

# Social Enterprises: A Revolution under the Radar

08.15.14 | Linda J. Rosenthal, JD



Until recently, entrepreneurs and businesses interested in being socially responsible had limited – and unsatisfactory – choices.

If they set up as traditional for-profit corporations, there were serious restrictions on straying from the existing model of maximizing shareholder value. If they set up as nonprofit corporations, they endangered their tax exemptions if the primary purpose was to make money from businesses unrelated to the stated charitable objectives.

That's all changed – swiftly – in the past few years. There's been a quiet movement sweeping across the United States and gaining support across party lines in state legislatures.

California has been among the states leading the way for radically new hybrid structures for businesses: social enterprises.

In January 2012 California became the sixth U.S. jurisdiction to authorize a new type of for-profit company called a "Benefit Corporation," and it was the first in the nation to permit the formation of a for-profit "Flexible Purpose Corporation."

## ***Why Couldn't Businesses be Socially Responsible?***

It's not an understatement to call these new developments in corporate law revolutionary.

The bedrock principle of business law has been that a for-profit corporation has just one purpose: to make money. That's why it's a "for-profit" legal entity. This is not just a consensus in the business community. It's a key part of state law that authorizes the creation of traditional for-profit corporations. The board of directors has a legal duty to take action and make decisions for this purpose.

For-profits can promote socially conscious causes so long as these decisions and activities further the long-term goal of economically benefiting the shareholders. If not, stock owners can sue them for breach of duty.

***Beginnings of the Change: The New Social Enterprise Movement***

The regular for-profit corporation model is still the legal format used by the overwhelming number of businesses in the United States. But the push to allow broader purposes within the for-profit corporate form is quickly taking hold.

Of course, this change could not occur without state legislation expressly authorizing these new types of for-profit corporations. Starting just a few years ago, state after state has jumped on the bandwagon to create a new hybrid corporate entity: a benefit corporation.

To date, some 26 states have enacted laws authorizing the formation of benefit corporations, and another 14 are considering taking this step.

All of this action was helped along by forward-looking state legislators and governors. In mid-2013, Delaware – perhaps the most influential state in the nation for corporate matters – enacted benefit corporation legislation. Its governor, [Jack Martell](#), described this landmark legislation as “. . . an innovative approach to using market forces to solve our most challenging problems.”

And the heads of hundreds of social enterprises hailed this achievement by issuing a dramatic Open Letter, urging other existing corporations and startups to come on board: ” Along with Governor Martell, we celebrate a new freedom to build businesses with a higher purpose than simply maximizing profit . . . We are part of a growing movement of business leaders that see this as a big market opportunity, because a large and increasing number of people want to support a better way to do business – better for our workers, better for our communities, better for our environment.”

We, too, are growing this movement. For Purpose Law Group is one of only a few law firms in California specializing in assisting social entrepreneurs in forming their business as a Benefit or a Flexible Purpose Corporation, or in converting a current traditional corporation into one of these new forms.