

Topic: Benefit Corporations

Question by: Mandy Harlan

Jurisdiction: Louisiana

Date: April 9, 2012

Jurisdiction	Question(s)
	Louisiana currently has legislation being introduced regarding benefit corporations. I would like to know what states currently file this type of entity and what concerns if any did you have before this legislation was passed and any concerns that may have arisen since the legislation was adopted.
Manitoba	
Corporations Canada	
Alabama	
Alaska	
Arizona	Arizona does not have this entity type, nor any pending legislation on it.
Arkansas	
California	
Colorado	
Connecticut	
Delaware	
District of Columbia	In the District of Columbia we have a pending legislation about benefit corporation. However, the drafters of our new corporate law that we started implementing as of January 1 st 2012 do not feel that there is a need for a separate benefit corporation provision. Their feeling is that existing Business Corporation Act allows for the same to be accomplished.
Florida	Florida had legislation for Benefit Corporations in our session that ended in early March. The bill did not pass. Redistricting was the hot topic and received most of the attention this legislative session. The Benefit Corporation bill just didn't get through all the committees it was assigned to and will probably be reintroduced next year.
Georgia	
Hawaii	

Jurisdiction	Question(s)
	Louisiana currently has legislation being introduced regarding benefit corporations. I would like to know what states currently file this type of entity and what concerns if any did you have before this legislation was passed and any concerns that may have arisen since the legislation was adopted.
Idaho	
Illinois	
Indiana	
Iowa	
Kansas	
Kentucky	
Louisiana	
Maine	Maine currently doesn't have a benefit corporations act and we haven't seen any legislation as of yet.
Maryland	
Massachusetts	
Michigan	Legislation was introduced last year but appears to have lost its momentum
Minnesota	
Mississippi	
Missouri	
Montana	Montana currently does not have statutory authority to file Benefit Corporations and we are not aware of any upcoming legislation regarding them
Nebraska	
Nevada	Nevada does not currently file benefit corporations. There could be legislation regarding this next year.
New Hampshire	New Hampshire does not have these nor have we seen any legislation toward this as of yet.
New Jersey	
New Mexico	
New York	
North Carolina	

Jurisdiction	Question(s)
	Louisiana currently has legislation being introduced regarding benefit corporations. I would like to know what states currently file this type of entity and what concerns if any did you have before this legislation was passed and any concerns that may have arisen since the legislation was adopted.
North Dakota	North Dakota does not have statutes related to benefit corporations.
Ohio	
Oklahoma	
Oregon	
Pennsylvania	Legislation has been introduced in Pennsylvania (HB1616) for benefit corporations. The Department has supported this legislation and does not see any adverse effects to the operations of the Bureau.
Rhode Island	Rhode Island does not have benefit corporations and to date, has not had any legislation introduced.
South Carolina	
South Dakota	
Tennessee	
Texas	Not in Texas.
Utah	We don't have any entity titled "benefit corporation" in Utah statute.
Vermont	
Virginia	See below
Washington	See Below
West Virginia	
Wisconsin	
Wyoming	

Additional comments:

VIRGINIA:

Virginia has had benefit corporations since July 1, 2011. The provisions are found in our Stock Corporations Act in Code sections [13.1-782](#) through 13.1-791.

To be a benefit corporation, the articles need to merely recite that the corporation is a benefit corporation. Our office is under no obligation to determine whether the corporation follows through and “registers” with B Lab or any other organization that provides a third-party standard. If the articles of a Virginia stock corporation say the corporation is a benefit corporation, we add it to the list. So far, we have 7 Virginia benefit corporations.

A few notes: If an existing corporation wants to become a benefit corporation, the requisite amendment has to be approved by all of the shareholders. I think a better model is for the articles to include a purpose of conducting business as a benefit corporation, instead of the statement, but that is implied. Consequently, corporations required to have a sole and specific purpose (e.g., banks and professional corporations) cannot be a Virginia benefit corporation. Neither can nonstock (non-profit) corporations. Also, we do not track whether a registered foreign corporation is a benefit corporation under the laws of its home jurisdiction, even though we do require the corporate charter upon registration, and subsequent amendments.

Finally, a bill was introduced this past session to have benefit LLCs. It was opposed by the business section of the bar and did not get out of committee.

WASHINGTON:

Funny you should ask. Washington just passed a new law, allowing a Social Purpose Corporation, similar to a benefit corporation, but not exactly the same. The new law becomes effective June 7, 2012 and can be found at <http://apps.leg.wa.gov/documents/billdocs/2011-12/Pdf/Bills/Session%20Law%202012/2239-S.SL.pdf>

While it isn't exactly a benefit corporation, they are able to pursue certification from B Lab if they choose. I've attached a recent news article on it.

Our concerns were limited to simple things, like filing issues:

How to make the system recognize the new ending and category of Profit Corporation;

How to train staff to review for the new 3-4 statements or provisions in articles or amendments to articles;

How we would file the social purpose report, if asked to do so;

And of course, what have we missed that is going to cause us a problem.

We are in the middle of implementing these changes now, so talk to me in a few months and I'll probably have other concerns

WILLIAM MITCHELL COLLEGE OF LAW:

Benefit corporation legislation was introduced this year in the Minnesota legislature but died, in part due to the opposition of the State Bar Association, which wanted time to seriously study the issue.

I was involved in opposing the legislation. Here is the most recent list of issues I've compiled, solely from the for-profit perspective:

- Once the directors have two disparate objects (wealth and “whales”), their choices become almost completely unreviewable.
 - The business judgment rule presupposes that the sole ultimate goal is shareholder wealth.
 - Even in the close corporation context, the justification of purported “benefit” motive could cloud issues of alleged minority oppression.
- “Contrariwise,” once a “whales” objective exists, strike suits by disappointed whale supporters are inevitable.
- Should the directors of a benefit corporation have the same exculpatory provisions in the articles as directors of a for profit corporation?
- May the benefit corporation select only one “stakeholder” interest and within that general interest may the corporation select a subset (e.g., protect our non-union employees?) Do existing “other constituency” statutes apply to benefit corporations? If so, what happens if the directors act to protect a constituency not within the selected benefit interest, to the detriment of the selected interest?
- What are the criteria for entering or exiting benefit corporation status? Is entrance/exit a dissent/appraisal event? If so, can that provision be waived in the articles of organization?
 - The last version of the Minnesota legislation which I saw seemed to provide that a corporation could originate as a benefit corporation but not become one after being incorporated otherwise. If so, then the “entrance” question is answered, because “becoming” would involve a merger into a shell corporation. That approach seems silly to me.
 - Are exit/enter changes with conversion statutes?
- Are benefit corporations subject to anti-takeover legislation?
- Does the existence of benefit corporation status implicitly restrict the permissible activities of corporations that have not chosen that status?

Happy to discuss further, either on list or off.

Regards,

Dan

Professor Daniel S. Kleinberger | Founding Director, Mitchell Fellows Program

Co-Reporter, Uniform Law Conference Project for

Harmonization of Business Entity Acts

daniel.kleinberger@wmitchell.edu | 651-290-6387 | Fax: 651-290-6414

William Mitchell College of Law

875 Summit Avenue, St. Paul, MN 55105

DRINKER BIDDLE & REATH:

The legislation that was introduced in Minnesota this year is very different from the benefit corporation legislation that has been enacted in California, Hawaii, Maryland, New Jersey, New York, Vermont, and Virginia and that has been introduced in Louisiana. The Minnesota legislation is unique -- or as a law professor like Dan Kleinberger might be wont to say, the Minnesota legislation is sui generis.

William H. Clark, Jr. | **Drinker Biddle & Reath LLP**

One Logan Square
Philadelphia, PA 19103
215-988-2804 direct
215-988-2757 fax

WILLIAM MITCHELL COLLEGE OF LAW:

Actually, there was another ex-law professor involved – Steve Young, a former Dean of Hamline Law School (a neighbor and competitor). He was, irate, to say the least, that the Bar Association had the temerity to wish to study the bill.

The issues I've raised below seem to me applicable beyond the Minnesota legislation.

Dan

Professor Daniel S. Kleinberger | Founding Director, Mitchell Fellows Program

Co-Reporter, Uniform Law Conference Project for

Harmonization of Business Entity Acts

daniel.kleinberger@wmitchell.edu | 651-290-6387 | Fax: 651-290-6414

William Mitchell College of Law

875 Summit Avenue, St. Paul, MN 55105

Full text of email:

Good Afternoon Everyone,

Louisiana currently has legislation being introduced regarding benefit corporations. I would like to know what states currently file this type of entity and what concerns if any did you have before this legislation was passed and any concerns that may have arisen since the legislation was adopted.

Thanks in advance for your time and any information you can share.

Mandy Harlan
Commercial Assistant Administrator
Louisiana Secretary of State's Office
8585 Archives Avenue
Baton Rouge, LA 70809
225-922-2896