

First Regular Session  
Sixty-eighth General Assembly  
STATE OF COLORADO

INTRODUCED

LLS NO. 11-0254.01 Bart Miller

SENATE BILL 11-005

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SENATE SPONSORSHIP

Bacon,

HOUSE SPONSORSHIP

Massey,

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Senate Committees  
Business, Labor and Technology

House Committees

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A BILL FOR AN ACT

101 CONCERNING BENEFIT CORPORATIONS.

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**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>.)*

**Section 1** of the bill enacts the "Colorado Benefit Corporation Act". The bill establishes general requirements for corporations to elect to be considered benefit corporations under Colorado law, including:

- ! The election and termination of benefit status;
- ! The promotion of public benefit as a purpose of the corporation;
- ! Standards of accountability for the conduct of directors and

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.*

- officers of a benefit corporation;
- ! Designation of benefit directors;
- ! Rights of action in benefit proceedings; and
- ! The filing and public availability of annual benefit reports and other information with the secretary of state.

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

2           **SECTION 1.** Title 7, Colorado Revised Statutes, is amended BY  
3 THE ADDITION OF A NEW ARTICLE to read:

4                           **ARTICLE 138**

5                           **Benefit Corporations**

6   PART 1

7   GENERAL PROVISIONS

8           **7-138-101. Short title.** THIS ARTICLE SHALL BE KNOWN AND MAY  
9 BE CITED AS THE "COLORADO BENEFIT CORPORATION ACT".

10           **7-138-102. Definitions.** AS USED IN THIS ARTICLE, UNLESS THE  
11 CONTEXT OTHERWISE REQUIRES:

12                   (1) "BENEFIT CORPORATION" MEANS A CORPORATION THAT HAS  
13 ELECTED TO BECOME SUBJECT TO THIS ARTICLE AND THE STATUS OF  
14 WHICH, AS A BENEFIT CORPORATION, HAS NOT BEEN TERMINATED UNDER  
15 SECTION 7-138-108.

16                   (2) "BENEFIT DIRECTOR" MEANS THE DIRECTOR DESIGNATED  
17 UNDER SECTION 7-138-302.

18                   (3) "BENEFIT ENFORCEMENT PROCEEDING" MEANS ANY CLAIM OR  
19 ACTION BROUGHT DIRECTLY BY A BENEFIT CORPORATION, OR  
20 DERIVATIVELY ON BEHALF OF A BENEFIT CORPORATION, AGAINST A  
21 DIRECTOR OR OFFICER FOR:

22                           (a) FAILURE TO PURSUE THE GENERAL PUBLIC BENEFIT PURPOSE OF  
23 THE BENEFIT CORPORATION OR ANY SPECIFIC PUBLIC BENEFIT PURPOSE SET

1 FORTH IN ITS ARTICLES; OR

2 (b) VIOLATION OF A DUTY OR STANDARD OF CONDUCT UNDER THIS  
3 ARTICLE.

4 (4) "GENERAL PUBLIC BENEFIT" MEANS A MATERIAL, POSITIVE  
5 IMPACT ON SOCIETY AND THE ENVIRONMENT, TAKEN AS A WHOLE, AS  
6 MEASURED BY A THIRD-PARTY STANDARD, FROM THE BUSINESS AND  
7 OPERATIONS OF A BENEFIT CORPORATION.

8 (5) (a) "INDEPENDENT" MEANS HAVING NO MATERIAL  
9 RELATIONSHIP WITH A BENEFIT CORPORATION OR SUBSIDIARY OF THE  
10 BENEFIT CORPORATION.

11 (b) FOR THE PURPOSE OF THIS DEFINITION, A PERCENTAGE OF  
12 OWNERSHIP IN AN ENTITY IS CALCULATED AS IF ALL OUTSTANDING RIGHTS  
13 TO ACQUIRE EQUITY INTERESTS IN THE ENTITY HAD BEEN EXERCISED. A  
14 MATERIAL RELATIONSHIP BETWEEN A PERSON AND A BENEFIT  
15 CORPORATION OR ANY OF ITS SUBSIDIARIES WILL BE CONCLUSIVELY  
16 PRESUMED TO EXIST IF ANY OF THE FOLLOWING APPLY:

17 (I) THE PERSON IS, OR HAS BEEN WITHIN THE LAST THREE YEARS,  
18 AN EMPLOYEE OF THE BENEFIT CORPORATION OR OF A SUBSIDIARY OF THE  
19 BENEFIT CORPORATION;

20 (II) AN IMMEDIATE FAMILY MEMBER OF THE PERSON IS, OR HAS  
21 BEEN WITHIN THE LAST THREE YEARS, AN EXECUTIVE OFFICER OF THE  
22 BENEFIT CORPORATION OR ITS SUBSIDIARY; OR

23 (III) THERE IS BENEFICIAL OR RECORD OWNERSHIP OF FIVE  
24 PERCENT OR MORE OF THE OUTSTANDING SHARES OF THE BENEFIT  
25 CORPORATION BY:

26 (A) THE PERSON; OR

27 (B) AN ENTITY OF WHICH THE PERSON IS A DIRECTOR, OFFICER, OR

1 MANAGER OR OF WHICH THE PERSON HAS A BENEFICIAL OR RECORD  
2 OWNERSHIP OF FIVE PERCENT OR MORE OF THE OUTSTANDING EQUITY  
3 INTERESTS.

4 (6) "MINIMUM STATUS VOTE" MEANS, IN ADDITION TO ANY OTHER  
5 APPROVAL OR VOTE REQUIRED BY THIS TITLE, THE ARTICLES OF  
6 INCORPORATION, OR A BYLAW ADOPTED BY THE SHAREHOLDERS, THE  
7 APPROVAL OF A CORPORATE ACTION BY AN AFFIRMATIVE VOTE OF AT  
8 LEAST TWO-THIRDS OF THE SHAREHOLDERS OF EACH CLASS OR SERIES  
9 ENTITLED TO CAST VOTES ON THE ACTION.

10 (7) "SPECIFIC PUBLIC BENEFIT" MEANS:

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

13 (b) PROMOTING ECONOMIC OPPORTUNITY FOR INDIVIDUALS OR  
14 COMMUNITIES BEYOND THE CREATION OF JOBS IN THE NORMAL COURSE OF  
15 BUSINESS;

16 (c) PRESERVING THE ENVIRONMENT;

17 (d) IMPROVING HUMAN HEALTH;

18 (e) PROMOTING THE ARTS, SCIENCES, OR THE ADVANCEMENT OF  
19 KNOWLEDGE;

20 (f) INCREASING THE FLOW OF CAPITAL TO ENTITIES WITH A PUBLIC  
21 BENEFIT PURPOSE; AND

22 (g) CONFERRING ANY OTHER PARTICULAR BENEFIT ON SOCIETY OR  
23 THE ENVIRONMENT.

24 (8) "SUBSIDIARY" MEANS, IN RELATION TO A PERSON, AN ENTITY  
25 IN WHICH THE PERSON OWNS, BENEFICIALLY OR OF RECORD, FIFTY PERCENT  
26 OR MORE OF THE OUTSTANDING EQUITY INTERESTS. FOR THE PURPOSE OF  
27 THIS DEFINITION, A PERCENTAGE OF OWNERSHIP IN AN ENTITY IS

1 CALCULATED AS IF ALL OUTSTANDING RIGHTS TO ACQUIRE EQUITY  
2 INTERESTS IN THE ENTITY HAD BEEN EXERCISED.

3 (9) "THIRD-PARTY STANDARD" MEANS A STANDARD FOR DEFINING,  
4 REPORTING, AND ASSESSING CORPORATE SOCIAL AND ENVIRONMENTAL  
5 PERFORMANCE THAT:

6 (a) IS DEVELOPED BY A PERSON THAT IS INDEPENDENT OF THE  
7 BENEFIT CORPORATION; AND

8 (b) IS TRANSPARENT BECAUSE THE FOLLOWING INFORMATION  
9 ABOUT THE STANDARD IS PUBLICLY AVAILABLE:

10 (I) THE FACTORS CONSIDERED WHEN MEASURING THE  
11 PERFORMANCE OF A BUSINESS;

12 (II) THE RELATIVE WEIGHTING OF THOSE FACTORS; AND

13 (III) THE IDENTITY OF THE PERSONS THAT DEVELOP AND CONTROL  
14 CHANGES TO THE STANDARD AND THE PROCESS BY WHICH THOSE CHANGES  
15 ARE MADE.

16 **7-138-103. Reservation of power to amend or repeal.** THE  
17 GENERAL ASSEMBLY HAS THE POWER TO AMEND OR REPEAL ALL OR PART  
18 OF THIS ARTICLE AT ANY TIME, AND ALL DOMESTIC AND FOREIGN  
19 CORPORATIONS SUBJECT TO THIS ARTICLE ARE GOVERNED BY THE  
20 AMENDMENT OR REPEAL.

21 **7-138-104. Application and effect of article.** (1) THIS ARTICLE  
22 APPLIES TO ALL BENEFIT CORPORATIONS.

23 (2) THE EXISTENCE OF A PROVISION OF THIS ARTICLE DOES NOT OF  
24 ITSELF CREATE AN IMPLICATION THAT A CONTRARY OR DIFFERENT RULE OF  
25 LAW IS APPLICABLE TO A CORPORATION THAT IS NOT A BENEFIT  
26 CORPORATION. THIS ARTICLE DOES NOT AFFECT A STATUTE OR RULE OF  
27 LAW THAT APPLIES TO A CORPORATION THAT IS NOT A BENEFIT

1 CORPORATION.

2 (3) THIS ARTICLE SUPERSEDES ANY CONFLICTING PROVISION OF  
3 THE ARTICLES OF INCORPORATION OR BYLAWS OF A BENEFIT  
4 CORPORATION.

5 **7-138-105. Application of "Colorado Business Corporation**  
6 **Act".** (1) THE "COLORADO BUSINESS CORPORATION ACT", ARTICLES 101  
7 TO 117 OF THIS TITLE, APPLIES TO ALL BENEFIT CORPORATIONS, EXCEPT  
8 THAT THIS ARTICLE SUPERSEDES ANY CONFLICTING PROVISION OF THE  
9 "COLORADO BUSINESS CORPORATION ACT".

10 (2) THE DEFINITIONS IN SECTIONS 7-90-102 AND 7-101-401 APPLY  
11 TO THIS ARTICLE.

12 **7-138-106. Formation of benefit corporation.** A BENEFIT  
13 CORPORATION MUST BE FORMED IN ACCORDANCE WITH THE "COLORADO  
14 BUSINESS CORPORATION ACT", ARTICLES 101 TO 117 OF THIS TITLE, BUT  
15 ITS ARTICLES OF INCORPORATION MUST ALSO STATE THAT IT IS A BENEFIT  
16 CORPORATION.

17 **7-138-107. Election of status.** (1) AN EXISTING BUSINESS  
18 CORPORATION MAY BECOME A BENEFIT CORPORATION UNDER THIS  
19 ARTICLE BY AMENDING ITS ARTICLES OF INCORPORATION TO INCLUDE, IN  
20 ADDITION TO THE REQUIREMENTS OF SECTIONS 7-110-101 TO 7-110-109,  
21 A STATEMENT THAT THE CORPORATION IS A BENEFIT CORPORATION. IN  
22 ORDER TO BE EFFECTIVE, THE AMENDMENT MUST BE ADOPTED BY THE  
23 MINIMUM STATUS VOTE.

24 (2) THIS SECTION APPLIES TO A MERGER OR SHARE EXCHANGE IF  
25 BOTH OF THE FOLLOWING APPLY:

26 (a) A CORPORATION THAT IS NOT A BENEFIT CORPORATION IS:

27 (I) A PARTY TO THE MERGER; OR

1 (II) THE EXCHANGING CORPORATION IN THE SHARE EXCHANGE;  
2 AND

3 (b) THE SURVIVING CORPORATION IN THE MERGER OR SHARE  
4 EXCHANGE IS A BENEFIT CORPORATION.

5 (3) TO BE EFFECTIVE, A PLAN OF MERGER OR SHARE EXCHANGE  
6 SUBJECT TO THIS SECTION MUST BE ADOPTED BY THE MINIMUM STATUS  
7 VOTE.

8 **7-138-108. Termination of status.** (1) A BENEFIT CORPORATION  
9 MAY TERMINATE ITS STATUS AS SUCH AND CEASE TO BE SUBJECT TO THIS  
10 ARTICLE BY AMENDING ITS ARTICLES OF INCORPORATION TO DELETE THE  
11 PROVISION REQUIRED BY SECTION 7-138-106. TO BE EFFECTIVE, THE  
12 AMENDMENT MUST BE ADOPTED BY THE MINIMUM STATUS VOTE.

13 (2) IF A PLAN OF MERGER, CONVERSION, OR SHARE EXCHANGE  
14 PROVIDING FOR THE MERGER OR CONVERSION OF A BENEFIT CORPORATION  
15 INTO, OR THE EXCHANGE OF A BENEFIT CORPORATION'S SHARES FOR,  
16 SHARES OR OWNER'S INTERESTS IN AN ENTITY THAT IS NOT A BENEFIT  
17 CORPORATION WOULD HAVE THE EFFECT OF TERMINATING THE STATUS OF  
18 THE CORPORATION AS A BENEFIT CORPORATION, IN ORDER TO BE  
19 EFFECTIVE, THE PLAN OF MERGER CONVERSION OR SHARE EXCHANGE MUST  
20 BE ADOPTED BY THE MINIMUM STATUS VOTE.

21 PART 2

22 CORPORATE PURPOSE

23 **7-138-201. Corporate purpose.** (1) A BENEFIT CORPORATION  
24 MUST HAVE THE PURPOSE OF PROMOTING GENERAL PUBLIC BENEFIT, IN  
25 ADDITION TO THE PURPOSES DESCRIBED IN SECTION 7-103-101.

26 (2) THE ARTICLES OF INCORPORATION OF A BENEFIT CORPORATION  
27 MAY IDENTIFY ONE OR MORE SPECIFIC PUBLIC BENEFITS THAT THE BENEFIT

1 CORPORATION INTENDS TO PROMOTE IN ADDITION TO ITS PURPOSE TO  
2 PROMOTE GENERAL PUBLIC BENEFIT PURSUANT TO SUBSECTION (1) OF THIS  
3 SECTION. THE IDENTIFICATION OF A SPECIFIC PUBLIC BENEFIT UNDER THIS  
4 SUBSECTION (2) DOES NOT LIMIT THE OBLIGATION OF A BENEFIT  
5 CORPORATION UNDER SUBSECTION (1) OF THIS SECTION.

6 (3) THE PROMOTION OF GENERAL AND SPECIFIC PUBLIC BENEFITS  
7 UNDER SUBSECTIONS (1) AND (2) OF THIS SECTION IS IN THE BEST  
8 INTERESTS OF THE BENEFIT CORPORATION.

9 (4) A BENEFIT CORPORATION MAY AMEND ITS ARTICLES TO ADD,  
10 MODIFY, OR DELETE THE IDENTIFICATION OF A SPECIFIC PUBLIC BENEFIT  
11 THAT THE BENEFIT CORPORATION INTENDS TO PROMOTE. TO BE  
12 EFFECTIVE, THE AMENDMENT MUST BE ADOPTED BY THE MINIMUM STATUS  
13 VOTE.

### 14 PART 3

#### 15 ACCOUNTABILITY

16 **7-138-301. Standard of conduct for directors.** (1) IN  
17 DISCHARGING THE DUTIES OF THEIR RESPECTIVE POSITIONS AND IN  
18 CONSIDERING THE BEST INTERESTS OF THE BENEFIT CORPORATION, THE  
19 BOARD OF DIRECTORS, COMMITTEES OF THE BOARD, AND INDIVIDUAL  
20 DIRECTORS OF A BENEFIT CORPORATION:

21 (a) SHALL CONSIDER THE EFFECTS OF ANY ACTION, OR DECISION  
22 NOT TO ACT, ON:

23 (I) THE SHAREHOLDERS OF THE BENEFIT CORPORATION;

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

26 (III) THE INTERESTS OF CUSTOMERS AS BENEFICIARIES OF THE  
27 GENERAL OR SPECIFIC PUBLIC BENEFIT PURPOSES OF THE BENEFIT



1 CORPORATION;

2 (IV) COMMUNITY AND SOCIETAL CONSIDERATIONS, INCLUDING  
3 THOSE OF EACH COMMUNITY IN WHICH OFFICES OR FACILITIES OF THE  
4 BENEFIT CORPORATION, ITS SUBSIDIARIES, OR SUPPLIERS ARE LOCATED;

5 (V) THE LOCAL AND GLOBAL ENVIRONMENT;

6 (VI) THE SHORT-TERM AND LONG-TERM INTERESTS OF THE  
7 BENEFIT CORPORATION, INCLUDING BENEFITS THAT MAY ACCRUE TO THE  
8 BENEFIT CORPORATION FROM ITS LONG-TERM PLANS AND THE POSSIBILITY  
9 THAT THESE INTERESTS MAY BE BEST SERVED BY THE CONTINUED  
10 INDEPENDENCE OF THE BENEFIT CORPORATION; AND

11 (VII) THE ABILITY OF THE BENEFIT CORPORATION TO ACCOMPLISH  
12 ITS GENERAL, AND ANY SPECIFIC, PUBLIC BENEFIT PURPOSE; AND

13 (b) MAY CONSIDER:

14 (I) THE RESOURCES, INTENT, AND PAST, STATED, AND POTENTIAL  
15 CONDUCT OF ANY PERSON SEEKING TO ACQUIRE CONTROL OF THE BENEFIT  
16 CORPORATION; AND

17 (II) OTHER PERTINENT FACTORS OR THE INTERESTS OF ANY OTHER  
18 GROUP THAT THEY DEEM APPROPRIATE.

19 (c) NEED NOT GIVE PRIORITY TO THE INTERESTS OF ANY  
20 PARTICULAR PERSON OR GROUP REFERRED TO IN PARAGRAPH (a) OR (b) OF  
21 THIS SUBSECTION (1) OVER THE INTERESTS OF ANY OTHER PERSON OR  
22 GROUP UNLESS THE BENEFIT CORPORATION HAS STATED ITS INTENTION TO  
23 GIVE PRIORITY TO INTERESTS RELATED TO A SPECIFIC PUBLIC BENEFIT  
24 PURPOSE IDENTIFIED IN ITS ARTICLES OF INCORPORATION; AND

25 (d) ARE NOT SUBJECT TO A DIFFERENT OR HIGHER STANDARD  
26 WHEN AN ACTION OR INACTION MIGHT AFFECT CONTROL OF THE BENEFIT  
27 CORPORATION.

1           (2) THE CONSIDERATION OF INTERESTS AND FACTORS IN THE  
2 MANNER DESCRIBED IN SUBSECTION (1) OF THIS SECTION DO NOT  
3 CONSTITUTE A VIOLATION OF SECTION 7-108-401, WHICH SECTION ALSO  
4 APPLIES TO THE EXTENT CONSISTENT WITH THIS SECTION.

5           (3) A DIRECTOR IS NOT LIABLE TO THE BENEFIT CORPORATION OR  
6 ANY PERSON ENTITLED TO BRING A BENEFIT ENFORCEMENT PROCEEDING  
7 UNDER SECTION 7-138-305 FOR ANY ACTION THE DIRECTOR TAKES OR  
8 DOES NOT TAKE AS A DIRECTOR IF, IN CONNECTION WITH THE ACTION OR  
9 OMISSION, THE DIRECTOR PERFORMED THE DUTIES OF THE POSITION IN  
10 COMPLIANCE WITH SECTION 7-108-401 AND THIS SECTION.

11           (4) A DIRECTOR OF A BENEFIT CORPORATION, IN THE  
12 PERFORMANCE OF DUTIES IN THAT CAPACITY, DOES NOT HAVE A  
13 FIDUCIARY DUTY TO A PERSON THAT IS A BENEFICIARY OF THE PUBLIC  
14 BENEFIT PURPOSES OF THE BENEFIT CORPORATION UNDER SECTION  
15 7-138-201 ARISING ONLY FROM THE PERSON'S STATUS AS A BENEFICIARY.

16           **7-138-302. Benefit director.** (1) THE BOARD OF DIRECTORS OF  
17 A BENEFIT CORPORATION MUST INCLUDE ONE DIRECTOR WHO:

- 18           (a) IS DESIGNATED THE BENEFIT DIRECTOR; AND
- 19           (b) HAS, IN ADDITION TO THE POWERS, DUTIES, RIGHTS, AND  
20 IMMUNITIES OF THE OTHER DIRECTORS OF THE BENEFIT CORPORATION, THE  
21 POWERS, DUTIES, RIGHTS, AND IMMUNITIES PROVIDED IN THIS SECTION.

22           (2) THE BENEFIT DIRECTOR MUST BE ELECTED, AND MAY BE  
23 REMOVED, IN THE MANNER PROVIDED BY ARTICLE 108 OF THIS TITLE, AND  
24 MUST BE AN INDIVIDUAL WHO IS INDEPENDENT, AS DEFINED IN SECTION  
25 7-138-102 (5). THE ARTICLES OF INCORPORATION OR BYLAWS OF A  
26 BENEFIT CORPORATION MAY PRESCRIBE ADDITIONAL QUALIFICATIONS OF  
27 THE BENEFIT DIRECTOR CONSISTENT WITH THIS SUBSECTION (2).

1           (3) THE BENEFIT DIRECTOR SHALL PREPARE, AND THE BENEFIT  
2 CORPORATION SHALL INCLUDE IN THE ANNUAL BENEFIT REPORT TO  
3 SHAREHOLDERS REQUIRED BY SECTION 7-138-401, THE OPINION OF THE  
4 BENEFIT DIRECTOR ON ALL OF THE FOLLOWING:

5           (a) WHETHER THE BENEFIT CORPORATION ACTED IN ACCORDANCE  
6 WITH ITS GENERAL, AND ANY SPECIFIC, PUBLIC BENEFIT PURPOSE IN ALL  
7 MATERIAL RESPECTS DURING THE PERIOD COVERED BY THE REPORT;

8           (b) WHETHER THE DIRECTORS AND OFFICERS COMPLIED WITH  
9 SECTIONS 7-138-301 AND 7-138-303; AND

10          (c) IF, IN THE OPINION OF THE BENEFIT DIRECTOR, THE BENEFIT  
11 CORPORATION OR ITS DIRECTORS OR OFFICERS FAILED TO COMPLY WITH  
12 SECTIONS 7-138-301 AND 7-138-303, A DESCRIPTION OF THE WAYS IN  
13 WHICH THE BENEFIT CORPORATION OR ITS DIRECTORS OR OFFICERS FAILED  
14 TO COMPLY.

15          (4) THE ACTS OR OMISSIONS OF AN INDIVIDUAL IN THE CAPACITY  
16 OF A BENEFIT DIRECTOR CONSTITUTE FOR ALL PURPOSES ACTS OR  
17 OMISSIONS OF THAT INDIVIDUAL IN THE CAPACITY OF A DIRECTOR OF THE  
18 BENEFIT CORPORATION.

19          (5) REGARDLESS OF WHETHER THE BYLAWS OF A BENEFIT  
20 CORPORATION INCLUDE A PROVISION ELIMINATING OR LIMITING THE  
21 PERSONAL LIABILITY OF DIRECTORS AUTHORIZED BY SECTION 7-108-402,  
22 A BENEFIT DIRECTOR IS NOT PERSONALLY LIABLE FOR AN ACT OR OMISSION  
23 IN THE CAPACITY OF A BENEFIT DIRECTOR UNLESS THE ACT OR OMISSION:

24          (a) CONSTITUTES A BREACH OF THE BENEFIT DIRECTOR'S DUTY OF  
25 LOYALTY TO THE BENEFIT CORPORATION OR TO ITS SHAREHOLDERS;

26          (b) IS AN ACT OR OMISSION THAT WAS NOT MADE IN GOOD FAITH  
27 OR THAT INVOLVED INTENTIONAL MISCONDUCT OR A KNOWING VIOLATION

1 OF LAW;

2 (c) IS AN ACT SPECIFIED IN SECTION 7-108-403; OR

3 (d) CONSTITUTES A TRANSACTION FROM WHICH THE DIRECTOR  
4 DIRECTLY OR INDIRECTLY DERIVED AN IMPROPER PERSONAL BENEFIT.

5 **7-138-303. Standard of conduct for officers.** (1) EACH OFFICER  
6 OF A BENEFIT CORPORATION SHALL CONSIDER THE INTERESTS AND  
7 FACTORS DESCRIBED IN SECTION 7-138-301 (1) (a) WHEN:

8 (a) THE OFFICER HAS DISCRETION TO ACT WITH RESPECT TO THE  
9 MATTER; AND

10 (b) IT REASONABLY APPEARS TO THE OFFICER THAT THE MATTER  
11 MAY HAVE A MATERIAL EFFECT ON THE PROMOTION OF A GENERAL OR A  
12 SPECIFIC PUBLIC BENEFIT BY THE BENEFIT CORPORATION.

13 (2) THE CONSIDERATION OF INTERESTS AND FACTORS IN THE  
14 MANNER DESCRIBED IN SUBSECTION (1) OF THIS SECTION DOES NOT  
15 CONSTITUTE A VIOLATION OF SECTION 7-108-401.

16 (3) AN OFFICER IS NOT PERSONALLY LIABLE FOR:

17 (a) ACTION TAKEN AS AN OFFICER IF THE OFFICER PERFORMED THE  
18 DUTIES OF THE POSITION IN COMPLIANCE WITH SECTION 7-108-401 AND  
19 THIS SECTION; OR

20 (b) FAILURE OF THE BENEFIT CORPORATION TO PROMOTE A  
21 GENERAL OR A SPECIFIC PUBLIC BENEFIT.

22 **7-138-304. Rights of action.** (1) THE DUTIES OF DIRECTORS AND  
23 OFFICERS UNDER THIS ARTICLE, AND THE GENERAL AND ANY SPECIFIC  
24 PUBLIC BENEFIT PURPOSES OF A BENEFIT CORPORATION, MAY BE ENFORCED  
25 ONLY IN A BENEFIT ENFORCEMENT PROCEEDING. NO PERSON MAY BRING  
26 AN ACTION OR ASSERT A CLAIM AGAINST A BENEFIT CORPORATION OR ITS  
27 DIRECTORS OR OFFICERS WITH RESPECT TO THE DUTIES OF DIRECTORS AND

1 OFFICERS UNDER THIS ARTICLE AND THE GENERAL AND ANY SPECIFIC  
2 PUBLIC BENEFIT PURPOSE OF THE BENEFIT CORPORATION EXCEPT IN A  
3 BENEFIT ENFORCEMENT PROCEEDING.

4 (2) A BENEFIT ENFORCEMENT PROCEEDING MAY BE COMMENCED  
5 OR MAINTAINED ONLY:

6 (a) DIRECTLY BY THE BENEFIT CORPORATION; OR

7 (b) DERIVATIVELY BY:

8 (I) A SHAREHOLDER;

9 (II) A DIRECTOR;

10 (III) A PERSON OR GROUP OF PERSONS THAT OWNS, BENEFICIALLY  
11 OR OF RECORD, FIVE PERCENT OR MORE OF THE EQUITY INTERESTS IN AN  
12 ENTITY OF WHICH THE BENEFIT CORPORATION IS A SUBSIDIARY; OR

13 (IV) OTHER PERSONS AS SPECIFIED IN THE ARTICLES OF  
14 INCORPORATION OR BYLAWS OF THE BENEFIT CORPORATION.

15 (3) A BENEFIT ENFORCEMENT PROCEEDING BROUGHT BY A  
16 SHAREHOLDER MUST SATISFY THE REQUIREMENTS OF SECTION 7-107-402.

#### 17 PART 4

#### 18 TRANSPARENCY

19 **7-138-401. Annual benefit report.** (1) A BENEFIT CORPORATION  
20 SHALL PREPARE AN ANNUAL BENEFIT REPORT THAT INCLUDES:

21 (a) A NARRATIVE DESCRIPTION OF ALL OF THE FOLLOWING:

22 (I) THE WAYS IN WHICH THE BENEFIT CORPORATION PURSUED  
23 GENERAL PUBLIC BENEFIT DURING THE YEAR AND THE EXTENT TO WHICH  
24 GENERAL PUBLIC BENEFIT WAS PROMOTED;

25 (II) THE WAYS IN WHICH THE BENEFIT CORPORATION PURSUED A  
26 SPECIFIC PUBLIC BENEFIT THAT THE ARTICLES OF INCORPORATION STATE  
27 IS THE PURPOSE OF THE BENEFIT CORPORATION TO PROMOTE;

1 (III) THE EXTENT TO WHICH THAT SPECIFIC PUBLIC BENEFIT WAS  
2 PROMOTED; AND

3 (IV) ANY CIRCUMSTANCES THAT HAVE HINDERED THE PROMOTION  
4 BY THE BENEFIT CORPORATION OF GENERAL OR SPECIFIC PUBLIC BENEFIT.

5 (b) AN ASSESSMENT OF THE SOCIAL AND ENVIRONMENTAL  
6 PERFORMANCE OF THE BENEFIT CORPORATION. THE ASSESSMENT MUST BE  
7 PREPARED IN ACCORDANCE WITH A THIRD-PARTY STANDARD:

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

10 (II) ACCOMPANIED BY AN EXPLANATION OF THE REASONS FOR ANY  
11 INCONSISTENT APPLICATION.

12 (c) THE NAME OF THE BENEFIT DIRECTOR AND THE ADDRESS TO  
13 WHICH CORRESPONDENCE TO THE BENEFIT DIRECTOR MAY BE DIRECTED.

14 (d) THE COMPENSATION PAID BY THE BENEFIT CORPORATION  
15 DURING THE YEAR TO EACH DIRECTOR IN THE CAPACITY OF A DIRECTOR.

16 (e) THE NAME OF EACH PERSON THAT OWNS FIVE PERCENT OR  
17 MORE OF THE OUTSTANDING SHARES OF THE BENEFIT CORPORATION  
18 EITHER:

19 (I) BENEFICIALLY, TO THE EXTENT KNOWN TO THE BENEFIT  
20 CORPORATION WITHOUT INDEPENDENT INVESTIGATION; OR

21 (II) OF RECORD.

22 (f) THE STATEMENT OF THE BENEFIT DIRECTOR DESCRIBED IN  
23 SECTION 7-138-302 (3).

24 (2) THE BENEFIT CORPORATION SHALL SEND THE BENEFIT REPORT  
25 ANNUALLY TO EACH SHAREHOLDER:

26 (a) WITHIN ONE HUNDRED TWENTY DAYS AFTER THE END OF THE  
27 FISCAL YEAR OF THE BENEFIT CORPORATION; OR

1 (b) AT THE SAME TIME THAT THE BENEFIT CORPORATION DELIVERS  
2 ANY OTHER ANNUAL REPORT TO ITS SHAREHOLDERS.

3 (3) A BENEFIT CORPORATION SHALL POST ITS MOST RECENT  
4 BENEFIT REPORT ON THE PUBLIC PORTION OF ITS WEB SITE, IF ANY, BUT THE  
5 COMPENSATION PAID TO DIRECTORS AND FINANCIAL OR PROPRIETARY  
6 INFORMATION INCLUDED IN THE BENEFIT REPORT MAY BE OMITTED FROM  
7 THE BENEFIT REPORT AS POSTED.

8 **7-138-402. Annual report filed with secretary of state.** THE  
9 ANNUAL REPORT THAT A BENEFIT CORPORATION IS REQUIRED TO DELIVER  
10 TO THE SECRETARY OF STATE PURSUANT TO SECTION 7-90-501 (1) MUST  
11 INCLUDE AS AN ATTACHMENT THE MOST RECENT BENEFIT REPORT  
12 DELIVERED TO SHAREHOLDERS PURSUANT TO SECTION 7-138-401; EXCEPT  
13 THAT THE COMPENSATION PAID TO DIRECTORS AND OFFICERS AND ANY  
14 FINANCIAL OR PROPRIETARY INFORMATION INCLUDED IN THE BENEFIT  
15 REPORT MAY BE OMITTED FROM THE BENEFIT REPORT AS DELIVERED TO  
16 THE SECRETARY OF STATE UNDER SECTION 7-90-501 (1).

17 **SECTION 2.** 7-111-103 (5), Colorado Revised Statutes, is  
18 amended to read:

19 **7-111-103. Action on plan.** (5) Unless articles 101 to 117 OR  
20 ARTICLE 138 of this title, including ~~the provisions of~~ section 7-117-101  
21 (8), the articles of incorporation, bylaws adopted by the shareholders, or  
22 the board of directors acting pursuant to subsection (3) of this section  
23 require a greater vote, the plan of conversion, plan of merger, or plan of  
24 share exchange shall be approved by each voting group entitled to vote  
25 separately on the plan by a majority of all the votes entitled to be cast on  
26 the plan by that voting group.

27 **SECTION 3. Act subject to petition - effective date -**

1     **applicability.** (1) This act shall take effect at 12:01 a.m. on the day  
2 following the expiration of the ninety-day period after final adjournment  
3 of the general assembly (August 10, 2011, if adjournment sine die is on  
4 May 11, 2011); except that, if a referendum petition is filed pursuant to  
5 section 1 (3) of article V of the state constitution against this act or an  
6 item, section, or part of this act within such period, then the act, item,  
7 section, or part shall not take effect unless approved by the people at the  
8 general election to be held in November 2012 and shall take effect on the  
9 date of the official declaration of the vote thereon by the governor.

10             (2) The provisions of this act shall apply to benefit corporations  
11 on or after the applicable effective date of this act.