

LIMITED LIABILITY COMPANY AMENDMENTS

2018 GENERAL SESSION

STATE OF UTAH

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LONG TITLE

General Description:

This bill enacts the Benefit Limited Liability Company Act.

Highlighted Provisions:

This bill:

- ▶ defines terms;
- ▶ provides for the formation of a benefit company;
- ▶ addresses termination of a benefit company;
- ▶ requires a benefit company to adopt a purpose of creating general public benefit;
- ▶ establishes standards of conduct for a member, manager, or officer of a benefit company;
- ▶ creates a right of action; and
- ▶ requires a benefit company to prepare, distribute, and make public an annual benefit report.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

29 ENACTS:

30 **48-4-101**, Utah Code Annotated 1953

31 **48-4-102**, Utah Code Annotated 1953

32 **48-4-103**, Utah Code Annotated 1953

33 **48-4-104**, Utah Code Annotated 1953

34 **48-4-105**, Utah Code Annotated 1953

35 **48-4-201**, Utah Code Annotated 1953

36 **48-4-301**, Utah Code Annotated 1953

37 **48-4-302**, Utah Code Annotated 1953

38 **48-4-303**, Utah Code Annotated 1953

39 **48-4-401**, Utah Code Annotated 1953

40 **48-4-402**, Utah Code Annotated 1953

41

42 *Be it enacted by the Legislature of the state of Utah:*

43 Section 1. Section **48-4-101** is enacted to read:

44 **CHAPTER 4. BENEFIT LIMITED LIABILITY COMPANY ACT**

45 **Part 1. General Provisions**

46 **48-4-101. Title.**

47 This chapter is known as the "Benefit Limited Liability Company Act."

48 Section 2. Section **48-4-102** is enacted to read:

49 **48-4-102. Application and effect of chapter.**

50 (1) This chapter applies to a benefit company organized under this chapter.

51 (2) (a) The existence of a provision in this chapter does not itself create an implication
52 that a contrary or different rule of law is applicable to a limited liability company that is not a
53 benefit company.

54 (b) This chapter does not affect a statute or rule of law that is applicable to a limited
55 liability company that is not a benefit limited liability company.

56 (3) (a) Except as otherwise provided in this chapter, Title 48, Chapter 3a, Utah Revised

57 Uniform Limited Liability Company Act, applies to a benefit company.

58 (b) The provisions of this chapter control over any inconsistent provision of Title 48,
59 Chapter 3a, Utah Revised Uniform Limited Liability Company Act.

60 (4) The operating agreement of a benefit company may not limit, be inconsistent with,
61 or supersede a provision of this chapter.

62 Section 3. Section **48-4-103** is enacted to read:

63 **48-4-103. Definitions.**

64 As used in this chapter:

65 (1) "Benefit company" means a limited liability company:

66 (a) that elects to become subject to this chapter; and

67 (b) the status of which as a benefit company has not been terminated.

68 (2) "Benefit enforcement proceeding" means a proceeding in a court of competent
69 jurisdiction for:

70 (a) failure of a benefit company to pursue or create general public benefit or a specific
71 public benefit described in the benefit company's certificate of organization; or

72 (b) a violation of an obligation, duty, or standard of conduct under this chapter.

73 (3) "General public benefit" means a material positive impact on society and the
74 environment:

75 (a) taken as a whole;

76 (b) assessed against a third-party standard; and

77 (c) from the business of a benefit company.

78 (4) "Immediate family member" means a parent, spouse, surviving spouse, child, or
79 sibling.

80 (5) (a) "Independent person" means a person who has no material relationship with a
81 benefit company or a subsidiary of the benefit company.

82 (b) "Independent person" does not include a person:

83 (i) who is, or has been within the last three years, an employee of the benefit company
84 or a subsidiary of the benefit company;

85 (ii) whose immediate family member is, or has been within the last three years, an
86 executive officer of the benefit company or a subsidiary of the benefit company;

87 (iii) who owns 5% or more of the outstanding interests of the benefit company,
88 calculated as if all outstanding rights to acquire interests in the benefit company have been
89 exercised; or

90 (iv) who owns 5% or more of the outstanding interests in an entity, calculated as if all
91 outstanding rights to acquire interests in the entity have been exercised, that owns 5% or more
92 of the outstanding interests of the benefit company, calculated as if all outstanding rights to
93 acquire interests in the benefit company have been exercised.

94 (6) "Minimum status vote" means:

95 (a) in the case of a limited liability company, in addition to any other required approval
96 or vote, the satisfaction of the following conditions:

97 (i) the members of every class or series may vote as a separate voting group on an
98 action of the limited liability company regardless of a limitation state in the certificate of
99 organization or operating agreement on the voting rights of any class or series; and

100 (ii) the action of the limited liability company is required to be approved by vote of the
101 members of each class or series entitled to cast at least two-thirds of the votes that all members
102 of the class or series are entitled to cast on the action; or

103 (b) in the case of a domestic entity other than a limited liability company, in addition to
104 any other required approval, vote, or consent, the satisfaction of the following conditions:

105 (i) the holders of every class or series of interest in the entity that are entitled to receive
106 a distribution of any kind from the entity may vote on or consent to the action regardless of any
107 otherwise applicable limitation on voting or consent rights of the class or series; and

108 (ii) the action of the limited liability company is required to be approved by vote or
109 consent of the holders described in Subsection (6)(b)(i) entitled to cast at least two-thirds of the
110 votes or consents that all of those holders are entitled to cast on the action.

111 (7) "Owns" includes ownership as the owner of record or as a beneficial owner.

112 (8) "Specific public benefit" includes:

113 (a) providing low-income or underserved individuals or communities with beneficial
114 products or services;

115 (b) promoting economic opportunity for individuals or communities beyond the
116 creation of jobs in the normal course of business;

117 (c) protecting or restoring the environment;

118 (d) improving human health;

119 (e) promoting the arts, sciences, or advancement of knowledge;

120 (f) increasing the flow of capital to entities with a purpose to benefit society or the
121 environment; and

122 (g) conferring any other particular benefit on society or the environment.

123 (9) "Subsidiary" means, in relation to a person, an entity in which the person owns
124 beneficially or of record, 50% or more of the outstanding equity interests, calculated as if all
125 outstanding rights to acquire equity interests in the entity have been exercised.

126 (10) "Third-party standard" means a standard for defining, reporting, and assessing
127 overall social and environmental performance that:

128 (a) assesses the effect of a business and a business's operations on the interests
129 described in Subsections 48-4-301(1)(a)(ii) through (v);

130 (b) is developed by an entity:

131 (i) that is independent of the benefit company;

132 (ii) whose governing body is comprised of no more than one-third of members who are
133 representatives of any of the following:

134 (A) an association of businesses that operate in a specific industry whose members are
135 measured by the standard;

136 (B) businesses from a specific industry or an association of businesses in that industry;

137 or

138 (C) businesses whose performance is assessed against the standard;

139 (iii) that is not materially financed by an association or business described in
140 Subsection (10)(b)(ii);

141 (iv) that has access to necessary expertise to assess overall social and environmental
142 performance;

143 (v) uses a balanced multistakeholder approach to develop the standard, including a
144 public comment period of at least 30 days; and

145 (vi) makes the following information publically available:

146 (A) the criteria considered when measuring the overall social and environmental
147 performance of a business;

148 (B) the relative weightings, if any, of the criteria described in Subsection
149 (10)(b)(vi)(A);

150 (C) the identity of each director, officer, material owner, and governing body of the
151 entity that developed and controls revisions to the standard;

152 (D) the process by which revisions to the standard and changes to the membership of
153 the governing body are made; and

154 (E) an accounting of the revenue and sources of financial support for the entity, with
155 sufficient detail to disclose a relationship that could reasonably be considered to present a
156 potential conflict of interest.

157 Section 4. Section **48-4-104** is enacted to read:

158 **48-4-104. Benefit company status.**

159 (1) A person may form a benefit company in accordance with Title 48, Chapter 3a,
160 Utah Revised Uniform Limited Liability Company Act, except the certificate of organization
161 shall state that the limited liability company is a benefit company.

162 (2) (a) A limited liability company may elect to become a benefit company by
163 amending, in accordance with Section [48-3a-202](#), the limited liability company's certificate of
164 organization to contain a statement that the limited liability company is a benefit company.

165 (b) An amendment described in Subsection (2)(a) is not effective unless the
166 amendment is adopted by at least the minimum status vote.

167 (3) If an entity that is not a benefit company is a party to a merger or is the exchanging
168 entity in an interest exchange, and the surviving entity in the merger or interest exchange is a

169 benefit company, the merger or interest exchange is not effective unless the merger or interest
170 exchange is adopted by the entity by at least the minimum status vote.

171 (4) (a) A benefit company may terminate the benefit company's status as a benefit
172 company and cease to be subject to this chapter by amending the benefit company's certificate
173 of organization in accordance with Section [48-3a-202](#) to delete the provision described in
174 Subsection (1) or (2) that states that the limited liability company is a benefit company.

175 (b) An amendment described in Subsection (4)(a) is not effective unless the
176 amendment is adopted by at least the minimum status vote.

177 (5) (a) If a proposed merger or interest exchange would have the effect of terminating a
178 benefit company's status as a benefit company, the merger or interest exchange is not effective
179 unless the merger or interest exchange is adopted by at least the minimum status vote.

180 (b) Unless the transaction is in the usual and regular course of the benefit company's
181 business, a sale, lease, exchange, or other disposition of all or substantially all of the assets of a
182 benefit company is not effective unless the transaction is approved by at least the minimum status
183 vote.

184 Section 5. Section **48-4-105** is enacted to read:

185 **48-4-105. Benefit company name.**

186 (1) The name of a benefit company may contain the words "benefit limited liability
187 company," "benefit limited company," or "benefit company" or the abbreviation "B.L.L.C.,"
188 "BLLC," "B.L.C.," or "BLC." "Limited" may be abbreviated as "Ltd.," and "company" may be
189 abbreviated as "Co."

190 (2) A benefit company that complies with Subsection (1) satisfies the requirement
191 described in Subsection [48-3a-108](#)(1).

192 Section 6. Section **48-4-201** is enacted to read:

193 **Part 2. Company Purposes**

194 **48-4-201. Company purpose.**

195 (1) In addition to the benefit company's purpose under Section [48-3a-104](#), a benefit
196 company shall have a purpose of creating general public benefit.

197 (2) (a) A benefit company's certificate of organization may identify one or more
198 specific public benefits that are the purposes of the benefit company to create.

199 (b) Identifying a specific public benefit in accordance with Subsection (2)(a) does not
200 affect a benefit company's obligation to create general public benefit in accordance with
201 Subsection (1).

202 (3) The creation of general public benefit and one or more specific public benefits is in
203 the best interests of the benefit company.

204 (4) (a) A benefit company may amend the benefit company's certificate or organization
205 to add, amend, or delete a specific public benefit.

206 (b) An amendment described in Subsection (4)(a) is not effective unless adopted by at
207 least the minimum status vote.

208 Section 7. Section **48-4-301** is enacted to read:

209 **Part 3. Accountability**

210 **48-4-301. Standard of conduct for members.**

211 (1) When discharging a duty under this chapter, each member of a member-managed
212 benefit company:

213 (a) shall consider the effect of any action or inaction on:

214 (i) the members of the benefit company;

215 (ii) the employees and workforce of the benefit company;

216 (iii) the interests of customers as beneficiaries of the benefit company's general public
217 benefit purpose or specific public benefit purpose of the benefit company;

218 (iv) community and societal considerations, including those of each community in
219 which offices or facilities of the benefit company or the benefit company's subsidiaries or
220 suppliers are located;

221 (v) the local and global environment;

222 (vi) the short-term and long-term interests of the benefit company, including benefits
223 that may accrue to the benefit company from the benefit company's long-term plans and the
224 possibility that the interests may be best served by the continued independence of the benefit

225 company; and

226 (vii) the ability of the benefit company to accomplish the benefit company's general
227 public benefit purpose and any specific public benefit purpose; and

228 (b) may consider other pertinent factors or the interests of any other group that the
229 member considers appropriate.

230 (2) A member is not required to prioritize the interests of a person or factor described
231 in Subsection (1)(a) or (b) over the interests of any other person or factor, unless the benefit
232 company's certificate of organization states an intention to give priority to certain interests
233 related to the benefit company's accomplishment of the benefit company's general public
234 benefit purpose or a specific public benefit purpose identified in the benefit company's
235 certificate of organization.

236 (3) A member's consideration of interests and factors in accordance with Subsections
237 (1) and (2) does not constitute a violation of Section [48-3a-409](#).

238 (4) A member of a member-managed limited liability company that is a benefit
239 company does not have a duty to a person who is a beneficiary of the benefit company's general
240 public benefit purpose or a specific public benefit purpose arising from the person's status as a
241 beneficiary.

242 Section 8. Section **48-4-302** is enacted to read:

243 **48-4-302. Standard of conduct for managers and officers.**

244 (1) Each manager of a manager-managed benefit company shall consider the interests
245 and factors described in Subsections [48-4-301](#)(1) and (2) when discharging the manager's
246 duties under this chapter and the operating agreement.

247 (2) If a benefit company has a person serving as an officer, the person shall consider
248 the interests and factors described in Subsections [48-4-301](#)(1) and (2) when discharging the
249 person's duties under this chapter and the operating agreement if:

250 (a) the officer has discretion to act with respect to the matter; and

251 (b) it reasonably appears to the officer that the matter may have a material effect on the
252 benefit company's creation of a general public benefit or a specific public benefit identified in

253 the benefit company's certificate of organization.

254 (3) A manager's consideration of the interests and factors described in Subsections
255 48-4-301(1) and (2) does not constitute a violation of Section 48-3a-409.

256 (4) A manager or officer does not have a duty to a person who is a beneficiary of the
257 benefit company's general public benefit purpose or a specific public benefit purpose arising
258 from the person's status as a beneficiary.

259 Section 9. Section **48-4-303** is enacted to read:

260 **48-4-303. Right of action.**

261 (1) Except in a benefit enforcement proceeding, a person may not bring an action or
262 assert a claim against a benefit company or a benefit company's member, manager, or officer
263 with respect to:

264 (a) failure to pursue or create general public benefit or a specific public benefit set forth
265 in the benefit company's certificate of organization; or

266 (b) violation of a duty or standard of conduct under this chapter.

267 (2) A benefit company is not liable for monetary damages under this chapter for a
268 failure of the benefit company to pursue or create general public benefit or a specific public
269 benefit.

270 (3) Only the following may commence or maintain a benefit enforcement proceeding:

271 (a) the benefit company, directly; or

272 (b) one or more of the following, derivatively:

273 (i) a member that owned at least 2% of the total number of interests of a class or series
274 outstanding at the time of the act or omission complained of;

275 (ii) a manager of a manager-managed benefit company;

276 (iii) a person or group of persons who own beneficially or of record at least 5% of the
277 interests in an association of which the benefit company is a subsidiary at the time of the act or
278 omission complained of; or

279 (iv) any person or group of persons specified in the benefit company's certificate of
280 organization or operating agreement.

281 Section 10. Section **48-4-401** is enacted to read:

282 **Part 4. Transparency**

283 **48-4-401. Annual benefit report.**

284 (1) A benefit company shall prepare an annual benefit report that includes:

285 (a) a narrative description of:

286 (i) the ways in which the benefit company pursued the benefit company's general
287 public benefit purpose during the year and the extent to which general public benefit was
288 created;

289 (ii) the ways in which the benefit company pursued any specific public benefit that the
290 benefit company's certificate of organization states is the purpose of the benefit company to
291 create and the extent to which the specific public benefit was created;

292 (iii) any circumstances that have hindered the benefit company's creation of general
293 public benefit or any specific public benefit; and

294 (iv) the process and rationale for selecting or changing the third-party standard used to
295 prepare the benefit report;

296 (b) an assessment of the overall social and environmental performance of the benefit
297 company against a third-party standard:

298 (i) applied consistently with any application of the standard in prior benefit reports; or

299 (ii) accompanied by an explanation of the reasons for any inconsistent application; and

300 (c) any connection between the organization that established the third-party standard,
301 or the organization's directors or officers, or a holder of 5% or more of the governance interests
302 in the organization, and the benefit company or the benefit company's members, managers, or
303 officers or any holder of 5% or more of the outstanding interests in the benefit company,
304 including any financial or governance relationship that might materially affect the credibility of
305 the use of the third-party standard.

306 (2) The assessment described in Subsection (1)(b) does not need to be audited or
307 certified by a third party.

308 Section 11. Section **48-4-402** is enacted to read:

309 **48-4-402. Availability of annual benefit report.**

310 (1) Each year, a benefit company shall send the benefit report described in Section
311 48-4-401 to each member:

312 (a) within 120 days after the day on which the benefit company's fiscal year ends; or

313 (b) the day on which the benefit company delivers any other annual report to the
314 benefit company's members.

315 (2) (a) Within five days after the day on which a benefit company sends a benefit report
316 to each member in accordance with Subsection (1), the benefit company shall:

317 (i) subject to Subsection (2)(b), post a copy of the benefit report on a public portion of
318 the benefit company's website; and

319 (ii) deliver a copy of the benefit report to the division for filing.

320 (b) If a benefit company does not have a website, the benefit company shall provide a
321 copy of the benefit report, without charge, to any person who requests a copy.

322 (c) The benefit company may omit any financial or proprietary information from a copy
323 of a benefit report described in Subsection (2)(a) or (b).

324 (d) The division may charge a fee established by the division in accordance with
325 Section 63J-1-504 for filing an annual benefit report in accordance with this section.