

**Representative Keven J. Stratton** proposes the following substitute bill:

**LIMITED LIABILITY COMPANY AMENDMENTS**

2018 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Keven J. Stratton**

Senate Sponsor: Todd Weiler

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**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 purpose of creating general public benefit;
- ▶ 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:**



26 ENACTS:

27 **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 **48-4-105**, Utah Code Annotated 1953

32 **48-4-201**, Utah Code Annotated 1953

33 **48-4-301**, Utah Code Annotated 1953

34 **48-4-302**, Utah Code Annotated 1953

35 **48-4-303**, Utah Code Annotated 1953

36 **48-4-401**, Utah Code Annotated 1953

37 **48-4-402**, Utah Code Annotated 1953

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

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

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

42 **Part 1. General Provisions**

43 **48-4-101. Title.**

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

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

46 **48-4-102. Application and effect of chapter.**

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

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

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

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

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

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

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

60 **48-4-103. Definitions.**

61 As used in this chapter:

62 (1) "Benefit company" means a limited liability company:

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

64 (b) the status of which as a benefit company has not been terminated.

65 (2) "Benefit enforcement proceeding" means a proceeding in a court of competent  
66 jurisdiction for:

67 (a) failure of a benefit company to pursue or create general public benefit or a specific  
68 public benefit described in the benefit company's certificate of organization; or

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

70 (3) "General public benefit" means a material positive impact on society and the  
71 environment:

72 (a) taken as a whole;

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

74 (c) from the business of a benefit company.

75 (4) "Immediate family member" means a parent, spouse, surviving spouse, child, or  
76 sibling.

77 (5) (a) "Independent person" means a person who has no material relationship with a  
78 benefit company or a subsidiary of the benefit company.

79 (b) "Independent person" does not include a person:

80 (i) who is, or has been within the last three years, an employee of the benefit company  
81 or a subsidiary of the benefit company;

82 (ii) whose immediate family member is, or has been within the last three years, an  
83 executive officer of the benefit company or a subsidiary of the benefit company;

84 (iii) who owns 5% or more of the outstanding interests of the benefit company,  
85 calculated as if all outstanding rights to acquire interests in the benefit company have been  
86 exercised; or

87 (iv) who owns 5% or more of the outstanding interests in an entity, calculated as if all

88 outstanding rights to acquire interests in the entity have been exercised, that owns 5% or more  
89 of the outstanding interests of the benefit company, calculated as if all outstanding rights to  
90 acquire interests in the benefit company have been exercised.

91 (6) "Minimum status vote" means:

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

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

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

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

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

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

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

109 (8) "Specific public benefit" includes:

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

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

114 (c) protecting or restoring the environment;

115 (d) improving human health;

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

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

- 119 (g) conferring any other particular benefit on society or the environment.
- 120 (9) "Subsidiary" means, in relation to a person, an entity in which the person owns  
121 beneficially or of record, 50% or more of the outstanding equity interests, calculated as if all  
122 outstanding rights to acquire equity interests in the entity have been exercised.
- 123 (10) "Third-party standard" means a standard for defining, reporting, and assessing  
124 overall social and environmental performance that:
- 125 (a) assesses the effect of a business and a business's operations on the interests  
126 described in Subsections [48-4-301](#)(1)(a)(ii) through (v);
- 127 (b) is developed by an entity:
- 128 (i) that is independent of the benefit company;
- 129 (ii) whose governing body is comprised of no more than one-third of members who are  
130 representatives of any of the following:
- 131 (A) an association of businesses that operate in a specific industry whose members are  
132 measured by the standard;
- 133 (B) businesses from a specific industry or an association of businesses in that industry;  
134 or
- 135 (C) businesses whose performance is assessed against the standard;
- 136 (iii) that is not materially financed by an association or business described in  
137 Subsection (10)(b)(ii);
- 138 (iv) that has access to necessary expertise to assess overall social and environmental  
139 performance;
- 140 (v) uses a balanced multistakeholder approach to develop the standard, including a  
141 public comment period of at least 30 days; and
- 142 (vi) makes the following information publically available:
- 143 (A) the criteria considered when measuring the overall social and environmental  
144 performance of a business;
- 145 (B) the relative weightings, if any, of the criteria described in Subsection  
146 (10)(b)(vi)(A);
- 147 (C) the identity of each director, officer, material owner, and governing body of the  
148 entity that developed and controls revisions to the standard;
- 149 (D) the process by which revisions to the standard and changes to the membership of

150 the governing body are made; and

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

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

155 **48-4-104. Benefit company status.**

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

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

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

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

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

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

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

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

181 Section 5. Section **48-4-105** is enacted to read:

182 **48-4-105. Benefit company name.**

183 (1) The name of a benefit company may contain the words "benefit limited liability  
184 company," "benefit limited company," or "benefit company" or the abbreviation "B.L.L.C.,"  
185 "BLLC," "B.L.C.," or "BLC." "Limited" may be abbreviated as "Ltd.," and "company" may be  
186 abbreviated as "Co."

187 (2) A benefit company that complies with Subsection (1) satisfies the requirement  
188 described in Subsection [48-3a-108\(1\)](#).

189 Section 6. Section **48-4-201** is enacted to read:

190 **Part 2. Company Purposes**

191 **48-4-201. Company purpose.**

192 (1) In addition to the benefit company's purpose under Section [48-3a-104](#), a benefit  
193 company shall have a purpose of creating general public benefit.

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

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

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

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

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

205 Section 7. Section **48-4-301** is enacted to read:

206 **Part 3. Accountability**

207 **48-4-301. Standard of conduct for members.**

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

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

211 (i) the members of the benefit company;

212 (ii) the employees and workforce of the benefit company;  
213 (iii) the interests of customers as beneficiaries of the benefit company's general public  
214 benefit purpose or specific public benefit purpose of the benefit company;

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

218 (v) the local and global environment;

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

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

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

227 (2) A member is not required to prioritize the interests of a person or factor described  
228 in Subsection (1)(a) or (b) over the interests of any other person or factor, unless the benefit  
229 company's certificate of organization states an intention to give priority to certain interests  
230 related to the benefit company's accomplishment of the benefit company's general public  
231 benefit purpose or a specific public benefit purpose identified in the benefit company's  
232 certificate of organization.

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

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

239 Section 8. Section **48-4-302** is enacted to read:

240 **48-4-302. Standard of conduct for managers and officers.**

241 (1) Each manager of a manager-managed benefit company shall consider the interests  
242 and factors described in Subsections [48-4-301](#)(1) and (2) when discharging the manager's



243 duties under this chapter and the operating agreement.

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

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

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

251 (3) A manager's consideration of the interests and factors described in Subsections  
252 48-4-301(1) and (2) does not constitute a violation of Section 48-3a-409.

253 (4) A manager or officer does not have a duty to a person who is a beneficiary of the  
254 benefit company's general public benefit purpose or a specific public benefit purpose arising  
255 from the person's status as a beneficiary.

256 Section 9. Section 48-4-303 is enacted to read:

257 **48-4-303. Right of action.**

258 (1) Except in a benefit enforcement proceeding, a person may not bring an action or  
259 assert a claim against a benefit company or a benefit company's member, manager, or officer  
260 with respect to:

261 (a) failure to pursue or create general public benefit or a specific public benefit set forth  
262 in the benefit company's certificate of organization; or

263 (b) violation of a duty or standard of conduct under this chapter.

264 (2) A benefit company is not liable for monetary damages under this chapter for a  
265 failure of the benefit company to pursue or create general public benefit or a specific public  
266 benefit.

267 (3) Only the following may commence or maintain a benefit enforcement proceeding:

268 (a) the benefit company, directly; or

269 (b) one or more of the following, derivatively:

270 (i) a member that owned at least 2% of the total number of interests of a class or series  
271 outstanding at the time of the act or omission complained of;

272 (ii) a manager of a manager-managed benefit company;

273 (iii) a person or group of persons who own beneficially or of record at least 5% of the

274 interests in an association of which the benefit company is a subsidiary at the time of the act or  
275 omission complained of; or

276 (iv) any person or group of persons specified in the benefit company's certificate of  
277 organization or operating agreement.

278 Section 10. Section **48-4-401** is enacted to read:

279 **Part 4. Transparency**

280 **48-4-401. Annual benefit report.**

281 (1) A benefit company shall prepare an annual benefit report that includes:

282 (a) a narrative description of:

283 (i) the ways in which the benefit company pursued the benefit company's general  
284 public benefit purpose during the year and the extent to which general public benefit was  
285 created;

286 (ii) the ways in which the benefit company pursued any specific public benefit that the  
287 benefit company's certificate of organization states is the purpose of the benefit company to  
288 create and the extent to which the specific public benefit was created;

289 (iii) any circumstances that have hindered the benefit company's creation of the general  
290 public benefit or any specific public benefit; and

291 (iv) the process and rationale for selecting or changing the third-party standard used to  
292 prepare the benefit report;

293 (b) an assessment of the overall social and environmental performance of the benefit  
294 company against a third-party standard:

295 (i) applied consistently with any application of the standard in prior benefit reports; or

296 (ii) accompanied by an explanation of the reasons for any inconsistent application; and

297 (c) any connection between the organization that established the third-party standard,  
298 or the organization's directors or officers, or a holder of 5% or more of the governance interests  
299 in the organization, and the benefit company or the benefit company's members, managers, or  
300 officers or any holder of 5% or more of the outstanding interests in the benefit company,  
301 including any financial or governance relationship that might materially affect the credibility of  
302 the use of the third-party standard.

303 (2) The assessment described in Subsection (1)(b) does not need to be audited or  
304 certified by a third party.

305 Section 11. Section ~~48-4-402~~ is enacted to read:

306 **48-4-402. Availability of annual benefit report.**

307 (1) Each year, a benefit company shall send the benefit report described in Section  
308 48-4-401 to each member:

309 (a) within 120 days after the day on which the benefit company's fiscal year ends; or

310 (b) the day on which the benefit company delivers any other annual report to the  
311 benefit company's members.

312 (2) (a) Within five days after the day on which a benefit company sends a benefit report  
313 to each member in accordance with Subsection (1), the benefit company shall:

314 (i) subject to Subsection (2)(b), post a copy of the benefit report on a public portion of  
315 the benefit company's website; and

316 (ii) deliver a copy of the benefit report to the division for filing.

317 (b) If a benefit company does not have a website, the benefit company shall provide a  
318 copy of the benefit report, without charge, to any person who requests a copy.

319 (c) The benefit company may omit any financial or proprietary information from a copy  
320 of a benefit report described in Subsection (2)(a) or (b).

321 (d) The division may charge a fee established by the division in accordance with  
322 Section 63J-1-504 for filing an annual benefit report in accordance with this section.