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Triple-bottom-line companies await California's bill of approval.

California bill vets triple bottom lines

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A quiet piece of California legislation that passed the state assembly in mid-May and is now being read in the Senate could have a dramatic effect on mission-driven businesses in the state. Proposed by Assemblyman Mark Leno (D-San Francisco), AB 2944 amends Section 309 of the Corporations Code to allow CEOs to consider factors other than shareholder profits when making business decisions.

As the law currently stands, CEOs who consider factors other than profits when the company is sold, such as social or environmental

responsibility, could be sued by the company's shareholders. The law is particularly important in the context of mergers and acquisitions, when it can be invoked to force CEOs to sell to the highest bidder without consideration of the company's mission or values.

Even so-called "B Corporations," which have written the right to consider non-financial factors into their corporate governance documents, could be open to lawsuits in California if the bill doesn't pass, according to Jonathan Storper, a proponent of the bill and a partner at San Francisco law firm Hanson Bridgett.

"I don't think articles of incorporation can trump case law," Storper says. "I'm not sure if it's been tested in court and there's an ongoing discussion about it, but the law is based on statutes, not articles of incorporation, so I think B Corporations in California could still be affected by this law."

While the amendment only states that CEOs have the option to consider other factors, opponents of the bill, which include the California Chamber of Commerce and the California Manufacturers and Technology Association, have voiced concern that the amendment opens the door for legislation that would require CEOs to consider such factors as community and environmental impact when making business decisions. Opponents also maintain that the amendment is irrelevant because the problem has not yet come up in court.

"No one has tried to sue for the right to consider other factors upon sale because everyone knows that you can't," says Storper. "Some lawyers are saying that they haven't heard of any clients bringing up these concerns either, but that just tells me that they're clearly not dealing with mission-driven companies."

Storper, who says he deals with several such companies, has had a handful of clients decide to incorporate and even locate in states other than California, such as Oregon or Nevada, where laws provide more explicit protection for socially and environmentally conscious directors. "One venture-backed company I've talked with started up in California but chose to incorporate in another state because California doesn't provide that comfort," Storper says. "The fact that they're venture-backed is significant, because it means that venture capital is looking at this issue too, and if they're going to invest, they want that protection."

Although 31 other states have similar laws in place, Storper notes that the California amendment is the first to include environmental concerns, which means the state could leapfrog into a leadership position on the issue should the bill pass the state senate. "The fact that this is the first bill to explicitly mention the environment could really send a message to the rest of the country and drive 'green' businesses to come here if they want to be part of the new economy," Storper says.

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