

Virginia Adopts Benefit Corporation Statute

On March 26, 2011, Virginia became the fourth state in the nation to adopt the “Benefit Corporation” as an authorized legal entity. Seven states are currently considering similar benefit corporation statutes, based on the Maryland, Vermont, and New Jersey statutes that have authorized benefit corporations. Effective July 1, 2011, new law HB 2358 allows directors and officers to take both public benefit and private interests of shareholders into consideration when taking corporate action, so long as the entity is properly organized as a benefit corporation. The corporation is therefore permitted to earn a profit, but maximizing shareholder value cannot be the only goal considered by directors and officers.

A new corporation wishing to incorporate as a benefit corporation must simply state in its articles, as initially filed with the State Corporation Commission, that it is a benefit corporation, while an existing corporation must amend its articles to include such a statement. The amendment must be approved by all shareholders entitled to vote on the amendment.

To qualify as a benefit corporation, one of the purposes of the corporation must be to create a general public benefit, which is defined as a material positive impact on society and the environment taken as a whole, as measured by a third-party standard, from the business and operations of a benefit corporation. The articles may also identify one or more specific public benefits; a benefit that serves one or more public welfare, religious, charitable, scientific, literary, or educational purposes, or other purpose or benefit beyond the strict interest of the shareholders. A specific public benefit may also be specified in the bylaws or adopted by the board of directors.

Directors of a benefit corporation must consider the effects of any corporate action upon the shareholders, the employees, the community, the local and global environment and the ability of the corporation to accomplish its general or specific public benefit purposes, among other things. The consideration of these interests will not constitute a violation of the directors’ fiduciary duties to the shareholders or constitute a conflict of interest, allowing directors to freely consider societal benefits without the fear of facing lawsuits for failing to maximize shareholder value.

Finally, benefit corporations must prepare an annual benefit report describing the ways in which the corporation pursued the general public benefit and any specific public benefits stated in the articles or bylaws. The report must also include an assessment of the social and environmental performance of the corporation and any other information that may be required under any third-party standard adopted by the directors. This report must be made available annually to all shareholders, obliging directors and officers to account for the actions taken by the corporation in an effort to earn a profit while also enhancing general public welfare and specific public benefits.