

CHAPTER 396

ELECTIONS

HOUSE BILL 07-1323

BY REPRESENTATIVE(S) Green, McGihon, Carroll T., Madden, Merrifield, Primavera, Borodkin, Buescher, Carroll M., Casso, Fischer, Gibbs, Kefalas, Kerr A., Peniston, and Todd;
also SENATOR(S) Gordon, Bacon, and Tupa.

AN ACT

CONCERNING THE TREATMENT OF CAMPAIGN CONTRIBUTION-RELATED ACTIVITY INVOLVING TWO TYPES OF LEGAL ENTITIES UNDER COLORADO LAW GOVERNING CAMPAIGN FINANCE, AND, IN CONNECTION THEREWITH, MODIFYING THE DEFINITION OF "CORPORATION" AND ADDRESSING THE TREATMENT OF CAMPAIGN CONTRIBUTIONS FROM LIMITED LIABILITY COMPANIES UNDER THE "FAIR CAMPAIGN PRACTICES ACT".

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

SECTION 1. 1-45-103 (7), Colorado Revised Statutes, is amended to read:

1-45-103. Definitions. As used in this article, unless the context otherwise requires:

(7) "Corporation" means a domestic corporation incorporated under and subject to the "Colorado Business Corporation Act", articles 101 to 117 of title 7, C.R.S., A DOMESTIC NONPROFIT CORPORATION INCORPORATED UNDER AND SUBJECT TO THE "COLORADO REVISED NONPROFIT CORPORATION ACT", ARTICLES 121 TO 137 OF TITLE 7, C.R.S., OR ANY CORPORATION INCORPORATED UNDER AND SUBJECT TO THE LAWS OF ANOTHER STATE OR FOREIGN COUNTRY. FOR PURPOSES OF THIS ARTICLE, "DOMESTIC CORPORATION" SHALL MEAN A FOR-PROFIT OR NONPROFIT CORPORATION INCORPORATED UNDER AND SUBJECT TO THE LAWS OF THIS STATE, AND "FOREIGN CORPORATION" SHALL MEAN A CORPORATION INCORPORATED UNDER AND SUBJECT TO THE LAWS OF ANOTHER STATE OR FOREIGN COUNTRY.

SECTION 2. 1-45-103.7, Colorado Revised Statutes, is amended BY THE ADDITION OF THE FOLLOWING NEW SUBSECTIONS to read:

1-45-103.7. Contribution limits - definitions. (5) (a) NO LIMITED LIABILITY

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

COMPANY SHALL MAKE ANY CONTRIBUTION TO A CANDIDATE COMMITTEE OR POLITICAL PARTY IF ONE OR MORE OF THE INDIVIDUAL MEMBERS OF THE LIMITED LIABILITY COMPANY IS:

(I) A CORPORATION;

(II) A LABOR ORGANIZATION;

(III) A NATURAL PERSON WHO IS NOT A CITIZEN OF THE UNITED STATES;

(IV) A FOREIGN GOVERNMENT;

(V) A PROFESSIONAL LOBBYIST, VOLUNTEER LOBBYIST, OR THE PRINCIPAL OF A PROFESSIONAL OR VOLUNTEER LOBBYIST, AND THE CONTRIBUTION IS PROHIBITED UNDER SECTION 1-45-105.5 (1); OR

(VI) OTHERWISE PROHIBITED BY LAW FROM MAKING THE CONTRIBUTION.

(b) NO LIMITED LIABILITY COMPANY SHALL MAKE ANY CONTRIBUTION TO A POLITICAL COMMITTEE IF ONE OR MORE OF THE INDIVIDUAL MEMBERS OF THE LIMITED LIABILITY COMPANY IS:

(I) AN ENTITY FORMED UNDER AND SUBJECT TO THE LAWS OF A FOREIGN COUNTRY;

(II) A NATURAL PERSON WHO IS NOT A CITIZEN OF THE UNITED STATES; OR

(III) A FOREIGN GOVERNMENT.

(c) NOTWITHSTANDING ANY OTHER PROVISION OF THIS SUBSECTION (5), NO LIMITED LIABILITY COMPANY SHALL MAKE ANY CONTRIBUTION TO A CANDIDATE COMMITTEE OR POLITICAL PARTY IF EITHER THE LIMITED LIABILITY COMPANY HAS ELECTED TO BE TREATED AS A CORPORATION BY THE INTERNAL REVENUE SERVICE PURSUANT TO 26 CFR 301.7701-3 OR ANY SUCCESSOR PROVISION OR THE SHARES OF THE LIMITED LIABILITY COMPANY ARE PUBLICLY TRADED. A CONTRIBUTION BY A LIMITED LIABILITY COMPANY WITH A SINGLE NATURAL PERSON MEMBER THAT DOES NOT ELECT TO BE TREATED AS A CORPORATION BY THE INTERNAL REVENUE SERVICE PURSUANT TO 26 CFR 301.7701-3 SHALL BE ATTRIBUTED ONLY TO THE SINGLE NATURAL PERSON MEMBER.

(d) (I) ANY LIMITED LIABILITY COMPANY THAT IS AUTHORIZED TO MAKE A CONTRIBUTION SHALL, IN WRITING, AFFIRM TO THE CANDIDATE COMMITTEE, POLITICAL COMMITTEE, OR POLITICAL PARTY TO WHICH IT HAS MADE A CONTRIBUTION, AS APPLICABLE, THAT IT IS AUTHORIZED TO MAKE A CONTRIBUTION, WHICH AFFIRMATION SHALL ALSO STATE THE NAMES AND ADDRESSES OF ALL OF THE INDIVIDUAL MEMBERS OF THE LIMITED LIABILITY COMPANY. NO CANDIDATE COMMITTEE, POLITICAL COMMITTEE, OR POLITICAL PARTY SHALL ACCEPT A CONTRIBUTION FROM A LIMITED LIABILITY COMPANY UNLESS THE WRITTEN AFFIRMATION SATISFYING THE REQUIREMENTS OF THIS PARAGRAPH (d) IS PROVIDED BEFORE THE CONTRIBUTION IS DEPOSITED BY THE CANDIDATE COMMITTEE, POLITICAL COMMITTEE, OR POLITICAL PARTY. THE CANDIDATE COMMITTEE, POLITICAL

COMMITTEE, OR POLITICAL PARTY RECEIVING THE CONTRIBUTION SHALL RETAIN THE WRITTEN AFFIRMATION FOR NOT LESS THAN ONE YEAR FOLLOWING THE DATE OF THE END OF THE ELECTION CYCLE DURING WHICH THE CONTRIBUTION IS RECEIVED.

(II) ANY CONTRIBUTION BY A LIMITED LIABILITY COMPANY, AND THE AGGREGATE AMOUNT OF CONTRIBUTIONS FROM MULTIPLE LIMITED LIABILITY COMPANIES ATTRIBUTED TO A SINGLE MEMBER OF ANY SUCH COMPANY UNDER THIS SUBPARAGRAPH (II), SHALL BE SUBJECT TO THE LIMITS GOVERNING SUCH CONTRIBUTIONS UNDER SECTION 3 OF ARTICLE XXVIII OF THE STATE CONSTITUTION. A LIMITED LIABILITY COMPANY THAT MAKES ANY CONTRIBUTION TO A CANDIDATE COMMITTEE, POLITICAL COMMITTEE, OR POLITICAL PARTY SHALL, AT THE TIME IT MAKES THE CONTRIBUTION, PROVIDE INFORMATION TO THE RECIPIENT COMMITTEE OR POLITICAL PARTY AS TO HOW THE CONTRIBUTION IS TO BE ATTRIBUTED AMONG THE MEMBERS OF THE LIMITED LIABILITY COMPANY. THE LIMITED LIABILITY COMPANY SHALL THEN ATTRIBUTE THE CONTRIBUTION TO ITS MEMBERS AGAINST THE AGGREGATE CONTRIBUTION LIMIT APPLICABLE TO MULTIPLE LIMITED LIABILITY COMPANIES UNDER THIS SUBPARAGRAPH (II); EXCEPT THAT THE AGGREGATE AMOUNT OF CONTRIBUTIONS FROM MULTIPLE LIMITED LIABILITY COMPANIES ATTRIBUTED TO A SINGLE MEMBER SHALL NOT EXCEED THE CONTRIBUTION LIMITS IN SECTION 3 OF ARTICLE XXVIII OF THE STATE CONSTITUTION. NOTHING IN THIS SUBPARAGRAPH (II) SHALL BE CONSTRUED TO RESTRICT A NATURAL PERSON FROM MAKING A CONTRIBUTION IN HIS OR HER OWN NAME TO ANY COMMITTEE OR POLITICAL PARTY TO THE EXTENT AUTHORIZED BY LAW.

(6) NO FOREIGN CORPORATION SHALL BE PERMITTED TO MAKE ANY CONTRIBUTION UNDER ARTICLE XXVIII OF THE STATE CONSTITUTION OR THIS ARTICLE THAT A DOMESTIC CORPORATION IS PROHIBITED FROM MAKING UNDER ARTICLE XXVIII OF THE STATE CONSTITUTION OR THIS ARTICLE.

(7) (a) ANY PERSON WHO BELIEVES THAT A VIOLATION OF SUBSECTION (5) OR (6) OF THIS SECTION HAS OCCURRED MAY FILE A WRITTEN COMPLAINT WITH THE SECRETARY OF STATE NO LATER THAN ONE HUNDRE EIGHTY DAYS AFTER THE DATE OF THE ALLEGED VIOLATION. THE COMPLAINT SHALL BE SUBJECT TO ALL APPLICABLE PROCEDURES SPECIFIED IN SECTION 9 (2) OF ARTICLE XXVIII OF THE STATE CONSTITUTION.

(b) ANY PERSON WHO HAS VIOLATED ANY OF THE PROVISIONS OF PARAGRAPH (a), (b), OR (c) OF SUBSECTION (5) OR SUBSECTION (6) OF THIS SECTION SHALL BE SUBJECT TO A CIVIL PENALTY OF AT LEAST DOUBLE AND UP TO FIVE TIMES THE AMOUNT CONTRIBUTED OR RECEIVED IN VIOLATION OF THE APPLICABLE PROVISION.

(c) ANY PERSON WHO HAS VIOLATED ANY OF THE PROVISIONS OF SUBPARAGRAPH (I) OF PARAGRAPH (d) OF SUBSECTION (5) OF THIS SECTION SHALL BE SUBJECT TO A CIVIL PENALTY OF FIFTY DOLLARS PER DAY FOR EACH DAY THAT THE WRITTEN AFFIRMATION REGARDING THE MEMBERSHIP OF A LIMITED LIABILITY COMPANY HAS NOT BEEN FILED WITH OR RETAINED BY THE CANDIDATE COMMITTEE, POLITICAL COMMITTEE, OR POLITICAL PARTY TO WHICH A CONTRIBUTION HAS BEEN MADE.

(8) AS USED IN THIS SECTION, "LIMITED LIABILITY COMPANY" INCLUDES ANY FORM OF DOMESTIC ENTITY AS DEFINED IN SECTION 7-90-102 (13), C.R.S., OR FOREIGN ENTITY AS DEFINED IN SECTION 7-90-102 (23), C.R.S.; EXCEPT THAT, AS

USED IN THIS SECTION, "LIMITED LIABILITY COMPANY" SHALL NOT INCLUDE A DOMESTIC CORPORATION, A DOMESTIC COOPERATIVE, A DOMESTIC NONPROFIT ASSOCIATION, A DOMESTIC NONPROFIT CORPORATION, A FOREIGN CORPORATION, A FOREIGN COOPERATIVE, A FOREIGN NONPROFIT ASSOCIATION, OR A FOREIGN NONPROFIT CORPORATION, AS THOSE TERMS ARE DEFINED IN SECTION 7-90-102, C.R.S.

SECTION 3. Effective date - applicability. This act shall take effect on passage, and its requirements shall apply to the portion of any election cycle or for the portion of the calendar year remaining after such effective date, and for any election cycle or calendar year commencing after such effective date, whichever is applicable.

SECTION 4. Safety clause. The general assembly hereby finds, determines, and declares that this act is necessary for the immediate preservation of the public peace, health, and safety.

Approved: June 1, 2007