



By Linda K. Breggin

Why Benefit Corps May Matter

In over a dozen states across the country a new type of business entity — the benefit corporation, or benefit corp — is now recognized under state law. Benefit corps represent a significant development, because as part of their mission they seek to have a material, positive societal and environmental impact.

Benefit corps are able to do this in part because new state laws allow them to consider non-financial interests, such as sustainability, and still meet their fiduciary obligations. As the *Wall Street Journal* explains, benefit corporation status gives “legal cover” to businesses that want to consider other factors such as their employees or the environment — and not just shareholders — in corporate decisions. Benefit corps also must report annually on their overall social and environmental performance and typically are required under state laws to use independent, transparent third-party standards to evaluate their success.

B Lab, a non-profit entity that promotes benefit corporation legislation, certifies specific corporations as “B Corps.” It has certified well over 700 B Corps to date in 27 countries, representing 60 industries. Not all B Corps are located in states that have enacted benefit corporation legislation and not all benefit corporations are certified B

Corps. According to B Lab, it only certifies companies that “meet rigorous standards of social and environmental performance, accountability, and transparency.” B Lab further explains that “B Corp certification is to sustainable business what Fair Trade certification is to coffee or USDA Organic certification is to milk.”

States that have passed laws that confer legal status on benefit corporations include Arizona, Arkansas, California, Colorado, the District of Columbia, Hawaii, Illinois, Louisiana, Maryland, Massachusetts, Nevada, New Jersey, New York, Pennsylvania, South Carolina, Vermont, and Virginia. The state laws are similar — typically based on model legislation — but not necessarily identical. In addition, legislation is pending in at least 10 other states.

In most states that have considered legislation, it has received bipartisan support. Erik Trojian, B Lab’s director of policy, explained to NPR’s Kojo Nnamdi: “We have extreme conservatives in some states that want this, extreme liberals in other states, because the idea is it’s a free market approach.”

But benefit corps are not without critics. A key concern, for example, is whether a new class of corporation is warranted. Mark Underberg argues in the *Harvard Law School Forum on Corporate and Financial Regulation* that benefit corps establish a “harmful dichotomy” between “good” and “bad” companies. In practice, he asserts, directors of regular corporations “have close to a free hand when considering matters that are most likely to have broader social or environmental implications — how products are manufactured, marketed and sold, corporate investments, fair trade, employment and supplier issues.”

Perhaps the most well-known

certified B Corps are Ben and Jerry’s (now a subsidiary of Unilever) and Patagonia. But B Corps come in all types and sizes. According to B Lab’s Katie Kerr, most B Corps are service sector companies, followed by wholesalers and manufacturers. Some B Corps are intrinsically environmental in their focus, such as 4th Bin, a door-to-door e-waste recycling company. Others have incorporated environmental considerations into their businesses. For example, Breckinridge Capital Advisors, a bond portfolio manager that manages \$18 billion in assets, says it qualified for B Corp certification in part because of “its commitment to sustainability investing.” B Corp-certified manufacturing companies include New Leaf Paper, which develops and distributes office and printing papers that meet leading environmental specifications.

Whether benefit corps will continue to gain traction is unclear, but the success or failure of legislation recently introduced in Delaware may be a bellwether. B Lab recognizes the significance of Delaware — the state in which 50 percent of all public compa-

nies are incorporated — considering benefit corporation legislation: “Delaware’s recognition of the rise of a new kind of corporation whose end objective is to create a positive impact on society and the environment . . . signals a seismic shift in corporate law.”

It may be a while until we know if B Lab’s ambitious goal to “redefine success in business” is farfetched or realistic — but just imagine if it succeeds. The implications for the environment could be significant.

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It may be a while until we know if B Corps will redefine business. Early results are promising