

**IDAHO UNIFORM BUSINESS
ORGANIZATIONS CODE
(IUBOC)**

IDAHO BENEFIT CORPORATION ACT



**Compiled under the authority of
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IDAHO BENEFIT CORPORATION ACT**

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IDAHO BENEFIT CORPORATION ACT

30-2001.APPLICATION AND EFFECT OF THIS CHAPTER. (1) This chapter may be known and cited as the “Idaho Benefit Corporation Act.”

(2) This chapter shall be applicable to all benefit corporations.

(3) The existence of a provision of this chapter shall not of itself create an implication that a contrary or different rule of law is applicable to a business corporation that is not a benefit corporation. This chapter shall not affect a statute or rule of law that is applicable to a business corporation that is not a benefit corporation.

(4) Except as otherwise provided in this chapter, the Idaho business corporation act shall be generally applicable to all benefit corporations. A benefit corporation may be subject simultaneously to this chapter and other chapters of this title. The provisions of this chapter shall control over other provisions of this title, including chapters 1 and 13 of this title.

(5) A provision of the articles of incorporation or bylaws of a benefit corporation may not limit, be inconsistent with or supersede a provision of this chapter.

30-2002.DEFINITIONS. In this chapter:

(1) “Benefit corporation” means a business corporation that has elected to become subject to this chapter and the status of which as a benefit corporation has not been terminated.

(2) “Benefit director” means the director designated as the benefit director of a benefit corporation under section 30-2008, Idaho Code.

(3) “Benefit enforcement proceeding” means any claim, action or proceeding for failure of a benefit corporation to pursue or create general public benefit or a specific public benefit purpose as set forth in its articles, or violation of any obligation, duty or standard of conduct under this chapter.

(4) “Benefit officer” means the individual designated as the benefit officer of a benefit corporation under section 30-2010, Idaho Code.

(5) “General public benefit” means a material positive impact on society and the environment, taken as a whole, as assessed under a third-party standard, resulting from the business and operations of a benefit corporation.

(6) “Independent” means having no material relationship with a benefit corporation or a subsidiary of the benefit corporation; provided however, that serving as a benefit director or benefit officer does not by itself preclude a person from being independent. A material relationship between an individual and a benefit corporation or any of its subsidiaries will be conclusively presumed to exist if any of the following apply:

(a) The individual is or has been within the last three (3) years an employee other than a benefit officer of the benefit corporation or a subsidiary.

(b) An immediate family member of the individual is or has been within the last three (3) years an executive officer other than a benefit officer of the benefit corporation or a subsidiary.

(c) There is beneficial or record ownership of five percent (5%) or more of the outstanding shares of the benefit corporation, calculated as if all outstanding rights to acquire equity interests in the benefit corporation had been exercised, by:

(i) The individual; or

(ii) An entity:

1. Of which the individual is a director, an officer or a manager; or

2. In which the individual owns beneficially or of record five percent (5%) or more of the outstanding equity interests, calculated as if all outstanding rights to acquire equity interests in the entity had been exercised.

(7) “Minimum status vote” means:

- (a) In the case of a business corporation, in addition to any other required approval or vote, the satisfaction of the following conditions:
- (i) The shareholders of every class or series shall be entitled to vote as a separate voting group on the corporate action regardless of a limitation stated in the articles of incorporation or bylaws on the voting rights of any class or series.
 - (ii) The corporate action must be approved by vote of the shareholders of each class or series entitled to cast at least two-thirds (2/3) of the votes that all shareholders of the class or series are entitled to cast on the action.
- (b) In the case of a domestic entity other than a business corporation, 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 equity interest in the entity that are entitled to receive a distribution of any kind from the entity shall be entitled to vote on or consent to the action regardless of any otherwise applicable limitation on the voting or consent rights of any class or series.
 - (ii) The action must be approved by vote or consent of the holders entitled to cast at least two-thirds (2/3) of the votes or consents that all of those holders are entitled to cast on the action.
- (8) “Publicly traded corporation” means a business corporation that has shares listed on a national securities exchange or traded in a market maintained by one (1) or more members of a national securities association.
- (9) “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; or
 - (g) Conferring any other particular benefit on society or the environment.
- (10) “Subsidiary” means, in relation to a person, an entity in which the person owns beneficially or of record fifty percent (50%) or more of the outstanding equity interests, calculated as if all outstanding rights to acquire equity interests in the entity had been exercised.
- (11) “Third-party standard” means a recognized standard for defining, reporting and assessing corporate social and environmental performance that is:
- (a) Comprehensive in that it assesses the effect of the business and its operations on the interests listed in section 30-2007(1), Idaho Code;
 - (b) Developed by an entity that is not controlled by the benefit corporation;
 - (c) Credible in that it is developed by an entity that both has access to necessary expertise to assess overall corporate social and environmental performance, and uses a balanced multi-stakeholder approach to develop the standard, including a reasonable public comment period; and
 - (d) Transparent in that information about the standard is publicly available, including information about:
 - (i) The criteria and weighting of such criteria used in the standard;
 - (ii) The identity of those who developed or revised the standard; and
 - (iii) An accounting of the revenue and sources of financial support for the entity that developed the standard, with sufficient detail to disclose any relationships that could reasonably be considered to present a potential conflict of interest.

30-2003.INCORPORATION. A benefit corporation shall be incorporated in accordance with part 2, chapter 1[29], title 30, Idaho Code, but its articles of incorporation must also state that it is a benefit corporation.

30-2004.ELECTION OF BENEFIT CORPORATION STATUS. (1) An existing business corporation may become a benefit corporation under this chapter by amending its articles of incorporation so that they contain a statement that the corporation is a benefit corporation. In order to be effective, the amendment must be adopted by at least the minimum status vote.

(2) (a) Except as provided in paragraph (b) of this subsection, if a domestic entity that is not a benefit corporation is a party to a merger or conversion or the exchanging entity in an interest exchange and the surviving or converted entity in the merger, conversion or interest exchange is to be a benefit corporation, the plan of merger, conversion or interest exchange must be approved by the domestic entity by at least the minimum status vote.

(b) Paragraph (a) of this subsection does not apply in the case of a corporation that is a party to a merger if the shareholders of the corporation are not entitled to vote on the merger pursuant to section 30-1-1105 [30-29-1105], Idaho Code.

30-2005.TERMINATION OF STATUS. (1) A benefit corporation may terminate its status as such and cease to be subject to this chapter by amending its articles of incorporation to delete the provision adopting benefit corporation status. In order to be effective, the amendment must be adopted by at least the minimum status vote.

(2) (a) Except as provided in paragraph (b) of this subsection, if a plan of merger, conversion or share exchange would have the effect of terminating the status of a business corporation as a benefit corporation, the plan must be adopted by at least the minimum status vote in order to be effective.

(b) Paragraph (a) of this subsection does not apply in the case of a corporation that is a party to a merger if the shareholders of the corporation are not entitled to vote on the merger pursuant to section 30-1-1105 [30-29-1105], Idaho Code.

(3) Any sale, lease, exchange or other disposition of all or substantially all of the assets of a benefit corporation, unless the transaction is in the usual and regular course of business, shall not be effective unless the transaction is approved by at least the minimum status vote.

30-2006.CORPORATE PURPOSES. (1) A benefit corporation shall have a purpose of creating general public benefit. This purpose is in addition to its purpose under section 30-1-301 [30-29-301], Idaho Code.

(2) The articles of incorporation of a benefit corporation may identify one (1) or more specific public benefits that it is the purpose of the benefit corporation to create in addition to its purposes under section 30-1-301 [30-29-301], Idaho Code, and subsection (1) of this section. The identification of a specific public benefit under this subsection does not limit the purpose of a benefit corporation to create general public benefit under subsection (1) of this subsection.

(3) The creation of general public benefit and specific public benefits under subsections (1) and (2) of this section is in the best interests of the benefit corporation.

(4) A benefit corporation may amend its articles of incorporation to add, amend or delete the identification of a specific public benefit that it is the purpose of the benefit corporation to create. In order to be effective, the amendment must be adopted by at least the minimum status vote.

(5) A professional corporation that is a benefit corporation does not violate section 30-1-1303(2) [30-29-1303(2)], Idaho Code, by having the purpose to create general public benefit or a specific public benefit.

30-2007.STANDARD OF CONDUCT FOR DIRECTORS. (1) 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 and individual directors of a benefit corporation shall consider the effects of any action or inaction on:

- (a) The shareholders of the benefit corporation;
- (b) The employees of the benefit corporation;
- (c) The subsidiaries and suppliers of the benefit corporation;
- (d) The interests of customers as beneficiaries of the general public benefit or specific public benefit purposes of the benefit corporation;
- (e) Community and social factors, including those of each community in which offices or facilities of the benefit corporation, its subsidiaries, or its suppliers are located;
- (f) The local and global environment;
- (g) 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
- (h) The ability of the benefit corporation to accomplish its general public benefit purpose and any specific public benefit purpose.

(2) 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 and individual directors of a benefit corporation may also consider any other pertinent factors or the interests of any group that they deem appropriate.

(3) The board of directors, committees of the board and individual directors of a benefit corporation need not give priority to a particular interest or factor referred to in subsection (1) or (2) of this section over any other interest or factor unless 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 or of a specific public benefit purpose identified in its articles of incorporation.

(4) The consideration of interests and factors in the manner required by this section does not constitute a violation of section 30-1-830 [30-29-830], Idaho Code.

(5) Except as provided in the articles of incorporation, a director is not personally liable for monetary damages for:

(a) Any action or inaction in the course of performing the duties of a director under subsection (1) of this section if the director performed the duties of office in compliance with section 3-1-830 [30-29-830], Idaho Code, and this section; or

(b) Failure of the benefit corporation to pursue or create general public benefit or specific public benefit.

(6) 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.

30-2008.BENEFIT DIRECTOR. (1) The board of directors of a benefit corporation that is a publicly traded corporation shall, and the board of any other benefit corporation may, include a director who shall be designated the benefit director, and 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) The benefit director shall be elected and may be removed in the manner provided in sections 30-1-803 through 30-1-809 [30-29-803 through 30-29-809], Idaho Code. Except as provided in subsection (6) of this section, the benefit director shall be an individual who is independent. The benefit director may serve as the benefit officer at the same time as serving as the benefit director. The articles of incorpora-

tion or bylaws of a benefit corporation may prescribe additional qualifications of the benefit director not inconsistent with this subsection.

(3) The benefit director shall prepare and the benefit corporation shall include in the annual benefit report to shareholders required by section 30-2012, Idaho Code, the opinion of the benefit director on 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 sections 30-2007 and 30-2009, Idaho Code, 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 paragraphs (a) and (b) of this subsection, 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 30-1-202 [30-29-202], Idaho Code, a benefit director shall 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 organized under chapter 13, title 30, Idaho Code, does not need to be independent.

30-2009.STANDARD OF CONDUCT FOR OFFICERS. (1) Each officer of a benefit corporation shall consider the interests and factors as provided in section 30-2007, Idaho Code, if the officer has discretion to act with respect to a matter, and 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.

(2) The consideration of interests and factors as provided in subsection (1) of this section shall not constitute a violation of sections 30-1-841 and 30-1-842, Idaho Code.

(3) Except as provided in the articles of incorporation or bylaws, 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) of this section if the officer performed the duties of the position in compliance with sections 30-1-841 and 30-1-842 [30-29-841 and 30-29-842], Idaho Code, 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.

30-2010.BENEFIT OFFICER. A benefit corporation may have an officer designated the benefit officer. The benefit officer shall have:

(1) The powers and duties relating to the purpose of the corporation to create general public benefit or specific public benefit provided by the bylaws or, absent controlling provisions by the bylaws, by resolutions or orders of the board of directors; and

(2) The duty to prepare the benefit report required in section 30-2012, Idaho Code.

30-2011.RIGHT OF ACTION. (1) Except in a benefit enforcement proceeding, no person may bring an

action or assert a claim against a benefit corporation or its directors or officers with respect to the corporation's failure to pursue or create general public benefit or a specific public benefit set forth in its articles of incorporation, or the corporation's violation of an obligation, duty or standard of conduct under this chapter.

(2) A benefit corporation shall not be liable for monetary damages under this chapter for any failure of the benefit corporation to pursue or create general public benefit or a specific public benefit.

(3) A benefit enforcement proceeding may be commenced or maintained directly by the benefit corporation, or derivatively by:

(a) A person or group of persons that owned beneficially or of record at least two percent (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 owned beneficially or of record five percent (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.

(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.

30-2012.PREPARATION OF ANNUAL BENEFIT REPORT. (1) A benefit corporation shall prepare an annual benefit report including the following:

(a) A narrative description of:

(i) The ways in which the benefit corporation pursued general public benefit during the year and the extent to which general public benefit was created;

(ii) The ways in which the benefit corporation pursued a specific public benefit that the articles of incorporation describe as the purpose of the benefit corporation to create, and the extent to which the specific public benefit was created;

(iii) Any circumstances that hindered the creation by the benefit corporation of either general public benefit or specific public benefit; and

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

(b) An assessment of the overall social and environmental performance of the benefit corporation under a third-party standard applied consistently with any application of that standard in prior benefit reports, or accompanied by an explanation of the reasons for any inconsistent application, or the change to that standard from the one used in the immediate prior report.

(c) The name of the benefit director and the benefit officer, if any, and the address to which correspondence to each of them may be directed.

(d) The compensation paid by the benefit corporation during the year to each director in the capacity of a director.

(e) The opinion of the benefit director described in section 30-2008(3), Idaho Code.

(f) A statement of any connection between the organization that established the third-party standard, or its directors, officers or any holder of five percent (5%) or more of the governance interests in the organization, and the benefit corporation or its directors, officers or any holder of five percent (5%) or more of the outstanding shares of the benefit corporation, including any financial or governance relationship that might materially affect the credibility of the use of the third-party standard.

(g) If the benefit corporation has dispensed with or restricted the discretion or powers of the board of directors, a description of the persons who exercise the powers, duties, and rights and who have the immunities of the board of directors, and the benefit director.

(2) If, during the year covered by a benefit report, a benefit director resigned from or refused to stand for reelection to the position of benefit director, or was removed from the position of benefit director, and the benefit director furnished the benefit corporation with any written correspondence concerning the circumstances surrounding the resignation, refusal or removal, the benefit report shall include that correspondence as an exhibit.

(3) Neither the benefit report nor the assessment of the performance of the benefit corporation in the benefit report required in subsection (1) of this section needs to be audited or certified by a third party.

30-2013.AVAILABILITY OF ANNUAL BENEFIT REPORT. (1) A benefit corporation shall send its annual benefit report to each shareholder either one hundred twenty (120) days following the end of the fiscal year of the benefit corporation, or at the same time that the benefit corporation delivers any other annual report to its shareholders, whichever is earlier.

(2) A benefit corporation shall post all of its benefit reports on the public portion of its website, if any; but the compensation paid to directors and financial or proprietary information included in the benefit reports may be omitted from the benefit reports as posted.

(3) If a benefit corporation does not have a website, the benefit corporation shall provide a copy of its most recent benefit report, without charge, to any person who requests a copy, provided however, that the compensation paid to directors and financial or proprietary information included in the benefit report may be omitted from the copy of the benefit report provided.

(4) Concurrently with the delivery of the benefit report to shareholders under subsection (1) of this section, the benefit corporation shall deliver a copy of the benefit report to the secretary of state for filing, provided however, that the compensation paid to directors and financial or proprietary information included in the benefit report may be omitted from the benefit report as delivered to the secretary of state. The secretary of state shall charge a fee for filing a benefit report, such fee to be set in a rule promulgated by the secretary.