

## CHAPTER 404

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**CORPORATIONS AND ASSOCIATIONS**

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**HOUSE BILL 10-1403**

BY REPRESENTATIVE(S) Kerr A., Apuan, Fischer, Kerr J., Labuda;  
also SENATOR(S) Whitehead.

**AN ACT**

**CONCERNING COMMERCIAL NOTIFICATIONS WITH REGARD TO THE SECRETARY OF STATE, AND  
MAKING AN APPROPRIATION THEREFOR.**

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

**SECTION 1.** 6-16-114, Colorado Revised Statutes, is amended to read:

**6-16-114. Fine - late filing fee - rules.** Any charitable organization, professional fund-raising consultant, or paid solicitor who, after sufficient notification by the secretary of state, fails to properly register, renew a registration, file a solicitation notice, or file a financial report of a solicitation campaign under this article by the end of the seventh day following the issuance of the final notice, is liable for a fine or late filing fee in an amount to be established by rule promulgated by the secretary of state. The late fee for filing a registration renewal, solicitation notice, or solicitation campaign financial report late shall not exceed one hundred dollars per year for charities or two hundred dollars per year for paid solicitors. Sufficient notification ~~shall consist~~ CONSISTS of at least two notices ~~sent by mail~~ GIVEN to the organization and registered agent of the charitable organization, professional fund-raising consultant, or paid solicitor. The fine or late filing fee is in addition to any other filing fee provided by this article.

**SECTION 2.** 7-55-121, Colorado Revised Statutes, is amended to read:

**7-55-121. Periodic report.** Part 5 of article 90 of this title, providing for ~~annual~~ PERIODIC reports from reporting entities, applies to associations formed under or subject to this article.

**SECTION 3.** 7-56-106 (1), Colorado Revised Statutes, is amended to read:

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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.*

**7-56-106. Periodic and other reports.** (1) Part 5 of article 90 of this title, providing for ~~annual~~ PERIODIC reports from reporting entities, applies to cooperatives formed under or subject to this article.

**SECTION 4.** 7-56-107 (4) (g), Colorado Revised Statutes, is amended to read:

**7-56-107. Cooperative records.** (4) A cooperative shall keep a copy of each of the following records at its principal office:

(g) A copy of its most recent ~~annual~~ PERIODIC report delivered to the secretary of state pursuant to part 5 of article 90 of this title; and

**SECTION 5.** 7-60-149, Colorado Revised Statutes, is amended to read:

**7-60-149. Limited liability partnership periodic reports.** Part 5 of article 90 of this title, providing for ~~annual~~ PERIODIC reports from reporting entities, applies to limited liability partnerships subject to this article.

**SECTION 6.** The introductory portion to 7-63-108 (3) and 7-63-108 (3) (a), Colorado Revised Statutes, are amended to read:

**7-63-108. Reference to corporation law.** (3) Except as otherwise provided in this article, article 90 of this title and, to the extent not addressed in said article 90, the law of this state applicable to a corporation formed under the "Colorado Business Corporation Act", articles 101 to 117 of this title, ~~shall~~ apply to an association with respect to the following matters:

(a) The filing by the secretary of state of articles for the formation or dissolution of an association, ~~annual~~ PERIODIC reports concerning an association, change of principal office, change of registered agent or registered agent address, and other documents including withdrawal and restatement of, amendments to, and statements with respect to any articles, ~~annual~~ PERIODIC reports, and other documents;

**SECTION 7.** 7-64-1007, Colorado Revised Statutes, is amended to read:

**7-64-1007. Periodic reports.** Part 5 of article 90 of this title, providing for PERIODIC reports from reporting entities, applies to domestic limited liability partnerships and domestic limited liability limited partnerships and applies to foreign limited liability partnerships and foreign limited liability limited partnerships that are authorized to transact business or conduct activities in this state pursuant to part 8 of article 90 of this title.

**SECTION 8.** 7-71-104 (1) (b), Colorado Revised Statutes, is amended to read:

**7-71-104. Effect of filing a statement of trade name.** (1) (b) A filed statement of trade name of a delinquent entity shall remain effective only through the last day of the twelfth calendar month following the calendar month of the effective date of delinquency under section 7-90-902 ~~(2)~~ (1), unless it is renewed in accordance with section 7-71-105; except that this paragraph (b) shall not apply to a filed statement of trade name of a delinquent entity that cures its delinquency pursuant to section 7-90-904 (1) while such filed statement of trade name is effective.

**SECTION 9.** 7-80-301, Colorado Revised Statutes, is amended to read:

**7-80-301. Limited liability companies - registered agents - service of process - periodic reports.** Part 7 of article 90 of this title, providing for registered agents and service of process, applies to limited liability companies formed under this article. Part 5 of article 90 of this title, providing for ~~annual~~ PERIODIC reports, applies to limited liability companies formed under this article.

**SECTION 10. Repeal.** 7-70-104 (4), Colorado Revised Statutes, is repealed as follows:

~~**7-70-104. Duration and renewal.** (4) No earlier than one hundred eighty days and no later than sixty days before the expiration of the then-current term of each statement of trademark registration, the secretary of state shall deliver to the registrant notice regarding renewal of the effectiveness of the statement of trademark registration in a form prescribed by the secretary of state. The notice regarding renewal shall be delivered to the last-known mailing address of the registrant; except that the secretary of state shall not be required to deliver to a registrant a notice regarding renewal for any statement of trademark registration for which a statement of renewal of trademark registration has previously been filed pursuant to subsection (2) of this section for the current renewal period. The failure of the secretary of state to deliver a notice regarding renewal with respect to any statement of trademark registration shall not affect the requirement that a statement of renewal of trademark registration be filed to maintain the effectiveness of the statement of trademark registration, and no person shall have a cause of action if the notice is not delivered.~~

**SECTION 11. Repeal.** 7-71-105 (2), Colorado Revised Statutes, is repealed as follows:

~~**7-71-105. Renewal of statement of trade name.** (2) The secretary of state shall deliver a notice regarding renewal, in such form as prescribed by the secretary of state, to each person that is not a reporting entity and has an effective statement of trade name on file in the records of the secretary of state no later than the first day of the calendar month preceding the calendar month in which the statement of trade name is no longer effective pursuant to section 7-71-104 (1) or subsection (1) of this section; except that the secretary of state shall not be required to deliver to a person a notice regarding renewal for any trade name of that person for any renewal period for which a statement of trade name renewal has previously been filed pursuant to subsection (1) of this section. The failure of the secretary of state to deliver a notice regarding renewal to any person shall not affect the requirement that any statement of trade name of that person be renewed in accordance with this section in order to remain effective.~~

**SECTION 12.** 7-90-102 (1.3), Colorado Revised Statutes, is amended, and the said 7-90-102 is further amended BY THE ADDITION OF A NEW SUBSECTION, 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:

(1.3) "~~Annual report~~" means the report required by section 7-90-501.

(48.5) "PERIODIC REPORT" MEANS THE REPORT REQUIRED BY SECTION 7-90-501.

**SECTION 13.** 7-90-306 (3), Colorado Revised Statutes, is amended to read:

**7-90-306. Filing duty of secretary of state - manner of filing.** (3) If the secretary of state permits a document to be delivered in a physical medium and if the secretary of state refuses to file the document, the secretary of state shall return it to any individual who has been identified, pursuant to section 7-90-301 (8), as having caused the document to be delivered for filing at the address provided for that individual, together with a written notice providing a brief explanation of the reason for the refusal, within ten days after the document was delivered to the secretary of state; except that no return or notice shall be required with respect to ~~an annual~~ A PERIODIC report that the secretary of state has refused to file.

**SECTION 14.** Part 4 of article 90 of title 7, Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW SECTION to read:

**7-90-403. Notices by the secretary of state.** (1) (a) THE SECRETARY OF STATE MAY GIVE NOTICE, IN SUCH MANNER AS THE SECRETARY OF STATE MAY DETERMINE, TO ANY PERSON ABOUT ANY MATTER ARISING UNDER OR WITH RESPECT TO THIS TITLE, INCLUDING NOTICE REGARDING:

- (I) THE DUE DATE OF A PERIODIC REPORT;
- (II) THE EXISTENCE OF GROUNDS FOR DELINQUENCY;
- (III) THE PENDENCY OF DISSOLUTION UPON EXPIRATION OF PERIOD OF DURATION;
- (IV) THE DISSOLUTION UPON EXPIRATION OF PERIOD OF DURATION;
- (V) THE DUE DATE OF A TRADE NAME RENEWAL; AND
- (VI) THE DUE DATE OF A TRADEMARK RENEWAL.

(b) THE SECRETARY OF STATE MAY USE A PHASE-IN PERIOD OR ANY OTHER METHOD TO MITIGATE HARDSHIP ON THE REPORTING ENTITY CAUSED BY ELECTRONIC NOTIFICATION AND MAY PROVIDE EXCEPTIONS FROM SUCH ELECTRONIC NOTIFICATION WHERE HARDSHIP OR OTHER GOOD CAUSE IS SHOWN.

(c) THIS SUBSECTION (1) DOES NOT AFFECT A REQUIREMENT THAT THE SECRETARY OF STATE GIVE NOTICE UNDER ANOTHER PROVISION OF LAW.

(2) NEITHER THE DETERMINATION OF THE SECRETARY OF STATE TO GIVE, OR NOT TO GIVE, ANY NOTICE UNDER THE AUTHORITY OF SUBSECTION (1) OF THIS SECTION NOR THE FAILURE OF ANY PERSON TO RECEIVE ANY NOTICE SO GIVEN AFFECTS ANY OBLIGATION UNDER OR REQUIREMENT OF ANY PROVISION OF THIS TITLE OR EXCUSES ANY NONCOMPLIANCE BY ANY PERSON OF ANY OBLIGATION UNDER OR REQUIREMENT OF ANY PROVISION OF THIS TITLE.

**SECTION 15.** The introductory portion to 7-90-501 (1) and 7-90-501 (4) (c), (4) (d), (5.5), and (7), Colorado Revised Statutes, are amended to read:

**7-90-501. Periodic reports.** (1) Each reporting entity shall deliver to the secretary of state, for filing pursuant to part 3 of this article, ~~an annual~~ A PERIODIC report that states the entity name of the reporting entity, the jurisdiction under the law of which the reporting entity is formed, and:

(4) (c) (I) ~~The~~ UNLESS OTHERWISE ELECTED AS PROVIDED IN SUBPARAGRAPH (II) OF THIS PARAGRAPH (c), A REPORTING ENTITY SHALL DELIVER ITS first ~~annual~~ PERIODIC report ~~for a reporting entity shall be delivered~~ to the secretary of state, for filing pursuant to part 3 of this article, no later than the last day of the second calendar month following the first anniversary OF THE CALENDAR month in which the reporting entity's constituent filed document or statement of foreign entity authority, as the case may be, became effective or, in the case of a reporting entity that has been reinstated or that has cured its delinquency, no later than the last day of the second calendar month following the first anniversary of the calendar month in which the reinstatement or curing of delinquency occurred. UNLESS OTHERWISE ELECTED AS PROVIDED IN SUBPARAGRAPH (II) OR (III) OF THIS PARAGRAPH (c), thereafter, the ~~annual~~ PERIODIC report shall be delivered to the secretary of state by each reporting entity annually.

(II) THE SECRETARY OF STATE MAY PERMIT, ON SUCH CONDITIONS AS THE SECRETARY OF STATE MAY DETERMINE, A REPORTING ENTITY TO SELECT AN ANNIVERSARY MONTH DIFFERENT THAN THE ANNIVERSARY MONTH AS ESTABLISHED IN SUBPARAGRAPH (I) OF THIS PARAGRAPH (c) BY DELIVERING TO THE SECRETARY OF STATE, FOR FILING PURSUANT TO PART 3 OF THIS ARTICLE, A STATEMENT OF ELECTION OF ALTERNATIVE ANNIVERSARY MONTH.

(III) THE SECRETARY OF STATE MAY PERMIT, ON SUCH CONDITIONS AS THE SECRETARY OF STATE MAY DETERMINE, A REPORTING ENTITY TO ELECT TO FILE THE PERIODIC REPORT REQUIRED BY THIS SECTION BIENNIALY BY DELIVERING TO THE SECRETARY OF STATE, FOR FILING PURSUANT TO PART 3 OF THIS ARTICLE, A STATEMENT OF ELECTION OF BIENNIAL REPORTING.

(d) Information in the ~~annual~~ PERIODIC report shall be current as of the date the ~~annual~~ PERIODIC report is delivered to the secretary of state, for filing pursuant to part 3 of this article, on behalf of the reporting entity. No ~~annual~~ PERIODIC report shall state a delayed effective date.

(5.5) ~~No later than sixty days prior to the due date of a reporting entity's annual report as established pursuant to paragraph (c) of subsection (4) of this section, the secretary of state shall deliver notice to the reporting entity of such due date at its registered agent address. The failure of the secretary of state to provide such notice shall not affect the requirement that the reporting entity deliver its annual report pursuant to paragraph (c) of subsection (4) of this section.~~

(7) Each reporting entity that fails or refuses to deliver to the secretary of state ~~an~~ ~~annual~~ A PERIODIC report for filing ~~within the time~~ ON OR BEFORE THE DUE DATE prescribed by subsection (4) of this section and pay the prescribed processing fee ~~shall be~~ IS subject to a penalty, which shall be determined and collected pursuant to

section 24-21-104 (3), C.R.S. ~~except that no such penalty shall be imposed if the notice required to be furnished by the secretary of state pursuant to subsection (5.5) of this section is not timely delivered to the reporting entity by the secretary of state and such nondelivery causes the failure to file within the time prescribed in subsection (4) of this section.~~

**SECTION 16.** 7-90-601.6 (1), Colorado Revised Statutes, is amended to read:

**7-90-601.6. Entity name of delinquent entity.** (1) The entity name of a delinquent entity shall include the word "delinquent", followed by the month, day, and year of the effective date of the entity's delinquency, after the four-hundredth day after the effective date of its delinquency under section 7-90-902 ~~(2)~~ (1).

**SECTION 17.** 7-90-702 (1) (b), Colorado Revised Statutes, is amended to read:

**7-90-702. Change or resignation of registered agent.** (1) An entity that maintains a registered agent pursuant to this part 7 may change its registered agent, the registered agent address, or the registered agent name of its registered agent only by stating a different registered agent, different registered agent address, or different registered agent name for its registered agent, as the case may be, in one of the following:

(b) ~~An annual~~ A PERIODIC report filed pursuant to section 7-90-501; or

**SECTION 18.** 7-90-705 (1) (b), Colorado Revised Statutes, is amended to read:

**7-90-705. Change of principal office address.** (1) An entity that has stated a principal office address in a document filed by the secretary of state may change its principal office address only by stating a different principal office address in one of the following:

(b) ~~An annual~~ A PERIODIC report filed pursuant to section 7-90-501;

**SECTION 19.** 7-90-806 (2), Colorado Revised Statutes, is amended to read:

**7-90-806. Withdrawal of foreign entity.** (2) If a foreign entity causes a statement of foreign entity withdrawal to be delivered to the secretary of state for filing pursuant to part 3 of this article before the date on which ~~an annual~~ A PERIODIC report for the foreign entity is due pursuant to part 5 of this article, the foreign entity ~~shall be~~ IS relieved of its obligation to file such annual report or pay the fee therefor.

**SECTION 20.** 7-90-902, Colorado Revised Statutes, is amended to read:

**7-90-902. Declaration of delinquency.** (1) If the secretary of state determines that one or more grounds exist under section 7-90-901 for declaring an entity delinquent ~~the secretary of state shall deliver written notice stating such grounds to the entity at the entity's principal office address and to the registered agent address of the entity's most recent registered agent. The notice shall state that, if the entity does not correct each ground for declaring it delinquent or demonstrate to the reasonable satisfaction of the secretary of state that such ground does not exist~~

~~within sixty days after delivery of the notice, the entity shall be delinquent following the expiration of such sixty days AND THE ENTITY DOES NOT CORRECT EACH GROUND FOR DECLARING IT DELINQUENT OR DEMONSTRATE TO THE REASONABLE SATISFACTION OF THE SECRETARY OF STATE THAT SUCH GROUND DOES NOT EXIST WITHIN SIXTY DAYS AFTER THE SECRETARY OF STATE MAKES SUCH DETERMINATION, THE ENTITY BECOMES DELINQUENT FOLLOWING THE EXPIRATION OF SUCH SIXTY DAYS.~~

~~(2) If the entity does not correct each ground identified in the notice of the secretary of state for declaring it delinquent or demonstrate to the reasonable satisfaction of the secretary of state that such ground does not exist within sixty days after delivery of the notice, the entity shall be delinquent following the expiration of such sixty days.~~

**SECTION 21.** 7-90-905 (1), Colorado Revised Statutes, is amended to read:

**7-90-905. Appeal from declaration of delinquency.** (1) An entity may appeal a declaration under section 7-90-902 ~~(2)~~ (1) that it is delinquent to the district court for the county in this state in which the street address of the entity's principal office is located, or, if the entity has no principal office in this state, to the district court for the county in which the street address of its registered agent is located or, if the entity has no registered agent, to the district court for the city and county of Denver within thirty days after the effective date of its delinquency. The entity shall commence such appeal by petitioning the court to set aside the declaration of its delinquency or to determine that the entity has cured its delinquency and attaching to the petition copies of such documents in the secretary of state's records as may be relevant.

**SECTION 22.** 7-90-906, Colorado Revised Statutes, is amended to read:

**7-90-906. Limited liability partnerships and limited liability limited partnerships.** Each limited liability partnership and limited liability limited partnership to which section 7-60-152 or section 7-64-1008 was applicable on September 30, 2005, shall be deemed delinquent pursuant to section 7-90-902 ~~(2)~~ (1), effective October 1, 2005.

**SECTION 23. Repeal.** 7-90-907 (1), Colorado Revised Statutes, is repealed as follows:

**7-90-907. Dissolution upon expiration of term.** ~~(1) If the secretary of state determines from the records of the secretary of state that the period of duration of a domestic entity will expire, the secretary of state shall deliver written notice of the pendency of the expiration to the entity's principal office address by either the ninetieth day before such expiration or the fifth day after the secretary of state makes the determination, whichever is later. The secretary of state need not give such notice if the secretary of state does not make the determination sooner than ten days before the expiration. The failure of the secretary of state to deliver a notice contemplated by this subsection (1) shall not affect the automatic dissolution of the entity pursuant to subsection (2) of this section. No person shall have a cause of action if the secretary of state does not make the determination or give the notice contemplated in this subsection (1).~~

**SECTION 24. Repeal.** 7-90-909, Colorado Revised Statutes, is repealed as follows:

~~**7-90-909. Notice of dissolution upon expiration of term.** Upon the dissolution, pursuant to section 7-90-907 (2), of a domestic entity to which notice was delivered pursuant to section 7-90-907 (1), the secretary of state shall deliver written notice of the dissolution, stating the effective date of dissolution, to the principal office address of the principal office of the entity.~~

**SECTION 25.** 7-116-101 (5) (f), Colorado Revised Statutes, is amended to read:

**7-116-101. Corporate records.** (5) A corporation shall keep a copy of each of the following records at its principal office:

(f) A copy of its most recent ~~annual~~ PERIODIC report pursuant to part 5 of article 90 of this title; and

**SECTION 26.** 7-116-107, Colorado Revised Statutes, is amended to read:

**7-116-107. Periodic report to secretary of state.** Part 5 of article 90 of this title, providing for ~~annual~~ PERIODIC reports from reporting entities, applies to domestic corporations and applies to foreign corporations that are authorized to transact business or conduct activities in this state.

**SECTION 27.** 7-136-101 (5) (g), Colorado Revised Statutes, is amended to read:

**7-136-101. Corporate records.** (5) A nonprofit corporation shall keep a copy of each of the following records at its principal office:

(g) A copy of its most recent ~~annual~~ PERIODIC report pursuant to part 5 of article 90 of this title; and

**SECTION 28.** 7-136-107, Colorado Revised Statutes, is amended to read:

**7-136-107. Periodic report to secretary of state.** Part 5 of article 90 of this title, providing for ~~annual~~ PERIODIC reports from reporting entities, applies to domestic nonprofit corporations and applies to foreign nonprofit corporations that are authorized to transact business or conduct activities in this state.

**SECTION 29.** 7-137-102 (1) and (3), Colorado Revised Statutes, are amended to read:

**7-137-102. Pre-1968 corporate entities - failure to file reports and designate registered agents - dissolution.** (1) Corporate entities that were formed prior to January 1, 1968, and that did not elect to be governed by articles 20 to 29 of this title and could, if they so elected, elect to be governed by articles 121 to 137 of this title, but that have not done so, are nevertheless reporting entities that are subject to part 5 of article 90 of this title, providing for ~~annual~~ PERIODIC reports from reporting entities, and are domestic entities that are subject to part 7 of article 90 of this title, providing for registered agents and service of process.

(3) If any corporate entity, formed prior to January 1, 1968, that could elect to be governed by articles 20 to 29 or 121 to 137 of this title, but that has not so elected and has failed to file ~~annual~~ PERIODIC reports or maintain a registered agent, may be declared delinquent pursuant to section 7-90-902.

**SECTION 30.** 7-137-201 (5), Colorado Revised Statutes, is amended to read:

**7-137-201. Procedure to elect to accept articles 121 to 137 of this title.**

(5) All corporate entities accepting articles 121 to 137 of this title ~~shall be~~ ARE reporting entities subject to part 5 of article 90 of this title, providing for ~~annual~~ PERIODIC reports from reporting entities, and ~~shall be~~ ARE subject to part 7 of article 90 of this title, providing for registered agents and service of process.

**SECTION 31. Appropriation.** In addition to any other appropriation, there is hereby appropriated, out of any moneys in the department of state cash fund created in section 24-21-104 (3) (b), Colorado Revised Statutes, not otherwise appropriated, to the department of state, for the fiscal year beginning July 1, 2010, the sum of one hundred five thousand two hundred dollars (\$105,200) cash funds, or so much thereof as may be necessary, for the implementation of this act.

**SECTION 32. Act subject to petition - effective date - applicability.** (1) 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 (August 11, 2010, if adjournment sine die is on May 12, 2010); 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 shall not take effect unless approved by the people at the general election to be held in November 2010 and shall take effect on the date of the official declaration of the vote thereon by the governor.

(2) The provisions of this act shall apply to conduct occurring on or after the applicable effective date of this act.

Approved: June 10, 2010