

CHAPTER 33

CORPORATIONS AND ASSOCIATIONS

SENATE BILL 22-045

BY SENATOR(S) Lee, Fenberg, Gonzales, Moreno, Pettersen, Rodriguez;
 also REPRESENTATIVE(S) Bird, Bacon, Cutter, Gray, Jodeh, Lindsay, Lontine, Snyder.

AN ACT**CONCERNING MODIFICATIONS TO THE LAWS GOVERNING PUBLIC BENEFIT CORPORATIONS.***Be it enacted by the General Assembly of the State of Colorado:***SECTION 1.** In Colorado Revised Statutes, **amend** 7-101-504 as follows:

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

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

~~(b) Convert into a domestic or foreign public benefit corporation or similar entity;~~
~~or~~

~~(c) Merge with or into another entity if, as a result of the merger, the shares in such corporation would become, or be converted into or exchanged for the right to receive, shares or other equity interests in a domestic or foreign public benefit corporation or similar entity.~~

~~(2) The restrictions of this section do not apply before the corporation has received payment for any of its capital stock. In the case of a domestic cooperative formed under article 55, 56, or 58 of this title 7 that is subject to the "Colorado Business Corporation Act", articles 101 to 117 of this title 7, an action described in subsection (1) or (4) of this section must be approved by vote or consent of the~~

Capital letters or bold & italic numbers indicate new material added to existing law; dashes through words or numbers indicate deletions from existing law and such material is not part of the act.

holders of every class or series of equity interest in the entity that are entitled to vote on the action by at least two-thirds of the votes or consents that all of those holders are entitled to cast on the action.

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

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

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

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

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

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

~~(4) Notwithstanding any other provision of this part 5, a corporation that is a public benefit corporation shall not, without the approval of two-thirds of the outstanding shares of each class of shares of the corporation of which there are outstanding shares, whether voting or nonvoting:~~

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

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

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

~~(I) Cash;~~

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

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

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

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

SECTION 2. In Colorado Revised Statutes, 7-101-506, **amend** (3) as follows:

7-101-506. Duties of directors. (3) ~~The articles of incorporation of a public benefit corporation may include a provision that a disinterested director's failure to satisfy this section does not~~ FOR THE PURPOSES OF THIS SECTION, A DIRECTOR'S OWNERSHIP OF OR OTHER INTEREST IN THE STOCK OF A PUBLIC BENEFIT CORPORATION DOES NOT, ALONE, CREATE A CONFLICT OF INTEREST ON THE PART OF THE DIRECTOR WITH RESPECT TO THE DIRECTOR'S DECISION IMPLICATING THE BALANCING REQUIREMENT IN SUBSECTION (1) OF THIS SECTION, EXCEPT TO THE EXTENT THAT THE OWNERSHIP OR INTEREST WOULD CREATE A CONFLICT OF INTEREST IF THE CORPORATION WAS NOT A PUBLIC BENEFIT CORPORATION. IN THE ABSENCE OF A CONFLICT OF INTEREST, A FAILURE TO SATISFY THE BALANCING REQUIREMENT SPECIFIED IN SUBSECTION (1) OF THIS SECTION DOES NOT, for the purposes of section 7-108-401 or 7-108-403 or article 109 of this title 7, constitute an act or omission THAT IS NOT IN GOOD FAITH OR A BREACH OF THE DUTY OF LOYALTY.

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

7-101-508. Actions to enforce requirements of section 7-101-506 (1). (1) ~~Shareholders of a public benefit corporation may maintain a derivative lawsuit~~ ANY ACTION TO ENFORCE THE REQUIREMENTS OF SECTION 7-101-506 (1), ~~if the shareholders~~ INCLUDING ANY INDIVIDUAL, DERIVATIVE, OR OTHER TYPE OF ACTION, MAY NOT BE BROUGHT UNLESS THE PARTIES BRINGING THE ACTION OWN, INDIVIDUALLY OR COLLECTIVELY, AS OF THE DATE OF INSTITUTING ~~a derivative suit~~ THE ACTION, EITHER:

- (a) At least two percent of the corporation's outstanding shares; or
- (b) In the case of a corporation with shares listed on a national securities exchange: ~~the lesser of~~
 - (I) Two percent of the corporation's outstanding shares; or
 - (II) Shares OF THE CORPORATION WITH A MARKET VALUE of at least two million dollars. ~~in market value.~~

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

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

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

~~(a)~~ The existence of a provision of this part 5 does not of itself create an implication that a contrary or different rule of law is or would be applicable to a

corporation or other entity that is not a public benefit corporation.

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

SECTION 5. Act subject to petition - effective date. This act takes effect at 12:01 a.m. on the day following the expiration of the ninety-day period after final adjournment of the general assembly; except that, if a referendum petition is filed pursuant to section 1 (3) of article V of the state constitution against this act or an item, section, or part of this act within such period, then the act, item, section, or part will not take effect unless approved by the people at the general election to be held in November 2022 and, in such case, will take effect on the date of the official declaration of the vote thereon by the governor.

Approved: March 17, 2022