

---

## Delaware Public Benefit Corporations: Choosing a Specific Benefit

Delaware is one of approximately 30 U.S. jurisdictions that allow corporations to elect benefit corporation status. This status permits a corporation to pursue social and environmental goals with the same priority as pursuing financial returns. In Delaware, corporations that have adopted this status are known as “public benefit corporations” (“PBCs”). The Delaware General Corporation Law (the “DGCL”) authorizes PBCs with the following language:

A “public benefit corporation” is a for-profit corporation organized under and subject to the requirements of this chapter that is intended to produce a public benefit or public benefits and to operate in a responsible and sustainable manner.

A PBC must balance three sets of interests: stockholder pecuniary interests, the general public interest (i.e., “those materially affected by the corporation’s conduct”), and one or more specified public benefits:

A public benefit corporation shall be managed in a manner that balances the stockholders’ pecuniary interests, the best interests of those materially affected by the corporation’s conduct, and the public benefit or public benefits identified in its certificate of incorporation.

Thus, unlike most jurisdictions that authorize public benefit corporations, Delaware requires that such entities choose a *specific public benefit* in addition to serving a general public benefit purpose. Specifically, the statute requires that a public benefit corporation “identify within its statement of business purpose . . . one or more specific public benefits to be promoted by the corporation.” The definition of public benefit is as follows:

A positive effect (or reduction of negative effects) on one or more categories of persons, entities, communities or interests (other than stockholders in their capacities as stockholders) including, but not limited to, the effects of an artistic, charitable, cultural, economic, educational, environmental, literary, medical, religious, scientific or technological nature.

While the statute does not delineate a level of required specificity, providing a specific benefit that is more specific than a restatement of the general benefit that the statute requires will ensure that corporations receive all the protections provided to PBCs under the public benefit corporation provisions of the DGCL.

In addition to providing sufficient specificity, it is also a best practice to provide a purpose that is broad enough to limit future requirements of change the purpose as circumstances change.

*This document is not intended to provide legal advice to any specific business. Applicable state statutes may have specific requirements and features, and thus should be consulted for the proposed state of incorporation. Businesses should obtain competent legal and accounting advice before taking any steps to become a benefit corporation.*

Thus, for example, if a company's specific public purpose involves ensuring that school children receive nutritious meals, it may be best to refer to that generic but specific purpose, rather than articulating the specific means by which the company currently achieves that purpose since, as the company scales and evolves, its method for providing nutritious meals may also change.

To date, hundreds of corporations have incorporated under the Delaware's PBC provisions. They have chosen a myriad of specific benefits. Examples include the following:

- ***Nutrition:*** *The delivery of nourishing, organic food to the nation's little ones and raising awareness and advancing solutions for childhood hunger and malnutrition in the United States.*
- ***Unemployment:*** *Build healthy communities, create jobs, and combat the social and economic ill effects of chronic joblessness in communities across America.*
- ***Education:*** *The Corporation also has a specific public benefit purpose to promote innovation in education and improved access to quality schooling.*
- ***Breast Milk:*** *The specific public benefits of increasing access to safe, high-quality human donor milk adapted for neonatal clinical and post-discharge settings; increasing breastfeeding rates and the economic empowerment of women; and supporting related research.*
- ***Developing Countries:*** *Benefit International community development in developing countries.*
- ***Environmental Sustainability:*** *Increasing environmental sustainability by fostering and facilitating the reuse of durable goods.*

Attached as Appendix A to this document is a list of additional specific benefits. This list can be searched for examples.

Attachment