

Topic: Public Benefit Corporations

Question by: Mike Powell

Jurisdiction: Texas

Date: May 16, 2018

Jurisdiction	Question(s)
	<p>For those jurisdictions that allow a for profit corporation to elect to be a Public Benefits Corporations we would greatly appreciate responses to the following questions:</p> <ol style="list-style-type: none"> <li>1. Does the filing office have a way of identifying the regular for-profit corporation from the public benefit corporation? (is it a separate entity type, have a different code/identifier, etc.)</li> <li>2. How many of these types of entities are formed on a yearly basis? (or what percentage of for-profit corporations are organized as PBCs?)</li> <li>3. Does your jurisdiction provide "fillable" forms or provide a summary information sheet to form these types of entities?</li> <li>4. Does your jurisdiction receive a number of calls or emails from members of the public wanting information on how to form these types of entities?</li> </ol>
<b>Manitoba</b>	
<b>Corporations Canada</b>	
<b>Alabama</b>	
<b>Alaska</b>	
<b>Arizona</b>	<ol style="list-style-type: none"> <li>1. Yes - it is a separate entity type.</li> <li>2. We currently have only 18 after having the law in place for about 2 years, so it is not a high-volume entity type.</li> <li>3. No special forms are available to these entity types.</li> <li>4. Minimal calls - only one or two since the law got passed, however, a lot of people asking for data on how many we have.</li> </ol>
<b>Arkansas</b>	

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<b>California</b>	<p>The California Secretary of State does not regulate whether an entity is operating on a for-profit or nonprofit basis. That being said, California law currently does not permit the formation of for-profit Public Benefit Corporations. Public Benefit Corporations are only formed pursuant to the Nonprofit Corporation Law. California Corporations Code sections 5000 et. seq.</p> <p>California does have an entity type called a Benefit Corporation, which may form as a for-profit entity that has the purpose of creating general public benefit. California Corporations Code sections 14600 et seq. Responses to your questions for Benefit Corporations:</p> <ol style="list-style-type: none"> <li>1. The Secretary of State's office does not code the regular for-profit corporation and the benefit corporation differently in our database. We do manually track the formation of benefit corporations for public inquiry purposes, but please note, this is a manual list, which may not reflect a completely accurate number of these entities.</li> <li>2. Since the creation of Benefit Corporations in 2012 we have had 353 total formations identified by manual tracking, an average of about 59 per year.</li> <li>3. Neither fillable forms or information sheets are not provided.</li> <li>4. We receive only a handful of calls per year on this entity type.</li> </ol>

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<b>Colorado</b>	<ol style="list-style-type: none"> <li>1. Colorado's law became effective April 1, 2014. In addition to corporations there are three types of cooperatives that can also elect to be a public benefit corporation. We do track them as PBCs, such as a Corporation PBC.</li> <li>2. For calendar year 2017: <table border="0" data-bbox="533 695 1220 846"> <thead> <tr> <th></th> <th>regular</th> <th>PBC</th> </tr> </thead> <tbody> <tr> <td>Cooperative association</td> <td>2</td> <td>5</td> </tr> <tr> <td>Cooperative</td> <td>29</td> <td>3</td> </tr> <tr> <td>Ltd Cooperative assoc</td> <td>17</td> <td>3</td> </tr> <tr> <td>Corporation</td> <td>11,103</td> <td>270</td> </tr> </tbody> </table> </li> </ol> <p>These figures are for newly formed. In Colorado, a corporation can file an amendment to become a PBC or vice versa. I didn't include those stats but could include them if you want them.</p> <ol style="list-style-type: none"> <li>3. These filings must be completed online. The filing process allows for an attachment that lists their purpose.</li> <li>4. I'm not aware of questions being asked. If so, they are very few.</li> </ol>		regular	PBC	Cooperative association	2	5	Cooperative	29	3	Ltd Cooperative assoc	17	3	Corporation	11,103	270
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<b>Connecticut</b>																
<b>Delaware</b>																
<b>District of Columbia</b>	<ol style="list-style-type: none"> <li>1. No it is a just a sub type to business corporation.</li> <li>2. Very small less than 5%.</li> <li>3. We have both fillable pdfs and also web filings - customer are required to put under purpose or misc section that corp will be benefit corporation (it has to be in the articles of incorporation or restated articles/articles of amendment);</li> <li>4. We have less than 20 entities since law's rollout in 2013. We get very few phone calls. I co authorized benefit corp guide along with B Lab - here is the link for more information - <a href="https://dcra.dc.gov/sites/default/files/dc/sites/dcra/publication/attachments/BenefitCorpHow-ToGuide.pdf">https://dcra.dc.gov/sites/default/files/dc/sites/dcra/publication/attachments/BenefitCorpHow-ToGuide.pdf</a></li> </ol>															
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<b>Hawaii</b>	<ol style="list-style-type: none"> <li>1. They fall under our profit domestic corporation statutes. We can identify by their purpose and we maintain a list, since it is a short one.</li> <li>2. Very few, maybe 1 or 2 a year since the effective date of July 8, 2011.</li> <li>3. No, they would use the profit Articles of Incorporation form and add an attachment for the public benefit purpose.</li> <li>4. Yes, but, not often.</li> </ol>
<b>Idaho</b>	
<b>Illinois</b>	
<b>Indiana</b>	<ol style="list-style-type: none"> <li>1. Yes. They are a different entity type with different filing requirements.</li> <li>2. We have 18 domestic benefit corporations and 1 foreign benefit corporation. We do not offer this entity type online. Because it is a more specialized entity we did not want people forming them without actually understanding what they are doing.</li> <li>3. Yes. <a href="file:///C:/Users/rlongfellow/Downloads/04159%20fill-in%20(4).pdf">file:///C:/Users/rlongfellow/Downloads/04159%20fill-in%20(4).pdf</a>&lt;file:///C:/Users/rlongfellow/Downloads/04159%20fill-in%20(4).pdf&gt;</li> <li>4. Not many.</li> </ol>
<b>Iowa</b>	
<b>Kansas</b>	

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<b>Kentucky</b>	<ol style="list-style-type: none"> <li>1. It has a different code identifier.</li> <li>2. Very very small.</li> <li>3. Forms are not provided for PBC.</li> <li>4. We rarely receive calls/e-mails.</li> </ol>
<b>Louisiana</b>	
<b>Maine</b>	
<b>Maryland</b>	
<b>Massachusetts</b>	<ol style="list-style-type: none"> <li>1. Massachusetts does identify both Benefit Corporations and Professional Benefit Corporations on our system as a separate entity type.</li> <li>2. On average about 11 benefit corporations form per year.</li> <li>3. Yes.</li> <li>4. No. When these entity types first were enacted in MA (2012) we provided information on our website which is still on our system today.</li> </ol>

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<b>Michigan</b>	<p>Michigan law does not currently allow for Public Benefit Corporations or Benefit Corporations.</p> <p>Last month, Benefit Corporation legislation was introduced in Michigan: HB 5867&lt;<a href="http://www.legislature.mi.gov/(S(emxrmauws5xfkk1pk15eis0x))/mileg.aspx?page=getobject&amp;objectname=2018-HB-5867&amp;query=on">http://www.legislature.mi.gov/(S(emxrmauws5xfkk1pk15eis0x))/mileg.aspx?page=getobject&amp;objectname=2018-HB-5867&amp;query=on</a>&gt;, HB 5868&lt;<a href="http://www.legislature.mi.gov/(S(emxrmauws5xfkk1pk15eis0x))/mileg.aspx?page=getobject&amp;objectname=2018-HB-5868&amp;query=on">http://www.legislature.mi.gov/(S(emxrmauws5xfkk1pk15eis0x))/mileg.aspx?page=getobject&amp;objectname=2018-HB-5868&amp;query=on</a>&gt;, HB 5869,&lt;<a href="http://www.legislature.mi.gov/(S(emxrmauws5xfkk1pk15eis0x))/mileg.aspx?page=getobject&amp;objectname=2018-HB-5869&amp;query=on">http://www.legislature.mi.gov/(S(emxrmauws5xfkk1pk15eis0x))/mileg.aspx?page=getobject&amp;objectname=2018-HB-5869&amp;query=on</a>&gt; and HB 5872&lt;<a href="http://www.legislature.mi.gov/(S(emxrmauws5xfkk1pk15eis0x))/mileg.aspx?page=getobject&amp;objectname=2018-HB-5872&amp;query=on">http://www.legislature.mi.gov/(S(emxrmauws5xfkk1pk15eis0x))/mileg.aspx?page=getobject&amp;objectname=2018-HB-5872&amp;query=on</a>&gt;.</p> <p>Benefit Corporation legislation was previously introduced in 2016, 2013, and 2011.</p>

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<b>Minnesota</b>	<p>Minnesota has had PBCs since 1/1/15.</p> <p>We get between 30 and 40 per year, so far, but it is still early days. That's out of about 6000 new corps per year, so what's that - half a percent. We do in excess of 30K LLCs per year, so that takes it way down, if you count those.</p> <p>PBCs have to have different corporate designations (GBC or general benefit corporation; SBC or specific benefit corporation).</p> <p>For a very short blurb on PBCs see: <a href="https://www.sos.state.mn.us/business-liens/start-a-business/types-of-minnesota-businesses/?searchTerm=public%20benefit%20corporations">https://www.sos.state.mn.us/business-liens/start-a-business/types-of-minnesota-businesses/?searchTerm=public%20benefit%20corporations</a></p> <p>To see the annual reports that are required by law, see: <a href="https://www.sos.state.mn.us/business-liens/business-liens-data/public-benefit-corporations-annual-reports-2017/?searchTerm=public%20benefit%20corporations">https://www.sos.state.mn.us/business-liens/business-liens-data/public-benefit-corporations-annual-reports-2017/?searchTerm=public%20benefit%20corporations</a> for the most recent year. We do provide an annual report form, but not other forms: <a href="https://www.sos.state.mn.us/media/1934/dcannualbenefitreport.pdf">https://www.sos.state.mn.us/media/1934/dcannualbenefitreport.pdf</a>.</p> <p>No fillable forms.</p> <p>We do receive some calls about PBCs. We generally refer them to the statute: <a href="https://www.revisor.mn.gov/statutes/?id=304A">https://www.revisor.mn.gov/statutes/?id=304A</a></p>
<b>Mississippi</b>	
<b>Missouri</b>	
<b>Montana</b>	
<b>Nebraska</b>	

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<b>Nevada</b>	<ol style="list-style-type: none"> <li>1. Yes, we use an identifier in the Articles and require a statement of purpose.</li> <li>2. Since 2013, in total, Nevada has recorded 1,693 Benefit Corps. Currently, there are approximately 600 in active status, 149 in default and the rest either revoked or terminated.</li> <li>3. Yes, we do provide fillable forms and include instructions and references to the applicable statutory chapters.</li> <li>4. We do answer inquiries on this topic. The number of calls and emails is small.</li> </ol>
<b>New Hampshire</b>	
<b>New Jersey</b>	
<b>New Mexico</b>	
<b>New York</b>	
<b>North Carolina</b>	
<b>North Dakota</b>	
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<b>Oklahoma</b>	
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<b>Pennsylvania</b>	<ol style="list-style-type: none"> <li>1. Yes - it is a separate entity type called "benefit corporation." Pennsylvania law also allows for other specialized business corporations, like professional corporations or management corporations, which have their own different entity types as well, as distinguished from a regular old business corporation.</li> <li>2. A small number of business corporations have formed as benefit corporations since the law was enacted in 2016. Existing corporations may also amend their articles to become benefit corporations. The current number of active benefit corporations is about 80, which is a very small percentage of business corporations. The law became effective in the beginning of 2013 - we had an initial bunch register (~40) and then it's been slow and steady since then.</li> </ol> <p>BUT we also got benefit LLCs early last year (effective February 21, 2017) and that has been crazy. We made the mistake of putting it on the LLC formation form (see next question) and the many un lawyered masses are using it, not understanding what a benefit LLC is or should be, despite the explanations and cautions on the form instructions.</p> <ol style="list-style-type: none"> <li>3. Yes, to both. Registration Forms&lt;<a href="http://www.dos.pa.gov/BusinessCharities/Business/RegistrationForms/Pages/default.aspx">http://www.dos.pa.gov/BusinessCharities/Business/RegistrationForms/Pages/default.aspx</a>&gt; (all also available online) But people don't read, so we plan to take the benefit part off the LLC Certificate of Organization form and perhaps even off the Articles of Incorporation form (although this seems to be less of a problem, since fewer people are forming corporations as a whole).</li> <li>4. Yes. We refer people to the information on the web about business corporations and their specialized types (Pennsylvania Business Corporations&lt;<a href="http://www.dos.pa.gov/BusinessCharities/Business/Resources/Pages/Pennsylvania-Business-Corporations.aspx">http://www.dos.pa.gov/BusinessCharities/Business/Resources/Pages/Pennsylvania-Business-Corporations.aspx</a>&gt;) and on the form itself. The general rule is that if you have to call the Customer Service line at the Department of State to ask whether your corporation (or LLC in PA) is a benefit entity, it is not.</li> </ol>
<b>Rhode Island</b>	
<b>South Carolina</b>	
<b>South Dakota</b>	
<b>Tennessee</b>	

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<b>Texas</b>	
<b>Utah</b>	
<b>Vermont</b>	
<b>Virginia</b>	<ol style="list-style-type: none"> <li>1. Yes - different code</li> <li>2. We only track how many are Active, and it's down to 38 as of May 1. I would guess about 200 or so were formed and became Inactive since the statutory provisions went into effect circa 2011.</li> <li>3. No</li> <li>4. Yes, a very, very small number.</li> </ol>
<b>Washington</b>	<ol style="list-style-type: none"> <li>1. They have both a unique identifier in our system, and carry a specific designation of SPC as opposed to Inc.</li> <li>2. About 100 per year</li> <li>3. Fillable forms and they are available to file online. Any existing profit corporation can also amend to become a SPC</li> <li>4. Occasionally, but it's not a high volume filing.</li> </ol>
<b>West Virginia</b>	
<b>Wisconsin</b>	
<b>Wyoming</b>	

**Additional comments:**

**Full text of email:**

Greetings from Texas,

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Mike Powell

Deputy Director, Business & Public Filings Division Telephone 512-463-9856 <http://www.sos.texas.gov>