

# Benefit Corporation Legislation: A New Corporate Form for Impact Investors

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Published by Hanson Bridgett's Sustainable Business Practice Group

[www.HansonBridgett.com](http://www.HansonBridgett.com)

Current corporate laws do not provide impact investors with the shareholder rights to guard against their earlystage impact investments suffering mission-creep through successive capital raises.

Shareholders of Benefit Corporations possess additional rights to hold the corporation accountable to pursue mission as well as margin. Benefit Corporation legislation has already been passed in three states (Maryland, Vermont, and New Jersey) and is moving forward with broad bipartisan support in eight others (see reverse), including California (AB 361 – Huffman).

Benefit Corporation legislation creates a new voluntary class of corporation that: 1) has the corporate purpose to create a material positive impact on society and the environment; 2) redefines fiduciary duty to require consideration of the interests of employees, community, and the environment; and 3) reports on its overall social and environmental performance using an independent third party standard. That last point is especially important for impact investors who want credible, comparable metrics on the social and environmental performance of prospective investments. Importantly, the legislation requires reporting based on all corporate operations as opposed to reporting only on a socially or environmentally progressive corporate project.

While Benefit Corporation legislation does not specify which third party standard a business uses to prepare their annual Benefit Report (nor does it require a business to get certified or rated), there are a number of independent third party standards such as GIIRS (GIIRS is the impact rating system developed by the nonprofit B Lab). B Lab's B Impact Rating System (the free version of GIIRS used by companies to assess their performance) is another one of many standards that businesses could use to fulfill their Benefit Corp reporting requirements.

Benefit Corporation legislation balances the needs of impact investors for both mission maintenance and liquidity options by requiring a 2/3 super-majority vote to transition into or out of Benefit Corporation status. This makes mission stickier and gives existing

shareholders legal protection to consider non-financial interests when evaluating liquidity options, while preserving the opportunity to change Benefit Corp status if desired to close a deal.

For impact investing to scale, we need generally accepted standards for measuring impact and we need the legal infrastructure to protect mission-driven businesses. Benefit Corporation helps provide both.

Business and investor support of Benefit Corporation legislation has been crucial to its legislative success so far. If you'd like to learn more about Benefit Corporation legislation in California, please contact Jonathan Storper at [jstorper@hansonbridgett.com](mailto:jstorper@hansonbridgett.com). If you'd like to find out about legislation in your state or find out how you can engage, please contact Erik Trojian, director of policy at B Lab, at [erik@bcorporation.net](mailto:erik@bcorporation.net).

### **Benefit Corporation Legislation Moves Across the Country**

#### **2010**

Maryland – signed into law (44-0; 135-5)

Vermont – signed into law (108-30)

#### **2011**

New Jersey – signed into law (39-0; 77-0)

Virginia – passed both houses unanimously (40-0; 100-0)

North Carolina – passed Senate unanimously (50-0)

Hawaii – passed Senate (24-1) and two House committees

New York – introduced

Pennsylvania – introduced

Michigan – introduced

California – introduced

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