

## CHAPTER 9

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**CORPORATIONS AND ASSOCIATIONS**


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**HOUSE BILL 08-1055**

BY REPRESENTATIVE(S) Witwer, Borodkin, Buescher, Butcher, Gardner B., Lambert, Stephens, and Marshall;  
also SENATOR(S) Shaffer, and Gordon.

**AN ACT**

**CONCERNING THE ADMINISTRATION OF THE REGULATION OF BUSINESS ENTITIES.**

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

**SECTION 1.** 7-55-102 (1) (h), Colorado Revised Statutes, is amended to read:

**7-55-102. Articles of incorporation - filing.** (1) Five persons or more, except as specified elsewhere in this article, a majority of whom are residents of Colorado, may be associated and incorporated pursuant to this article for the cooperative transaction of any lawful business, except banking. Persons desiring to avail themselves of the provisions of this article shall deliver to the secretary of state, for filing pursuant to part 3 of article 90 of this title, articles of incorporation stating:

(h) The ~~names~~ TRUE NAME and ~~addresses~~ MAILING ADDRESS of ~~those filing the articles of incorporation~~ EACH INCORPORATOR.

**SECTION 2. Repeal.** 7-56-207, Colorado Revised Statutes, is repealed as follows:

**7-56-207. Use of the term "cooperative" - penalty for unlawful use.** ~~(1) No person shall use the word "cooperative" or an abbreviation or derivation of it as a part of its business or domestic entity name or as a trade name, trademark, service mark, brand, or designation except:~~

~~(a) An entity incorporated under or subject to this article, article 55 of this title, article 33.5 of title 38, C.R.S., part 10 of article 16 of title 10, C.R.S., or a similar law of another jurisdiction;~~

~~(b) An entity operated on a cooperative basis;~~

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

~~(c) An entity described in section 501 (c) (6) of the "Internal Revenue Code of 1986", as amended;~~

~~(d) An association of two or more of the entities described in paragraphs (a) to (c) of this subsection (1); or~~

~~(e) As authorized by section 7-56-205 or as otherwise required or authorized by any other statute.~~

~~(2) An entity described in subsection (1) of this section or one or more members of such an entity may, without the necessity of posting a bond, bring an action for an injunction or for actual damages incurred, or both, as a result of a violation of or to enforce the provisions of this section, or both. Upon proof that the word "cooperative" or an abbreviation or derivation of that word is used in violation of this section, the court shall enter an order permanently enjoining such use of the word. The prevailing party in the action shall be awarded judgment against the other party for the attorney fees and costs of litigation incurred by the prevailing party in the action. The provisions of this section shall not apply to any person that has been continuously using the word "cooperative" or an abbreviation or derivation of that word in the person's business since July 5, 1973, as part of its trade name, business name, trademark, service mark, brand, or designation.~~

**SECTION 3.** 7-62-201 (1) (c), Colorado Revised Statutes, is amended to read:

**7-62-201. Certificates - contents - filing with secretary of state.** (1) In order to form a limited partnership, a certificate of limited partnership shall be delivered to the secretary of state, for filing pursuant to part 3 of article 90 of this title. The certificate of limited partnership shall state:

(c) The true name and MAILING address of each general partner;

**SECTION 4.** 7-62-402 (1) (i), Colorado Revised Statutes, is amended to read:

**7-62-402. Events of withdrawal.** (1) A person ceases to be a general partner of a limited partnership upon the happening of any of the following events:

(i) In the case of a general partner that is a corporation, the filing of a ~~certificate~~ ARTICLES of dissolution, or its equivalent, for the corporation or the revocation of its charter or ~~certificate~~ ARTICLES of incorporation; or

**SECTION 5.** 7-90-102 (63), Colorado Revised Statutes, is amended to read:

**7-90-102. Definitions.** As used in this title, except as otherwise defined for the purpose of any section, subpart, part, or article of this title, or unless the context otherwise requires:

(63) "Surviving entity" means the entity into which a merging entity or entities have merged pursuant to section 7-90-203 OR PURSUANT TO THE ORGANIC STATUTES OTHER THAN THIS ARTICLE.

**SECTION 6.** 7-90-601, Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW SUBSECTION to read:

**7-90-601. Entity name.** (7) (a) NO PERSON SHALL USE THE WORD "COOPERATIVE" OR AN ABBREVIATION OR DERIVATION OF IT AS A PART OF ITS BUSINESS OR DOMESTIC ENTITY NAME OR AS A TRADE NAME, TRADEMARK, SERVICE MARK, BRAND, OR DESIGNATION EXCEPT:

(I) AN ENTITY INCORPORATED UNDER OR SUBJECT TO ARTICLE 55 OR 56 OF THIS TITLE, PART 10 OF ARTICLE 16 OF TITLE 10, C.R.S., ARTICLE 33.5 OF TITLE 38, C.R.S., OR A SIMILAR LAW OF ANOTHER JURISDICTION;

(II) AN ENTITY OPERATED ON A COOPERATIVE BASIS;

(III) AN ENTITY DESCRIBED IN SECTION 501 (c) (6) OF THE "INTERNAL REVENUE CODE OF 1986", AS AMENDED;

(IV) AN ASSOCIATION OF TWO OR MORE OF THE ENTITIES DESCRIBED IN SUBPARAGRAPHS (I) TO (III) OF THIS PARAGRAPH (a); OR

(V) AS AUTHORIZED BY SECTION 7-56-205 OR AS OTHERWISE REQUIRED OR AUTHORIZED BY ANY OTHER STATUTE.

(b) AN ENTITY DESCRIBED IN THIS SUBSECTION (7), OR ONE OR MORE MEMBERS OF SUCH AN ENTITY, MAY, WITHOUT THE NECESSITY OF POSTING A BOND, BRING AN ACTION FOR AN INJUNCTION OR FOR ACTUAL DAMAGES INCURRED AS A RESULT OF A VIOLATION OF THIS SUBSECTION (7) OR TO ENFORCE THIS SUBSECTION (7). UPON PROOF THAT THE WORD "COOPERATIVE" OR AN ABBREVIATION OR DERIVATION OF THAT WORD IS USED IN VIOLATION OF THIS SECTION, THE COURT SHALL ENTER AN ORDER PERMANENTLY ENJOINING SUCH USE OF THE WORD. THE PREVAILING PARTY IN THE ACTION SHALL BE AWARDED JUDGMENT AGAINST THE OTHER PARTY FOR THE ATTORNEY FEES AND COSTS OF LITIGATION INCURRED BY THE PREVAILING PARTY IN THE ACTION. THIS SECTION SHALL NOT APPLY TO ANY PERSON THAT HAS BEEN CONTINUOUSLY USING THE WORD "COOPERATIVE" OR AN ABBREVIATION OR DERIVATION OF THAT WORD IN THE PERSON'S BUSINESS ON OR BEFORE JULY 5, 1973, AS PART OF ITS TRADE NAME, BUSINESS NAME, TRADEMARK, SERVICE MARK, BRAND, TRUE NAME, OR DESIGNATION.

**SECTION 7.** The introductory portion to 7-90-702 (4) and 7-90-702 (4) (c), Colorado Revised Statutes, are amended to read:

**7-90-702. Change or resignation of registered agent.** (4) ~~Any~~ If A person appointed as the registered agent for an entity in a filed document ~~may, if the person~~ has resigned or otherwise is no longer the registered agent, THE PERSON, OR IF SUCH PERSON IS DECEASED OR A COURT OF COMPETENT JURISDICTION HAS APPOINTED A GUARDIAN OR GENERAL CONSERVATOR FOR THE PERSON, THE PERSON'S EXECUTOR, ADMINISTRATOR, GUARDIAN, CONSERVATOR, OR OTHER LEGAL REPRESENTATIVE, MAY deliver to the secretary of state, for filing pursuant to part 3 of this article, a statement of change that, in addition to the information required to be stated in the statement of change pursuant to section 7-90-305.5, states:

(c) That ~~the person appointed as registered agent has delivered~~ notice of the change HAS BEEN DELIVERED to the entity.

**SECTION 8.** The introductory portion to 7-113-102 (1.3) and 7-113-102 (1.8) (b), Colorado Revised Statutes, are amended to read:

**7-113-102. Right to dissent.** (1.3) A shareholder is not entitled to dissent and obtain payment, under subsection (1) of this section, of the fair value of the shares of any class or series of shares ~~which~~ THAT either were listed on a national securities exchange registered under the federal "Securities Exchange Act of 1934", as amended, ~~or on the national market system of the national association of securities dealers automated quotation system;~~ or were held of record by more than two thousand shareholders, at the time of:

(1.8) The limitation set forth in subsection (1.3) of this section shall not apply if the shareholder will receive for the shareholder's shares, pursuant to the corporate action, anything except:

(b) Shares of any other corporation which, at the effective date of the plan of merger or share exchange, either will be listed on a national securities exchange registered under the federal "Securities Exchange Act of 1934", as amended, ~~or on the national market system of the national association of securities dealers automated quotation system;~~ or will be held of record by more than two thousand shareholders;

**SECTION 9.** 7-134-102 (2) (b), Colorado Revised Statutes, is amended to read:

**7-134-102. Dissolution by directors and members.** (2) For a proposal to dissolve the nonprofit corporation to be authorized:

(b) The board of directors shall recommend the proposal to dissolve to the members ENTITLED TO VOTE THEREON unless the board of directors determines that, because of conflict of interest or other special circumstances, it should make no recommendation and communicates the basis for its determination to the members; and

**SECTION 10.** 11-51-307 (1) (f), Colorado Revised Statutes, is amended to read:

**11-51-307. Exempt securities.** (1) The following securities are exempted from sections 11-51-301 and 11-51-305:

(f) Any security listed or approved for listing upon notice of issuance on ~~the New York stock exchange, American stock exchange, Pacific stock exchange, Midwest stock exchange, PBW stock exchange, Boston stock exchange, or Chicago board of options exchange;~~ any security designated or approved for designation upon notice of issuance for inclusion in the national association of securities dealers ~~automated quotation national market system;~~ ANY NATIONAL SECURITIES EXCHANGE REGISTERED UNDER THE FEDERAL "SECURITIES EXCHANGE ACT OF 1934", 15 U.S.C. SEC. 78f, AS AMENDED, OR any other security of the same issuer ~~which~~ THAT is of a senior or substantially equal rank; any security called for by subscription rights or warrants so listed, designated, or approved; or any warrant or right to purchase or

subscribe to any of them;

**SECTION 11.** 7-42-102 (1) and (2), Colorado Revised Statutes, are amended to read:

**7-42-102. Work after organization.** (1) Any corporation formed under the provisions of law for the purpose of constructing any ditch, flume, bridge, ferry, or telegraph line, within ninety days from the EFFECTIVE date of its ~~certificate~~ ARTICLES of incorporation, shall commence work on such ditch, flume, bridge, ferry, or telegraph line, as shall be named in the ~~certificate~~ ARTICLES, and shall complete the work with due diligence. The time of the completion of any such ditch, bridge, ferry, or telegraph line shall not be extended beyond a period of two years from the time work was commenced.

(2) Any corporation failing to commence work within ninety days ~~from~~ AFTER the EFFECTIVE date of the ~~certificate~~ ARTICLES OF INCORPORATION, or failing to complete the same within two years ~~from~~ AFTER the time of commencement, shall forfeit all right to the water so claimed, and the same shall be subject to be claimed by any other company. The time for the completion of any flume constructed under the provisions of law shall not be extended beyond a period of four years.

**SECTION 12.** 7-42-103, Colorado Revised Statutes, is amended to read:

**7-42-103. Right-of-way.** Any ditch, reservoir, or pipeline corporation formed under the provisions of law shall have the right-of-way over the line named in the ~~certificate~~ ARTICLES OF INCORPORATION, and shall also have the right to run water from the stream, channel, or water source, whether natural or artificial, named in the ~~certificate~~ ARTICLES through its ditch or pipeline, and store the same in any reservoir of the company when not needed for immediate use. The line proposed shall not interfere with any other ditch, pipeline, or reservoir having prior rights, except the right to cross by pipe or flume; nor shall the water of any stream, channel, or other water course, whether natural or artificial, be diverted from its original channel or source to the detriment of any person or persons having priority of right thereto, but this shall not be construed to prevent the appropriation and use of any water not ~~theretofore~~ utilized and applied to beneficial uses.

**SECTION 13.** 7-42-107, Colorado Revised Statutes, is amended to read:

**7-42-107. Shall furnish water to whom - rate.** Any corporation constructing a ditch under the provisions of law shall furnish water to the class of persons using the water in the way named in the ~~certificate~~ ARTICLES OF INCORPORATION, in the way the water is designated to be used, whether to miners, millmen, farmers, or for domestic use, whenever it has water in its ditch unsold, and it shall at all times give the preference to use of the water in said ditch to the class named in the ~~certificate~~ ARTICLES. The rates at which water shall be furnished are to be fixed by the board of county commissioners as soon as the ditch is completed and prepared to furnish water.

**SECTION 14.** 7-43-102, Colorado Revised Statutes, is amended to read:

**7-43-102. Certificate for pipeline companies.** Whenever any three or more

persons associate under the provisions of law to form a corporation for the purpose of constructing a pipeline for the conveyance of gas, water, or oil, they, in ~~their certificate~~ THE ARTICLES OF INCORPORATION, in addition to the matters otherwise required, shall state the places from and to which it is intended to construct the proposed line. Any pipeline corporation formed under the provisions of law shall have the right-of-way over the line named in the ~~certificate~~ ARTICLES and shall also have the right to convey gas, water, or oil by said line, as stated in ~~such certificate~~ THE ARTICLES, through lands of the state of Colorado and lands of any persons, ~~with the right to~~ AND TO erect ~~thereon~~ pump stations, storage tanks, and other buildings necessary for such business. If ~~any such~~ A corporation is unable to agree with ~~such~~ THE persons owning any of ~~such~~ THE lands for the purchase of any real estate required for the purpose of any such corporation or company, or the transaction of the business of the same, or for right-of-way, or any other lawful purpose connected with or necessary to the operation of said company, ~~such~~ THE corporation may acquire such title in the manner provided by law.

**SECTION 15.** 7-44-101, Colorado Revised Statutes, is amended to read:

**7-44-101. Tax exemptions - fees.** Any water users' association ~~which~~ THAT is organized in conformity with the requirements of the United States under the reclamation act of June 17, 1902, and ~~which~~; THAT, under its articles of incorporation, is authorized to furnish water only to its stockholders, shall be exempt from the payment of any income tax and from the payment of any annual franchise tax but shall be required to pay, as preliminary to its incorporation, a fee ~~which~~ THAT shall be determined and collected pursuant to section 24-21-104 (3), C.R.S., for the filing and recording of its articles of incorporation. ~~and the issuance of a certificate of incorporation.~~

**SECTION 16.** 7-50-113, Colorado Revised Statutes, is amended to read:

**7-50-113. Articles of amendment evidence of amendment.** The ~~certificate~~ ARTICLES of amendment, or copy thereof, duly certified by the secretary of state or by the recorder, shall be received as evidence of the change, alteration, or amendment of the ~~certificate~~ ARTICLES of incorporation of ~~such~~ THE corporation.

**SECTION 17.** 7-90-904 (1), Colorado Revised Statutes, is amended to read:

**7-90-904. Cure of delinquency.** (1) A delinquent entity may cure its delinquency by:

(a) ~~Correcting each ground cited by the secretary of state in the notice delivered to the entity pursuant to section 7-90-902 (1); and~~ DELIVERING TO THE SECRETARY OF STATE, FOR FILING PURSUANT TO PART 3 OF THIS ARTICLE, A STATEMENT CURING DELINQUENCY STATING:

(I) THE ENTITY'S PRINCIPAL OFFICE ADDRESS; AND

(II) THE ENTITY'S REGISTERED AGENT'S NAME AND ADDRESS.

(b) ~~Paying any fee or penalty determined by the secretary of state.~~

**SECTION 18.** 7-102-102 (1)(e), Colorado Revised Statutes, is amended to read:

**7-102-102. Articles of incorporation.** (1) The articles of incorporation shall state:

(e) The true name and MAILING address of each incorporator.

**SECTION 19.** 7-111-108 (8), Colorado Revised Statutes, is amended to read:

**7-111-108. Redomestication as a domestic insurer.** (8) The certificate of redomestication shall serve the same purpose as ~~a certificate~~ ARTICLES of incorporation under articles 101 to 117 of this title. ~~and, at the request of the redomesticated insurer, the secretary of state shall issue a certificate of incorporation in place of the certificate of redomestication.~~

**SECTION 20.** 7-137-201 (3), Colorado Revised Statutes, is amended to read:

**7-137-201. Procedure to elect to accept articles 121 to 137 of this title.** (3) If the domestic entity name of the corporate entity accepting articles 121 to 137 of this title is not in conformity with part 6 of article 90 of this title, the corporate entity shall change its domestic entity name to conform with part 6 of article 90 of this title. The adoption of a domestic entity name that is in conformity with said part 6 by the members or stockholders of the corporate entity, and its inclusion in the statement of election to accept ~~said~~ articles 121 to 137 as the entity name, ~~and the issuance of a certificate of acceptance by the secretary of state shall be the only action necessary to effect such~~ THE change. The articles of incorporation, affidavit, or other basic organizational charter shall be deemed for all purposes amended to conform to ~~such~~ THE entity name.

**SECTION 21.** 7-90-301, Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW SUBSECTION to read:

**7-90-301. Filing requirements.** (12) NOTWITHSTANDING SECTION 2-4-108, C.R.S., SECTION 24-11-110, C.R.S., OR ANY OTHER PROVISION OF LAW, IF THE LAST DAY OF A PERIOD FOR FILING A DOCUMENT THAT IS AUTHORIZED OR REQUIRED TO BE FILED BY ELECTRONIC MEANS FALLS ON A SATURDAY, SUNDAY, LEGAL HOLIDAY, OR ANY DAY THE SECRETARY OF STATE'S PHYSICAL OFFICE IS CLOSED, THE PERIOD SHALL EXPIRE ON SUCH DAY.

**SECTION 22. Repeal.** Article 73 of title 7, Colorado Revised Statutes, is repealed.

**SECTION 23. Effective date.** This act shall take effect at 12:01 a.m. on the day following the expiration of the ninety-day period after final adjournment of the general assembly that is allowed for submitting a referendum petition pursuant to article V, section 1 (3) of the state constitution, (August 6, 2008, if adjournment sine die is on May 7, 2008); except that, if a referendum petition is filed against this act

or an item, section, or part of this act within such period, then the act, item, section, or part, if approved by the people, shall take effect on the date of the official declaration of the vote thereon by proclamation of the governor.

Approved: March 6, 2008