# The Mid-Atlantic Guide to B Corps

Ridgeline Venture Law

# Introduction

A corporation is a creature of state law. It is governed first and foremost by laws of the place in which it is incorporated and/or principally operates, and additionally by the standards to greater or lesser degrees of the places in which it conducts business. Of course, from Alabama to California, we are a diverse country of diverse sets of rules and regulations. Rising above the diversity, however, is the universal principle of shareholder primacy; that is, corporate directors are elected by corporate shareholders, and the directors in their management of the corporation must above all else provide a financial return to shareholders.

An unfortunate byproduct of shareholder primacy is that it limits the ability of corporate management to at times esteem its employees and environmental footprints, or to measure the social consequences of its practices, if such estimation or measurement endangers stockholder return. This is admittedly an oversimplification, but not an egregious one. Time and time again, corporations have been prevented from, say, paying employees higher wages at the expense of issuing dividends, by lawsuits initiated by shareholders against corporate directors, aka shareholder suits.

The rise of the benefit corporation is in direct response to shareholder primacy. Under benefit corporation statutes, corporations that operate according to 'doing well by doing good' ethos are shielded from a range of acquisition tactics and shareholder suits when compliant with the respective statutes. Moreover, data is showing that benefit corporations tend to attract better talent and scale better than their non-benefit peers. They may even find tax advantages not otherwise available.

We at RVL® are into doing well by doing good. We're one of the handful of Certified B Corp® law firms and a 2018 Best for the World Honoree for our commitment to triple-bottom-line business practices. We believe that the challenging work of building today's companies for tomorrow's economies goes hand-in-hand with positively impacting the environmental and social fabric of our community. Learn more about how we manage the corporate, intellectual property, and technology needs of emerging enterprises at [venturelaw.org](venturelaw.org).

*Cover: Henry Keith Photography, www.henrykeith.com*
*Design: Balernum, www.balernum.com*

# Helpful Definitions

Virgil, statutes he did not write. They are full of legalese and best read with, well, there's really no liquor that makes reading statutes enjoyable. Unless you are an attorney and born with an innate desire to spend whole days arguing the merits of using "comprises" versus "consists of", you are best off delegating the work of corporate compliance and all things statutory.

We largely summarize state statutes cited in this guide to spare you the sad experience of seeing how inartfully English words can be combined. For our summaries, the following definitions are useful shorthands for operative terms.

**Articles of Incorporation** – A set of formal documents containing the corporation's pertinent information (such as its address, agent, shares, and limitations) which is submitted to a governmental body (such as the Secretary of State) in order to legally create a corporation.

**Annual Benefit Report** – An annual report that addresses the corporation's effort to provide General Public Benefits, including for example, details about the success of the corporation's efforts and circumstances that might have hindered the corporation from realizing its goal.

**B Lab** – A nonprofit organization that certifies companies as "Certified B Corporations."

**Benefit Director** - A board member who prepares the benefit report and shares it with stipulated parties (shareholders, the public, etc.).

**Benefit Enforcement Proceeding** – A private right of action claiming a benefit corporation has failed to create general or Specific Public Benefit, or otherwise violated a duty of a benefit corporation.

**General Public Benefit** — A material, positive impact on society and the environment, as measured by a third-party standard, through activities that promote a combination of specific public benefits.

**Incorporation** – The act of becoming a corporation, including in some states where benefit corporation statutes so extend a limited liability company.

**Public Benefit Corporation** — A for-profit corporation that is intended to produce a public benefit and to operate in a responsible manner, balancing the stockholders' pecuniary interests, the best interests of those materially affected by the corporation's conduct, and the public benefit identified in its articles of incorporation.

**Shareholder Primacy** – The concept that shareholder interests are paramount to all other corporate interests and profit maximization is king.

**Specific Public Benefit** – A benefit that is specifically named, such as "providing low-income communities with beneficial products."

**Third Party Standard** — A standard for defining, reporting, and assessing a company's overall corporate, social, and environmental performance through comprehensive, independent, credible, and transparent evaluation.

# Q & A:
# Benefit Companies and Certified B Corps

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## Q: How would you describe what a Benefit Corporation is and why it's important?

**A:** A Public Benefit Corporation may be thought of as a legal framework to best promote corporate social responsibility. Over the past few decades, U.S. corporate law has trended towards something lawyers ominously refer to as the doctrine of shareholder primacy. It basically means that shareholders can pressure a company into maximizing monetary return to those investors over competing considerations like environmental and social impact. For example, a company could be prevented from rolling out a novel paternity leave program for its employees if by doing so the company were to risk shareholder dividends. By organizing and operating as benefit corporations, companies can shield their management activities from shareholder pressures; effectively, Benefit Corporations put the force of law behind the idea that a company can and will consider people, planet, and profit as worthy metrics of success.

**Note that we will use "company" in our answers when referring to you or your entity since benefit corporation regulations extend in some states to partnership structures as well as corporations.*

## Q: If a company is already set up as a C Corp or an S Corp, what will change if it becomes a Benefit Corporation?

**A:** A few things: for instance, in Delaware, to become a Public Benefit Corporation, an already existing C or S Corp must (1) add "Public Benefit Corporation" "PBC" or "P.B.C" to its name, (2) identify one or more Specific Public Benefits in its Certificate of Incorporation approved by both the board of directors and stockholders of the corporation, and (3) amend stock certificates to state "Public Benefit Corporation." Once effective, directors have a duty to consider in board actions not only stockholder interest, but also the stated public benefit(s) and all other stakeholders in the company.

## Q: What is involved in the process to become a Benefit Corporation? How long does it take and how much does it cost (not including legal fees)?

**A:** If you're already incorporated as a C or S Corp, then the administrative filing costs will be the required amendments to your company's incorporation documents. If you have yet to incorporate, then the filing costs will be the same as incorporating as a C or S Corp in your state. If your state has not adopted benefit corporation legislation, or has adopted a watered-down version of them (think double-bottom-line vs triple-bottom-line), then you may need to consider foreign certificates. The amount of time involved will largely depend upon your corporate governance structure, and how much time is necessary for board-level adoption of the new structure.

## Q: What are the ongoing requirements and fees needed to retain Benefit Corporation status?

**A:** Most states require that a company submit a benefit report annually or biannually; this is one way of keeping companies focused on the triple-bottom-line approach to measuring success. Some states require the update to be published publicly and others allow the company to choose. Also, some states require that the company provide notice of its status as a benefit corporation before the sale of stock. Of course, the company will need to operate in accordance with its newly stated corporate, environmental and social mission, and its accounting practices will need to be updated to properly record and substantiate this. Otherwise, the company should comply with corporate formalities as usual.

## Q: How does becoming a Benefit Corporation affect your taxes? Are they taxed differently?

**A:** Benefit corporations are not tax-exempt, like non-profits, because they are still for-profit entities. A benefit corporation will still be taxed as an S or C Corp, or alternative pass-through entity where applicable. Benefit corporation status is first and foremost a legal status. Notwithstanding, in some circumstances, for instance with pass-through entities, expenditures historically not deductible as not related to the primary business of the company may become deductible through benefit corporation adoption. For instance, if a law firm partnership properly organized wished to purchase kayaks for monthly river cleanups (just brainstorming here, of course), that purchase may ordinarily be considered personal expenditures attributable to its partners or not reasonably related to the practice of law; as a benefit corporation, the law firm may reasonably argue that the purchase is a proper business expenditure in light of the firm's triple-bottom-line business model and specific corporate structure. The I.R.S. in its rulemaking is concerned with the creation of wealth, and if new markets are created or competitive advantages achieved through investments specific to differentiating branding, i.e. promotion of benefit corporation status to appeal to conscientious consumers, then a secondary if not parallel aspect of the company's business purpose has been achieved and should be recognized equivalent with other primary business expenses.

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# Delaware

As Delaware goes, so goes the nation. Not actually. But as Delaware corporate law goes, so goes U.S. corporate law. You can think of Delaware as the Rudy of the Union, in a sense. It's undersized, underpopulated (well, it is sort of densely populated), but the preeminent forum for business standardization.

There's a long history to this, but let's just sum it up as Delaware has done a knockout job establishing itself as a corporate haven, for better or worse. (In some places, there are more chickens than people; in Delaware, there are more registered corporations than people.) Consequently, in many cases you will see Delaware's corporate statutes adopted entirely by other states. Appropriately, our Mid-Atlantic tour starts with Delaware.

**Delaware - The Nuts and Bolts**

***How to PBC if your business is already up and running:***

To become a Public Benefit Corporation (PBC) in Delaware, an existing entity generally must amend its Articles of Incorporation with the approval of 2/3 of the outstanding stock of the corporation. An exception to the rule is available to early stage companies that have not yet received payment for capital stock. Merging or consolidating with or into another entity also requires reaching the 2/3 threshold under § 363(b)(2).

***How to PBC if your business is a NewCo:***

To become a PBC, a newly formed company (NewCo) must file its Articles of Incorporation including: (1) a statement of one or more Specific Public Benefits within the NewCo's purpose; and, (2) a statement in its heading that it is a public benefit corporation.

***Once you've pushed the paper:***

Once the certificate of incorporation is successfully amended/initially filed, a specified Benefit Director of the entity must prepare a report (at least) biennially for its stockholders or directors that details the company's progress and activities in pursuit of the stated public benefit(s). Delaware's statute does not require verification by a third party (such as B Lab) or public access to the benefit report. Companies can still decide to report annually instead of biennially, be verified by a third party, or elect to make the report publicly available under its own bylaws— but they are not required to by the Delaware Code.
As the Epicenter of Corporate Law, the Delaware Business Codes are often used as models for other state legislation. Delaware's adoption of a PBC statute is a significant milestone in the ongoing movement towards responsible enterprise, even if the legislation omits ideal enhancements found within other model legislation.

# Maryland

Maryland was actually the first state to adopt Public Benefit Corporation (PBC) legislation. Being the first, the statute follows the model legislation created by B Lab, the nonprofit that endorses companies as Certified B Corps.

Maryland's statutes differ from Delaware in a few noteworthy ways: (1) public benefit is defined as a material and positive impact on both environment and society; (2) specific means of accomplishing a public benefit include action-oriented and quantifiable activities such as "increasing the flow of capital to entities with a public benefit purpose"; and, (3) actualization of public benefit is guided by an independent third-party assessor. Unlike a few other states, like New Jersey and Virginia, there is no Benefit Enforcement Proceeding here. In Delaware, a PBC need only "intend" to produce a public benefit, which may be defined as broadly as promoting a positive effect on a religious interest. In Maryland, a more global public benefit must be advanced in the balancing of interests.

***Maryland - The Nuts and Bolts***

A NewCo PBC in Maryland must expressly state the fact in its charter and bylaws (Articles), and all stock certificates. It must further state its intent to be organized or a public benefit, as defined, and highlight any particular specific benefits, i.e. objectives that when acted upon comprise a public benefit. The entity's progress in pursuit of the stated benefit(s) and business activity is disclosed to shareholders and the public through an annual benefit report. The report is to be posted on the company's website (if there is one) and should be provided to anyone who requests it free of charge (if there isn't a website). For transparency, a third-party evaluator's report must also be publicly accessible.

## Notable Example

Laureate Education, a worldwide network of higher education institutions, is both a Maryland Public Benefit Corporation and a Certified B Corp®. With over 1 million students at nearly 70 institutions in 25 countries around the world, Laureate is the largest global network of degree-granting higher education institutions and the largest company to become a PBC. It is also the first PBC to be traded on any stock exchange in the world.

LAUREATE INTERNATIONAL UNIVERSITIES®

# New Jersey

New Jersey hopped on the wagon in 2011 after the illustrious governor Chris Christie signed it's benefit corporation bill into law.

An entity can file/amend its Articles of Organization with the New Jersey Department of the Treasury (Division of Revenue & Enterprise) to become a Benefit Corporation by (1) including a statement that distinguishes it as a Benefit Corporation and (2) by stating a General Public Benefit (with other specific benefits if desired) that it agrees to pursue. A Benefit Director must also be specifically designated and elected to prepare the annual benefit report that details the entity's progress in pursuing its stated goal(s) in accordance with a third-party standard. The report is presented to all stockholders on an annual basis. The most recent report must also be made publicly available through the company's website (if there is one) or be available free of charge by request (if there isn't one). Proprietary or financial information may be omitted from the public version of the report.

The New Jersey statute added a unique clause that outlines a "forfeiture of benefit corporation status" if the company fails to submit a benefit report for a period of two years. If the company subsequently submits a benefit report, they are reinstated as a benefit corporation and subject to the New Jersey Benefit Corp Code again. Shareholders can also vote to terminate benefit corporation status.

***New Jersey - The Nuts and Bolts***
***How to PBC if your business is already up and running:***
To become a Public Benefit Corporation (PBC) in New Jersey, an existing entity generally must amend its Articles of Incorporation to state that it is a benefit corporation, and the amendment must be adopted by at least a minimum status vote. A minimum status vote requires approval by at least 2/3 of shareholders.

***How to PBC if your business is a NewCo:***
To become a PBC, a newly formed company (NewCo) must file its Articles including: (1) a statement of one or more Specific Public Benefits within the NewCo's purpose; and, (2) a statement that it is a public benefit corporation.

***Once you've pushed the paper:***
Once the Articles of Incorporation are successfully amended/initially filed, an elected Benefit Director must prepare a report an annual for its shareholders or directors that details the company's progress and activities in pursuit of the stated public benefit(s). The statute lists in details what must be included in the

report, such as an assessment of the social and environmental performance of the corporation prepared in accordance with a third-party standard, the names and contact addresses for the company's Benefit Directors and officers, the compensation paid to each Benefit Director and officer, and the names of each person owning more than 5 percent of outstanding shares in the corporation.

New Jersey's statute does not require verification by a third party (such as B Lab). but does require that the report by published on its public website and delivered to the Department of Treasury for filing. New Jersey benefit corporations may also designate a "benefit officer" with the authority to manage for the purpose of achieving public or specific benefits. The duties of the benefit officers and directors can be enforced in a Benefit Enforcement Proceeding, but can only be brought by the corporation itself or derivatively, by a shareholder for example.

## Notable Example

Jetty is a surf clothing and apparel company started by five f riends o n a snowboard mission with $200 apiece. Jetty prides itself on giving back to local communities through initiatives like its Oyster Shell Recycling Program, which aims to repopulate Long Beach's oysters and oyster reefs. Jetty is a Certified B Corp and although they were already doing incredible amounts of charitable work, they wanted to become certified to be held officially accountable. After a "decade of dedication, a few bad decisions, countless t-shirt designs, and a Superstorm later, Jetty is now the most recognizable surf and skate apparel brand on the East Coast."

# New York

In New York, an entity can file/amend its Articles of Incorporation to become a Public Benefit Corporation (PBC) by including a statement that distinguishes it as a PBC. An existing corporation that wants to become a benefit corporation must have the approval of its shareholders by a minimum status vote. The certificate of incorporation can (but does not have to) detail the Specific Public Benefit(s) that the company wishes to pursue. A PBC must produce a benefit report annually for its shareholders that details its progress in pursuing its stated public benefit (and specific benefits if applicable). For example, it must contain a narrative description of any circumstances that hindered the creation of a general or specific public benefit, as well as information about the compensation paid to directors and the names of each person owning more than 5 percent or more of outstanding shares in the corporation. This report must be generated using a third-party standard. In addition to shareholders, the entity must make the report publicly available through its website (if there is one) or available on request (if there isn't one). Any financial or proprietary information included in the benefit report may be omitted from the publicly posted versions. A separate copy must also be filed with the New York Department of State, Division of Corporations.

Benefit corporations can choose to terminate their status as a benefit corporation by amending their certificate of incorporation to delete identification as a benefit corporation. The termination must be approved by a minimum number of shareholders as defined by New York law. New York law also permits a shareholders or directors to bring a Benefit Enforcement Proceeding. There are other more detailed stipulations in the New York Business Code, but as always, we recommend consulting an attorney before making such a substantive business decision.

## Notable Examples

Greyston Bakery became New York State's first registered benefit corporation in 2012, though it was founded in 1982. The company is known for its "open hiring" practices, where anyone can apply to work regardless of their background. All profits from the company go to its parent nonprofit (the Greyston Foundation) for low-income housing, day care open to the community, a medical center for those with AIDS, and other community endeavors. Greyston continues to be the supplier of Ben & Jerry's, another Certified B Corp©.

Kickstarter PBC is one of the most famous benefit corporations. Kickstarter's global crowdfunding platform focuses on bringing creative projects to life — and they do a good job of it. According to their site, 15,443,519 total backers have funded 153,281 projects on the platform.*

*as of November 2018

# Pennsylvania

In Pennsylvania, an existing or new company can become a Public Benefit Corporation (PBC) by amending/filing its Articles of Incorporation with the Bureau of Corporations and Charitable Organizations to include a statement of its status as a benefit corporation. Similar to Delaware, an existing entity must have approval of 2/3 of its shareholders to make the switch.

The newly formed benefit corporation will need to prepare a benefit report each year describing its efforts to create public benefit during the preceding year. This report, which should include an assessment of the overall social and environmental performance of the benefit corporation, will be given to shareholders and made available to the public through the company's website. Financial or proprietary information may be omitted from the public version of the report, but, overall, it must be prepared in accordance with a credible third-party standard. Read the more in-depth stipulations of the Pennsylvania Code and consult an attorney before making the switch.

## Notable Example

Shift Capital is a real estate firm that believes in minimizing displacement of communities, preserving long-term affordability for all, and minimizing the negative impacts of gentrification. The Philadelphia firm says one of the defining issues of our society today is whether we will rebuild our cities to be beacons of inclusiveness or exclusiveness. Their mission is to "provide the urban communities we invest in with employment, and other measurable social and economic impacts by acquiring and improving the existing real estate stock and re-tenanting those assets with businesses and individuals that share our common vision."

SHIFT CAPITAL

# Virginia

In Virginia, an existing or new company can become a Public Benefit Corporation (PBC) by amending/filing its Articles of Incorporation with the State Corporation Commission to include (1) a statement of its status as a benefit corporation and (2) a corporate purpose to create General Public Benefit (with optional specific benefits). The decision to amend articles of incorporation requires a ⅔ vote by the board of directors and shareholders.

The newly formed benefit corporation will need to prepare a benefit report each year describing its efforts to create public benefit during the preceding year. This report, which should include an assessment of the overall social and environmental performance of the benefit corporation, will be given to shareholders and made available to the public through the company's website. Financial or proprietary information may be omitted from the public version of the report, but, overall, it must be prepared in accordance with a credible third-party standard. The Virginia Code further details the requirements of becoming a Virginia benefit corporation.

## Notable Examples

A growing number of companies in the Richmond area of Virginia are becoming B Corporations.

Acorn Sign Graphics makes custom designed signs with an environmental mission. The company was founded in the 1970s and is currently co-owned by husband and wife duo Beth and Steve Gillespie. Acorn Sign uses less waste, fewer toxic chemicals, and recycled or green-friendly materials in its signs.

Another environmentally conscious B Corp, Natural Organic Process Enterprises (NOPE) works with companies and colleges in Virginia to develop food scrap and organic recycling programs. NOPE "provides collection and transportation services for food scrap and organic materials from the customer's site to a Virginia DEQ Permitted compost facility for recycling into compost or other environmentally beneficial use." The company's founder is a veteran of the Waste and Recycling Industry and formed NOPE in his own garage after realizing that food waste was a growing problem in Virginia.

# Washington D.C.

To become a Public Benefit Corporation (PBC) in Washington D.C, a new or existing entity must specify its status as a PBC in its Articles of Incorporation. The entity must also express its purpose of creating General Public Benefit (with the option of identifying one or more Specific Public Benefits). The entity's board of directors should include a specified Benefit Director who is to prepare an annual benefit report to be presented to shareholders. In addition to detailing the company's pursuits of its stated purpose, the benefit report must be prepared in accordance with a credible third-party standard. The report must be posted on a public portion of the company's website (and made readily available upon request if they don't have a website). Also, a copy must be delivered to the Mayor when filing the biennial report required of all corporations under § 29-102.11. The compensation paid to directors and financial or proprietary information included in the benefit report may be omitted from the copy of the benefit report that is delivered to the public and the Mayor. Reference the Code of the District of Columbia for more in-depth details of becoming a D.C. benefit corporation.

# West Virginia

In order to become a West Virginia Public Benefit Corporation, new or existing entities must file Articles of Incorporation with the Secretary of State that specify its status as a benefit corporation. The entity shall have as one of its purposes the purpose of creating a General Public Benefit (with optional Specific Public Benefits). The entity must also prepare an annual benefit report that details the company's progress in pursuit of its purpose(s).

The benefit report must be prepared in accordance with a third-party standard (specified in the articles of incorporation, the bylaws, or otherwise adopted by the board of directors). The report should be made available to each shareholder. Additionally, the benefit corporation should post its most recent benefit report on a publicly accessible portion of its Internet website (if it has one); the report needs to be readily available to those who request it if there is no public website. A benefit corporation is not required to publicly disclose to persons other than its shareholders any proprietary, confidential, or individual compensation information contained in its benefit report. The West Virginia Code further details the requirements of becoming a Virginia benefit corporation.

***West Virginia - The Nuts and Bolts***

***How to PBC if your business is already up and running:***

To become a Benefit Corporation in West Virginia, an existing entity must amend its Articles to state that it is a benefit corporation.

***How to PBC if your business is a NewCo:***

To become a PBC, a newly formed company (NewCo) must file its Articles with the Secretary of State stating it is a benefit corporation.

***Once you've pushed the paper:***

Once the certificate of incorporation is successfully amended/initially filed, an elected Benefit Director must prepare a report an annual for its shareholders or directors that details the company's progress and activities in pursuit of the stated public benefit(s). The statute lists in details what must be included in the report, such as an assessment of the social and environmental performance of the corporation prepared in accordance with a third-party standard, and an explanation of any circumstances that have hindered the corporation in creating a benefit. The report must be made available to the public on the corporation's website. A Virginia benefit corporation may terminate its status as a benefit corporation by amending its Articles to delete the statement stating it is a benefit corporation.

# Resources

How to Choose a Third Party Standard

State by State Status of Legislation

Benefit Corporation FAQ's

Find a Benefit Corporation

Find a Certified B Corp

# State Statutes

Delaware

Washington D.C.

Maryland

New Jersey

New York

Pennsylvania

Virginia

West Virginia

# Ridgeline Venture Law

RVL® is a business, intellectual property and technology firm, building today's companies for tomorrow's economies. Someone once said lawyers were good for nothing; we took that personally. Our firm is a B Corp® Best for the World Honoree for our commitment to triple-bottom-line business practices. We believe that the challenging work of building today's companies for tomorrow's economies goes hand-in-hand with positively impacting the environmental and social fabric of our community.

Visit our site to learn more about services we provide to ideators and innovators, and to see our environmental and social impact commitments in action.

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