

Benefit Corporation Law Takes Effect

Patrick Gallagher | Feb 10, 2012

A new law allowing the formation of benefit corporations in New York gives socially conscious businesses a means to advance their agendas while still earning profits.

The law, which took effect Feb. 10, was unanimously passed by both houses of the state Legislature last July but was not signed by Gov. Andrew Cuomo until December. New York becomes just the seventh state to permit benefit corporations. California enacted a similar law on Jan. 1.

State lawmakers have touted the measure as a means of attracting new businesses to the state.

Under the new law, a company that files as a benefit corporation may prioritize social or environmental goals over profits, insulating the company from potential lawsuits filed by investors. Such companies will not be tax-exempt and will not be held to the same regulatory standards as nonprofits, nor will they be held to the same profit-oriented standards that drive a strictly for-profit company.

Specific public benefits defined in the law include providing low-income or underserved individuals or communities with beneficial products or services; promoting economic opportunities for individuals or communities beyond the creation of jobs in the normal course of business; preserving the environment and promoting the arts and education, among other items.

Scarsdale attorney Douglas Singer, partner at Falcon and Singer P.C., said the new law appeals to “hybrid” companies that fall between for-profit and nonprofit status.

“For companies for which having a positive impact on society or a positive impact on the environment is very much part of their mission, benefit corporations give them a way to achieve those goals and at the same time operate in a for-profit mode,” Singer said.

While for-profit corporations are required to operate for the benefit of their shareholders, benefit corporations are required to demonstrate how their actions line up with their social or environmental goals.

“If you become a benefit corporation, directors and board members are required to consider the effects of any action on the ability of the company to accomplish its public benefit purposes,” Singer said.

A company classified as a benefit corporation must submit an annual report to shareholders detailing the ways in which it pursued its public benefit purposes, in addition to reporting executive compensation information and the names of shareholders who own at least 5 percent of the company, Singer said.

Greyston Bakery in Yonkers has been a staunch supporter of the new law and said it would seek classification as a benefit corporation.

While the bakery operates as a for-profit company, a portion of all profits supports the Greyston Foundation, an affiliated nonprofit whose community development initiatives include low-income housing, health services, child care and technology education projects.

“What we’ve always said and what supporters of this legislation say is there doesn’t need to be a difference between a business doing good and a business making profits,” said Michael Brady, president and CEO of Greyston Bakery.