



Florida's New Law to Help Social Entrepreneurs

By Laurie A. Thompson

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On July 1, 2014, Florida joined 25 other states as well as the District of Columbia in changing its law to allow for the formation of a new kind of corporate legal entity, i.e., a for-profit corporation that is set up to serve a public purpose. This new type of legal entity is generally referred to as a benefit corporation aka B corporation. (On a side note, do not be confused by the nickname. The name B corporation has nothing to do with the tax status of the entity. The owners of a B corporation must determine whether they want to classify their B corporation as either a C corporation or an S corporation for tax purposes.)

The rapid development of the sustainable business movement, impact investing and social entrepreneurship created the need for a new corporate form which allows such businesses to distinguish themselves in the marketplace and remove the constraints imposed by an outdated legal framework ill-equipped to accommodate for-profit entities whose social benefit purpose is central to their existence.

Specifically, prior to the passage of this legislation corporate directors who made business decisions based upon considerations other than maximizing profit for the shareholder risked being sued for breaching their fiduciary obligations, see, e.g., *Dodge v. Ford*, 170 N.W. 668, 684 (1919) (“A business corporation is organized and carried on primarily for the profit of the stockholders.”). Moreover, such companies had no way to distinguish themselves from other companies which had no social benefit purpose but paid millions for slick marketing campaigns to fool consumers into thinking they did. The benefit corporation is a comprehensive yet flexible legal entity devised to address the needs of entrepreneurs and investors whose focus is on the triple bottom line, i.e., profits, people and the planet.

The law creating the benefit corporation generally requires that the corporate entity have a purpose to create a “material positive impact on society and the environment.” Additionally, it expands the duties of the directors to require consideration of nonfinancial stakeholders as well as the normal consideration of the financial interests of shareholders. Finally, a hallmark of the benefit corporation is transparency in that it imposes an obligation to report on the corporation’s overall social and environmental performance using a comprehensive, credible, independent and transparent third-party standard.

Florida’s recently enacted statute differs from that of most other state statutes because it creates

two types of benefit corporations, i.e., the benefit corporation and the social purpose corporation. A social purpose corporation has the purpose of creating a public benefit, which is defined as “a positive effect, or the minimization of negative effects, on the environment or one or more categories of persons or entities, of an artistic, charitable, economic, educational, cultural, literary, religious, social, ecological or scientific nature, due to the business or operations of the corporation.” On the other hand, a benefit corporation has the purpose of creating a *general* public benefit which is broadly defined as “a material, positive effect on society and the environment, as assessed using a third party standard, which is attributable to the business and operations of the corporation.”

Directors and officers of social purpose corporation *must* consider the effects of any action by the corporation on the shareholders and on the corporation’s ability to accomplish any public benefit identified in its articles. Consideration *may* also be given to the effect of a corporate decision on the corporation’s workforce, its customers and suppliers, the community and societal factors, the environment, the interests of the corporation, and any other pertinent factors or the interests of any group they deem appropriate (hereinafter referred to as larger public interest factors.) On the other hand, directors and officers of benefit corporations *must* consider the effects of any action on the larger public interest factors in addition to the corporation’s ability to accomplish its general public benefit.

Because this law is so new it is impossible to know whether it will serve the intended purpose of assisting for-profit social enterprises and the investors who fund them. However, it certainly appears to be a step in the right direction in that it attempts to address the legal obstacles experienced by social entrepreneurs and offers them a way to distinguish themselves in the crowded marketplace.

