

Effective 5/8/2018

**Part 1
General Provisions**

48-4-101 Title.

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

Enacted by Chapter 201, 2018 General Session

48-4-102 Application and effect of chapter.

- (1) This chapter applies to a benefit company organized under this chapter.
- (2)
 - (a) The existence of a provision in this chapter does not itself create an implication that a contrary or different rule of law is applicable to a limited liability company that is not a benefit company.
 - (b) This chapter does not affect a statute or rule of law that is applicable to a limited liability company that is not a benefit company.
- (3)
 - (a) Except as otherwise provided in this chapter, Title 48, Chapter 3a, Utah Revised Uniform Limited Liability Company Act, applies to a benefit company.
 - (b) The provisions of this chapter control over any inconsistent provision of Title 48, Chapter 3a, Utah Revised Uniform Limited Liability Company Act.
- (4) The operating agreement of a benefit company may not limit, be inconsistent with, or supersede a provision of this chapter.

Amended by Chapter 136, 2019 General Session

48-4-103 Definitions.

As used in this chapter:

- (1) "Benefit company" means a limited liability company:
 - (a) that elects to become subject to this chapter; and
 - (b) the status of which as a benefit company has not been terminated.
- (2) "Benefit enforcement proceeding" means a proceeding in a court of competent jurisdiction for:
 - (a) failure of a benefit company to pursue or create general public benefit or a specific public benefit described in the benefit company's certificate of organization; or
 - (b) a violation of an obligation, duty, or standard of conduct under this chapter.
- (3) "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 company.
- (4) "Immediate family member" means a parent, spouse, surviving spouse, child, or sibling.
- (5)
 - (a) "Independent person" means a person who has no material relationship with a benefit company or a subsidiary of the benefit company.
 - (b) "Independent person" does not include a person:
 - (i) who is, or has been within the last three years, an employee of the benefit company or a subsidiary of the benefit company;

- (ii) whose immediate family member is, or has been within the last three years, an executive officer of the benefit company or a subsidiary of the benefit company;
 - (iii) who owns 5% or more of the outstanding interests of the benefit company, calculated as if all outstanding rights to acquire interests in the benefit company have been exercised; or
 - (iv) who owns 5% or more of the outstanding interests in an entity, calculated as if all outstanding rights to acquire interests in the entity have been exercised, that owns 5% or more of the outstanding interests of the benefit company, calculated as if all outstanding rights to acquire interests in the benefit company have been exercised.
- (6) "Minimum status vote" means:
- (a) in the case of a limited liability company, in addition to any other required approval or vote, the satisfaction of the following conditions:
 - (i) the members of every class or series may vote as a separate voting group on an action of the limited liability company regardless of a limitation state in the certificate of organization or operating agreement on the voting rights of any class or series; and
 - (ii) the action of the limited liability company is required to be approved by vote of the members of each class or series entitled to cast at least two-thirds of the votes that all members of the class or series are entitled to cast on the action; or
 - (b) in the case of a domestic entity other than a limited liability company, 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 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 voting or consent rights of the class or series; and
 - (ii) the action of the limited liability company is required to be approved by vote or consent of the holders described in Subsection (6)(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.
- (7) "Owns" includes ownership as the owner of record or as a beneficial owner.
- (8) "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.
- (9) "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 have been exercised.
- (10) "Third-party standard" means a standard for defining, reporting, and assessing overall social and environmental performance that:
- (a) assesses the effect of a business and a business's operations on the interests described in Subsections 48-4-301(1)(a)(ii) through (v);
 - (b) is developed by an entity:
 - (i) that is independent of the benefit company;
 - (ii) whose governing body is comprised of no more than one-third of members who are representatives of any of the following:

- (A) an association of businesses that operate in a specific industry whose members are measured by the standard;
- (B) businesses from a specific industry or an association of businesses in that industry; or
- (C) businesses whose performance is assessed against the standard;
- (iii) that is not materially financed by an association or business described in Subsection (10)(b)(ii);
- (iv) that has access to necessary expertise to assess overall social and environmental performance;
- (v) uses a balanced multistakeholder approach to develop the standard, including a public comment period of at least 30 days; and
- (vi) makes the following information publically available:
 - (A) the criteria considered when measuring the overall social and environmental performance of a business;
 - (B) the relative weightings, if any, of the criteria described in Subsection (10)(b)(vi)(A);
 - (C) the identity of each director, officer, material owner, and governing body of the entity that developed and controls revisions to the standard;
 - (D) the process by which revisions to the standard and changes to the membership of the governing body are made; and
 - (E) 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.

Enacted by Chapter 201, 2018 General Session

48-4-104 Benefit company status.

- (1) A person may form a benefit company in accordance with Title 48, Chapter 3a, Utah Revised Uniform Limited Liability Company Act, except the certificate of organization shall state that the limited liability company is a benefit company.
- (2)
 - (a) A limited liability company may elect to become a benefit company by amending, in accordance with Section 48-3a-202, the limited liability company's certificate of organization to contain a statement that the limited liability company is a benefit company.
 - (b) An amendment described in Subsection (2)(a) is not effective unless the amendment is adopted by at least the minimum status vote.
- (3) If an entity that is not a benefit company is a party to a merger or is the exchanging entity in an interest exchange, and the surviving entity in the merger or interest exchange is a benefit company, the merger or interest exchange is not effective unless the merger or interest exchange is adopted by the entity by at least the minimum status vote.
- (4)
 - (a) A benefit company may terminate the benefit company's status as a benefit company and cease to be subject to this chapter by amending the benefit company's certificate of organization in accordance with Section 48-3a-202 to delete the provision described in Subsection (1) or (2) that states that the limited liability company is a benefit company.
 - (b) An amendment described in Subsection (4)(a) is not effective unless the amendment is adopted by at least the minimum status vote.
- (5)

- (a) If a proposed merger or interest exchange would have the effect of terminating a benefit company's status as a benefit company, the merger or interest exchange is not effective unless the merger or interest exchange is adopted by at least the minimum status vote.
- (b) Unless the transaction is in the usual and regular course of the benefit company's business, a sale, lease, exchange, or other disposition of all or substantially all of the assets of a benefit company is not effective unless the transaction is approved by at least the minimum status vote.

Enacted by Chapter 201, 2018 General Session

48-4-105 Benefit company name.

- (1) The name of a benefit company may contain the words "benefit limited liability company," "benefit limited company," or "benefit company" or the abbreviation "B.L.L.C.," "BLLC," "B.L.C.," or "BLC." "Limited" may be abbreviated as "Ltd.," and "company" may be abbreviated as "Co."
- (2) A benefit company that complies with Subsection (1) satisfies the requirement described in Subsection 48-3a-108(1).

Enacted by Chapter 201, 2018 General Session