

BENEFIT CORPORATIONS AMENDMENTS

2015 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Keven J. Stratton

Senate Sponsor: Curtis S. Bramble

LONG TITLE

General Description:

This bill modifies benefit corporations amendments.

Highlighted Provisions:

This bill:

- ▶ corrects the definition of "minimum status vote";
- ▶ requires annual benefit reports to be filed with the Division of Corporations and Commercial Code at the same time the corporation files the annual report with the Division of Corporations and Commercial Code; and
- ▶ makes technical changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

16-10b-103, as enacted by Laws of Utah 2014, Chapter 394

16-10b-402, as enacted by Laws of Utah 2014, Chapter 394

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

Section 1. Section **16-10b-103** is amended to read:



28 **16-10b-103. Definitions.**

29 As used in this chapter:

30 (1) "Annual benefit report" means a report required under Section 16-10b-401.

31 (2) "Benefit corporation" means a business corporation:

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

33 (b) the status of which as a benefit corporation has not been terminated.

34 (3) "Benefit director" means the director designated as the benefit director of a benefit
35 corporation under Section 16-10b-302.

36 (4) "Benefit enforcement proceeding" means a proceeding in a court of competent
37 jurisdiction for:

38 (a) failure of a benefit corporation to pursue or create general public benefit or a
39 specific public benefit purpose set forth in its articles of incorporation; or

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

41 (5) "Benefit officer" means the individual designated as the benefit officer of a benefit
42 corporation under Section 16-10b-304.

43 (6) "Business corporation" means a corporation formed under Chapter 10a, Utah
44 Revised Business Corporation Act, or Chapter 11, Professional Corporation Act.

45 (7) "Division" means the Division of Corporations and Commercial Code.

46 (8) "Executive officer" means:

47 (a) a benefit corporation's president;

48 (b) a vice president of the benefit corporation in charge of a principal business unit,
49 division, or function; or

50 (c) any other officer who performs a policy-making function for the benefit
51 corporation.

52 (9) "General public benefit" means a material positive impact on society and the
53 environment:

54 (a) taken as a whole;

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

56 (c) from the business of a benefit corporation.

57 (10) "Immediate family" means a parent, spouse, surviving spouse, child, or sibling of
58 a person.

59 (11) (a) "Independent" means having no material relationship with a benefit
60 corporation or a subsidiary of the benefit corporation.

61 (b) Serving as a benefit director or benefit officer does not make an individual not
62 independent.

63 (c) A material relationship between an individual and a benefit corporation or any of its
64 subsidiaries will be conclusively presumed to exist if one or more of the following apply:

65 (i) the individual is, or has been within the last three years, an employee other than a
66 benefit officer of the benefit corporation or a subsidiary of the benefit corporation;

67 (ii) an immediate family member of the individual is, or has been within the last three
68 years, an executive officer other than a benefit officer of the benefit corporation or a subsidiary
69 of the benefit corporation; or

70 (iii) there is beneficial or record ownership of 5% or more of the outstanding shares of
71 the benefit corporation, calculated as if all outstanding rights to acquire equity interests in the
72 benefit corporation had been exercised, by:

73 (A) the individual; or

74 (B) an entity of which the individual is a director, an officer, or a manager, or in which
75 the individual owns beneficially or of record 5% or more of the outstanding equity interests,
76 calculated as if all outstanding rights to acquire equity interests in the entity had been
77 exercised.

78 (12) "Minimum status vote" means:

79 (a) in the case of a business corporation, in addition to any other required approval or
80 vote, the satisfaction of the following conditions:

81 (i) the shareholders of every class or series may vote as a separate voting group on the
82 corporate action regardless of a limitation stated in the articles of incorporation or bylaws on
83 the voting rights of a class or series; ~~[or]~~ and

84 (ii) the corporate action is required to be approved by vote of the shareholders of each
85 class or series entitled to cast at least two-thirds of the votes that all shareholders of the class or
86 series are entitled to cast on the action; or

87 (b) in the case of a domestic entity other than a business corporation, in addition to any
88 other required approval, vote, or consent, the satisfaction of the following conditions:

89 (i) the holders of every class or series of equity interest in the entity that are entitled to

90 receive a distribution of any kind from the entity may vote on or consent to the action
91 regardless of any otherwise applicable limitation on the voting or consent rights of a class or
92 series; ~~[or]~~ and

93 (ii) the action must be approved by vote or consent of the holders described in
94 Subsection (12)(b)(i) entitled to cast at least two-thirds of the votes or consents that all of those
95 holders are entitled to cast on the action.

96 (13) "Publicly traded corporation" means a business corporation that has shares listed
97 on a national securities exchange or traded in a market maintained by one or more members of
98 a national securities association.

99 (14) "Specific public benefit" includes:

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

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

104 (c) protecting or restoring the environment;

105 (d) improving human health;

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

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

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

110 (15) "Subsidiary" means, in relation to a person, an entity in which the person owns
111 beneficially or of record 50% or more of the outstanding equity interests, calculated as if all
112 outstanding rights to acquire equity interests in the entity had been exercised.

113 (16) "Third-party standard" means a recognized standard for defining, reporting, and
114 assessing corporate social and environmental performance that:

115 (a) assesses the effect of the business and its operations upon the interests listed in
116 Subsections 16-10b-301(1)(a)(ii), (iii), (iv), and (v);

117 (b) is developed by an entity that is not controlled by the benefit corporation;

118 (c) is developed by an entity that both:

119 (i) has access to necessary expertise to assess overall corporate social and
120 environmental performance; and

121 (ii) uses a balanced multistakeholder approach to develop the standard, including a
122 reasonable public comment period; or

123 (d) makes the following information publicly available:

124 (i) about the standard:

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

127 (B) the relative weightings, if any, of those criteria; and

128 (ii) about the development and revision of the standard:

129 (A) the identity of the directors, officers, material owners, and the governing body of
130 the entity that developed and controls revisions to the standard;

131 (B) the process by which revisions to the standard and changes to the membership of
132 the governing body are made; or

133 (C) an accounting of the revenue and sources of financial support for the entity, with
134 sufficient detail to disclose a relationship that could reasonably be considered to present a
135 potential conflict of interest.

136 Section 2. Section **16-10b-402** is amended to read:

137 **16-10b-402. Availability of annual benefit report.**

138 (1) A benefit corporation shall send its annual benefit report required by Section
139 **16-10b-401** to each shareholder on the earlier of:

140 (a) 120 days following the end of the fiscal year of the benefit corporation; or

141 (b) the same time that the benefit corporation delivers another annual report to its
142 shareholders.

143 (2) A benefit corporation shall post all of its annual benefit reports on the public
144 portion of its Internet website, if any, but financial or proprietary information included in the
145 annual benefit reports may be omitted from the annual benefit reports as posted.

146 (3) If a benefit corporation does not have an Internet website, the benefit corporation
147 shall provide a copy of its most recent annual benefit report, without charge, to a person that
148 requests a copy, but financial or proprietary information included in the annual benefit report
149 may be omitted from the copy of the benefit report provided.

150 (4) (a) [~~Concurrently with the delivery of the benefit report to shareholders under~~
151 ~~Subsection (2);~~] At the same time that the benefit corporation files its annual report with the

152 division in accordance with Section [16-10a-1607](#), the benefit corporation shall deliver [a] the
153 most recent copy of the annual benefit report to the division for filing, but financial or
154 proprietary information included in the annual benefit report may be omitted from the annual
155 benefit report as delivered to the division.

156 (b) The division shall charge a fee established by the division in accordance with
157 Section [63J-1-504](#) for filing an annual benefit report.

158 (c) The benefit corporation shall file the annual benefit report in addition to the annual
159 report required by Section [~~16-10a-1603~~] [16-10a-1607](#).

Legislative Review Note
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Office of Legislative Research and General Counsel