CLIENT ALERTS & INSIGHTS

Ohio Creates New For-Profit Benefit Corporation

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A new law passed in Ohio that will create a "For-Profit Benefit Corporation" designation in Ohio. Senate Bill 21 amends Ohio Corporation law, as contained in ORC §1701, providing for a new form of for-profit corporation, a Benefit Corporation, affording the corporation and its directors protection against liability to shareholders relating to the corporation's pursuit of a beneficial purpose.

What is a Benefit Corporation?

> A benefit corporation is a for-profit corporation that is authorized by a specific provision in its organizational documents to pursue one or more beneficial purposes in addition to the other legal purposes for which for-profit corporations may be formed. Benefit corporations do not receive any special government incentives to operate for a beneficial purpose (e.g., special tax treatment) and are subject to all the other requirements and limitations imposed by Ohio law on for-profit corporations.

What is Beneficial Purpose?

> A beneficial purpose can be any purpose that has beneficial effects on persons, entities, communities, or interests, other than shareholders in their capacity as shareholders, including effects of an artistic, charitable, cultural, economic, educational, environmental, literary, medical, religious, scientific, or technological nature. Under the new law, benefit corporations and their directors are protected from liability to beneficiaries of a beneficial purpose and specifically owe no duty to such beneficiaries.

Ohio joins at least 31 other states that have adopted amendments to their respective corporation laws to provide for the creation of benefit corporations. Ohio's proposed legislation differs from that adopted in some other states due to its flexibility. Some state laws require each benefit corporation to produce an annual public benefit report prepared against a third-party standard that describes how and to what extent the corporation has accomplished its beneficial purpose.

Senate Bill 21 gives shareholders the flexibility to determine what, if any, public reporting would be required. For example, the owners of a corner grocery store that operate for a profit may also approve cancer research as a beneficial purpose without being required to report publicly. However, a company wishing to attract investors who make investment decisions based on a beneficial purpose can provide for public reporting and auditing of the report.

In either circumstance, benefit corporations would still be required to produce annual financial statements (as required by O.R.C. §1701.38) for shareholders, and shareholders would still be entitled to examine the books and records of the corporation (as provided for in §1701.37(C)). The type of investor and the type of investment is changing. The new generation of investment wants to

provide capital for corporations that combine a for-profit mentality while promoting a civic responsibility to the community.

Well-known examples of Benefit Corporations across the country include Kickstarter, Patagonia, Laureaute Education and King Arthur Flour Company.

To learn more about Benefit Corporations or any other matter pending before the Ohio General Assembly, contact a member of the firm's Government Relations Practice Group.

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