

Considering the Benefits of a Benefit Limited Liability Company by Callie Rogers

Last month, Utah became one of a handful of states to offer benefit limited liability companies. Effective on May 8, 2018, the Utah Benefit Limited Liability Company Act, codified at Utah Code Title 48 Chapter 4 (the “Act”), allows companies to organize as a benefit LLC (a “BLLC”).

What is a benefit limited liability company?

Like its more common corporate counterpart, the benefit corporation, a BLLC has a stated purpose of creating general or specific public benefit. In the corporate context, this allows a board of directors greater freedom to make decisions that benefit the public good even if those decisions do not directly benefit the bottom line.

Similarly, the Utah Act allows members of a BLLC to consider the effect of any company action or inaction on the ability of the BLLC to accomplish its general (and any specific) benefit purpose in addition to considering the impact of the action on members of the company, employees and customers. See Utah Code Ann. 48-4-201.

The Act describes the following specific public benefits of a BLLC: (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. Utah Code 48-4-103.

How do I form a benefit limited liability company?

A new company may organize as a BLLC simply by making a designation as such on its articles of organization filed with the Utah Division of Corporations and Commercial Code. Existing companies may elect to become a BLLC by amending their articles of organization once they obtain the required approvals from their members. The filing fees for a BLLC are

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the same as for any other LLC — \$70 to file the initial articles and \$37 to amend them.

Why would I form a benefit limited liability company?

Customers and employees alike increasingly want to purchase from and work for companies that not only aim to make money but also aim to make their communities a better place. Organizing as a BLLC formalizes this purpose. While a typical LLC has more flexibility than a corporation and, in many cases, would not need to organize as a BLLC to operate in a way that benefits its community, organizing as a BLLC shows the public that the company has committed to creating a public benefit – operating as a BLLC provides a good public relations strategy as well as a strategy to do public good.

However, organizing under the Act makes allocating resources for public benefit mandatory rather than optional, and requires filing annual reports showing these efforts. See Utah Code Ann. 48-4-401. If the members of the company decide they no longer want to operate as a BLLC, they would need to amend the articles of organization filed with the Utah Division of Corporations.