

Effective 5/13/2014

**Part 3
Accountability**

16-10b-301 Standard of conduct for directors.

- (1) Subject to Subsection (2), the board of directors, committees of the board of directors, and individual directors of a benefit corporation, in discharging the duties of their respective positions and in considering the best interests of the benefit corporation:
 - (a) shall consider the effects of an action or inaction upon:
 - (i) the shareholders of the benefit corporation;
 - (ii) the employees and workforce of the benefit corporation, its subsidiaries, and its suppliers;
 - (iii) the interests of customers as beneficiaries of the general public benefit or specific public benefit purposes of the benefit corporation;
 - (iv) community and societal factors, including those of each community in which offices or facilities of the benefit corporation, its subsidiaries, or its suppliers are located;
 - (v) the local and global environment;
 - (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; and
 - (vii) the ability of the benefit corporation to accomplish its general public benefit purpose and a specific public benefit purpose; and
 - (b) may consider other pertinent factors or the interests of any other group that they consider appropriate.
- (2)
 - (a) Subject to Subsection (2)(b), in discharging the duties of their respective positions and in considering the best interests of the benefit corporation, the board of directors, committees of the board of directors, and individual directors of a benefit corporation need not give priority to a particular interest or factor referred to in Subsection (1) over any other interest or factor.
 - (b) Subsection (2)(a) does not apply if the benefit corporation has stated in its articles of incorporation its intention to give priority to certain interests or factors related to its accomplishment of its general public benefit purpose or of a specific public benefit purpose identified in its articles of incorporation.
- (3) The consideration of interests and factors in the manner required by Subsections (1) and (2) does not constitute a violation of Section 16-10a-840.
- (4) Except as provided in the articles of incorporation or bylaws, a director is not personally liable for monetary damages for:
 - (a) an action or inaction in the course of performing the duties of a director under Subsections (1) and (2) if the director performed the duties of office in compliance with Section 16-10a-840 and this section; or
 - (b) failure of the benefit corporation to pursue or create general public benefit or specific public benefit.
- (5) A director does not have a duty to a person that is a beneficiary of the general public benefit purpose or a specific public benefit purpose of a benefit corporation arising from the status of the person as a beneficiary.

Enacted by Chapter 394, 2014 General Session

16-10b-302 Benefit director.

- (1) The board of directors of a benefit corporation that is a publicly traded corporation shall, and the board of directors of any other benefit corporation may, include a director, who:
 - (a) is designated the benefit director; and
 - (b) shall have, in addition to the powers, duties, rights, and immunities of the other directors of the benefit corporation, the powers, duties, rights, and immunities provided in this chapter.
- (2)
 - (a) A benefit director shall be elected, and may be removed, in the manner provided by Sections 16-10a-801 through 16-10a-810.
 - (b) Except as provided in Subsection (6), the benefit director shall be an individual who is independent.
 - (c) The benefit director may serve as the benefit officer at the same time as serving as the benefit director.
 - (d) The articles of incorporation or bylaws of a benefit corporation may prescribe additional qualifications of the benefit director not inconsistent with this Subsection (2).
- (3) The benefit director shall prepare, and the benefit corporation shall include in the annual benefit report to shareholders required by Section 16-10b-401, the opinion of the benefit director on all of the following:
 - (a) whether the benefit corporation acted in accordance with its general public benefit purpose and any specific public benefit purpose in all material respects during the period covered by the report;
 - (b) whether the directors and officers complied with Subsections 16-10b-301(1) and 16-10b-303(1), respectively; and
 - (c) if, in the opinion of the benefit director, the benefit corporation or its directors or officers failed to act or comply in the manner described in Subsections (3)(a) and (b), a description of the ways in which the benefit corporation or its directors or officers failed to act or comply.
- (4) The act or inaction of an individual in the capacity of a benefit director shall constitute for all purposes an act or inaction of that individual in the capacity of a director of the benefit corporation.
- (5) Regardless of whether the articles of incorporation or bylaws of a benefit corporation include a provision eliminating or limiting the personal liability of directors authorized by Section 16-10a-841, a benefit director may not be personally liable for an 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.
- (6) The benefit director of a professional corporation does not need to be independent.

Enacted by Chapter 394, 2014 General Session

16-10b-303 Standard of conduct for officers.

- (1) An officer of a benefit corporation shall consider the interests and factors described in Subsection 16-10b-301(1) in the manner provided in Subsections 16-10b-301(1) and (2) if:
 - (a) the officer has discretion to act with respect to a matter; and
 - (b) it reasonably appears to the officer that the matter may have a material effect on the creation by the benefit corporation of general public benefit or a specific public benefit identified in the articles of incorporation of the benefit corporation.
- (2) The consideration of interests and factors in the manner described in Subsection (1) may not constitute a violation of Section 16-10a-831 or 16-10a-840.

- (3) Except as provided in the articles of incorporation or bylaws of a benefit corporation, an officer is not personally liable for monetary damages for:
- (a) an action or inaction as an officer in the course of performing the duties of an officer under Subsection (1) if the officer performed the duties of the position in compliance with Section 16-10a-831 or 16-10a-840 and this section; or
 - (b) failure of the benefit corporation to pursue or create general public benefit or specific public benefit.
- (4) An officer does not have a duty to a person that is a beneficiary of the general public benefit purpose or a specific public benefit purpose of a benefit corporation arising from the status of the person as a beneficiary.

Enacted by Chapter 394, 2014 General Session

16-10b-304 Benefit officer.

- (1) A benefit corporation may have an officer designated as the benefit officer.
- (2) A benefit officer has:
- (a) the powers and duties relating to the purpose of the corporation to create general public benefit or specific public benefit provided:
 - (i) by the bylaws; or
 - (ii) absent controlling provisions in the bylaws, by resolutions or orders of the board of directors; and
 - (b) the duty to prepare the benefit report required by Section 16-10b-401.

Enacted by Chapter 394, 2014 General Session

16-10b-305 Right of action.

- (1) Except in a benefit enforcement proceeding, a person may not bring an action or assert a claim against a benefit corporation or its directors or officers with respect to:
- (a) failure to pursue or create general public benefit or a specific public benefit set forth in its articles of incorporation; or
 - (b) violation of an obligation, duty, or standard of conduct under this chapter.
- (2) A benefit corporation may not be liable for monetary damages under this chapter for a failure of the benefit corporation to pursue or create general public benefit or a specific public benefit.
- (3)
- (a) A benefit enforcement proceeding may be commenced or maintained only:
 - (i) directly by the benefit corporation; or
 - (ii) derivatively by:
 - (A) a person or group of persons that owns beneficially or of record at least 2% of the total number of shares of a class or series outstanding at the time of the act or omission complained of;
 - (B) a director;
 - (C) a person or group of persons that own beneficially or of record 5% or more of the outstanding equity interests in an entity of which the benefit corporation is a subsidiary at the time of the act or omission complained of; or
 - (D) other persons as specified in the articles of incorporation or bylaws of the benefit corporation.

- (b) A benefit corporation may provide in its articles of incorporation a greater degree of ownership by a person or group of persons than those listed under Subsection (3)(a) to bring a derivative action.
- (4) For purposes of this section, a person is the beneficial owner of shares or equity interests if the shares or equity interests are held in a voting trust or by a nominee on behalf of the beneficial owner.

Enacted by Chapter 394, 2014 General Session