
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 sustainable business
8 limited liability company to offer entrepreneurs and investors
9 the option to build and invest in businesses that operate in a
10 socially and environmentally sustainable manner. Enforcement of
11 those responsibilities comes not from governmental oversight,
12 but rather from enforcement by members and managers of the
13 provisions governing transparency and accountability included in
14 this chapter.

15 § -2 **Definitions.** As used in this chapter:

16 "Articles" means the articles of organization of a
17 sustainable business limited liability company.



1 "Benefit manager" means the manager designated as the
2 benefit manager of a sustainable business limited liability
3 company under section -7.

4 "Director" means the director of financial institutions.

5 "General public benefit" means a material, positive impact
6 on society and the environment, taken as a whole and as measured
7 by a third-party standard pursuant to section -10, from the
8 business and operations of a sustainable business limited
9 liability company.

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

13 "Member" means a member of a sustainable business limited
14 liability company.

15 "Subsidiary" of a person means an association in which the
16 person owns beneficially or of record fifty per cent or more of
17 the outstanding equity interests; provided that a percentage of
18 ownership in an association shall be calculated as if all
19 outstanding rights to acquire equity interests in the
20 association had been exercised.

21 "Sustainable business limited liability company" means a
22 manager-managed domestic limited liability company, organized



1 under chapter 428, that has elected to also become subject to
2 this chapter and whose status as a sustainable business limited
3 liability company has not been terminated as provided in this
4 chapter.

5 "Third-party standard" means a standard for defining,
6 reporting, and assessing overall social and environmental
7 performance that conforms to the requirements of this chapter.

8 § -3 Election of a domestic limited liability company to
9 become a sustainable business limited liability company. (a) A
10 manager-managed domestic limited liability company organized
11 under chapter 428 may elect to become a sustainable business
12 limited liability company subject to this chapter by including
13 in its articles or amending its articles to include a statement
14 that the limited liability company is a sustainable business
15 limited liability company. An amendment pursuant to this
16 subsection shall require the consent of all members.

17 (b) If a limited liability company that is not a
18 sustainable business limited liability company is a party to a
19 merger, consolidation, or division, or is the exchanging limited
20 liability company in a share exchange, and the surviving, new,
21 or any resulting limited liability company in the merger,
22 consolidation, division, or share exchange is to be a



1 sustainable business limited liability company, then the plan of
2 merger, consolidation, division, or share exchange shall require
3 the consent of all members.

4 **§ -4 Termination of sustainable business limited**
5 **liability company status.** (a) A sustainable business limited
6 liability company may terminate its status and cease to be
7 subject to this chapter by amending its articles to delete the
8 statement that the limited liability company is a sustainable
9 business limited liability company. An amendment pursuant to
10 this subsection shall require the consent of all members.

11 (b) If a plan of merger, consolidation, division, or share
12 exchange would have the effect of terminating the status of a
13 limited liability company as a sustainable business limited
14 liability company, the plan shall require the consent of all
15 members.

16 **§ -5 Benefit purposes.** (a) Every sustainable business
17 limited liability company shall have among its purposes the
18 creation of a general public benefit.

19 (b) In addition to the general public benefit purpose
20 described in subsection (a), the articles of a sustainable
21 business limited liability company may identify one or more
22 specific public benefits for which the sustainable business



1 limited liability company was created. The identification of a
2 specific public benefit pursuant to this subsection does not
3 limit the obligation of a sustainable business limited liability
4 company to create a general public benefit. Allowable specific
5 benefits for sustainable business limited liability companies
6 subject to this chapter include:

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



1 through assignment, license, lien, security agreement,
2 or obligation for the following purposes:

3 (A) Creating and retaining good jobs within the State
4 and throughout the United States;

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

12 (C) Enhancing environmental protection nationally and
13 internationally;

14 provided that if a specific public benefit is
15 specified, section -4 shall not apply to the
16 limited liability company and the sustainable business
17 limited liability company status shall be irrevocable;
18 and provided further that if the annual statement of
19 the benefit director reflects that the sustainable
20 business limited liability company has failed to
21 fulfill its stated specific public benefit, its status



1 as a sustainable business limited liability company
2 shall be terminated.

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

6 (d) A sustainable business limited liability company may,
7 subject to sections 428-204 through 428-204.6, amend its
8 articles to add, amend, or delete the identification of a
9 specific public benefit for which the sustainable business
10 limited liability company was created. An amendment pursuant to
11 this subsection shall require the consent of all members.

12 **§ -6 Standard of conduct for managers and members.** (a)

13 In discharging the duties of their respective positions, the
14 managers and members of a sustainable business limited liability
15 company, in considering the best interests of the sustainable
16 business limited liability company:

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

19 (A) The members of the sustainable business limited
20 liability company; and



- 1 (B) The accomplishment of general and specific public
2 benefits set forth in the sustainable business
3 limited liability company's purposes; and
- 4 (2) May consider the effect of any action of the
5 sustainable business limited liability company upon:
- 6 (A) The employees and workforce of the sustainable
7 business limited liability company and its
8 subsidiaries and suppliers;
- 9 (B) The interests of customers as beneficiaries of
10 the general or specific public benefit purposes
11 of the sustainable business limited liability
12 company;
- 13 (C) Community and societal considerations, including
14 those of any community in which offices or
15 facilities of the sustainable business limited
16 liability company or its subsidiaries or
17 suppliers are located;
- 18 (D) The local and global environment;
- 19 (E) The short-term and long-term interests of the
20 sustainable business limited liability company,
21 including benefits that may accrue to the
22 sustainable business limited liability company



1 from its long-term plans and the possibility that
2 these interests may be best served by the
3 continued independence of the sustainable
4 business limited liability company;

5 (F) The ability of the sustainable business limited
6 liability company to accomplish its general
7 public benefit purpose and any specific public
8 benefit purpose;

9 (G) The resources, intent, and conduct of any person
10 seeking to acquire control of the limited
11 liability company; and

12 (H) Any other pertinent factors or the interests of
13 any other group that the managers or members deem
14 appropriate.

15 (b) A manager or member shall not be personally liable for
16 monetary damages for any action taken as a manager or member if
17 the manager or member performed the duties of office in
18 compliance with the general standards of conduct pursuant to
19 section 428-409.

20 § -7 **Benefit manager.** (a) One manager of a sustainable
21 business limited liability company shall be designated the
22 benefit manager and shall have, in addition to all of the



1 powers, duties, rights, and immunities of the other managers, if
2 any, of the sustainable business limited liability company, the
3 powers, duties, rights, and immunities provided in this section.

4 (b) The benefit manager shall be designated, appointed,
5 elected, replaced, or removed pursuant to section 428-404(b).

6 The articles or operating agreement of a sustainable business
7 limited liability company may prescribe additional
8 qualifications of the benefit manager consistent with this
9 section.

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



1 company, its members, or its managers failed to act according to
2 the requirements of this chapter. The benefit manager's
3 statement included in the final draft of the benefit report
4 shall include formal responses to all questions, concerns,
5 comments, and suggestions raised through the public comment
6 period required by section -9.

7 (d) A benefit manager shall be independent of and shall
8 have no material relationship with the sustainable business
9 limited liability company. For purposes of this section, a
10 material relationship shall exist between a benefit manager and
11 a sustainable business limited liability company if the benefit
12 manager is:

- 13 (1) An employee other than a benefit manager of the
14 sustainable business limited liability company or any
15 of its subsidiaries or has been an employee within the
16 previous three years;
- 17 (2) Related by blood, marriage, or adoption to; is a party
18 to a civil union with; is a reciprocal beneficiary or
19 household member of; or resides with a member or
20 manager of the sustainable business limited liability
21 company or any of its subsidiaries; or



1 (3) An owner of the sustainable business limited liability
2 company; a director, officer, or manager of an
3 association; or an association in which the manager
4 owns beneficially or of record five per cent or more
5 of the outstanding equity interests or the outstanding
6 shares is a member of the sustainable business limited
7 liability company; provided that percentage ownership
8 in an association shall be calculated as if all
9 outstanding rights to acquire equity interests in the
10 association had been exercised.

11 § -8 **Right of action.** The members and managers of a
12 sustainable business limited liability company shall have the
13 right, pursuant to section 428-410, to bring direct or
14 derivative claims to enforce the general or specific public
15 benefit purposes of the sustainable business limited liability
16 company and the standard of conduct for managers and members
17 established by section -6(a)(1).

18 § -9 **Annual benefit report.** (a) A sustainable business
19 limited liability company shall deliver to each member an annual
20 benefit report, including:

21 (1) A narrative description of:



- 1 (A) The ways in which the sustainable business
2 limited liability company pursued general public
3 benefits during the year and the extent to which
4 general public benefits were created;
- 5 (B) The ways in which the sustainable business
6 limited liability company pursued each specific
7 public benefit that the articles state as a
8 purpose of the sustainable business limited
9 liability company and the extent to which each
10 specific public benefit was created; and
- 11 (C) Any circumstances that have hindered the creation
12 by the sustainable business limited liability
13 company of general or specific public benefits;
- 14 (2) An assessment of the overall social and environmental
15 performance of the sustainable business limited
16 liability company, prepared in accordance with a
17 third-party standard under section -10 that is
18 applied consistently with any application of that
19 standard in prior benefit reports or accompanied by an
20 explanation of the reasons for any inconsistent
21 application;



- 1 (3) The name of the benefit manager and the address to
2 which correspondence to the benefit manager may be
3 directed;
- 4 (4) The compensation paid by the sustainable business
5 limited liability company during the year to each
6 manager in the person's capacity as manager;
- 7 (5) The name of each member of the sustainable business
8 limited liability company;
- 9 (6) The statement of the benefit manager described in
10 section -7(c);
- 11 (7) A statement of any connection to the third-party
12 standard under section -10, or its directors,
13 officers, or material owners from the sustainable
14 business limited liability company, its members, or
15 its managers including any financial or governance
16 relationship that might materially affect the
17 credibility of the objective assessment of the third-
18 party standard; and
- 19 (8) A statement that, as a private limited liability
20 company under the direction of its members and
21 managers and governed by the articles and operating
22 agreement of the sustainable business limited



1 liability company, including those governing the
2 general or specific public benefit purpose and the
3 activities of the sustainable business limited
4 liability company, the sustainable business limited
5 liability company and its activities in creating a
6 general or specific public benefit are subject to the
7 oversight of the members and managers of the
8 sustainable business limited liability company and are
9 not subject to the direct oversight, regulation, or
10 endorsement of any governmental body.

11 (b) A sustainable business limited liability company shall
12 post a draft of its benefit report on the public section of its
13 website or make it otherwise available to the public for a
14 sixty-day public comment period prior to final publication of
15 the benefit report. The deadline to submit comments shall be
16 published in a publicly accessible manner.

17 (c) The benefit report shall be sent annually to each
18 member and shall be delivered to the director according to the
19 schedule established for filing annual reports by section
20 428-210.

21 (d) A sustainable business limited liability company shall
22 post its most recent benefit report on the public portion of its



1 website, if any; provided that the compensation paid to managers
2 and any financial or proprietary information included in the
3 benefit report may be omitted from the benefit report as posted.
4 If a sustainable business limited liability company does not
5 have a public website, it shall deliver a copy of its most
6 recent benefit report upon request and without charge to any
7 person who requests a copy.

8 **§ -10 Third-party standard.** A third-party standard for
9 purposes of defining, reporting, and assessing overall social
10 and environmental performance of a sustainable business limited
11 liability company subject to this chapter shall be:

12 (1) Comprehensive in its assessment of the effect of the
13 business and its operations upon the interests listed
14 in section -6(a);

15 (2) Developed by an organization that is independent of
16 the sustainable business limited liability company;
17 and

18 (3) Transparent because the following information is
19 publicly available:

20 (A) The criteria considered when measuring the
21 overall social and environmental performance of a
22 sustainable business limited liability company,



- 1 as well as the relative weightings of those
2 criteria;
- 3 (B) The identity of the directors, officers, any
4 material owners, and the governing body of the
5 organization that developed and controls
6 revisions to the standard;
- 7 (C) The process by which revisions to the standard
8 are made;
- 9 (D) The process by which changes to the membership of
10 the governing body of the organization that
11 developed and controls revisions to the standard
12 are made; and
- 13 (E) An accounting of the sources of financial support
14 for the organization that developed and controls
15 revisions to the standard that includes
16 sufficient detail to disclose any relationships
17 that could reasonably be considered to present a
18 potential conflict of interest.

19 § -11 Ministerial role of director. Sections 428-206
20 through 428-209 shall apply to annual benefit reports delivered
21 to the director pursuant to section -9 by a sustainable
22 business limited liability company."



1 SECTION 2. Section 428-404, Hawaii Revised Statutes, is
2 amended by amending subsection (c) to read as follows:

3 "(c) The only matters of a limited liability company's
4 business that require the consent of all the members are:

- 5 (1) Amendments to the operating agreement under section
6 428-103;
- 7 (2) Authorization or ratification of acts or transactions
8 under section 428-103(b)(2)(B) which would otherwise
9 violate the duty of loyalty;
- 10 (3) Amendments to the articles of organization under
11 section 428-204;
- 12 (4) Compromising an obligation to make a contribution
13 under section 428-402(b);
- 14 (5) Compromising among members, an obligation of a member
15 to make a contribution or return money or other
16 property paid or distributed in violation of this
17 chapter;
- 18 (6) Making interim distributions under section 428-405(a);
- 19 (7) Admission of a new member;
- 20 (8) Use of the company's property to redeem an interest
21 subject to a charging order;



- 1 (9) Consent to dissolve the company under section
2 428-801(2);
- 3 (10) Waiving of the right to have the company's business
4 wound up and the company terminated under section
5 428-802(b);
- 6 (11) Merging the company with another entity under section
7 ~~[+]428-904(e)(1)[+]~~; ~~[and]~~
- 8 (12) Selling, leasing, exchanging, or otherwise disposing
9 of all, or substantially all, of the company's
10 property with or without goodwill~~[-]~~;
- 11 (13) Election of the company to become a sustainable
12 business limited liability company pursuant to section
13 -3;
- 14 (14) Termination of the company's status as a sustainable
15 business limited liability company pursuant to section
16 -4; and
- 17 (15) Amendment of the company's articles of organization to
18 add, amend, or delete the identification of a specific
19 public benefit pursuant to section -5."

20 SECTION 3. Statutory material to be repealed is bracketed
21 and stricken. New statutory material is underscored.

22



1 SECTION 4. This Act shall take effect on July 1, 2112.

2



Report Title:

Sustainable Business Limited Liability Companies

Description:

Establish a new chapter in the Hawaii Revised Statutes to authorize the creation of and establish policies and procedures for the governance of sustainable business limited liability companies. Effective July 1, 2112. (SD2)

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