
A BILL FOR AN ACT

RELATING TO LIMITED LIABILITY COMPANIES.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

1 SECTION 1. The Hawaii Revised Statutes is amended by
2 adding a new chapter to be appropriately designated and to read
3 as follows:

4 "CHAPTER

5 SUSTAINABLE BUSINESS LIMITED LIABILITY COMPANIES

6 § -1 Purpose and findings. This chapter authorizes a
7 designation and code of conduct for a business limited liability
8 company to offer entrepreneurs and investors the option to build
9 and invest in businesses that operate in a socially and
10 environmentally sustainable manner. Enforcement of those
11 responsibilities comes not from governmental oversight, but
12 rather from new provisions on transparency and accountability
13 included in this chapter.

14 § -2 Definitions. As used in this chapter:

15 "Benefit director" means the director designated as the
16 benefit director of a sustainable business limited liability
17 company under section -7.



1 "Benefit officer" means the individual designated as the
2 benefit officer of a sustainable business limited liability
3 company under section -9.

4 "General public benefit" means a material positive impact
5 on society and the environment, taken as a whole and as measured
6 by a third-party standard under section -12, from the
7 business and operations of a sustainable business limited
8 liability company.

9 "Independent" means having no material relationship with a
10 sustainable business limited liability company or any of its
11 subsidiaries.

12 "Material owner" means a shareholder who holds either
13 beneficially or of record five per cent or more of the
14 outstanding shares of a sustainable business limited liability
15 company.

16 "Material relationship" means a relationship between a
17 person and a sustainable business limited liability company
18 where:

19 (1) The person is, or has been within the last three
20 years, an employee other than a benefit officer of the
21 sustainable business limited liability company or any
22 of its subsidiaries;



1 (2) The person is related by blood, marriage, or adoption
2 to; is a party to a civil union with; is a reciprocal
3 beneficiary or household member of; or resides with an
4 officer other than a benefit officer or director of
5 the sustainable business limited liability company or
6 any of its subsidiaries; or

7 (3) The person or an association of which the person is a
8 director, officer, or manager or in which the person
9 owns beneficially or of record five per cent or more
10 of the outstanding equity interests or the outstanding
11 shares of the sustainable business limited liability
12 company; provided that percentage ownership in an
13 association shall be calculated as if all outstanding
14 rights to acquire equity interests in the association
15 had been exercised.

16 "Minimum status vote" means that in addition to any other
17 approval or vote required by this chapter or the bylaws adopted
18 by the shareholders:

19 (1) The holders of shares of every class or series shall
20 be entitled to vote on the corporate action regardless
21 of any limitation stated in the articles of



1 incorporation or bylaws on the voting rights of any
2 class or series; and

3 (2) The corporate action shall be approved by vote of the
4 shareholders of each class or series entitled to cast
5 at least two-thirds of the votes that all shareholders
6 of the class or series are entitled to cast thereon.

7 "Subsidiary" of a person means an association in which the
8 person owns beneficially or of record fifty per cent or more of
9 the outstanding equity interests; provided that a percentage of
10 ownership in an association shall be calculated as if all
11 outstanding rights to acquire equity interests in the
12 association had been exercised.

13 "Sustainable business limited liability company" means a
14 domestic limited liability company, incorporated under chapter
15 414, that has elected to also become subject to this chapter and
16 whose status as a sustainable business limited liability company
17 has not been terminated as provided in this chapter.

18 "Third-party standard" means a standard for defining,
19 reporting, and assessing overall corporate social and
20 environmental performance that conforms to the requirements of
21 this chapter.



1 **§ -3 Election of a domestic limited liability company to**
2 **become a sustainable business limited liability company.** (a) A
3 domestic limited liability company incorporated under chapter
4 414 may elect to become a sustainable business limited liability
5 company under this chapter by including in its articles or
6 amending its articles to include a statement that the limited
7 liability company is a sustainable business limited liability
8 company. An amendment pursuant to this subsection shall not be
9 effective unless it is adopted by at least the minimum status
10 vote.

11 (b) If a limited liability company that is not a
12 sustainable business limited liability company is a party to a
13 merger, consolidation, or division, or is the exchanging limited
14 liability company in a share exchange, and the surviving, new,
15 or any resulting limited liability company in the merger,
16 consolidation, division, or share exchange is to be a
17 sustainable business limited liability company, then the plan of
18 merger, consolidation, division, or share exchange shall not be
19 effective unless it is adopted by the limited liability company
20 by at least the minimum status vote.

21 **§ -4 Termination of sustainable business limited**
22 **liability company status.** (a) A sustainable business limited



1 liability company may terminate its status as such and cease to
2 be subject to this chapter by amending its articles to delete
3 the statement that the limited liability company is a
4 sustainable business limited liability company. An amendment
5 pursuant to this subsection shall not be effective unless it is
6 adopted by at least the minimum status vote.

7 (b) If a plan of merger, consolidation, division, or share
8 exchange would have the effect of terminating the status of a
9 business limited liability company as a sustainable business
10 limited liability company, the plan shall not be effective
11 unless it is adopted by at least the minimum status vote.

12 § -5 **Corporate purposes.** (a) Every sustainable
13 business limited liability company shall have among its purposes
14 the creation of a general public benefit.

15 (b) In addition to the purposes described in subsection
16 (a), the articles of a sustainable business limited liability
17 company may identify one or more specific public benefits for
18 which the sustainable business limited liability company was
19 created. The identification of a specific public benefit under
20 this subsection does not limit the obligation of a sustainable
21 business limited liability company to create a general public



1 benefit. Allowable specific benefits for sustainable business
2 limited liability companies subject to this chapter include:

- 3 (1) Providing low-income or underserved individuals or
4 communities with beneficial products or services;
- 5 (2) Promoting economic opportunity for individuals or
6 communities beyond the creation of jobs in the normal
7 course of business;
- 8 (3) Preserving the environment;
- 9 (4) Improving human health;
- 10 (5) Promoting the arts, sciences, or advancement of
11 knowledge;
- 12 (6) Increasing the flow of capital to entities with a
13 public benefit purpose; and
- 14 (7) The accomplishment of any other particular benefit for
15 society or the environment; and
- 16 (8) Using the right to exclude, conferred by any and all
17 patents in which it has an interest in this right
18 through assignment, license, lien, security agreement,
19 or obligation for the following purposes:
- 20 (A) Creating and retaining good jobs within the State
21 as well as throughout the United States;



1 (B) Upholding fair labor standards nationally and
2 internationally; provided that for purposes of
3 this section, "fair labor standards" prohibit
4 child labor, forced or compulsory labor,
5 discrimination in employment, restrictions on
6 freedom of association, and denial of the right
7 to collective bargaining; and

8 (C) Enhancing environmental protection nationally and
9 internationally;

10 provided that if this public benefit is specified,
11 section -4 shall not apply to the limited liability
12 company and the sustainable business limited liability
13 company status shall be irrevocable, and that if the
14 annual statement of the benefit director reflects that
15 the sustainable business limited liability company has
16 failed to meet this specific public benefit, then the
17 limited liability company will have its status as a
18 sustainable business limited liability company
19 terminated.

20 (c) The creation of general and specific public benefits
21 as provided in subsections (a) and (b) shall be in the best
22 interests of the sustainable business limited liability company.



1 (d) A sustainable business limited liability company may
2 amend its articles to add, amend, or delete the identification
3 of a specific public benefit for which the sustainable business
4 limited liability company was created. An amendment pursuant to
5 this subsection shall not be effective unless it is adopted by
6 at least the minimum status vote.

7 § -6 Standard of conduct for directors. (a) In
8 discharging the duties of their respective positions, the board
9 of directors, committees of the board, and individual directors
10 of a sustainable business limited liability company, in
11 considering the best interests of the sustainable business
12 limited liability company:

13 (1) Shall consider the effects of any action of the
14 sustainable business limited liability company upon:

15 (A) The shareholders of the sustainable business
16 limited liability company; and

17 (B) The accomplishment of general and specific public
18 benefits set forth in the sustainable business
19 limited liability company's purposes; and

20 (2) May consider:



- 1 (A) The employees and workforce of the sustainable
2 business limited liability company and its
3 subsidiaries and suppliers;
- 4 (B) The interests of customers as beneficiaries of
5 the general or specific public benefit purposes
6 of the sustainable business limited liability
7 company;
- 8 (C) Community and societal considerations, including
9 those of any community in which offices or
10 facilities of the sustainable business limited
11 liability company or its subsidiaries or
12 suppliers are located;
- 13 (D) The local and global environment;
- 14 (E) The short-term and long-term interests of the
15 sustainable business limited liability company,
16 including benefits that may accrue to the
17 sustainable business limited liability company
18 from its long-term plans and the possibility that
19 these interests may be best served by the
20 continued independence of the sustainable
21 business limited liability company;



1 (F) The ability of the sustainable business limited
2 liability company to accomplish its general
3 public benefit purpose and any specific public
4 benefit purpose;

5 (G) The resources, intent, and conduct of any person
6 seeking to acquire control of the limited
7 liability company; and

8 (H) Any other pertinent factors or the interests of
9 any other group that they deem appropriate.

10 (b) A director shall not be personally liable for monetary
11 damages for any action taken as a director if the director
12 performed the duties of the director's office in compliance with
13 the general standards of conduct pursuant to section 414-221.

14 § -7 **Benefit director.** (a) The board of directors of a
15 sustainable business limited liability company shall include one
16 director who shall be designated the benefit director and who
17 shall have, in addition to all of the powers, duties, rights,
18 and immunities of the other directors of the sustainable
19 business limited liability company, the powers, duties, rights,
20 and immunities provided in this section.

21 (b) The benefit director shall be elected pursuant to
22 sections 414-193 and 414-194 and may be removed in the manner



1 provided by sections 414-198 and 414-199. The benefit director
2 may serve concurrently as the benefit officer. The articles or
3 bylaws of a sustainable business limited liability company may
4 prescribe additional qualifications of the benefit director;
5 provided that the qualifications are consistent with this
6 subsection.

7 (c) The benefit director shall prepare, and the
8 sustainable business limited liability company shall include in
9 the annual benefit report to shareholders required by section
10 -11, a statement whether, in the opinion of the benefit
11 director, the sustainable business limited liability company
12 acted in accordance with its general, and any specific, public
13 benefit purpose in all material respects during the period
14 covered by the report and whether the directors and officers
15 complied with sections -6(a) and -8(a), respectively. If
16 in the opinion of the benefit director the sustainable business
17 limited liability company or its directors or officers failed to
18 act according to the requirements of this chapter, then the
19 statement of the benefit director shall include a description of
20 the ways in which the sustainable business limited liability
21 company or its directors or officers failed to act according to
22 the requirements of this chapter. The benefit director's



1 statement included in the final draft of the benefit report
2 shall include formal responses to all questions, concerns,
3 comments, and suggestions raised through the public comment
4 period required by section -11.

5 (d) A benefit director shall be independent of and shall
6 have no material relationship with the sustainable benefit
7 limited liability company.

8 § -8 Standard of conduct for officers. (a) Each
9 officer of a sustainable business limited liability company
10 shall consider the interests and factors described in section
11 -6(a) in the manner provided in that section when:

12 (1) The officer has discretion to act with respect to a
13 matter; and

14 (2) It reasonably appears to the officer that the matter
15 may have a material effect on:

16 (A) The creation of a general or specific public
17 benefit by the sustainable business limited
18 liability company; or

19 (B) Any of the interests or factors referred to in
20 section -6(a).

21 (b) An officer shall not be personally liable for monetary
22 damages for any action taken as an officer if the officer



1 performed the duties of the position in compliance with the
2 general standards of conduct pursuant to section 414-233.

3 **§ -9 Benefit officer.** (a) A sustainable business
4 limited liability company may have an officer designated as the
5 benefit officer who shall have the authority and shall perform
6 the duties in the management of the sustainable business limited
7 liability company relating to the purpose of the limited
8 liability company to create general or specific public benefit
9 as may be provided by or pursuant to the bylaws or, in the
10 absence of controlling provisions in the bylaws, as may be
11 determined by or pursuant to resolutions or orders of the board
12 of directors. If a sustainable business limited liability
13 company has a benefit officer, the duties of the benefit officer
14 shall include preparing the benefit report required by section
15 -11.

16 (b) A benefit officer shall be independent of and shall
17 have no material relationship with the sustainable benefit
18 limited liability company.

19 **§ -10 Right of action.** The shareholders and directors
20 of a sustainable business limited liability company shall have
21 the right to bring direct or derivative claims to enforce
22 corporate purposes and the standards for directors as set forth



1 in section 414-221(a) and shall have the right to bring direct
2 or derivative claims to enforce the general or specific public
3 benefit purposes of the sustainable business limited liability
4 company and the standard of conduct for directors pursuant to
5 section -6(a)(1).

6 § -11 **Annual benefit report.** (a) A sustainable
7 business limited liability company shall deliver to each
8 shareholder an annual benefit report, including:

9 (1) A narrative description of:

10 (A) The ways in which the sustainable business
11 limited liability company pursued general public
12 benefits during the year and the extent to which
13 general public benefit was created;

14 (B) The ways in which the sustainable business
15 limited liability company pursued any specific
16 public benefit that the articles state as a
17 purpose of the sustainable business limited
18 liability company and the extent to which that
19 specific public benefit was created; and

20 (C) Any circumstances that have hindered the creation
21 by the sustainable business limited liability
22 company of general or specific public benefits;



- 1 (2) An assessment of the overall social and environmental
2 performance of the sustainable business limited
3 liability company, prepared in accordance with a
4 third-party standard under section -12 applied
5 consistently with any application of that standard in
6 prior benefit reports or accompanied by an explanation
7 of the reasons for any inconsistent application;
- 8 (3) The name of the benefit director and the benefit
9 officer, if any, and the address to which
10 correspondence to each of them may be directed;
- 11 (4) The compensation paid by the sustainable business
12 limited liability company during the year to each
13 director in the person's capacity as director;
- 14 (5) The name of each person who owns five per cent or more
15 of the outstanding shares of the sustainable business
16 limited liability company either beneficially to the
17 extent known to the sustainable business limited
18 liability company or of record;
- 19 (6) The statement of the benefit director described in
20 section -7(c);
- 21 (7) A statement of any connection to the third-party
22 standard under section -12, or its directors,



1 officers, or material owners from the sustainable
2 business limited liability company, or its directors,
3 officers, and material owners, including any financial
4 or governance relationship that might materially
5 affect the credibility of the objective assessment of
6 the third-party standard; and

7 (8) A statement that, as a private limited liability
8 company under the direction of its board and
9 accountable to its shareholders and the articles and
10 bylaws of the sustainable benefit limited liability
11 company, including those governing the general or
12 specific public benefit purpose and the activities of
13 the sustainable benefit limited liability company, the
14 sustainable benefit limited liability company and its
15 activities are subject to the oversight of the board
16 of the sustainable benefit limited liability company
17 and are not subject to the direct oversight,
18 regulation, or endorsement of any governmental body.

19 (b) A sustainable business limited liability company shall
20 post a draft of its benefit report on the public section of its
21 website, or make it otherwise available to the public, for a
22 sixty-day public comment period prior to final publication of



1 the benefit report. The deadline for a commentary shall be
2 published in a publicly accessible manner.

3 (c) The benefit report shall be sent annually to each
4 shareholder within one hundred twenty days following the end of
5 the fiscal year of the sustainable business limited liability
6 company.

7 (d) A sustainable business limited liability company shall
8 post its most recent benefit report on the public portion of its
9 website, if any, except that the compensation paid to directors
10 and any financial or proprietary information included in the
11 benefit report may be omitted from the benefit report as posted.
12 If a sustainable business limited liability company does not
13 have a public website, it shall deliver a copy of its most
14 recent benefit report upon request and without charge to any
15 person who requests a copy.

16 § -12 **Third-party standard.** A third-party standard for
17 purposes of defining, reporting, and assessing overall corporate
18 social and environmental performance of a sustainable business
19 limited liability company subject to this chapter shall be:

20 (1) Comprehensive in its assessment of the effect of the
21 business and its operations upon the interests listed
22 in section -6(a);



- 1 (2) Developed by an organization that is independent of
- 2 the sustainable business limited liability company;
- 3 and
- 4 (3) Transparent because the following information is
- 5 publicly available:
- 6 (A) The criteria considered when measuring the
- 7 overall social and environmental performance of a
- 8 business, as well as the relative weightings of
- 9 those criteria;
- 10 (B) The identity of the directors, officers, any
- 11 material owners, and the governing body of the
- 12 organization that developed and controls
- 13 revisions to the standard;
- 14 (C) The process by which revisions to the standard
- 15 are made;
- 16 (D) The process by which changes to the membership of
- 17 the governing body of the organization that
- 18 developed and controls revisions to the standard
- 19 are made; and
- 20 (E) An accounting of the sources of financial support
- 21 for the organization that developed and controls
- 22 revisions to the standard, with sufficient detail

1 to disclose any relationships that could
2 reasonably be considered to present a potential
3 conflict of interest.

4 § -13 Ministerial role of department director. Section
5 414-16 shall apply to any filings made by a sustainable business
6 limited liability company."

7 SECTION 2. This Act shall take effect on July 1, 2112.

8



Report Title:

Sustainable Business Limited Liability Companies

Description:

Establish a new chapter in the Hawaii Revised Statutes, entitled sustainable business limited liability companies. Effective July 1, 2112. (SD1)

The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.

