

**Second Regular Session
Seventy-third General Assembly
STATE OF COLORADO**

ENGROSSED

*This Version Includes All Amendments Adopted
on Second Reading in the House of Introduction*

LLS NO. 22-0746.01 Christy Chase x2008

SENATE BILL 22-045

SENATE SPONSORSHIP

Lee,

HOUSE SPONSORSHIP

Bird,

Senate Committees

Business, Labor, & Technology

House Committees

A BILL FOR AN ACT

101 **CONCERNING MODIFICATIONS TO THE LAWS GOVERNING PUBLIC**
102 **BENEFIT CORPORATIONS.**

Bill Summary

(Note: This summary applies to this bill as introduced and does not reflect any amendments that may be subsequently adopted. If this bill passes third reading in the house of introduction, a bill summary that applies to the reengrossed version of this bill will be available at <http://leg.colorado.gov>.)

The bill modifies the "Public Benefit Corporation Act of Colorado" as follows:

- Eliminates the requirement for approval of two-thirds of the outstanding shares to convert an existing corporation to a public benefit corporation (PBC) or an existing PBC into a non-PBC, thereby defaulting to the majority vote

Shading denotes HOUSE amendment. Double underlining denotes SENATE amendment.
*Capital letters or bold & italic numbers indicate new material to be added to existing statute.
Dashes through the words indicate deletions from existing statute.*

SENATE
2nd Reading Unamended
February 11, 2022

- requirement applicable to other corporate conversions (**section 1** of the bill);
- Eliminates the application of appraisal rights for shareholders objecting to the conversion of a non-PBC to a PBC (**section 1**);
 - Clarifies that a director's ownership of stock in a PBC does not inherently create a conflict of interest and specifies that, absent a conflict of interest, a director does not act in bad faith and does not breach a duty of loyalty if the director, in directing the business of the PBC, fails to satisfy a requirement to balance shareholder pecuniary interests, the best interests of those materially affected by the action, and the specific public benefit of the PBC (**section 2**); and
 - Clarifies the requirements for actions to enforce the requirements imposed on directors to balance the interests of shareholders, those materially affected by the corporate action, and the public benefit of the PBC (**section 3**).
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1 *Be it enacted by the General Assembly of the State of Colorado:*

2 **SECTION 1.** In Colorado Revised Statutes, **amend** 7-101-504 as
3 follows:

4 **7-101-504. Nonprofit corporations.** ~~(1) Notwithstanding any~~
5 ~~other provisions of this part 5 other than subsection (2) of this section, a~~
6 ~~corporation that is not a public benefit corporation shall not, without the~~
7 ~~approval of two-thirds of the outstanding shares of each class of shares~~
8 ~~of the corporation of which there are outstanding shares, whether voting~~
9 ~~or nonvoting:~~

10 ~~(a) Amend its articles of incorporation to include a provision~~
11 ~~authorized by section 7-101-503 (1)(a);~~

12 ~~(b) Convert into a domestic or foreign public benefit corporation~~
13 ~~or similar entity, or~~

14 ~~(c) Merge with or into another entity if, as a result of the merger,~~
15 ~~the shares in such corporation would become, or be converted into or~~
16 ~~exchanged for the right to receive, shares or other equity interests in a~~

1 ~~domestic or foreign public benefit corporation or similar entity.~~

2 ~~(2) The restrictions of this section do not apply before the~~
3 ~~corporation has received payment for any of its capital stock. In the case~~
4 ~~of a domestic cooperative formed under article 55, 56, or 58 of this title~~
5 ~~7 that is subject to the "Colorado Business Corporation Act", articles 101~~
6 ~~to 117 of this title 7, an action described in subsection (1) or (4) of this~~
7 ~~section must be approved by vote or consent of the holders of every class~~
8 ~~or series of equity interest in the entity that are entitled to vote on the~~
9 ~~action by at least two-thirds of the votes or consents that all of those~~
10 ~~holders are entitled to cast on the action.~~

11 ~~(3) A shareholder of a corporation that is not a public benefit~~
12 ~~corporation is entitled to exercise the right to seek appraisal rights~~
13 ~~pursuant to article 113 of this title 7 if the shareholder:~~

14 ~~(a) Has neither consented in writing pursuant to section 7-107-104~~
15 ~~nor voted in favor of an amendment, merger, or conversion specified in~~
16 ~~this subsection (3);~~

17 ~~(b) Holds shares of the corporation immediately before the~~
18 ~~effective time of:~~

19 ~~(I) An amendment to the corporation's articles of incorporation to~~
20 ~~include a provision authorized by section 7-101-503 (1)(a);~~

21 ~~(II) A conversion into a domestic or foreign public benefit~~
22 ~~corporation or similar entity; or~~

23 ~~(III) A merger that would result in the conversion of the~~
24 ~~corporation's shares into, or exchange of the corporation's shares for, the~~
25 ~~right to receive shares or other equity interests in a domestic or foreign~~
26 ~~public benefit corporation or similar entity.~~

27 ~~(4) Notwithstanding any other provision of this part 5, a~~

1 corporation that is a public benefit corporation shall not, without the
2 approval of two-thirds of the outstanding shares of each class of shares
3 of the corporation of which there are outstanding shares, whether voting
4 or nonvoting:

5 (a) Amend its articles of incorporation to delete or amend a
6 provision authorized by section 7-101-503 (1)(a);

7 (b) Convert into another domestic or foreign entity that is not a
8 public benefit corporation or similar entity;

9 (c) Merge with or into another entity if, as a result of the merger,
10 the shares in the public benefit corporation would become, be converted
11 into, or be exchanged for the right to receive:

12 (I) Cash;

13 (II) Shares or other equity interests in a domestic or foreign
14 corporation that is not a public benefit corporation or similar entity; or

15 (III) Shares or other equity interests in a domestic or foreign
16 public benefit corporation or similar entity, the articles of incorporation
17 or similar governing instrument of which do not contain the identical
18 provisions identifying the public benefit pursuant to section 7-101-503
19 (1); or

20 (d) Sell, lease, exchange, or otherwise dispose of all, or
21 substantially all, of the property of the public benefit corporation in a
22 transaction for which a shareholder vote is required under section
23 7-112-102 (1).

24 (5) A nonprofit corporation cannot be a constituent entity in
25 connection with a ANY merger WITH or conversion governed by this
26 section INTO A PUBLIC BENEFIT CORPORATION.

27 **SECTION 2.** In Colorado Revised Statutes, 7-101-506, **amend**

1 (3) as follows:

2 **7-101-506. Duties of directors.** (3) ~~The articles of incorporation~~
3 ~~of a public benefit corporation may include a provision that a~~
4 ~~disinterested director's failure to satisfy this section does not~~ FOR THE
5 PURPOSES OF THIS SECTION, A DIRECTOR'S OWNERSHIP OF OR OTHER
6 INTEREST IN THE STOCK OF A PUBLIC BENEFIT CORPORATION DOES NOT,
7 ALONE, CREATE A CONFLICT OF INTEREST ON THE PART OF THE DIRECTOR
8 WITH RESPECT TO THE DIRECTOR'S DECISION IMPLICATING THE BALANCING
9 REQUIREMENT IN SUBSECTION (1) OF THIS SECTION, EXCEPT TO THE
10 EXTENT THAT THE OWNERSHIP OR INTEREST WOULD CREATE A CONFLICT
11 OF INTEREST IF THE CORPORATION WAS NOT A PUBLIC BENEFIT
12 CORPORATION. IN THE ABSENCE OF A CONFLICT OF INTEREST, A FAILURE TO
13 SATISFY THE BALANCING REQUIREMENT SPECIFIED IN SUBSECTION (1) OF
14 THIS SECTION DOES NOT, for the purposes of section 7-108-401 or
15 7-108-403 or article 109 of this title 7, constitute an act or omission THAT
16 IS not in good faith or a breach of the duty of loyalty.

17 **SECTION 3.** In Colorado Revised Statutes, **amend** 7-101-508 as
18 follows:

19 **7-101-508. Actions to enforce requirements of section**
20 **7-101-506 (1).** (1) ~~Shareholders of a public benefit corporation may~~
21 ~~maintain a derivative lawsuit~~ ANY ACTION to enforce the requirements of
22 section 7-101-506 (1), ~~if the shareholders~~ INCLUDING ANY INDIVIDUAL,
23 DERIVATIVE, OR OTHER TYPE OF ACTION, MAY NOT BE BROUGHT UNLESS
24 THE PARTIES BRINGING THE ACTION own, individually or collectively, as
25 of the date of instituting ~~a derivative suit~~ THE ACTION, either:

- 26 (a) At least two percent of the corporation's outstanding shares; or
27 (b) In the case of a corporation with shares listed on a national

1 securities exchange: ~~the lesser of~~

2 (I) Two percent of the corporation's outstanding shares; or

3 (II) Shares OF THE CORPORATION WITH A MARKET VALUE of at
4 least two million dollars. ~~in market value.~~

5 (2) THIS SECTION DOES NOT RELIEVE THE PARTIES BRINGING AN
6 ACTION DESCRIBED IN SUBSECTION (1) OF THIS SECTION FROM COMPLYING
7 WITH OTHER CONDITIONS APPLICABLE TO A DERIVATIVE ACTION,
8 INCLUDING ANY RULES OF THE COURT IN WHICH THE ACTION IS FILED.

9 **SECTION 4.** In Colorado Revised Statutes, **amend** 7-101-509 as
10 follows:

11 **7-101-509. No effect on other corporations.** (1) ~~Except as~~
12 ~~provided in section 7-101-504:~~

13 (a) The existence of a provision of this part 5 does not of itself
14 create an implication that a contrary or different rule of law is or would
15 be applicable to a corporation or other entity that is not a public benefit
16 corporation.

17 (b) (2) ~~EXCEPT AS PROVIDED IN SECTION 7-101-504,~~ this part 5
18 does not affect a statute or rule of law that applies to a corporation that is
19 not a public benefit corporation.

20 **SECTION 5. Act subject to petition - effective date.** This act
21 takes effect at 12:01 a.m. on the day following the expiration of the
22 ninety-day period after final adjournment of the general assembly; except
23 that, if a referendum petition is filed pursuant to section 1 (3) of article V
24 of the state constitution against this act or an item, section, or part of this
25 act within such period, then the act, item, section, or part will not take
26 effect unless approved by the people at the general election to be held in

- 1 November 2022 and, in such case, will take effect on the date of the
- 2 official declaration of the vote thereon by the governor.