

**First Regular Session
Sixty-ninth General Assembly
STATE OF COLORADO**

PREAMENDED

*This Unofficial Version Includes Committee
Amendments Not Yet Adopted on Second Reading*

LLS NO. 13-0399.03 Thomas Morris x4218

HOUSE BILL 13-1138

HOUSE SPONSORSHIP

Lee,

SENATE SPONSORSHIP

Kefalas,

House Committees

Business, Labor, Economic, & Workforce Development

Appropriations

Senate Committees

A BILL FOR AN ACT

101 **CONCERNING BENEFIT CORPORATIONS.**

Bill Summary

(Note: This summary applies to this bill as introduced and does not reflect any amendments that may be subsequently adopted. If this bill passes third reading in the house of introduction, a bill summary that applies to the reengrossed version of this bill will be available at <http://www.leg.state.co.us/billsummaries>.)

On and after January 1, 2014, the bill permits a corporation to become a benefit corporation if it includes a statement to that effect in its articles of incorporation and also specifies in its articles of incorporation an additional purpose of providing a general or specific public benefit. A corporation needs to obtain two-thirds of the shareholders' consent to amend its articles of incorporation to become a public benefit corporation; shareholders have dissenting rights.

Shading denotes HOUSE amendment. Double underlining denotes SENATE amendment.
*Capital letters indicate new material to be added to existing statute.
Dashes through the words indicate deletions from existing statute.*

The corporation and its directors and officers are not liable for failure to pursue or create a general or specific public benefit. The bill specifies directors' and officers' standards of conduct. A benefit corporation must prepare a benefit report if so required by its articles of incorporation, and must send the report to its shareholders. The report may assess the corporation's performance in achieving its general or specific public benefit against a third-party standard.

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

2 **SECTION 1.** In Colorado Revised Statutes, **add** part 5 to article
3 101 of title 7 as follows:

4 **PART 5**

5 **BENEFIT CORPORATIONS**

6 **7-101-501. Short title.** THIS PART 5 SHALL BE KNOWN AND MAY
7 BE CITED AS THE "BENEFIT CORPORATION ACT OF COLORADO".

8 **7-101-502. Definitions.** AS USED IN THIS PART 5, UNLESS THE
9 CONTEXT OTHERWISE REQUIRES:

10 (1) "BENEFIT CORPORATION" MEANS A CORPORATION THAT HAS
11 ELECTED TO BECOME SUBJECT TO THIS PART 5, AND THE STATUS OF WHICH
12 AS A BENEFIT CORPORATION HAS NOT BEEN TERMINATED UNDER SECTION
13 7-101-506.

14 (2) "BENEFIT ENFORCEMENT PROCEEDING" MEANS ANY CLAIM OR
15 ACTION FOR A FAILURE OF A BENEFIT CORPORATION TO PURSUE OR CREATE
16 GENERAL PUBLIC BENEFIT OR A SPECIFIC PUBLIC BENEFIT SET FORTH IN ITS
17 ARTICLES OF INCORPORATION, OR FOR VIOLATION OF ANY DUTY OR
18 STANDARD OF CONDUCT UNDER THIS PART 5.

19 (3) "GENERAL PUBLIC BENEFIT" MEANS A MATERIAL POSITIVE
20 IMPACT ON SOCIETY AND THE ENVIRONMENT, TAKEN AS A WHOLE,
21 ASSESSED AGAINST ANY THIRD-PARTY STANDARD, FROM THE BUSINESS
22 AND OPERATIONS OF A BENEFIT CORPORATION.

1 (4) "MINIMUM STATUS VOTE" MEANS:

2 (a) IN THE CASE OF A CORPORATION, IN ADDITION TO ANY OTHER
3 REQUIRED APPROVAL OR VOTE, THE CORPORATE ACTION MUST BE
4 APPROVED BY THE SHAREHOLDERS OF EACH CLASS OR SERIES THAT ARE
5 ENTITLED TO VOTE ON THE ACTION BY EACH VOTING GROUP ENTITLED TO
6 VOTE SEPARATELY ON THE ACTION BY AT LEAST TWO-THIRDS OF THE
7 VOTES ENTITLED TO BE CAST BY THAT VOTING GROUP.

8 (b) IN THE CASE OF A DOMESTIC COOPERATIVE FORMED UNDER
9 ARTICLE 55 OR 56 OF THIS TITLE THAT IS SUBJECT TO THE "COLORADO
10 BUSINESS CORPORATION ACT", IN ADDITION TO ANY OTHER REQUIRED
11 APPROVAL, VOTE, OR CONSENT, THE ACTION MUST BE APPROVED BY VOTE
12 OR CONSENT OF THE HOLDERS OF EVERY CLASS OR SERIES OF EQUITY
13 INTEREST IN THE ENTITY THAT ARE ENTITLED TO VOTE ON THE ACTION BY
14 AT LEAST TWO-THIRDS OF THE VOTES OR CONSENTS THAT ALL OF THOSE
15 HOLDERS ARE ENTITLED TO CAST ON THE ACTION.

16 (5) "SPECIFIC PUBLIC BENEFIT" INCLUDES A MATERIAL POSITIVE
17 IMPACT ON ANY OF THE FOLLOWING:

18 (a) PROVIDING LOW-INCOME OR UNDERSERVED INDIVIDUALS OR
19 COMMUNITIES WITH BENEFICIAL PRODUCTS OR SERVICES;

20 (b) PROMOTING ECONOMIC OPPORTUNITY FOR INDIVIDUALS OR
21 COMMUNITIES BEYOND THE CREATION OF JOBS IN THE NORMAL COURSE OF
22 BUSINESS;

23 (c) PROTECTING OR RESTORING THE ENVIRONMENT;

24 (d) IMPROVING HUMAN HEALTH;

25 (e) PROMOTING THE ARTS, SCIENCES, OR ADVANCEMENT OF
26 KNOWLEDGE;

27 (f) INCREASING THE FLOW OF CAPITAL TO ENTITIES THAT HAVE A

1 PURPOSE OF BENEFITTING SOCIETY OR THE ENVIRONMENT; AND

2 (g) CONFERRING ANY OTHER MATERIAL BENEFIT ON SOCIETY OR
3 THE ENVIRONMENT.

4 (6) "THIRD-PARTY STANDARD" MEANS A STANDARD FOR DEFINING,
5 REPORTING, AND ASSESSING CORPORATE SOCIAL AND ENVIRONMENTAL
6 PERFORMANCE DEVELOPED BY AN ORGANIZATION THAT IS NOT
7 CONTROLLED BY THE BENEFIT CORPORATION OR ANY OF ITS AFFILIATES
8 AND THAT MAKES PUBLICLY AVAILABLE THE FOLLOWING INFORMATION:

9 (a) THE CRITERIA CONSIDERED WHEN MEASURING THE SOCIAL AND
10 ENVIRONMENTAL PERFORMANCE OF A BUSINESS, THE RELATIVE
11 WEIGHTINGS OF THOSE CRITERIA, IF ANY, AND THE PROCESS FOR
12 DEVELOPMENT AND REVISION OF THE STANDARD; AND

13 (b) ANY MATERIAL OWNERS OF THE ORGANIZATION THAT
14 DEVELOPED THE THIRD-PARTY STANDARD, THE MEMBERS OF ITS
15 GOVERNING BODY AND HOW THEY ARE SELECTED, AND THE SOURCES OF
16 FINANCIAL SUPPORT FOR THE ORGANIZATION, IN SUFFICIENT DETAIL TO
17 DISCLOSE ANY RELATIONSHIPS THAT COULD REASONABLY BE CONSIDERED
18 TO COMPROMISE ITS INDEPENDENCE.

19 **7-101-503. Application and amendment of part.** (1) THIS PART
20 5 APPLIES ONLY TO A BENEFIT CORPORATION.

21 (2) THE EXISTENCE OF A PROVISION OF THIS PART 5 DOES NOT OF
22 ITSELF CREATE ANY IMPLICATION THAT A CONTRARY OR DIFFERENT RULE
23 OF LAW IS OR WOULD BE APPLICABLE TO A CORPORATION OR OTHER ENTITY
24 THAT IS NOT A BENEFIT CORPORATION. THIS PART 5 DOES NOT AFFECT ANY
25 STATUTE OR RULE OF LAW AS IT APPLIES TO A CORPORATION OR OTHER
26 ENTITY THAT IS NOT A BENEFIT CORPORATION.

27 (3) THE "COLORADO BUSINESS CORPORATION ACT", ARTICLES 101

1 TO 117 OF THIS TITLE, AND THE "COLORADO CORPORATIONS AND
2 ASSOCIATIONS ACT", ARTICLE 90 OF THIS TITLE, APPLY TO ALL BENEFIT
3 CORPORATIONS; EXCEPT THAT THIS PART 5 CONTROLS OVER ANY
4 PROVISION OF THE "COLORADO BUSINESS CORPORATION ACT" OR THE
5 "COLORADO CORPORATIONS AND ASSOCIATIONS ACT" THAT IS
6 INCONSISTENT WITH THIS PART 5.

7 (4) A DOMESTIC COOPERATIVE THAT IS SUBJECT TO THE
8 "COLORADO BUSINESS CORPORATION ACT" MAY BE SUBJECT
9 SIMULTANEOUSLY TO BOTH THAT ACT AND THIS PART 5, IN WHICH CASE
10 THIS PART 5 CONTROLS OVER ANY INCONSISTENT PROVISION OF THAT ACT.

11 (5) THE GENERAL ASSEMBLY MAY AMEND OR REPEAL ALL OR PART
12 OF THIS PART 5 AT ANY TIME, AND ALL BENEFIT CORPORATIONS ARE
13 GOVERNED BY SUCH AMENDMENT OR REPEAL.

14 **7-101-504. Formation of benefit corporations.** (1) A BENEFIT
15 CORPORATION MUST BE FORMED IN ACCORDANCE WITH ARTICLE 102 OF
16 THIS TITLE, OR ARTICLE 55 OR 56 OF THIS TITLE IN THE CASE OF A
17 DOMESTIC COOPERATIVE, AND PART 3 OF ARTICLE 90 OF THIS TITLE, BUT
18 ITS ARTICLES OF INCORPORATION MUST ALSO STATE THAT IT IS A BENEFIT
19 CORPORATION.

20 (2) IF THE ARTICLES OF INCORPORATION INCLUDE A STATEMENT
21 THAT THE CORPORATION IS A BENEFIT CORPORATION, THEY MUST INCLUDE
22 A CONSPICUOUS STATEMENT OF THE FACT THAT THE CORPORATION IS A
23 BENEFIT CORPORATION IN EACH SUBSEQUENT AMENDMENT TO OR
24 RESTATEMENT OF ITS ARTICLES OF INCORPORATION, AND ON EACH
25 CERTIFICATE REPRESENTING OUTSTANDING STOCK OF THE BENEFIT
26 CORPORATION.

27 **7-101-505. Election of status.** (1) AN EXISTING CORPORATION

1 MAY BECOME A BENEFIT CORPORATION UNDER THIS PART 5 BY AMENDING
2 ITS ARTICLES OF INCORPORATION SO THAT THEY CONTAIN, IN ADDITION TO
3 ANY OTHER REQUIREMENTS OF APPLICABLE LAW, A STATEMENT THAT THE
4 CORPORATION IS A BENEFIT CORPORATION. IN ORDER TO BE EFFECTIVE,
5 THE AMENDMENT MUST BE ADOPTED BY THE MINIMUM STATUS VOTE.

6 (2) IF AN ENTITY THAT IS NOT A BENEFIT CORPORATION IS A PARTY
7 TO A MERGER OR CONVERSION AND THE SURVIVING OR RESULTING ENTITY
8 IN THE MERGER OR CONVERSION IS TO BE A BENEFIT CORPORATION, THE
9 PLAN OF MERGER OR CONVERSION MUST BE ADOPTED BY THE MINIMUM
10 STATUS VOTE. THE APPROVAL OF ANY OTHER PLAN OF MERGER, OR PLAN
11 OF CONVERSION, MUST BE APPROVED BY A BENEFIT CORPORATION AS
12 PROVIDED IN ARTICLE 90 OF THIS TITLE.

13 **7-101-506. Termination of status.** (1) A BENEFIT CORPORATION
14 MAY TERMINATE ITS STATUS AS SUCH AND CEASE TO BE SUBJECT TO THIS
15 PART 5 BY AMENDING ITS ARTICLES OF INCORPORATION TO DELETE THE
16 PROVISION REQUIRED BY SECTION 7-101-504 TO BE STATED IN THE
17 ARTICLES OF INCORPORATION OF A BENEFIT CORPORATION. IN ORDER TO
18 BE EFFECTIVE, THE AMENDMENT MUST BE ADOPTED BY THE MINIMUM
19 STATUS VOTE.

20 (2) IF A PLAN OF MERGER OR CONVERSION WOULD HAVE THE
21 EFFECT OF TERMINATING THE STATUS OF A CORPORATION AS A BENEFIT
22 CORPORATION, IN ORDER TO BE EFFECTIVE THE PLAN MUST BE ADOPTED BY
23 THE MINIMUM STATUS VOTE. ANY SALE, LEASE, EXCHANGE, OR OTHER
24 DISPOSITION OF ALL OR SUBSTANTIALLY ALL OF THE ASSETS OF A BENEFIT
25 CORPORATION, OTHER THAN IN THE USUAL AND REGULAR COURSE OF
26 BUSINESS OF THE BENEFIT CORPORATION, IS NOT EFFECTIVE UNLESS THE
27 TRANSACTION IS APPROVED BY THE MINIMUM STATUS VOTE. ANY OTHER

1 PLAN OF MERGER OR PLAN OF CONVERSION MUST BE APPROVED BY A
2 BENEFIT CORPORATION AS PROVIDED IN ARTICLE 90 OF THIS TITLE.

3 **7-101-507. Corporate purposes.** (1) EVERY BENEFIT
4 CORPORATION HAS THE PURPOSE OF ENGAGING IN ANY LAWFUL BUSINESS
5 UNLESS A MORE LIMITED PURPOSE IS STATED IN ITS ARTICLES OF
6 INCORPORATION.

7 (2) IN ADDITION TO THE PURPOSE UNDER SUBSECTION (1) OF THIS
8 SECTION, EACH BENEFIT CORPORATION MUST HAVE A PURPOSE OF
9 PURSUING OR CREATING GENERAL PUBLIC BENEFIT OR A SPECIFIC PUBLIC
10 BENEFIT, OR BOTH, AS SET FORTH IN THE BENEFIT CORPORATION'S
11 ARTICLES OF INCORPORATION. THE IDENTIFICATION OF A SPECIFIC PUBLIC
12 BENEFIT UNDER THIS SUBSECTION (2) DOES NOT LIMIT THE OBLIGATION OF
13 A BENEFIT CORPORATION THAT HAS ELECTED TO PURSUE OR CREATE
14 GENERAL PUBLIC BENEFIT TO PURSUE OR CREATE THAT GENERAL PUBLIC
15 BENEFIT.

16 (3) A BENEFIT CORPORATION MAY AMEND ITS ARTICLES OF
17 INCORPORATION TO ADD, AMEND, OR DELETE THE IDENTIFICATION OF THE
18 GENERAL PUBLIC BENEFIT OR ANY SPECIFIC PUBLIC BENEFIT THAT IT IS THE
19 PURPOSE OF THE BENEFIT CORPORATION TO PURSUE OR CREATE. IN ORDER
20 TO BE EFFECTIVE, THE AMENDMENT MUST BE ADOPTED BY THE MINIMUM
21 STATUS VOTE.

22 **7-101-508. Standard of conduct for directors of a benefit**
23 **corporation.** (1) THE PURSUIT OR CREATION OF GENERAL PUBLIC
24 BENEFIT, OR OF ANY SPECIFIC PUBLIC BENEFIT AS SPECIFIED IN THE BENEFIT
25 CORPORATION'S ARTICLES OF INCORPORATION, IS IN THE BEST INTERESTS
26 OF THE BENEFIT CORPORATION.

27 (2) IN DISCHARGING THE DUTIES OF THEIR POSITIONS AND IN

1 CONSIDERING THE BEST INTERESTS OF A BENEFIT CORPORATION:

2 (a) THE DIRECTORS OF A BENEFIT CORPORATION THAT HAS
3 ELECTED TO PURSUE OR CREATE GENERAL PUBLIC BENEFIT SHALL
4 CONSIDER THE EFFECTS OF ANY ACTION OR INACTION UPON:

5 (I) THE SHAREHOLDERS OF THE BENEFIT CORPORATION;

6 (II) THE EMPLOYEES AND WORK FORCE OF THE BENEFIT
7 CORPORATION, ITS SUBSIDIARIES, AND ITS SUPPLIERS;

8 (III) THE INTERESTS OF CUSTOMERS OF THE BENEFIT
9 CORPORATION;

10 (IV) COMMUNITY AND SOCIETAL FACTORS, INCLUDING THOSE OF
11 EACH COMMUNITY IN WHICH OFFICES OR FACILITIES OF THE BENEFIT
12 CORPORATION, ITS SUBSIDIARIES, OR ITS SUPPLIERS ARE LOCATED;

13 (V) THE LOCAL AND GLOBAL ENVIRONMENT;

14 (VI) THE SHORT-TERM AND LONG-TERM INTERESTS OF THE
15 BENEFIT CORPORATION, INCLUDING BENEFITS THAT MAY ACCRUE TO THE
16 BENEFIT CORPORATION FROM ITS LONG-TERM PLANS AND THE POSSIBILITY
17 THAT THESE INTERESTS MAY BE BEST SERVED BY THE CONTINUED
18 INDEPENDENCE OF THE BENEFIT CORPORATION; AND

19 (VII) THE ABILITY OF THE BENEFIT CORPORATION TO ACCOMPLISH
20 GENERAL PUBLIC BENEFIT AND ANY SPECIFIC PUBLIC BENEFIT;

21 (b) THE DIRECTORS OF A BENEFIT CORPORATION THAT HAS
22 ELECTED TO PURSUE OR CREATE ANY SPECIFIC PUBLIC BENEFIT MAY
23 CONSIDER THE EFFECTS OF ANY ACTION OR INACTION UPON:

24 (I) THE SHAREHOLDERS OF THE BENEFIT CORPORATION; AND

25 (II) ANY BENEFICIARIES OF THE SPECIFIC PUBLIC BENEFIT OF THE
26 BENEFIT CORPORATION; AND

27 (c) (I) THE DIRECTORS OF A BENEFIT CORPORATION MAY CONSIDER

1 OTHER PERTINENT FACTORS OR THE INTERESTS OF ANY OTHER GROUP THAT
2 THEY DEEM APPROPRIATE; BUT

3 (II) THE DIRECTORS OF A BENEFIT CORPORATION NEED NOT GIVE
4 PRIORITY TO THE INTERESTS OF A PARTICULAR PERSON OR GROUP
5 REFERRED TO IN PARAGRAPH (a) OR (b) OF THIS SUBSECTION (2) OVER THE
6 INTERESTS OF ANY OTHER PERSON OR GROUP UNLESS THE BENEFIT
7 CORPORATION HAS STATED IN ITS ARTICLES OF INCORPORATION ITS
8 INTENTION TO GIVE PRIORITY TO CERTAIN INTERESTS RELATED TO ITS
9 ACCOMPLISHMENT OF ITS GENERAL PUBLIC BENEFIT OR OF A SPECIFIC
10 PUBLIC BENEFIT IDENTIFIED IN ITS ARTICLES OF INCORPORATION.

11 (3) THE CONSIDERATION OF INTERESTS AND FACTORS IN THE
12 MANNER REQUIRED BY SUBSECTION (2) OF THIS SECTION DOES NOT
13 VIOLATE SECTION 7-108-401.

14 (4) NEITHER THE BENEFIT CORPORATION NOR ANY DIRECTOR OWES
15 A DUTY TO A PERSON THAT IS A BENEFICIARY OF THE GENERAL PUBLIC
16 BENEFIT OR ANY SPECIFIC PUBLIC BENEFIT OF THE BENEFIT CORPORATION
17 ARISING FROM THE STATUS OF THE PERSON AS A BENEFICIARY.

18 **7-101-509. Standard of conduct for officers of a benefit**
19 **corporation.** (1) IN CONSIDERING THE BEST INTERESTS OF THE BENEFIT
20 CORPORATION AS SET FORTH IN SECTION 7-101-508 (1), EACH OFFICER OF
21 A BENEFIT CORPORATION MAY CONSIDER THE INTERESTS AND FACTORS
22 DESCRIBED IN SECTION 7-101-508 (2) IN THE MANNER PROVIDED IN THAT
23 SECTION IF:

24 (a) THE OFFICER HAS DISCRETION TO ACT WITH RESPECT TO A
25 MATTER; AND

26 (b) IT REASONABLY APPEARS TO THE OFFICER THAT THE MATTER
27 MAY HAVE A MATERIAL EFFECT ON THE PURSUIT OR CREATION BY THE

1 BENEFIT CORPORATION OF GENERAL PUBLIC BENEFIT OR A SPECIFIC PUBLIC
2 BENEFIT IDENTIFIED IN ITS ARTICLES OF INCORPORATION.

3 (2) THE CONSIDERATION OF INTERESTS AND FACTORS IN THE
4 MANNER REQUIRED BY SUBSECTION (1) OF THIS SECTION DOES NOT
5 VIOLATE SECTION 7-108-401.

6 (3) AN OFFICER DOES NOT HAVE A DUTY TO A PERSON THAT IS A
7 BENEFICIARY OF THE GENERAL PUBLIC BENEFIT OR A SPECIFIC PUBLIC
8 BENEFIT OF A BENEFIT CORPORATION ARISING FROM THE STATUS OF THE
9 PERSON AS A BENEFICIARY.

10 **7-101-510. Benefit enforcement proceedings.** (1) EXCEPT IN A
11 BENEFIT ENFORCEMENT PROCEEDING, NO PERSON MAY BRING AN ACTION
12 OR ASSERT A CLAIM AGAINST A BENEFIT CORPORATION OR ITS DIRECTORS
13 OR OFFICERS FOR:

14 (a) FAILURE TO PURSUE OR CREATE GENERAL PUBLIC BENEFIT OR
15 A SPECIFIC PUBLIC BENEFIT SET FORTH IN ITS ARTICLES OF INCORPORATION;
16 OR

17 (b) VIOLATION OF A DUTY OR STANDARD OF CONDUCT UNDER THIS
18 PART 5.

19 (2) A BENEFIT ENFORCEMENT PROCEEDING MAY BE COMMENCED
20 OR MAINTAINED ONLY:

21 (a) SUBJECT TO SECTION 7-107-402, BY A SHAREHOLDER; OR

22 (b) BY OTHER PERSONS AS SPECIFIED IN, AND PURSUANT TO THE
23 PROCEDURES THAT MUST BE SPECIFIED IN, THE ARTICLES OF
24 INCORPORATION OF THE BENEFIT CORPORATION.

25 (3) THIS SECTION DOES NOT LIMIT ANY PERSON'S RIGHT TO
26 COMMENCE OR MAINTAIN AN ACTION UNDER SECTION 7-103-104 OR
27 7-114-301.

1 (4) A BENEFIT CORPORATION IS NOT LIABLE FOR MONETARY
2 DAMAGES FOR ANY FAILURE OF THE BENEFIT CORPORATION TO PURSUE OR
3 CREATE GENERAL PUBLIC BENEFIT OR A SPECIFIC PUBLIC BENEFIT.

4 (5) A DIRECTOR OR OFFICER IS NOT LIABLE FOR MONETARY
5 DAMAGES FOR:

6 (a) VIOLATION OF ANY DUTY OR STANDARD OF CONDUCT UNDER
7 THIS PART 5, IF THE DIRECTOR OR OFFICER PERFORMED THE DUTIES OF
8 OFFICE IN COMPLIANCE WITH SECTION 7-108-401; OR

9 (b) ANY FAILURE OF THE BENEFIT CORPORATION TO PURSUE OR
10 CREATE GENERAL PUBLIC BENEFIT OR A SPECIFIC PUBLIC BENEFIT.

11 **7-101-511. Benefit report.** (1) A BENEFIT CORPORATION SHALL
12 PREPARE A REPORT THAT INCLUDES THE FOLLOWING:

13 (a) A NARRATIVE DESCRIPTION OF:

14 (I) THE WAYS IN WHICH THE BENEFIT CORPORATION PURSUED OR
15 CREATED GENERAL PUBLIC BENEFIT DURING THE PERIOD AND THE EXTENT
16 TO WHICH GENERAL PUBLIC BENEFIT WAS PURSUED OR CREATED;

17 (II) THE WAYS IN WHICH THE BENEFIT CORPORATION PURSUED OR
18 CREATED A SPECIFIC PUBLIC BENEFIT THAT THE ARTICLES OF
19 INCORPORATION STATE IS THE PURPOSE OF THE BENEFIT CORPORATION TO
20 PURSUE OR CREATE AND THE EXTENT TO WHICH THAT SPECIFIC PUBLIC
21 BENEFIT WAS PURSUED OR CREATED;

22 (III) ANY CIRCUMSTANCES THAT HAVE HINDERED THE PURSUIT OR
23 CREATION BY THE BENEFIT CORPORATION OF GENERAL PUBLIC BENEFIT OR
24 ANY SPECIFIC PUBLIC BENEFIT; AND

25 (IV) THE PROCESS AND RATIONALE FOR SELECTING OR CHANGING
26 THE THIRD-PARTY STANDARD USED TO PREPARE THE BENEFIT REPORT; AND

27 (b) AN ASSESSMENT OF THE OVERALL SOCIAL AND

1 ENVIRONMENTAL PERFORMANCE OF THE BENEFIT CORPORATION AGAINST
2 A THIRD-PARTY STANDARD:

3 (I) APPLIED CONSISTENTLY WITH ANY APPLICATION OF THAT
4 STANDARD IN PRIOR BENEFIT REPORTS; OR

5 (II) ACCOMPANIED BY AN EXPLANATION OF THE REASONS FOR ANY
6 INCONSISTENT APPLICATION. THE ASSESSMENT DOES NOT NEED TO BE
7 PERFORMED, AUDITED, OR CERTIFIED BY A THIRD PARTY.

8 (2) A BENEFIT CORPORATION THAT PREPARES A REPORT SHALL
9 SEND IT TO EACH SHAREHOLDER.

10 (3) A BENEFIT CORPORATION SHALL POST ALL OF ITS REPORTS
11 PREPARED PURSUANT TO THIS SECTION ON THE PUBLIC PORTION OF ITS WEB
12 SITE, IF ANY, BUT THE BENEFIT CORPORATION MAY OMIT FROM THE POSTED
13 REPORTS ANY FINANCIAL OR PROPRIETARY INFORMATION INCLUDED IN THE
14 REPORTS.

15 (4) IF A BENEFIT CORPORATION DOES NOT HAVE A WEB SITE, THE
16 BENEFIT CORPORATION SHALL PROVIDE A COPY OF ITS MOST RECENT
17 REPORT WITHOUT CHARGE, TO ANY PERSON THAT REQUESTS A COPY, BUT
18 THE BENEFIT CORPORATION MAY OMIT ANY FINANCIAL OR PROPRIETARY
19 INFORMATION FROM THE COPY OF THE BENEFIT REPORT SO PROVIDED.

20 **SECTION 2.** In Colorado Revised Statutes, 7-113-102, **amend**
21 (1) (d); and **add** (1) (f), (1) (g), and (1) (h) as follows:

22 **7-113-102. Right to dissent.** (1) A shareholder, whether or not
23 entitled to vote, is entitled to dissent and obtain payment of the fair value
24 of the shareholder's shares in the event of any of the following corporate
25 actions:

26 (d) Consummation of a sale, lease, exchange, or other disposition
27 of all, or substantially all, of the property of an entity controlled by the

1 corporation if the shareholders of the corporation were entitled to vote
2 upon the consent of the corporation to the disposition pursuant to section
3 7-112-102 (2); and

4 (f) CONSUMMATION OF A PLAN BY WHICH A CORPORATION
5 BECOMES A BENEFIT CORPORATION BY MERGER INTO A CORPORATION
6 THAT HAS ELECTED BENEFIT CORPORATION STATUS AS PROVIDED IN
7 SECTION 7-101-505;

8 (g) CONSUMMATION OF A PLAN BY WHICH A BENEFIT CORPORATION
9 TERMINATES BENEFIT CORPORATION STATUS BY MERGER INTO A
10 CORPORATION THAT HAS NOT ELECTED BENEFIT CORPORATION STATUS AS
11 PROVIDED IN SECTION 7-101-506; AND

12 (h) AN AMENDMENT TO THE CORPORATION'S ARTICLES OF
13 INCORPORATION TO:

14 (I) ELECT BENEFIT CORPORATION STATUS AS PROVIDED IN SECTION
15 7-101-505;

16 (II) TERMINATE BENEFIT CORPORATION STATUS AS PROVIDED IN
17 SECTION 7-101-506;

18 (III) CHANGE, IN ANY MATERIAL RESPECT, ANY SPECIFIC PUBLIC
19 BENEFIT SET FORTH IN A BENEFIT CORPORATION'S ARTICLES OF
20 INCORPORATION; OR

21 (IV) AMEND THE ARTICLES OF INCORPORATION OF A BENEFIT
22 CORPORATION THAT HAS INCLUDED A PURPOSE TO PURSUE OR CREATE THE
23 GENERAL PUBLIC BENEFIT TO DELETE SUCH PURPOSE.

24 **SECTION 3. Act subject to petition - effective date -**
25 **applicability.** (1) This act takes effect January 1, 2014; except that, if a
26 referendum petition is filed pursuant to section 1 (3) of article V of the
27 state constitution against this act or an item, section, or part of this act

1 within the ninety-day period after final adjournment of the general
2 assembly, then the act, item, section, or part will not take effect unless
3 approved by the people at the general election to be held in November
4 2014 and, in such case, will take effect on the date of the official
5 declaration of the vote thereon by the governor.

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