

**SOCIAL PURPOSE CORPORATIONS AND BENEFIT CORPORATIONS
NEW BUSINESS ENTITIES AUTHORIZED BY FLORIDA LAW**

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A. Introduction

1. Chapter 607, Part II Social Purpose Corporations and Part III Benefit Corporations, effective July 1, 2014.
2. Florida law historically has authorized two types of corporations, for profit (Chapter 607) and not for profit (Chapter 617).
 - (a) Directors of for profit corporations have a duty to manage corporate assets for profit.
 - (b) The purposes of not for profit corporations must be not for profit. Fla. Stat. § 617.0301 (“charitable, benevolent, eleemosynary, educational, historical, civic, patriotic, political, religious, social, fraternal, literary, cultural, athletic, scientific, agricultural, horticultural, animal husbandry, and professional, commercial, industrial, or trade association purposes.”)
3. The new law provides for two new types of corporations that consider a specific social purpose (Social Purpose Corporations) and that consider broad public benefit (Benefit Corporations).
4. The new types of corporations are for profit, taxable corporations.
5. Chapter 607 has been divided into three parts:
 - (a) Part I – General Provisions
 - (b) Part II – Social Purpose Corporations (Sections 607.501 – 607.513)
 - (c) Part III – Benefit Corporations (Sections 607.601 – 607.613)
6. The provisions for Social Purpose Corporations and Benefit Corporations in the two parts are similar; the distinction is specific social purpose versus broad public benefit, duties of the directors and requirement to use a third-party standard.
7. Basic distinction from regular taxable corporations: permitted purposes (for public benefit), transparency (annual benefit report).

B. Reasons for New Types of Corporations in Part II and Part III of Chapter 607

1. Florida law did not have a provision for a profit-making corporation to consider a social purpose or benefit in addition to profit while protecting its directors from liability for considering the social purpose. H. Rep. Staff Analysis, Bill #CS/CS/HB 685 (“Legislative History”), p.2.

2. The Legislative History includes the following example (p.2, n. 11):

In 1917, Henry Ford declared, “My ambition is to employ still more men; to spread the benefits of this industrial system to the greatest possible number, to help them build up their lives and their homes. To do this, we are putting the greatest share of our profits back into the business.” After shareholders sued Mr. Ford, the court determined that the profits would be paid to shareholders. *Dodge v. Ford Motor Co.*, 170 N.W. 668 (MI 1919).

3. Currently, 27 states have enacted benefit corporation legislation and 14 states are considering benefit corporation legislation. www.bcorporation.net.

C. Social Purpose Corporation – Chapter 607 Part II (Sections 607.501 to 607.513)

1. Corporate Purpose (Section 607.506): creating a public benefit (in addition to corporate purpose, Section 607.0301).
 - (a) Public benefit: “a positive effect, or the minimization of negative effects, taken as a whole, on the environment or on one or more categories of persons or entities, other than shareholders in their capacity as shareholder, of an artistic, charitable, economic, educational, cultural, literary, religious, social, ecological, or scientific nature, from the business and operations of a social purpose corporation. The term includes, but is not limited to, the following:
 - (i) Providing low-income or underserved individuals or communities with beneficial products or services.
 - (ii) Promoting economic opportunity for individuals or communities beyond the creation of jobs in the normal course of business.
 - (iii) Protecting or restoring the environment.
 - (iv) Improving human health.
 - (v) Promoting the arts, sciences, or advancement of knowledge.
 - (vi) Increasing the flow of capital to entities that have as their stated purpose the provision of a benefit to society or the environment.
 - (b) In addition, may identify one or more specific public benefits; any amendments require minimum status vote.
Specific public benefit: “a benefit identified as a purpose of the social purpose corporation which is set forth in the articles of incorporation and is consistent with a public benefit.
2. Directors – Standard of Conduct.
 - (a) Directors shall consider: the shareholders and the ability of the corporation to accomplish its public benefit or any specific public benefit purpose.

- (b) Directors may consider: employees, subsidiaries, suppliers; customers and suppliers as beneficiaries, community and societal factors, local and global environment, corporate interests, other factors.
- (c) No priority, no requirement to give equal weight to, the interests considered unless so stated in Articles of Incorporation.
- (d) Directors are not personally liable for monetary damages for the failure of the corporation to pursue or create a public benefit or specific public benefit (except as provided in the articles of incorporation).
- (e) Section 607.0830 applies (duties).
- (f) No duty to beneficiaries of the corporation (except as provided in the articles of incorporation).

3. Annual Benefit Report

- (a) Benefit director, benefit officer or board of directors shall prepare an “annual benefit report.”
- (b) Annual benefit report must contain:
 - (i) a narrative description of the ways the corporation pursued a public benefit and the extent to which a public benefit was created, any circumstance that hindered the pursuit or creation of a public benefit, the process and rationale for selecting or changing the third-party standard used to prepare the report (if the articles of incorporation require or the board determines that the report must be prepared in accordance with a third-party standard).
 - (ii) if using a third-party standard (per articles or board), the standard must be applied consistently with prior reports or the report must include an explanation for any inconsistency with immediate prior report.
 - (iii) name of benefit director and benefit officer (if any), with mailing addresses.
 - (iv) if the corporation has a benefit director, the benefit director’s statement (see discussion of benefit director).
 - (v) if using a third-party standard, a statement of any connection between the organization that established the standard (or its directors, officers, holders of more than 5 percent of governance interests) and the corporation (or its directors, officers or holders of 5 percent or more of its shares).
 - (vi) if a benefit director resigned, refused to stand for reelection, or was removed, and the director furnished written correspondence to the corporation concerning the circumstances, the correspondence must be included as an exhibit to the annual benefit report.
- (c) Annual benefit report is not required to be audited or certified by a third-party standards provider.

D. Benefit Corporation

- 1. Corporate Purpose (Section 607.606): creating general public benefit (in addition to Section 607.0301 purpose).

- (a) General public benefit: “a material, positive effect on society and the environment, taken as a whole, as assessed using a third-party standard which is attributable to the business and operations of a benefit corporation.” Section 607.602(5).
 - (b) In addition, may identify one or more specific public benefits; any amendments require minimum status vote.
2. Directors – Standard of Conduct.
- (a) Directors shall consider: the shareholders; employees and workforce of the corporation, its subsidiaries and suppliers; customers and suppliers as beneficiaries; community and societal factors; local and global environment; corporate interests; the ability of the corporation to accomplish its general public benefit purpose and each of its specific public benefit purposes (if any).
 - (b) Directors may consider: other factors.
 - (c) No priority, no requirement to give equal weight to, the interests considered unless so stated in Articles of Incorporation.
 - (d) Directors are not personally liable for monetary damages for the failure of the corporation to pursue or create a general public benefit or specific public benefit (except as provided in the articles of incorporation).
 - (e) Section 607.0830 applies (duties).
 - (f) No duty to beneficiaries of the corporation (except as provided in the articles of incorporation).
3. Annual Benefit Report
- (a) Benefit director, benefit officer or board of directors shall prepare an “annual benefit report.”
 - (b) Annual benefit report must contain:
 - (i) a narrative description of the ways the corporation pursued general public benefit and the extent to which the general public benefit was created, any circumstance that hindered the pursuit or creation of general or specific public benefit, the process and rationale for selecting or changing the third-party standard used to prepare the report.
 - (ii) name of benefit director and benefit officer (if any), with mailing addresses.
 - (iii) if the corporation has a benefit director, the benefit director’s statement (see discussion of benefit director).
 - (iv) a statement of any connection between the organization that established the third-party standard (or its directors, officers, holders of more than 5 percent of governance interests) and the corporation (or its directors, officers or holders of 5 percent or more of its shares).
 - (v) if a benefit director resigned, refused to stand for reelection, or was removed, and the director furnished written correspondence to the

- corporation concerning the circumstances, the correspondence must be included as an exhibit to the annual benefit report.
- (c) Must be prepared in accordance with a third-party standard; third-party standard must be applied consistently with any previous application in prior annual benefit reports or is accompanied by an explanation for any inconsistent application or change from immediate prior report.
 - (d) Annual benefit report is not required to be audited or certified by a third-party standards provider.

E. Requirements – Both Types

1. Articles of Incorporation must state that the corporation is a social purpose corporation under Part II of Chapter 607 or benefit corporation under Part III of Chapter 607.
 - (a) Upon formation. Sections 607.503; 607.603.
 - (b) By amendment or by merger, conversion, share exchange. Sections 607.504; 607.604.
 - (i) Must be adopted by the “minimum status vote.”
 - (ii) Shareholders are entitled to appraisal rights of Section 607.1301-607.1333.
2. Minimum Status Vote
Two-thirds vote by each class or series of shares or equity interest.
2. Professional corporations may be social purpose or benefit corporations. Sections 607.506; 607.606.
3. Terminate status by amendment of Articles of Incorporation, by merger, conversion or share exchange or by sale (other than transaction in the usual course, pursuant to court order or pursuant to which substantially all of the net proceeds are distributed to the shareholders within one year after the sale).
 - (a) Must be adopted by minimum status vote.
 - (b) Shareholders entitled to appraisal rights of Sections 607.1301-607.1333.
4. Benefit Director
 - (a) Board of directors may have a “benefit director” (if articles of incorporation so provide).
 - (b) Benefit director has powers, duties, rights and immunities of other directors.
 - (c) Independent (except for Chapter 621 corporation); may serve as the “benefit officer.” Articles and bylaws may prescribe additional qualifications.
 - (d) Prepares for inclusion in the annual benefit report to shareholders (unless articles or bylaws provide otherwise), whether the corporation acted in accordance with its purposes, whether the directors and officers complied

with their duties, whether the directors and officers failed to comply their duties (including description of the failures).

- (e) Actions/inactions in capacity as benefit director are also in capacity as director.

5. Officers – Standard of Conduct

- (a) An officer with discretion to act on a matter that the officer believes may have a material effect on the ability of the corporation to create a public benefit identified in the articles of incorporation shall consider the interests and factors that the directors consider (above).
- (b) An officer is not personally liable for monetary damages to the corporation or any other person for her failure of the corporation to pursue or create a general or specific benefit; the officer, however, is required to perform the duties of the office.
- (c) No duty to beneficiaries of the corporation (except as provided in the articles of incorporation).

6. Benefit Officer

- (a) The corporation may designate an officer as the “benefit officer.”
- (b) The benefit officer has the powers and duties set for in the bylaws or established by the board of directors which may include: powers and duties relating to the benefit purpose of the corporation; the duty to prepare the annual benefit report.

7. Right of Action

- (a) No rights against the corporation for failure to pursue or create the benefit or violation of an obligation, duty or standard of conduct, other than in a benefit enforcement proceeding.
- (b) The corporation is not liable for monetary damages for failure to pursue or create the benefit.
- (c) A “benefit enforcement proceeding” may be brought directly by the corporation or derivatively by a shareholder, a director, a person or group that owns 5% or more of the corporation’s parent entity, any other person specified in the articles or bylaws.

8. Availability of Annual Benefit Report

- (a) The corporation shall send the annual benefit report to each shareholder within 120 days after end of fiscal year or at same time as it delivers any other annual report to its shareholders.
- (b) The corporation shall post the annual benefit report on the public portion of its website (if any) for at least three years and, if no website, the corporation shall provide a copy of the most recent report, without charge, to any person upon request.
- (c) The circuit court will summarily order the corporation to furnish the annual benefit report to a shareholder and may order the corporation to pay the shareholder’s costs (including reasonable attorneys’ fees).

F. Third-Party Standards

1. Third-party reporting standards are optional for social purpose corporations, mandatory for benefit corporations.
2. Various third-party reporting standards are available.

G. Certification

1. Not required for either social purpose or benefit corporations.
2. B Lab – Certified B Corporation
from bcorporation.net: B Corp is to business what Fair Trade Certification is to coffee or USDA organic certification is to milk.
More than 1,000 certified B corporations from more than 33 countries and more than 60 industries, working together toward one unifying goal—to redefine success in business.

H. Examples – B Corporations

1. W. S. Badger Co., Inc. – Badger Balm
2. Patagonia, Inc. – outdoor apparel
3. Seventh Generation – cleaning products
4. Ben & Jerry’s – ice cream
5. King Arthur Flour Co. – oldest flour company in U.S.
6. California Law Firm – Wendel, Rosen, Black & Dean LLP
7. Florida Example – Clean the World Management, Inc. (by recent amendment); not on certified B corporation list at this time