

Effective 5/13/2014

**Part 1
General Provisions**

16-10b-101 Title.

This chapter is known as the "Benefit Corporation Act."

Enacted by Chapter 394, 2014 General Session

16-10b-102 Application and effect of chapter.

- (1) This chapter applies to a benefit corporation organized under this chapter.
- (2) The existence of a provision of this chapter does not of itself create an implication that a contrary or different rule of law is applicable to a business corporation that is not a benefit corporation. This chapter does not affect a statute or rule of law that is applicable to a business corporation that is not a benefit corporation.
- (3)
 - (a) Except as otherwise provided in this chapter, Chapter 10a, Utah Revised Business Corporation Act, is applicable to a benefit corporation.
 - (b) A benefit corporation may be subject simultaneously to this chapter and other chapters of this title, including Chapter 11, Professional Corporation Act.
 - (c) This chapter controls over Chapter 10a, Utah Revised Business Corporation Act, and Chapter 11, Professional Corporation Act, or other laws.
- (4) The articles of incorporation or bylaws of a benefit corporation may not limit, be inconsistent with, or supersede a provision of this chapter.

Enacted by Chapter 394, 2014 General Session

16-10b-103 Definitions.

As used in this chapter:

- (1) "Annual benefit report" means a report required under Section 16-10b-401.
- (2) "Benefit corporation" means a business corporation:
 - (a) that elects to become subject to this chapter; and
 - (b) the status of which as a benefit corporation has not been terminated.
- (3) "Benefit director" means the director designated as the benefit director of a benefit corporation under Section 16-10b-302.
- (4) "Benefit enforcement proceeding" means a proceeding in a court of competent jurisdiction for:
 - (a) failure of a benefit corporation to pursue or create general public benefit or a specific public benefit purpose set forth in its articles of incorporation; or
 - (b) a violation of an obligation, duty, or standard of conduct under this chapter.
- (5) "Benefit officer" means the individual designated as the benefit officer of a benefit corporation under Section 16-10b-304.
- (6) "Business corporation" means a corporation formed under Chapter 10a, Utah Revised Business Corporation Act, or Chapter 11, Professional Corporation Act.
- (7) "Division" means the Division of Corporations and Commercial Code.
- (8) "Executive officer" means:
 - (a) a benefit corporation's president;

- (b) a vice president of the benefit corporation in charge of a principal business unit, division, or function; or
 - (c) any other officer who performs a policy-making function for the benefit corporation.
- (9) "General public benefit" means a material positive impact on society and the environment:
- (a) taken as a whole;
 - (b) assessed against a third-party standard; and
 - (c) from the business of a benefit corporation.
- (10) "Immediate family" means a parent, spouse, surviving spouse, child, or sibling of a person.
- (11)
- (a) "Independent" means having no material relationship with a benefit corporation or a subsidiary of the benefit corporation.
 - (b) Serving as a benefit director or benefit officer does not make an individual not independent.
 - (c) A material relationship between an individual and a benefit corporation or any of its subsidiaries will be conclusively presumed to exist if one or more of the following apply:
 - (i) the individual is, or has been within the last three years, an employee other than a benefit officer of the benefit corporation or a subsidiary of the benefit corporation;
 - (ii) an immediate family member of the individual is, or has been within the last three years, an executive officer other than a benefit officer of the benefit corporation or a subsidiary of the benefit corporation; or
 - (iii) there is beneficial or record ownership of 5% or more of the outstanding shares of the benefit corporation, calculated as if all outstanding rights to acquire equity interests in the benefit corporation had been exercised, by:
 - (A) the individual; or
 - (B) an entity of which the individual is a director, an officer, or a manager, or in which the individual owns beneficially or of record 5% or more of the outstanding equity interests, calculated as if all outstanding rights to acquire equity interests in the entity had been exercised.
- (12) "Minimum status vote" means:
- (a) 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 may vote as a separate voting group on the corporate action regardless of a limitation stated in the articles of incorporation or bylaws on the voting rights of a class or series; and
 - (ii) the corporate action is required to 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 on the action; or
 - (b) in the case of a domestic entity 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 entity that are entitled to receive a distribution of any kind from the entity may vote on or consent to the action regardless of any otherwise applicable limitation on the voting or consent rights of a class or series; and
 - (ii) the action must be approved by vote or consent of the holders described in Subsection (12) (b)(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.
- (13) "Publicly traded corporation" means a business corporation that has shares listed on a national securities exchange or traded in a market maintained by one or more members of a national securities association.
- (14) "Specific public benefit" includes:

- (a) providing low-income or underserved individuals or communities with beneficial products or services;
 - (b) promoting economic opportunity for individuals or communities beyond the creation of jobs in the normal course of business;
 - (c) protecting or restoring the environment;
 - (d) improving human health;
 - (e) promoting the arts, sciences, or advancement of knowledge;
 - (f) increasing the flow of capital to entities with a purpose to benefit society or the environment; and
 - (g) conferring any other particular benefit on society or the environment.
- (15) "Subsidiary" means, in relation to a person, an entity in which the person owns beneficially or of record 50% or more of the outstanding equity interests, calculated as if all outstanding rights to acquire equity interests in the entity had been exercised.
- (16) "Third-party standard" means a recognized standard for defining, reporting, and assessing corporate social and environmental performance that:
- (a) assesses the effect of the business and its operations upon the interests listed in Subsections 16-10b-301(1)(a)(ii), (iii), (iv), and (v);
 - (b) is developed by an entity that is not controlled by the benefit corporation;
 - (c) is developed by an entity that both:
 - (i) has access to necessary expertise to assess overall corporate social and environmental performance; and
 - (ii) uses a balanced multistakeholder approach to develop the standard, including a reasonable public comment period; or
 - (d) makes the following information publicly available:
 - (i) about the standard:
 - (A) the criteria considered when measuring the overall social and environmental performance of a business; and
 - (B) the relative weightings, if any, of those criteria; and
 - (ii) about the development and revision of the standard:
 - (A) the identity of the directors, officers, material owners, and the governing body of the entity 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; or
 - (C) an accounting of the revenue and sources of financial support for the entity, with sufficient detail to disclose a relationship that could reasonably be considered to present a potential conflict of interest.

Amended by Chapter 20, 2015 General Session

16-10b-104 Incorporation of benefit corporation.

A person shall incorporate a benefit corporation in accordance with Chapter 10a, Part 2, Incorporation, but its articles of incorporation shall also state that it is a benefit corporation.

Enacted by Chapter 394, 2014 General Session

16-10b-105 Election of benefit corporation status.

(1) A business corporation may become a benefit corporation under this chapter by amending its articles of incorporation so that the articles of incorporation contain, in addition to the

requirements of Section 16-10a-202, a statement that the corporation is a benefit corporation. To be effective, the amendment must be adopted by at least the minimum status vote.

- (2)
- (a) Except as provided in Subsection (2)(b), if a domestic entity that is not a benefit corporation is a party to a merger or the exchanging entity in a share exchange and the surviving entity in the merger or share exchange is to be a benefit corporation, the plan of merger or share exchange must be approved by the domestic entity by at least the minimum status vote.
 - (b) Subsection (2)(a) does not apply in the case of a corporation that is a party to a merger if the shareholders of the corporation are not entitled to vote on the merger pursuant to Section 16-10a-1104.

Enacted by Chapter 394, 2014 General Session

16-10b-106 Termination of benefit corporation status.

- (1) A benefit corporation may terminate its status as a benefit corporation and cease to be subject to this chapter by amending its articles of incorporation to delete the provision required by Section 16-10b-104 or 16-10b-105 to be stated in the articles of incorporation of a benefit corporation. To be effective, the amendment must be adopted by at least the minimum status vote.
- (2)
 - (a) Except as provided in Subsection (2)(b), if a plan of merger or share exchange would have the effect of terminating the status of a business corporation as a benefit corporation, the plan must be adopted by at least the minimum status vote to be effective.
 - (b) Subsection (2)(a) does not apply in the case of a corporation that is a party to a merger if the shareholders of the corporation are not entitled to vote on the merger pursuant to Section 16-10a-1104.
- (3) A 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, is not effective unless the transaction is approved by at least the minimum status vote.

Enacted by Chapter 394, 2014 General Session