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## New laws allow firms to pursue social good

### New types of companies can put mission ahead of profit

MARK ANDERSON | STAFF WRITER

In a move that could help the rising movement known as social entrepreneurship, a pair of pioneering California laws that take effect in January will allow formation of corporations whose main purpose isn't to make money.

The laws provide for companies that are nonprofit/for-profit hybrids, producing a social benefit, not simply increasing shareholder value. And unlike nonprofits, they can tap the capital markets to raise money.

The structure protects companies designed to promote recycling or renewable energy, for example, from being sued by shareholders for failing to put profits first.

"This has been a long time coming," said Mike Hannigan, president of Give Something Back Office Supplies. His 20-year-old company, with offices in Oakland and Sacramento, gives its profits to charity.

Hannigan said he and co-founder Sean Marx have always agreed on the concept for the company. But any new investor could balk at the idea, setting the stage for legal conflict. Under current law, "investor interest trumps the ability for us to continue on our mission," Hannigan said.

Give Something Back started in 1991 as partnership. It later became a limited liability corporation and then converted to an S corporation when it bought its headquarters building in Oakland. So far this year, it has donated \$100,000

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a month. In its 20 years, the company has donated \$5 million to charities benefiting children and other causes.

#### TWO KINDS OF HYBRIDS

Legislators this year approved two bills to let companies pursue social missions — one allowing formation of "benefit corporations" and the other allowing "flexible-purpose corporations."

Assembly Bill 361, introduced by Assemblyman Jared Huffman, a Democrat from San Rafael, allowed benefit corporations. SB 201, which created flexible-purpose corporations, was introduced by state Sen. Mark DeSaulnier, a Democrat representing Concord.

The two laws are largely similar, though they are aimed at slightly different kinds of enterprises. "Benefit corporations" are likely to be small and may have a social mission as their only purpose; "flexible-purpose corporations," likely to be larger companies, also can serve other purposes, such as making a profit.

Both bills got through the Legislature with little opposition and were signed Oct. 10 by Gov. Jerry Brown. Only a handful of other states have yet adopted similar measures.

"This is something that is important," said Scott Hauge, president of Small Business California, a San Francisco-based nonpartisan advocacy group for small business. He and his group were strong backers of the bill to allow benefit corporations.

Adoption of the two laws "recognizes the interest of businesses to get involved in social causes," Hauge said.

#### NEW AVENUES FOR INVESTORS

Though their purpose may be the same, the new corporate structures differ from nonprofit organizations in important ways. Nonprofits must provide a public benefit in exchange for a tax exemption but are limited in the ways they can raise capital. Nonprofits may not, for example, have an initial public offering.

The new corporate structures could be

eagerly embraced by businesses and investors that worry about the impact of their business on society, said Charley Ansbach, a Sacramento-area fundraising professional who teaches social enterprise classes at the University of the Pacific.

Benefit corporations can, for example, make sure their foreign factory workers are treated well in addition to watching the bottom line, Ansbach said.

The new corporations could serve many different purposes, and it will be interesting to see which companies emerge first to embrace the model, said Will Fitzpatrick, general counsel for Omidyar Network, the venture fund and foundation started by eBay founder Pierre Omidyar. While the Network itself wouldn't be a candidate for the new corporate models, some of its portfolio companies could be, Fitzpatrick said.

The new models also provide avenues for commercial capital investors and philanthropic investors to feel comfortable investing together in a company with a clearly defined goal, he said.

The benefit of investing in a business rather than donating to a nonprofit is that the money can create ongoing returns to finance the social mission, Hannigan said.

California's current laws require businesses to operate in the best interest of the shareholder, which is legally defined as returning profit to the shareholders, said Dan Okenfuss, media relations chief with Huffman's office.

"One of the ideas is that these structures offer a legal protection for a company that is following a path that is not just in the best interest of the profit of the corporation," Okenfuss said. "Hopefully, we can create more companies and create more jobs."

There has been concern that these new purpose corporations could take money from existing pool of money that nonprofits depend on for their budgets, but Fitzpatrick said that argument is flawed.

"There is not one finite pool. This could attract additional money," he said.

manderson@bizjournals.com | 916-558-7874