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Victoria Frappaolo

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BENEFITTING FROM SUSTAINABLE DEVELOPMENT

Victoria Frappaolo*

As the world continues to strive to achieve sustainable development, U.S. states must continue to adopt laws that govern benefit corporations. A benefit corporation “is a new corporate entity that requires directors to take social and environmental considerations into account when making corporate decisions.”¹ It has been suggested that the benefit corporation structure will appeal to larger corporations who will see it as a way to protect the organization’s social mission.² There are also many smaller for-profit organizations that have adopted this structure.³ Regardless of the size, this corporate entity has found favor among institutional investors who have a growing interest to invest in companies that have an environmental and social impact.⁴

The International Institute for Sustainable Development (IISD) defined sustainable development as “development that meets the needs of the present without compromising the ability of future generations to meet their own needs.”⁵ This contrasts with many for-profit corporations in that unlike nonprofit corporations that are driven by a mission, as their name suggests, for-profits are driven by profit. Thus, a disparate relationship exists between companies wanting to do make decisions that allow them to maximize profits while ensuring that these decisions do not impact sustainable development.⁶ Benefit corporations provide companies with an incentive to find ways to use mechanisms that allow for sustainable development while still maximizing profit, thus achieving this dual mission.⁷

Laws for incorporating and managing benefit corporations will provide socially focused companies and entrepreneurs the tools they need to make the environmental and social issues a primary focus of an organization.⁸ When states provide a legal structure for U.S. entities to incorporate a benefit corporation under, they are creating a corporate structure that has a reporting requirement, which includes a review and summary of the organization’s environmental and social performance.⁹ These reporting requirements are dependent on the state where the benefit corporation is incorporated.¹⁰ Outside organizations, such as B Lab, a nonprofit that works with companies and people whose businesses act as a “force for good,”¹¹ have created a best practice for benefit reporting.¹²

Thus far, thirty-one states have passed laws that provide a legal framework for businesses to become benefit corporations.¹³ Of the nineteen states that do not provide laws for forming a benefit corporation, eight are currently working on passing legislation.¹⁴ To ensure that all businesses throughout the U.S. are encouraged to adopt practices that help guarantee sustainable development, the nineteen states that have yet to adopt laws which allow organizations to incorporate as benefit corporations should do so immediately.¹⁵

It is necessary for every state to adopt a legal structure for benefit corporations because this corporate structure encourages businesses to take sustainable development into account.¹⁶ Businesses incorporated in states without these laws do not have the same level of incentive or guidance on how to ensure that they consider sustainable development.¹⁷ Benefit corporations provide businesses with an “increased legal protection, accountability, and transparency around its mission” and require companies to produce an annual benefit report, which increases access to private investment capital.¹⁸ Although one may say that there is no rush because thirty-one states have already adopted legislation, corporations that are incorporated in the other nineteen states are not provided with the opportunity to be at the forefront of this growing movement.¹⁹

If every state in the U.S. adopts laws supporting benefit corporations, sustainable development would be fostered throughout the U.S. This will also provide other countries considering adopting laws regarding benefit corporations’ examples of ways they may develop their legal framework. In addition, U.S. laws will demonstrate to other countries that these laws allow for companies from their countries to be at a competitive advantage. Once laws are adopted throughout the U.S. and the world, companies will not only be competing for a greater profit, but also keeping sustainable development at its forefront.



* Victoria Frappaolo is a JD/MA candidate at American University Washington College of Law. She is pursuing her master’s in Social Enterprise from American University’s School of International Service. She is currently a law clerk at Klamp & Associates, P.C.

ENDNOTES

¹ ELIZABETH SCHMIDT, *NONPROFIT LAW* 539 (Wolters Kluwer Law & Business, 1st ed. 2011).

² See *id.*

³ Find a Benefit Corp BENEFIT CORP. <http://benefitcorp.net/businesses/find-a-benefit-corp> (last visited Mar. 14, 2017).

⁴ Why do Investors Like Benefit Corporations, BENEFIT CORP., <http://benefitcorp.net/investors/who-investing-benefit-corps> (last visited Mar. 14, 2017).

⁵ Sustainable Development, INT’L INST. FOR SUSTAINABLE DEV., <http://www.iisd.org/topic/sustainable-development> (last visited Mar. 26, 2017).

⁶ Dana B. Reiser, Note, *Benefit Corporations: A Sustainable Form of Organization?* 11 WAKE FOREST L. REV. 591, (2011).

⁷ *Id.* at 592.

⁸ What is a Benefit Corporation?, BENEFIT CORP., <http://benefitcorp.net/businesses> (last visited Mar. 14, 2017).

⁹ *Id.*

¹⁰ *Id.*

¹¹ About B Lab, CERTIFIED B CORP., <https://www.bcorporation.net/what-are-b-corps/about-b-lab> (last visited Mar., 26 2017).

¹² See Benefit Corp., *supra* note 8.

¹³ State by State Status of Legislation, BENEFIT CORP., <http://benefitcorp.net/policymakers/state-by-state-status> (last visited Mar. 14, 2017).

¹⁴ *Id.*

¹⁵ See *id.*

¹⁶ Why is a Benefit Corp Right for Me? BENEFIT CORPORATION, <http://benefitcorp.net/businesses/why-become-benefit-corp> (last visited March 26, 2017).

¹⁷ See *id.*

¹⁸ See *id.*

¹⁹ See *id.*