amount of the unauthorized expenditure, with interest at the
30 rate of 8% per year.

1 (d) Rulemaking.--No later than six months after the
2 effective date of this act, the department shall promulgate
3 final regulations to implement this section.

4 (e) Sole proprietorships excluded.--Nothing in this section
5 shall be construed to apply a new duty to the owner of a sole
6 proprietorship.

7 Section 5. Notification to shareholders of corporate political
8 activities.

9 (a) Notification to shareholders.--

10 (1) At least quarterly during each fiscal year, a
11 corporation incorporated in this Commonwealth that makes
12 contributions or expenditures for political activities must
13 notify its shareholders and the department in writing of the
14 nature of all its political activities, funded by either its
15 separate segregated fund or through its general corporate
16 treasury, including contributions or expenditures made
17 directly or indirectly.

18 (2) A report made pursuant to this section shall include
19 the following:

20 (i) The date of the contributions or expenditures.

21 (ii) The amount of the contributions or
22 expenditures.

23 (iii) The identity of the candidate, political
24 party, committee, electioneering communication, ballot
25 measure campaign or issue advocacy campaign.

26 (iv) If the contributions or expenditures were made
27 for or against a candidate, including an electioneering
28 communication as defined in section 304 of the Federal
29 Election Campaign Act of 1971 (Public Law 92-225, 52
30 U.S.C. § 30104), the office sought by the candidate and

1 the political party affiliation of the candidate.

2 (v) If the contributions or expenditures were made
3 for or against a ballot measure, the purpose of the
4 measure and whether the contributions or expenditures
5 were made in support or opposition to the ballot measure.

6 (vi) If the contributions or expenditures were made
7 for or against an issue advocacy campaign, the nature of
8 the political issue and whether the contributions were
9 made in support or opposition to the political issue.

10 (vii) All expenditures made by a separate segregated
11 fund affiliated with the corporation.

12 (b) Public disclosure.--

13 (1) The quarterly reports of political activities by a
14 corporation incorporated in this Commonwealth to shareholders
15 shall be public records.

16 (2) A copy of the reports filed pursuant to subsection
17 (a) (1) shall be posted for at least one year on the
18 corporation's Internet website, if any.

19 Section 6. Public disclosure of corporate political activities
20 by the department.

21 (a) Department duty.--The quarterly reports of political
22 activities by a corporation incorporated in this Commonwealth to
23 shareholders shall be made publicly available by the department.

24 (b) Electronic form.--A quarterly report required to be
25 filed under this section shall be filed in electronic form using
26 filing software approved or developed by the department in
27 addition to filing in any other form that the department may
28 require by regulation.

29 (c) Format.--The department shall ensure that, to the
30 greatest extent practicable, the quarterly reports on political

1 activities are publicly available through the department's
2 Internet website in a format that permits the reports to be
3 searched, sorted and downloaded.

4 Section 7. Report by Department of the Auditor General.

5 (a) Audit.--On an annual basis, the Department of the
6 Auditor General shall audit the effectiveness of the department
7 in meeting the reporting and disclosure requirements of this
8 act.

9 (b) Report.--Not later than April 1 of each year, the
10 Department of the Auditor General shall submit to the Governor a
11 report on the review required by subsection (a) for the
12 preceding year.

13 Section 8. Board approval for corporate political expenditures.

14 (a) Approval required.--Notwithstanding any other provision
15 of law, no corporation and no trade, business or professional
16 association shall make any campaign contribution or expenditure
17 unless specifically authorized to do so whether:

18 (1) By the vote of the board of directors of the
19 corporation or of the executive committee of the trade,
20 business or professional association at a regular or special
21 meeting.

22 (2) By the president, vice president, secretary or
23 treasurer of a corporation whom the board has specifically
24 empowered to authorize such contributions or expenditures.

25 (3) For a corporation, by any other person designated by
26 resolution of the board of directors of a corporation to
27 authorize contributions or expenditures.

28 (b) Form of contribution.--No corporation, trade, business
29 or professional association shall make any contribution or
30 expenditure as defined under Federal or State law, other than an

1 in-kind contribution or expenditure, except by check.

2 Section 9. Applicability to foreign corporations.

3 (a) General rule.--A foreign corporation, other than a
4 foreign association or foreign nonprofit corporation, but
5 including a foreign parent corporation even if the foreign
6 parent corporation does not transact intrastate business, is
7 subject to the requirements of sections 4, 5, 6 and 7, if:

8 (1) the average of the property factor, payroll factor
9 and sales factor, as those terms are defined in section 401
10 of the act of March 4, 1971 (P.L.6, No.2), known as the Tax
11 Reform Code of 1971, with respect to the foreign corporation,
12 is more than 50% during its latest full-income year; and

13 (2) more than one-half of its outstanding voting
14 securities are held of record by persons having addresses in
15 this Commonwealth appearing on the books of the corporation
16 on the record date for the latest meeting of shareholders
17 held during its latest full-income year or, if no meeting was
18 held during that year, on the last day of the latest full-
19 income year.

20 (b) Determination.--The determination of the property
21 factor, payroll factor and sales factor under subsection (a)
22 with respect to any parent corporation shall be made on a
23 consolidated basis, including in a unitary computation, after
24 elimination of intercompany transactions, the property, payroll
25 and sales of the parent and all of its subsidiaries in which it
26 owns directly or indirectly more than 50% of the outstanding
27 shares entitled to vote for the election of directors, but
28 deducting a percentage of the property, payroll and sales of any
29 subsidiary equal to the percentage minority ownership, if any,
30 in the subsidiary. For the purpose of this section, any

1 securities held to the knowledge of the issuer in the names of
2 broker-dealers, nominees for broker-dealers, including clearing
3 corporations or banks, associations or other entities holding
4 securities in a nominee name or otherwise on behalf of a
5 beneficial owner, collectively nominee holders, shall not be
6 considered outstanding. However, if the foreign corporation
7 requests all nominee holders to certify, with respect to all
8 beneficial owners for whom securities are held, the number of
9 shares held for those beneficial owners having addresses as
10 shown on the records of the nominee holder in this Commonwealth
11 and outside of this Commonwealth, then all shares so certified
12 shall be considered outstanding and held of record by persons
13 having addresses either in this Commonwealth or outside of this
14 Commonwealth as so certified, provided that the certification so
15 provided shall be retained with the record of shareholders and
16 made available for inspection and copying. A current list of
17 beneficial owners of a foreign corporation's securities provided
18 to the corporation by one or more nominee holders or agent
19 thereof under the requirements of 17 CFR § 240.14b-1(b) (3)
20 (relating to obligation of registered brokers and dealers in
21 connection with the prompt forwarding of certain communications
22 to beneficial owners) or 240.14b-2(b) (3) (relating to obligation
23 of banks, associations and other entities that exercise
24 fiduciary powers in connection with the prompt forwarding of
25 certain communications to beneficial owners) promulgated under
26 the Securities Exchange Act of 1934 (Public Law 48-881, 15
27 U.S.C. § 78a et seq.) shall constitute an acceptable
28 certification with respect to beneficial owners for the purposes
29 of this subsection.

30 (c) Applicability.--This section does not apply to any

1 corporation:

2 (1) With outstanding securities listed on the New York
3 Stock Exchange or the American Stock Exchange.

4 (2) With outstanding securities designated as qualified
5 for trading on the Nasdaq National Market of the Nasdaq Stock
6 Market, or any successor thereto.

7 (3) If all of its voting shares, other than directors'
8 qualifying shares, are owned directly or indirectly by a
9 corporation or corporations not subject to this section.

10 (d) Liability.--Any party that obtains a final determination
11 by a court of competent jurisdiction that the corporation failed
12 to provide to the party information required to be provided by
13 this act or provided the party information of the kind required
14 to be provided by this act that is incorrect, then the court, in
15 its discretion, shall have the power to include in its judgment
16 recovery by the party from the corporation of all court costs
17 and reasonable attorney fees incurred in that legal proceeding
18 to the extent they relate to obtaining that final determination.

19 Section 10. Effective date.

20 This act shall take effect in 60 days.