

# Enrolled House Bill 2296

Sponsored by Representatives READ, BAILEY; Representative FAGAN, Senator EDWARDS (Pre-session filed.)

CHAPTER .....

AN ACT

Relating to benefit companies.

Whereas the Legislative Assembly intends with this 2013 Act to provide the legal means to create and operate benefit companies, a form of business entity the purpose of which is to create benefits for the public in addition to generating profit for the entity's owners; and

Whereas the Legislative Assembly understands and intends that the provisions of this 2013 Act do not give a benefit company a preference for public contracts, provide a benefit company with any tax advantage or otherwise permit the State of Oregon, an agency of the State of Oregon, a local government or an agency of a local government to grant a preference or advantage to a benefit company that is not available on the same basis to any other person or entity, or that is solely a consequence of the benefit company's status as a benefit company; now, therefore,

**Be It Enacted by the People of the State of Oregon:**

**SECTION 1. As used in sections 1 to 11 of this 2013 Act:**

(1) "Benefit company" means a corporation or a limited liability company that is incorporated, organized, formed or created under section 3 of this 2013 Act.

(2) "Benefit governor" means an individual who is designated as the benefit governor of a benefit company under section 7 of this 2013 Act.

(3) "General public benefit" means a material positive impact on society and the environment, taken as a whole, from the business and operations of a benefit company.

(4) "Governor" means a director of a corporation that is a benefit company, a member in a member-managed limited liability company that is a benefit company or a manager in a manager-managed limited liability company that is a benefit company.

(5) "Minimum status vote" means a decision that an entity makes in accordance with section 4 of this 2013 Act.

(6) "Third-party standard" means a recognized standard for defining, reporting and assessing an entity's social and environmental performance that:

(a) Establishes criteria that apply to all of the interests described in section 6 (1)(b), (c), (d), (e) and (f) of this 2013 Act;

(b) Is developed by an organization that is not under the control of the benefit company or any of the benefit company's affiliates; and

(c) Has information publicly available concerning:

(A) The criteria the standard uses to measure an entity's overall social and environmental performance and the relative weight the standard gives to each criterion;

(B) The process by which the standard is developed and revised; and

(C) The organization that developed the standard that is sufficient in detail to disclose any relationships that might compromise the organization's independence, including:

- (i) The material owners and members of the organization's governing body;
- (ii) How the organization selects members of the organization's governing body; and
- (iii) The organization's sources of financial support.

**SECTION 2.** (1) Except as otherwise provided in sections 1 to 11 of this 2013 Act, sections 1 to 11 of this 2013 Act apply to:

(a) A corporation that states in the corporation's articles of incorporation or articles of conversion that the corporation is subject to sections 1 to 11 of this 2013 Act;

(b) A limited liability company that states in the limited liability company's articles of organization or articles of conversion that the limited liability company is subject to sections 1 to 11 of this 2013 Act; or

(c) A corporation or limited liability company that elects to become a benefit company under section 3 of this 2013 Act.

(2)(a) Except as provided in paragraph (c) of this subsection, a benefit company that is a corporation incorporated under ORS chapter 60 is subject to ORS chapter 60 and to sections 1 to 11 of this 2013 Act.

(b) Except as provided in paragraph (c) of this subsection, a benefit company that is a limited liability company organized under ORS chapter 63 is subject to ORS chapter 63 and to sections 1 to 11 of this 2013 Act.

(c) To the extent that a provision of sections 1 to 11 of this 2013 Act conflicts with a provision of ORS chapter 60 or 63, a specific provision of sections 1 to 11 of this 2013 Act controls over a general provision of ORS chapter 60 or 63.

(3) Sections 1 to 11 of this 2013 Act do not apply to a corporation that is not a benefit company or to a limited liability company that is not a benefit company.

**SECTION 3.** (1)(a) Notwithstanding ORS 60.074 (2), a corporation incorporated under ORS chapter 60 is a benefit company under sections 1 to 11 of this 2013 Act if the corporation's articles of incorporation state that the corporation is a benefit company subject to sections 1 to 11 of this 2013 Act.

(b) Notwithstanding ORS 63.074 (3), a limited liability company organized under ORS chapter 63 is a benefit company under sections 1 to 11 of this 2013 Act if the limited liability company's articles of organization state that the limited liability company is a benefit company subject to sections 1 to 11 of this 2013 Act.

(2)(a) A corporation that is incorporated under ORS chapter 60 may become a benefit company by amending the corporation's articles of incorporation to state, in addition to the requirements set forth in ORS 60.047, that the corporation is a benefit company subject to sections 1 to 11 of this 2013 Act. The amendment to the articles of incorporation must be approved by a minimum status vote.

(b) A limited liability company that is organized under ORS chapter 63 may become a benefit company by amending the limited liability company's articles of organization to state, in addition to the requirements set forth in ORS 63.047, that the limited liability company is a benefit company subject to sections 1 to 11 of this 2013 Act. The amendment to the articles of organization must be approved by a minimum status vote.

(3) A benefit company may be formed by means of a conversion if articles of conversion that state that the converted entity will be a benefit company that is subject to sections 1 to 11 of this 2013 Act are approved by a minimum status vote.

(4) An entity that is not a benefit company may become a benefit company by merging or exchanging equity interests with a benefit company if the shareholders or holders of equity interests of the entity that is not the benefit company approve, by a minimum status vote, a plan of merger or a plan for exchanging equity interests with a benefit company under which the surviving entity will be a benefit company.

(5) A benefit company may become an entity other than a benefit company only if an action to remove from the articles of incorporation, articles of organization or articles of conversion the provision that states that the entity is a benefit company subject to sections 1 to 11 of this 2013 Act is approved by a minimum status vote.

(6)(a) A plan for a benefit company must be approved by a minimum status vote if the plan would:

(A) Merge the benefit company with an entity that is not a benefit company, if the surviving entity would not be a benefit company;

(B) Provide for exchanging equity interests with an entity that is not a benefit company, if the exchange would create an entity that is not a benefit company and that would hold substantially all of the benefit company's assets;

(C) Convert the benefit company to an entity that is not a benefit company; or

(D) Otherwise cause sections 1 to 11 of this 2013 Act not to apply to the benefit company.

(b) A sale, lease, exchange or other disposition of all or substantially all of a benefit company's assets must be approved by a minimum status vote unless the benefit company conducts the sale, lease, exchange or other disposition in the ordinary course of the benefit company's business.

(7) A provision of a benefit company's articles of incorporation, articles of organization, articles of conversion or plan described in subsection (6) of this section may be inconsistent with or supersede a provision of sections 1 to 11 of this 2013 Act only to the extent that the provision in the articles of incorporation, articles of organization, articles of conversion or plan imposes a more stringent requirement on the benefit company, in keeping with the purposes set forth in sections 1 to 11 of this 2013 Act, than a provision of sections 1 to 11 of this 2013 Act imposes.

**SECTION 4.** (1) Except as provided in subsections (2) and (3) of this section, an approval of an action described in section 3 (2) to (6) of this 2013 Act is effective only if, in addition to any other applicable requirements, a majority of the interests that are entitled to vote on the action are voted to approve the action.

(2) If an entity's governing documents or the provisions of ORS chapter 60 or 63, as applicable, require more than a majority vote or require each class or series to vote separately, approval of the action is effective only if the requirement for the greater vote or for separate class or series voting is met.

(3) If, as of the effective date of this 2013 Act, an entity has shares that are listed on a national securities exchange or are regularly traded in a market that a member of a national or affiliated securities association maintains, each class or series of the entity's shares must separately meet the requirement to approve the action by two-thirds of the shares that are entitled to vote.

**SECTION 5.** (1) In addition to any purpose set forth in or adopted in accordance with ORS 60.047 (2)(c)(A), 60.074, 63.047 or 63.074, a benefit company has the purpose of providing a general public benefit.

(2)(a) The articles of incorporation or articles of organization for a benefit company may identify a specific public benefit for the benefit company in addition to the purposes described in subsection (1) of this section. A benefit company's identification of a specific public benefit does not limit the benefit company's obligation to fulfill the purposes described in subsection (1) of this section.

(b) A benefit company may amend the articles of incorporation or articles of organization to add, amend or remove a specific public benefit in the manner otherwise provided for amending the benefit company's purpose in the articles of incorporation or articles of organization.

(3) Notwithstanding the requirement in ORS 58.076 that a professional corporation have rendering professional service as the professional corporation's sole purpose, a professional corporation that is a benefit company shall have the purposes set forth in ORS 58.076 and

the purpose of providing a general public benefit. The professional corporation may identify a specific public benefit in addition to the purposes described in this subsection.

**SECTION 6.** (1) A governor of a benefit company shall act in the best interests of the benefit company and shall discharge the governor's duties as provided for a director of a corporation in ORS 60.357, or as provided for a member or manager of a limited liability company under ORS 63.155, as appropriate for the benefit company's form of organization. In determining the best interests of the benefit company, the governor shall consider how an action of the governor or of the benefit company, or a decision not to act, will affect:

- (a) The shareholders or members of the benefit company;
- (b) The employees and work force of the benefit company and the employees and work force of the benefit company's subsidiaries and suppliers;
- (c) The benefit company's subsidiaries and suppliers;
- (d) The interests the benefit company's customers have in receiving a portion of the general public benefit or specific public benefit that the benefit company provides;
- (e) The communities that the benefit company's activities affect including, but not limited to, the communities in which the benefit company is located, operates or has offices or other facilities and in which the benefit company's subsidiaries and suppliers are located, operate or have offices or other facilities;
- (f) The local and global environment;
- (g) The short-term and long-term interests of the benefit company, including an interest in benefits that might accrue from the benefit company's long-term plans and the possibility that the interests of the benefit company are best served by keeping the benefit company independent; and
- (h) The benefit company's ability to fulfill the benefit company's general public benefit purpose and any specific public benefit identified in the benefit company's articles of incorporation or articles of organization.

(2) A governor of a benefit company may consider how an action of the governor or of the benefit company, or decision not to act, will affect other interests the governor deems pertinent.

(3) A governor of a benefit company need not give a particular interest identified in subsection (1) or (2) of this section priority over another interest identified in subsection (1) or (2) of this section unless the benefit company's articles of incorporation or articles of organization identify an interest to which the governor must give priority.

(4) A governor's consideration under this section of the effects of an action, or a decision not to act, is in accordance with ORS 60.357 or 63.155 as ORS 60.357 or 63.155 applies to the governor.

(5)(a) A governor of a benefit company is not personally liable for money damages as a consequence of taking an action or deciding not to act if the governor discharged the governor's duties in accordance with this section and with ORS 60.357 or 63.155, as appropriate for the benefit company's form of organization.

(b) A governor of a benefit company is not personally liable for money damages for the benefit company's failure to provide a general public benefit or a specific public benefit.

(c) A governor of a benefit company does not have a duty to a person as a consequence of the person's status as a beneficiary of the general public benefit or a specific public benefit that the benefit company provides.

**SECTION 7.** (1)(a) A benefit company must have a board of governors and may designate at least one member of the board as a benefit governor. A benefit governor, in addition to the powers, duties, rights, privileges and immunities that other governors of the benefit company have, has the powers, duties, rights, privileges and immunities set forth in this section.

(b) The articles of incorporation, articles of organization, bylaws or other organizational documents of the benefit company may set forth additional qualifications for a benefit governor that are consistent with this section.

(2) The benefit company's governors shall elect or appoint and may remove a benefit governor in accordance with procedures set forth in the benefit company's articles of incorporation or articles of organization or in accordance with procedures the governors adopt if the articles of incorporation or articles of organization do not specify a procedure.

(3) The benefit governor shall provide information or statements to other governors of the benefit company concerning the other governors' obligations under section 6 of this 2013 Act.

(4) An individual's action or decision not to act made in the capacity of benefit governor is for all purposes the individual's action or decision not to act in the individual's capacity as a governor of the benefit company.

(5) A benefit governor is not personally liable for an action or omission the benefit governor makes in the benefit governor's capacity as a benefit governor unless the action or omission constitutes self-dealing, willful misconduct or a knowing violation of law.

**SECTION 8.** (1) A member that has management duties with respect to a benefit company, or an officer or a manager of a benefit company, shall act in the best interests of the benefit company and shall discharge the member's, officer's or manager's duties as provided in ORS 60.374 and 60.377 or in ORS 63.155, as appropriate for the benefit company's form of organization. In addition, the member, officer or manager shall consider the effects of an action of the member, officer or manager or of the benefit company, or of a decision not to act:

(a) To the extent the member, officer or manager has the discretion to take the action or to decide not to act;

(b) If, in the member's, officer's or manager's reasonable judgment, the action or decision not to act may have a material effect on the general public benefit or a specific public benefit the benefit company provides; and

(c) In accordance with the provisions of section 6 (1) to (3) of this 2013 Act for a governor's consideration of the effects of the action or the decision not to act.

(2) A member's, officer's or manager's consideration under this section of the effects of an action, or a decision not to act, is in accordance with ORS 60.374 and 60.377 or with ORS 63.155, as appropriate for the benefit company's form of organization, as those provisions apply to a member, officer or manager of a benefit company.

(3)(a) A member, officer or manager of a benefit company is not personally liable for money damages as a consequence of taking an action or deciding not to act if the member, officer or manager discharged the member's, officer's or manager's duties in accordance with this section and with ORS 60.374 and 60.377 or with ORS 63.155, as appropriate for the benefit company's form of organization.

(b) A member, officer or manager of a benefit company is not personally liable for money damages for the benefit company's failure to provide a general public benefit or a specific public benefit.

(c) A member, officer or manager of a benefit company does not have a duty to a person as a consequence of the person's status as a beneficiary of the general public benefit or a specific public benefit that the benefit company provides.

**SECTION 9.** (1) Except as provided in subsection (2) of this section, a person may not commence a proceeding against a benefit company, or against the governors, members, officers or managers of a benefit company, to assert a claim that the benefit company, governors, members, officers or managers:

(a) Failed to pursue, create or provide a general public benefit or a specific public benefit identified in the benefit company's articles of incorporation or articles of organization; or

(b) Violated a duty or a standard of conduct prescribed under sections 1 to 11 of this 2013 Act.

(2) A person may commence a direct or derivative proceeding, as appropriate, to compel a benefit company to provide a general public benefit or a specific public benefit or to require a governor, member, officer or manager to act in accordance with a duty or a standard of conduct set forth in the benefit company's articles of incorporation or articles of organization, or prescribed under sections 1 to 11 of this 2013 Act, only if the person is:

(a) The benefit company;

(b) A governor;

(c) A shareholder or member; or

(d) Another person identified in the benefit company's bylaws, articles of incorporation or articles of organization as having a right to commence a proceeding under this section.

(3) A benefit company is not liable for money damages as a consequence of failing to provide a general public benefit or a specific public benefit.

**SECTION 10.** (1) A benefit company each year shall prepare a benefit report.

(2)(a) The benefit report shall give a narrative description of:

(A) The extent to which the benefit company provided a general public benefit and the actions and methods the benefit company used to provide the general public benefit.

(B) The extent to which the benefit company provided a specific public benefit identified in the benefit company's articles of incorporation or articles of organization, and the actions and methods the benefit company used to provide the specific public benefit.

(C) Any circumstances that hindered or prevented the benefit company from providing a general public benefit or a specific public benefit.

(b) In addition to the narrative descriptions required under paragraph (a) of this subsection, the benefit report shall:

(A) Assess the extent to which the benefit company met or exceeded a third-party standard that the benefit company selected and identified in the benefit report. The benefit company shall conduct the assessment and evaluate the benefit company's performance with respect to the third-party standard in a manner that is consistent with assessments and evaluations conducted in previous benefit reports or shall explain the reasons for an inconsistent assessment or evaluation.

(B) Describe the process and rationale the benefit company used to select or to change the third-party standard described in subparagraph (A) of this paragraph.

(c) A benefit report prepared under this section does not need to be audited or certified by a third party.

(3) The benefit company each year shall deliver a copy of the benefit report to each holder of an equity interest within 120 days after the end of the benefit company's fiscal year or at the same time the benefit company delivers any other annual report to a holder of an equity interest.

(4) A benefit company shall post on the publicly accessible pages of the benefit company's website all of the benefit company's benefit reports or shall provide without charge a copy of the most recent benefit report to a person that requests a copy unless providing the copy would violate a provision of applicable law.

**SECTION 11.** The benefit company shall assess the extent to which the benefit company provides a general public benefit and any specific public benefit identified in the benefit company's articles of incorporation or articles of organization against a third-party standard.

**Passed by House April 18, 2013**

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Ramona J. Line, Chief Clerk of House

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Tina Kotek, Speaker of House

**Passed by Senate May 23, 2013**

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Peter Courtney, President of Senate

**Received by Governor:**

.....M,....., 2013

**Approved:**

.....M,....., 2013

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John Kitzhaber, Governor

**Filed in Office of Secretary of State:**

.....M,....., 2013

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Kate Brown, Secretary of State