

LIMITED LIABILITY COMPANY AMENDMENTS

2018 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Keven J. Stratton

Senate Sponsor: _____

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 general public benefit purpose;
- ▶ 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:

ENACTS:

48-4-101, Utah Code Annotated 1953



- 28 [48-4-102](#), Utah Code Annotated 1953
- 29 [48-4-103](#), Utah Code Annotated 1953
- 30 [48-4-104](#), Utah Code Annotated 1953
- 31 [48-4-201](#), Utah Code Annotated 1953
- 32 [48-4-301](#), Utah Code Annotated 1953
- 33 [48-4-302](#), Utah Code Annotated 1953
- 34 [48-4-303](#), Utah Code Annotated 1953
- 35 [48-4-401](#), Utah Code Annotated 1953
- 36 [48-4-402](#), Utah Code Annotated 1953

37

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

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

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

41 **Part 1. General Provisions**

42 **48-4-101. Title.**

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

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

45 **48-4-102. Application and effect of chapter.**

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

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

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

52 (3) (a) Except as otherwise provided in this chapter, Title 48, Chapter 3a, Utah Revised
53 Uniform Limited Liability Company Act, applies to a benefit company.

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

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

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

59 **48-4-103. Definitions.**60 As used in this chapter:61 (1) "Benefit company" means a limited liability company:62 (a) that elects to become subject to this chapter; and63 (b) the status of which as a benefit company has not been terminated.64 (2) "Benefit enforcement proceeding" means a proceeding in a court of competent
65 jurisdiction for:66 (a) failure of a benefit company to pursue or create a general public benefit or a
67 specific public benefit described in the benefit company's certificate of organization; or68 (b) a violation of an obligation, duty, or standard of conduct under this chapter.69 (3) "General public benefit" means a material positive impact on society and the
70 environment:71 (a) taken as a whole;72 (b) assessed against a third-party standard; and73 (c) from the business of a benefit company.74 (4) "Immediate family member" means a parent, spouse, surviving spouse, child, or
75 sibling.76 (5) (a) "Independent person" means a person who has no material relationship with a
77 benefit company or a subsidiary of the benefit company.78 (b) "Independent person" does not include a person:79 (i) who is, or has been within the last three years, an employee of the benefit company
80 or a subsidiary of the benefit company;81 (ii) whose immediate family member is, or has been within the last three years, an
82 executive officer of the benefit company or a subsidiary of the benefit company;83 (iii) who owns 5% or more of the outstanding interests of the benefit company,
84 calculated as if all outstanding rights to acquire interests in the benefit company have been
85 exercised; or86 (iv) who owns 5% or more of the outstanding interests in an entity, calculated as if all
87 outstanding rights to acquire interests in the entity have been exercised, that owns 5% or more
88 of the outstanding interests of the benefit company, calculated as if all outstanding rights to
89 acquire interests in the benefit company have been exercised.

90 (6) "Minimum status vote" means:

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

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

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

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

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

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

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

108 (8) "Specific public benefit" includes:

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

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

113 (c) protecting or restoring the environment;

114 (d) improving human health;

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

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

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

119 (9) "Subsidiary" means, in relation to a person, an entity in which the person owns
120 beneficially or of record, 50% or more of the outstanding equity interests, calculated as if all

121 outstanding rights to acquire equity interests in the entity have been exercised.

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

124 (a) assesses the effect of a business and a business's operations on the interests

125 described in Subsections 48-4-301(1)(a)(ii) through (v);

126 (b) is developed by an entity:

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

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

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

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

133 or

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

135 (iii) that is not materially financed by an association or business described in

136 Subsection (10)(b)(ii);

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

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

141 (vi) makes the following information publically available:

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

144 (B) the relative weightings, if any, of the criteria described in Subsection

145 (10)(b)(vi)(A);

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

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

150 (E) an accounting of the revenue and sources of financial support for the entity, with
151 sufficient detail to disclose a relationship that could reasonably be considered to present a

152 potential conflict of interest.

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

154 **48-4-104. Benefit company status.**

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

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

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

163 (3) If an entity that is not a benefit company is a party to a merger or is the exchanging
164 entity in an interest exchange, and the surviving entity in the merger or interest exchange is a
165 benefit company, the merger or interest exchange is not effective unless the merger or interest
166 exchange is adopted by the entity by at least the minimum status vote.

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

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

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

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

180 Section 5. Section **48-4-201** is enacted to read:

181 **Part 2. Company Purposes**

182 **48-4-201. Company purpose.**

183 (1) In addition to the benefit company's purpose under Section 48-3a-104, a benefit
184 company shall have a purpose of creating general public benefit.

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

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

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

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

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

196 Section 6. Section **48-4-301** is enacted to read:

197 **Part 3. Accountability**

198 **48-4-301. Standard of conduct for members.**

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

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

202 (i) the members of the benefit company;

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

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

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

209 (v) the local and global environment;

210 (vi) the short-term and long-term interests of the benefit company, including benefits
211 that may accrue to the benefit company from the benefit company's long-term plans and the
212 possibility that the interests may be best served by the continued independence of the benefit
213 company; and

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

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

218 (2) A member is not required to prioritize the interests of a person or factor described
219 in Subsection (1)(a) or (b) over the interests of any other person or factor, unless the benefit
220 company's certificate of organization states an intention to give priority to certain interests
221 related to the benefit company's accomplishment of the benefit company's general public
222 benefit purpose or a specific public benefit purpose identified in the benefit company's
223 certificate of organization.

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

226 (4) A member is not personally liable for monetary damages for:

227 (a) any action or inaction taken as a member of a member-managed limited liability
228 company in the course of performing the duties described in Subsection (1) or (2), unless the
229 action or inaction constitutes self-dealing, willful misconduct, or a knowing violation of law; or

230 (b) the failure of the benefit company to pursue or create a general public benefit or a
231 specific public benefit purpose.

232 (5) A member of a member-managed limited liability company that is a benefit
233 company does not have a duty to a person who is a beneficiary of the benefit company's general
234 public benefit purpose or specific public benefit purpose arising from the person's status as a
235 beneficiary.

236 Section 7. Section **48-4-302** is enacted to read:

237 **48-4-302. Standard of conduct for managers and officers.**

238 (1) Each manager of a manager-managed benefit company shall consider the interests
239 and factors described in Subsections 48-4-301(1) and (2) when discharging the manager's
240 duties under this chapter and the operating agreement.

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

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

245 (b) it reasonably appears to the officer that the matter may have a material affect on the
246 benefit company's creation of a general public benefit or a specific public benefit identified in
247 the benefit company's certificate of organization.

248 (3) A manager's consideration of the interests and factors described in Subsections
249 48-4-301(1) and (2) does not constitute a violation of Section 48-3a-409.

250 (4) A manager or officer is not personally liable for monetary damages for:

251 (a) any action or inaction taken as a manager or officer in the course of performing the
252 duties described in Subsection 48-4-301(1) or (2), unless the action or inaction constitutes
253 self-dealing, willful misconduct, or a knowing violation of law; or

254 (b) the failure of the benefit company to pursue or create a general public benefit or a
255 specific public benefit.

256 (5) 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 8. 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 the general public benefit or a specific public benefit set
265 forth 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 a 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 9. 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 the 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 the 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 10. 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) A benefit company shall post each of the benefit company's benefit reports on a

316 public portion of the benefit company's website.

317 (b) A benefit company is not required to include any financial or proprietary

318 information in the benefit report that the benefit company posts to the benefit company's

319 website.

320 (3) (a) If a benefit company does not have a website, the benefit company shall provide

321 a copy of the benefit company's most recent benefit report, without charge, to any person who

322 requests a copy.

323 (b) The benefit company may omit any financial or proprietary information from a

324 copy of a benefit report described in Subsection (3)(a).

Legislative Review Note
Office of Legislative Research and General Counsel