

D I L L A S H A W L L C

Benefit Corporations: **Is a B Corp right for me?**



ABOUT ME



I am an attorney at Dillashaw, LLC, a boutique corporate firm representing entrepreneurs, growth companies, and investors with respect to financings, mergers and acquisitions, and corporate governance matters.

Prior to joining Dillashaw, LLC, I was an attorney at the Lincoln-based firm of Cline Williams Wright Johnson & Oldfather, specializing in corporate law and commercial contracts.

I formed the first B Corp in the state of Nebraska and have since assisted clients nationwide in forming and operating benefit corporations.

I received my BSBA in 2007 from the University of Nebraska-Lincoln. I received my *JD magna cum laude* and my MBA from the University of Nebraska-Lincoln in 2011.

WHAT IS A B CORP?

- Traditional corporation with modified obligations
 - Commitment to consider impact on society and the environment
 - Third-party standards to measure success
 - Required regular reporting to show progress on achieving impact
- For-profit entity
 - B Corps still focus on maximizing stockholder value
 - Well-defined, protected long-term mission

Etsy



BEN & JERRY'S

WARBY PARKER

patagonia

WHY DO WE NEED B CORPS?

- Legal precedent
 - Traditional corporate law requires directors to place profit above all else
- Prevent mission loss
 - Ensures a new investor or owner can't force a mission change
- No alternatives
 - Nothing commits corporations to sustainability
 - Directors may be liable to stockholders if being socially conscious limits profit maximization
- ****Note:** existing C Corps can become B Corps

WHY SHOULD I CONSIDER A B CORP?

- **Reduced director liability**
 - Legal protection when making decisions
- **Expanded stockholder rights**
 - Stockholders can hold company accountable to mission
 - Expanded rights can only be exercised by stockholders
- **Marketing/reputation**
 - Shows leadership in a growing movement

WHY SHOULD I CONSIDER A B CORP?

- Talent acquisition
 - Employees, particularly millennials, want to work for socially-conscious companies
- Mission protection, even after sale/IPO
 - All stakeholders know that company's mission and values will remain the same through capitalization changes
- Increased access to private investment capital
 - Stable mission can lead to greater long-term, holistic value

FORMATION & OPERATION

- B Corps are authorized in 30 states + DC
 - Businesses in one of the other 20 states may want to register in a state that permits B Corps and qualify as foreign entities
 - Typically registration will just occur in the same manner as C Corps
- Requirements differ depending on the state of formation
 - Nebraska has relatively strict reporting and transparency requirements
 - Other states, like Delaware, may have significantly lower requirements

FORMATION & OPERATION

- Incorporated like a C Corp, but articles must state that the corporation is a B Corp
- Articles may also identify specific public benefit
 - i.e., “improve education among the public as it relates to child development”
 - 2/3 vote required to remove/change a public benefit
- **Benefit directors & officers**
 - An independent benefit director may be required to gauge and report progress on impact goals
 - Can also appoint benefit officer to assist with reporting

WHERE TO FORM MY B CORP?

- Requirements vary significantly from state to state
- One goal may be to reduce compliance costs
 - Reduced reporting requirements will keep costs in check
 - Limited public reporting may be attractive
- A different goal may be to fully demonstrate commitment to purpose or cause
 - Additional reporting requirements may not be a concern
 - Stockholders may like required third-party certification

WHERE TO FORM MY B CORP?

Nebraska

Neb. Rev. Stat. §§ 21-401 et seq.

- Description of how company promoted general/specific benefit required
- Third-party standard to assess benefit creation and performance required
- Report must include assessment in social impact against 3rd party standard

Delaware

Del. Code Ann. 8 Del. §§ 361 et seq.

- Description of how company promoted general/specific benefit required
- No requirement that a third-party standard be used to evaluate company
- No requirement to include social impact assessment in report

WHERE TO FORM MY B CORP?

Nebraska

Neb. Rev. Stat. §§ 21-401 et seq.

- Benefit report must be filed every fiscal year
- Report must be filed with the Secretary of State
- Report must be posted on company website

Delaware

Del. Code Ann. 8 Del. §§ 361 et seq.

- Benefit report required once every 2 years
- No requirement that report be filed with the state
- Report only required to go to stockholders

CLOSING THOUGHTS

- Should I form a B Corp?
 - How committed are you to social and environmental impact?
 - Do you want service and conscientiousness embedded into your company's DNA?
- Next steps
 - All companies: decide what benefits you will focus on
 - New ventures: consider where to form B Corp
 - Nebraska: Stricter reporting and transparency requirements
 - Delaware: Additional cost associated with being present in 2 states
 - Existing companies: think about getting requisite vote

QUESTIONS?

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