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## BENEFIT LLCs - AN OPTION FOR SOCIALLY CONSCIOUS BUSINESS OWNERS



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### **BENEFIT LLCs VS. TRADITIONAL LLCs**

Any LLC can state in its operating agreement that its purpose is to provide public benefits. And while state LLC laws differ, some specifically declare that management’s fiduciary duties can be expanded, limited or restricted in the operating agreement. This allows for the LLC’s managers to be required to take into account the interests of all of those materially affected by its operations when making business decisions.

The operating agreement can also require the LLC to report periodically on whether it is achieving its public benefit goals.

### **WHAT ARE THE ADVANTAGES OF FORMING A BENEFIT LLC?**

There may be advantages to forming a Benefit LLC (where the purpose, accountability and transparency requirements are statutory) rather than using a traditional LLC (where they are contractual). They can include the following:

- ▶ Socially conscious individuals may prefer to invest in, buy from, work for, and do business with companies that have taken the extra step of forming a statutory social entity such as a Benefit LLC.
- ▶ It may be easier for the public to identify that a company has a social mission when it is a Benefit LLC, as there is no need to read through the operating agreement to see its commitment.
- ▶ It may be easier for impact investors (those who hope to achieve beneficial social or environmental changes through their investments) and others to assess the performance of the Benefit LLC because of its statutory reporting obligations.
- ▶ Forming a Benefit LLC may also reduce formation costs as complex governance provisions will not have to be written into its operating agreement as it would for a traditional LLC that wants to have the equivalent governance structure.

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### WHERE CAN A BENEFIT LLC BE FORMED?

Benefit LLCs are not as widely authorized as Benefit Corporations—at least not yet. Only a few states currently have a Benefit LLC law. These include Maryland (the first state to enact one), Oregon, Pennsylvania, Utah, Kansas, and Delaware.

However, it is significant that one of those states is [Delaware](#)—the country’s most popular formation state and a state whose business entity statutes are influential and often copied. Because of this significance, it is worthwhile to take a closer look at the Delaware law.

### DELAWARE’S STATUTORY PUBLIC BENEFIT LLC LAW

On August 1, 2018, a new subchapter was added to the Delaware LLC law authorizing the formation of Statutory Public Benefit LLCs.

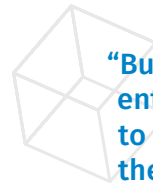
A Statutory Public Benefit LLC is defined as a for-profit LLC that is intended to produce a public benefit and operate in a responsible and sustainable manner. Like a traditional Delaware LLC, it is formed by filing a Certificate of Formation with the Division of Corporations.

However, in addition to setting forth its name and the name of its Registered Agent and the address of its registered office—like any other LLC—a Statutory Public Benefit LLC must state in the heading of its Certificate of Formation that it is a Statutory Public Benefit LLC and set forth one or more specific public benefits to be promoted. A Statutory Public Benefit LLC cannot delete or amend those provisions without the approval of members who own at least two-thirds of the then current percentage or other interests in its profits.

The members or managers of a Delaware Statutory Public Benefit LLC, or others with authority to manage or direct the

business, are required to manage in a manner that balances the pecuniary interests of the members, the best interests of those materially affected by its conduct, and the specific public benefit or benefits set forth in its certificate of formation.

A Statutory Public Benefit LLC is also required to provide its members biennially with a statement as to its promotion of the public benefits set forth in its Certificate of Formation and as to the best interests of those materially affected by its conduct.



**“Business owners who prefer the LLC form of entity to the corporation, who are committed to having a positive impact on society and the environment, and who want to attract like-minded investors, customers and workers may wish to familiarize themselves with the Benefit LLC laws that have been enacted—such as Delaware’s Statutory ”**

### CONCLUSION

Business owners who prefer the LLC form of entity to the corporation, who are committed to having a positive impact on society and the environment, and who want to attract like-minded investors, customers and workers may wish to familiarize themselves with the Benefit LLC laws that have been enacted—such as Delaware’s Statutory Public Benefit LLC Law. Lawyers with clients that can benefit from this type of entity may wish to do so as well.

### LEARN MORE

For more information or assistance with forming a Benefit LLC in Delaware or the other states that authorize this entity, contact your CT representative.