



Business Law Legislative Update 2022

Presented by Trevor Crow

COLORADO

I. SB 22-034: Modification To Colorado Public Benefit Corporation Act

- a. Bill Summary: The bill modifies the "Public Benefit Corporation Act of Colorado" as follows:
 1. Eliminates the requirement for approval of two-thirds of the outstanding shares to convert an existing corporation to a public benefit corporation (PBC) or an existing PBC into a non-PBC, thereby defaulting to the majority vote requirement applicable to other corporate conversions (section 1 of the bill);
 2. Eliminates the application of appraisal rights for shareholders objecting to the conversion of a non-PBC to a PBC (section 1);
 3. Clarifies that a director's ownership of stock in a PBC does not inherently create a conflict of interest and specifies that, absent a conflict of interest, a director does not act in bad faith and does not breach a duty of loyalty if the director, in directing the business of the PBC, fails to satisfy a requirement to balance shareholder pecuniary interests, the best interests of those materially affected by the action, and the specific public benefit of the PBC (section 2); and
 4. Clarifies the requirements for actions to enforce the requirements imposed on directors to balance the interests of shareholders, those materially affected by the corporate action, and the public benefit of the PBC (section 3).
- b. Effective Date: August 22, 2022 (90 days after adjournment)

II. HB 22-1317: Restrictive Employment Agreements Act

- a. Bill Summary: The bill declares that a covenant not to compete that restricts the right of any person to receive compensation for performance of labor for any employer is void, with certain exceptions. One exception is for a covenant not to compete governing a person who, at the time the covenant not to compete is entered into and at the time it is enforced, earns an amount of annualized cash compensation equivalent to or greater than the threshold amount for highly compensated workers, if the covenant not to compete is for the protection of trade secrets and is no broader than is reasonably necessary to protect the employer's legitimate interest in protecting trade secrets.
- b. Effective Date: August 22, 2022 (90 days after adjournment)

III. HB 22-1250: Nonsubstantive Changes to Title 7 Of Colorado Revised Statutes

a. Bill Summary:

1. Changes references to "owners' interest" to "owner's interest";
2. Repeals a provision exempting certain domestic entities from a provision allowing reinstatement of an entity after an administrative dissolution upon compliance with certain conditions; and
3. Makes clarifying changes to the provision requiring notification of ratification of defective corporate actions to holders of valid and putative shares.

b. Effective Date: August 22, 2022 (90 days after adjournment)

IV. SB 22-034: Business Filing Address and Name Fraud

a. Background: Under current law, a business entity submits to the secretary of state for online filing documents that concern the creation, organization, and operations of the entity. By submitting a document, an individual affirms under penalty of perjury that the individual is authorized to file the document, the facts in the document are true, and the document otherwise complies with the secretary of state's filing requirements. The secretary of state files the document in an online database as a ministerial act and does not independently verify whether the document is accurate.

b. Bill Summary: The bill creates a complaint process for a person whose business identity or personal identifying information has been used in the filing of these documents with the secretary of state without authority or for fraudulent activity. If a complaint is submitted with the secretary of state, the secretary may forward the complaint to the attorney general for further investigation. The attorney general may investigate the complaint and refer the complaint to an administrative law judge.

If an administrative law judge determines that an entity has been created fraudulently or without authorization, the secretary of state will:

1. Mark the business record with a notice that the entity is fraudulent or unauthorized;
2. Redact each address that was used without authorization from the entity's filing and from any other relevant filings; and
3. Disable additional filing functionality on the entity's records.

If an administrative law judge determines that an unauthorized filing was made for a legitimate entity, the secretary of state will:

1. Mark each unauthorized filing for the entity to notify the public that the filing is unauthorized;
2. Redact from the entity's filing and from the relevant filings each address and name that was used without authorization; and
3. Mark the business record on the entity's filing to notify the public that the entity has been the victim of fraudulent or unauthorized acts.
- 4.

If a person alleged to have committed fraud or unauthorized acts fails to respond to the complaint, the allegations are deemed conceded, and the secretary of state will take the appropriate steps listed above in the same manner as if the finding had been made by an administrative law judge.

Additionally, the bill states that fraudulent filings are unfair or deceptive trade practices under the "Colorado Consumer Protection Act" and as such are subject to enforcement by the attorney general's office.

- c. Effective Date: July 1, 2023

V. SB 22-228: Retail Establishments Accept Cash Enforcement

- a. Background: Current law requires retail establishments to accept United States currency. One of the exceptions to the requirement is for security deposits. A violation of the requirement by a retail establishment is a civil infraction punishable by a fine of \$250.
- b. Bill Summary: The bill exempts retail establishments in which the primary method of selling goods or services is through an automatic renewal contract and defines "retail establishment" and "security deposit". The attorney general is authorized to bring a civil and criminal action to enforce the provision.
- c. Effective Date: August 22, 2022 (90 days after adjournment)