

## Benefit Corporation -- Summary and Objectives

### Summary

Benefit Corporation is a distinct type of corporation that creates general public benefit alongside shareholder value, redefines fiduciary duty to require consideration of non-financial interests, and reports on its overall social and environmental performance using recognized third party standards. Legislation avoids a prescriptive regulatory approach and is narrowly tailored so that below provisions notwithstanding, existing corporate statutes apply.

### Objectives

Like never before, tens of thousands of companies are using sustainability and social innovation as a competitive advantage in the marketplace. A New Economy is emerging that requires new market infrastructure to facilitate growth. Corporate leaders need to be able to shape business models that enable them to satisfy the demands of investors, employees and customers who increasingly demand that corporations serve both shareholders and society, considering the impact of their decisions on multiple stakeholders rather than maintain a singular focus on short term financial maximization.

Without increasing regulation or impacting the state budget, legislation creating a Benefit Corporation:

- ✓ Removes legal impediments preventing businesses and investors from making their own decisions to use sustainability and social innovation as a competitive advantage, particularly in liquidity scenarios;
- ✓ Legitimizes and accelerates development of a New Economy by providing legal recognition for businesses that adopt higher standards of corporate purpose, accountability, and transparency;
- ✓ Rebuilds public trust in business by demonstrating that businesses are willing to be held accountable to create value for both shareholders and society;
- ✓ Serves as a platform for policymakers to provide in the future a variety of tailored tax, procurement, and investment incentives for private sector businesses addressing public benefit objectives.

Unlike existing constituency statutes, a new corporate form:

- ✓ Provides clarity to business leaders, general counsels, and investors that the fiduciary duty of these businesses includes creating public benefit, even in liquidity scenarios;
- ✓ Expands shareholder rights to enforce this expanded definition of fiduciary duty, as well as a higher standard of conduct for directors to consider the impact of their decisions on both financial and non-financial interests;
- ✓ Includes higher standards of transparency, requiring annual reporting to shareholders and the public about the corporation's social and environmental performance;
- ✓ Creates a market for the development of recognized standards of assessing corporate social and environmental performance;
- ✓ Helps ensure that these corporations and the positive social and environmental impact they create are built to last beyond marketing trends, strong business cycles, or existing corporate leadership by requiring a 2/3 majority vote of shareholders to remove these higher standards.

## Benefit Corporation -- Major Provisions

### Purpose

- ✓ shall create **general public benefit**
- ✓ shall have right to name specific public benefit purposes (e.g. 50% profits to charity, carbon neutral, 100% local sourcing, beneficial product to customers in poverty)
- ✓ the creation of public benefit is in the best interests of the Benefit Corporation

#### Accountability

- ✓ directors' duties are to make decisions in the best interests of the corporation
- ✓ directors and officers shall **consider** effect of decisions on shareholders and employees, suppliers, customers, community, environment (together the "Stakeholders")
  - not required to give priority to any particular stakeholder
  - have discretion to give priority to particular stakeholders consistent with general and any specific public benefit purposes
  - standard of accountability is identical for operating and liquidity/change of control decisions
- ✓ shall have an independent Benefit Director accountable for statement in annual Benefit Report whether Board acted consistent with obligation to create general and specific public benefit purposes, and considered effects of decisions on stakeholders

#### Transparency

- ✓ shall publish annual Benefit Report in accordance with **recognized third party standards** for defining, reporting, and assessing social and environmental performance, including assessment of successes and failures in achieving general and specific public benefit purpose and in considering effects of decisions on stakeholders
- ✓ Benefit Report delivered to: 1) all shareholders; 2) to public website with exclusion of proprietary data; and 3) Secretary of State with exclusion of proprietary data

#### Right of Action

- ✓ only shareholders and directors have right of action
- ✓ no third party right of action
- ✓ if Benefit Corporation is a subsidiary, >5% owners of parent have right of action
- ✓ Right of Action can be for 1) violation of or failure to pursue general or specific public benefit; 2) violation of duty or standard of conduct

#### Change of Control/Purpose/Structure

- ✓ shall require 2/3 majority vote

## **Initial Drafters**

William H. Clark, Jr. is a partner in the Corporate and Securities and Government and Regulatory Affairs Practice Groups of Drinker Biddle and Reath LLP. Bill has served for a number of years as the draftsman for the Title 15/ Business Associations Committee of the Pennsylvania Bar Association and in that capacity was the author of the 1988 Pennsylvania Business Corporation Law and the Pennsylvania Revised Uniform Limited Partnership Act. He subsequently drafted the 1990 follow-on legislation to the 1988 BCL which made insurance corporations subject to the 1988 BCL and recodified the law on credit unions. He was also the draftsman of the 1994 Pennsylvania Limited Liability Company Law. Bill drafted the legislation and designed the legislative strategy that led to the enactment of the North Dakota Publicly Traded Corporations Act, which is the first state corporation law in the United States to address all of the major issues of corporate governance that are of concern to institutional investors. Bill is the reporter for a special committee of the ABA Business Law Section preparing a comprehensive revision of the Model Nonprofit Corporation Act. He is the ABA reporter for a joint project of the ABA and the National Conference of Commissioners on Uniform State Laws that has drafted the Model Entity Transactions Act, which permits mergers between differing forms of entities and the conversion of an entity from one form of organization to another. He was also the reporter for the NCCUSL drafting committee that prepared the Model Registered Agents Act. Bill is a Pennsylvania commissioner to NCCUSL and has participated in the drafting of the Uniform Statutory Trust Act and the revised Uniform Limited Liability Company Act. He was formerly an appointed member of the Committee on Corporate Laws of the Business Law Section of the American Bar Association which is responsible for updating the Model Business Corporation Act, and he now serves as a special consultant to the committee. Bill is the former chair of the Business Law Section of the Pennsylvania Bar Association and the former chair of the Business Law Section of the Philadelphia Bar Association. He is a fellow of the American Bar Foundation and a member of the American Law Institute. Bill graduated summa cum laude from Amherst College and received his J.D. magna cum laude from Temple University. He also has a master's degree in theology from Westminster Theological Seminary.

B Lab is a nonprofit organization dedicated to using the power of business to solve social and environmental problems. B Lab drives systemic change through three interrelated initiatives: 1) building a community of Certified B Corporations to make it easier for all of us to tell the difference between “good companies” and just good marketing; 2) accelerating the growth of the impact investing asset class through use of B Lab’s GIIRS impact rating system by institutional investors; and 3) promoting supportive public policies, including creation of a new corporate form and tax, procurement, and investment incentives for sustainable business. For more information, check [www.bcorporation.net](http://www.bcorporation.net)