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HOUSE BILL 17-1200

BY REPRESENTATIVE(S) Wist and Gray, Lee, Arndt, Becker K., Exum, Herod, Hooton, Kraft-Tharp, Lontine, Mitsch Bush, Rosenthal, Saine, Salazar, Winter, Duran;
also SENATOR(S) Tate and Kefalas, Cooke, Fenberg, Hill, Jones, Kagan, Kerr, Merrifield, Todd.

CONCERNING MODIFICATION OF THE LAWS REGULATING PUBLIC BENEFIT CORPORATIONS, AND, IN CONNECTION THEREWITH, MAKING AN APPROPRIATION.

Be it enacted by the General Assembly of the State of Colorado:

SECTION 1. In Colorado Revised Statutes, 7-101-503, **amend** (1) introductory portion, (1)(a), and (4) as follows:

7-101-503. Public benefit corporation - definitions - contents of articles of incorporation. (1) A public benefit corporation is a for-profit corporation organized under and subject to the requirements of the "Colorado Business Corporation Act", articles 101 to 117 of this ~~title~~ TITLE 7, or a domestic cooperative organized under article 55, ~~or~~ 56, ~~OR~~ 58 of this ~~title~~ TITLE 7 that is subject to the "Colorado Business Corporation Act", that is intended to produce a public benefit or public benefits and to operate in a responsible and sustainable manner. To that end, a public benefit

Capital letters indicate new material added to existing statutes; dashes through words indicate deletions from existing statutes and such material not part of act.

corporation shall be managed in a manner that balances the shareholders' pecuniary interests, the best interest of those materially affected by the corporation's conduct, and the public benefit identified in its articles of incorporation. In its articles of incorporation, a public benefit corporation shall:

(a) Identify within its statement of business or purpose pursuant to section 7-103-101 (1) one or more specific public benefits to be promoted by the PUBLIC BENEFIT corporation; and

(4) The domestic entity name of a public benefit corporation ~~must, without exception,~~ MAY contain the words "public benefit corporation", the abbreviation "P.B.C." OR "PUB. BEN. CORP.", or the designation "PBC", WHICH SHALL BE DEEMED TO SATISFY THE REQUIREMENTS OF SECTION 7-90-601 (3)(a), and MUST otherwise satisfy the requirements of section 7-102-102 (1)(a). IF THE NAME DOES NOT CONTAIN THE LANGUAGE SPECIFIED IN THIS SUBSECTION (4), THE PUBLIC BENEFIT CORPORATION SHALL, BEFORE ISSUING UNISSUED SHARES OF STOCK OR DISPOSING OF TREASURY SHARES, PROVIDE NOTICE TO ANY PERSON TO WHOM THE STOCK IS ISSUED OR WHO ACQUIRES THE TREASURY SHARES THAT IT IS A PUBLIC BENEFIT CORPORATION; EXCEPT THAT THE NOTICE NEED NOT BE PROVIDED IF THE ISSUANCE OR DISPOSAL IS PURSUANT TO AN OFFERING REGISTERED UNDER THE FEDERAL "SECURITIES ACT OF 1933", 15 U.S.C. SEC. 77a ET SEQ., AS AMENDED, OR IF, AT THE TIME OF ISSUANCE OR DISPOSAL, THE PUBLIC BENEFIT CORPORATION HAS A CLASS OF SECURITIES THAT IS REGISTERED UNDER THE FEDERAL "SECURITIES EXCHANGE ACT OF 1934", 15 U.S.C. SEC. 78b ET SEQ., AS AMENDED.

SECTION 2. In Colorado Revised Statutes, 7-101-504, **amend** (2), (4)(b), and (4)(c); and **add** (4)(d) as follows:

7-101-504. Certain amendments and mergers - votes required - dissenter's rights. (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, ~~or~~ 56, OR 58 of this ~~title~~ TITLE 7 that is subject to the "Colorado Business Corporation Act", articles 101 to 117 of this ~~title~~ TITLE 7, an action described in subsection (1) OR (4) of this section must be approved by vote or consent of the 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.

(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:

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

(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) As a result of the merger, the shares in such corporation would become, be converted into, or be exchanged for the right to receive Shares or other equity interests in a domestic or foreign corporation that is not a public benefit corporation or similar entity; and~~ 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 the domestic or foreign corporation that is not a public benefit corporation or similar entity 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).

SECTION 3. 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 section 7-108-401 OR 7-108-402 or article 109 of this ~~title~~ TITLE 7, constitute an act or omission not in good faith or a breach of the duty of loyalty.

SECTION 4. In Colorado Revised Statutes, 7-101-507, **amend** (1)(a) as follows:

7-101-507. Benefit report - definition. (1) A public benefit corporation shall prepare an annual report that includes:

(a) A narrative description of:

(I) The ways in which the public benefit corporation promoted the public benefit identified in the articles of incorporation and the best interests of those materially affected by the PUBLIC BENEFIT corporation's conduct;

(II) Any circumstances that have hindered the public benefit corporation's promotion of the identified public benefit and the best interests of those materially affected by the PUBLIC BENEFIT corporation's conduct; and

(III) The process and rationale for selecting or changing the third-party standard used to ~~prepare the benefit report~~ COMPLETE THE ASSESSMENT PURSUANT TO SUBSECTION (1)(b) OF THIS SECTION; and

SECTION 5. 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) This part 5 does not affect a statute or rule of law that applies to a corporation that is not a public benefit corporation. ~~except as provided in section 7-101-504.~~

SECTION 6. In Colorado Revised Statutes, 7-90-601, **add** (3)(h) as follows:

7-90-601. Entity name. (3) In addition to the requirements of subsection (2) of this section:

(h) THE WORDS OR ABBREVIATIONS "PUBLIC BENEFIT CORPORATION", "P.B.C.", "PBC", AND "PUB. BEN. CORP." MAY BE USED IN AN ENTITY NAME ONLY BY CORPORATIONS AND COOPERATIVES THAT ARE ORGANIZED AS PUBLIC BENEFIT CORPORATIONS UNDER PART 5 OF ARTICLE 101 OF THIS TITLE 7.

SECTION 7. Appropriation. For the 2017-18 state fiscal year, \$30,488 is appropriated to the department of state. This appropriation is from the department of state cash fund created in section 24-21-104 (3)(b), C.R.S. To implement this act, the department may use this appropriation for personal services related to information technology services.

SECTION 8. Act subject to petition - effective date - applicability. (1) 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 (August 9, 2017, if adjournment sine die is on May 10, 2017); 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 2018 and, in such case, will take effect on the date of the official declaration of the vote thereon by the governor.

(2) This act applies to conduct occurring on or after the applicable effective date of this act.

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SECRETARY OF
THE SENATE

APPROVED _____

John W. Hickenlooper
GOVERNOR OF THE STATE OF COLORADO