

REVISED NONPROFIT CORPORATION ACT

2000 GENERAL SESSION

STATE OF UTAH

Sponsor: Lyle W. Hillyard

AN ACT RELATING TO CORPORATIONS; ENACTING A NEW NONPROFIT CORPORATIONS ACT; ESTABLISHING GENERAL PROVISIONS; ADDRESSING INCORPORATION; ADDRESSING POWERS AND PURPOSES; ADDRESSING NAMES; ADDRESSING OFFICE AND AGENTS; ADDRESSING MEMBERSHIP; ADDRESSING MEETINGS AND VOTING OF MEMBERS; ADDRESSING DIRECTORS AND OFFICERS; ADDRESSING INDEMNIFICATION; ADDRESSING AMENDMENTS TO ARTICLES OF INCORPORATION OR BYLAWS; ADDRESSING MERGERS; ADDRESSING SALES OF PROPERTY; ADDRESSING DISTRIBUTIONS; ADDRESSING DISSOLUTION; ADDRESSING FOREIGN NONPROFIT CORPORATIONS; ADDRESSING RECORDS, INFORMATION, AND REPORTS; ADDRESSING TRANSITION; ADDRESSING CONVERSIONS BETWEEN NONPROFIT AND FOR PROFIT ENTITIES; MAKING TECHNICAL CHANGES; PROVIDING AN EFFECTIVE DATE; AND PROVIDING A COORDINATION CLAUSE.

This act affects sections of Utah Code Annotated 1953 as follows:

AMENDS:

- 3-1-25**, as last amended by Chapter 66, Laws of Utah 1987
- 3-1-30**, as last amended by Chapter 203, Laws of Utah 1994
- 3-1-31**, as last amended by Chapter 203, Laws of Utah 1994
- 3-1-44**, as enacted by Chapter 204, Laws of Utah 1994
- 7-5-2**, as last amended by Chapter 6, Laws of Utah 1982
- 9-13-201**, as enacted by Chapter 76, Laws of Utah 1999
- 11-32-3**, as last amended by Chapter 235, Laws of Utah 1995
- 11-32-8**, as enacted by Chapter 143, Laws of Utah 1987
- 16-7-13**, as enacted by Chapter 48, Laws of Utah 1993
- 16-7-14**, as enacted by Chapter 48, Laws of Utah 1993

17A-3-903, as renumbered and amended by Chapter 186, Laws of Utah 1990
21-1-2, as last amended by Chapter 313, Laws of Utah 1994
21-1-2.5, as last amended by Chapter 313, Laws of Utah 1994
31A-5-101, as last amended by Chapter 6, Laws of Utah 1992, Third Special Session
31A-5-102, as last amended by Chapter 131, Laws of Utah 1999
31A-5-104, as last amended by Chapter 277, Laws of Utah 1992
31A-5-203, as last amended by Chapter 344, Laws of Utah 1995
31A-5-219, as last amended by Chapter 277, Laws of Utah 1992
31A-5-404, as last amended by Chapter 277, Laws of Utah 1992
31A-5-405, as last amended by Chapter 95, Laws of Utah 1987
31A-5-407, as last amended by Chapter 277, Laws of Utah 1992
31A-5-409, as last amended by Chapter 22, Laws of Utah 1989
31A-5-410, as last amended by Chapter 277, Laws of Utah 1992
31A-5-415, as last amended by Chapter 9, Laws of Utah 1996, Second Special Session
31A-5-503, as enacted by Chapter 242, Laws of Utah 1985
31A-5-504, as last amended by Chapter 277, Laws of Utah 1992
31A-5-508, as last amended by Chapter 20, Laws of Utah 1995
31A-7-103, as last amended by Chapter 277, Laws of Utah 1992
31A-7-201, as last amended by Chapter 344, Laws of Utah 1995
31A-7-202, as last amended by Chapter 91, Laws of Utah 1987
31A-7-303, as last amended by Chapter 91, Laws of Utah 1987
31A-7-304, as enacted by Chapter 242, Laws of Utah 1985
31A-7-313, as enacted by Chapter 242, Laws of Utah 1985
31A-8-103, as last amended by Chapter 44, Laws of Utah 1997
31A-8-204, as last amended by Chapter 79, Laws of Utah 1996
31A-8-406, as enacted by Chapter 204, Laws of Utah 1986
31A-9-101, as last amended by Chapter 327, Laws of Utah 1990
31A-9-105, as last amended by Chapter 277, Laws of Utah 1992

31A-9-204, as last amended by Chapter 91, Laws of Utah 1987
31A-9-212, as last amended by Chapter 91, Laws of Utah 1987
31A-9-405, as enacted by Chapter 242, Laws of Utah 1985
31A-9-406, as enacted by Chapter 242, Laws of Utah 1985
31A-9-502, as enacted by Chapter 242, Laws of Utah 1985
31A-11-105, as last amended by Chapter 277, Laws of Utah 1992
31A-14-205, as last amended by Chapter 9, Laws of Utah 1996, Second Special Session
31A-14-210, as last amended by Chapter 9, Laws of Utah 1996, Second Special Session
31A-22-1305, as enacted by Chapter 204, Laws of Utah 1986
31A-27-335, as last amended by Chapter 131, Laws of Utah 1999
31A-34-105, Utah Code Annotated 1953
31A-34-108, Utah Code Annotated 1953
41-22-2, as last amended by Chapter 73, Laws of Utah 1999
48-2b-106, as last amended by Chapter 38, Laws of Utah 1999
53B-5-114, as enacted by Chapter 86, Laws of Utah 1998
59-8-103, as last amended by Chapter 278, Laws of Utah 1995
63-11-3.1, as enacted by Chapter 225, Laws of Utah 1998

ENACTS:

16-6a-101, Utah Code Annotated 1953
16-6a-102, Utah Code Annotated 1953
16-6a-103, Utah Code Annotated 1953
16-6a-104, Utah Code Annotated 1953
16-6a-105, Utah Code Annotated 1953
16-6a-106, Utah Code Annotated 1953
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16-6a-112, Utah Code Annotated 1953
16-6a-113, Utah Code Annotated 1953
16-6a-114, Utah Code Annotated 1953
16-6a-115, Utah Code Annotated 1953
16-6a-116, Utah Code Annotated 1953
16-6a-117, Utah Code Annotated 1953
16-6a-118, Utah Code Annotated 1953
16-6a-201, Utah Code Annotated 1953
16-6a-202, Utah Code Annotated 1953
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16-6a-301, Utah Code Annotated 1953
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16-6a-1301, Utah Code Annotated 1953
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16-6a-1401, Utah Code Annotated 1953
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16-6a-1701, Utah Code Annotated 1953
16-6a-1702, Utah Code Annotated 1953
16-6a-1703, Utah Code Annotated 1953
16-6a-1704, Utah Code Annotated 1953
16-10a-1008.3, Utah Code Annotated 1953
16-10a-1008.5, Utah Code Annotated 1953

REPEALS:

- 16-6-18**, as enacted by Chapter 17, Laws of Utah 1963
- 16-6-19**, as last amended by Chapter 108, Laws of Utah 1990
- 16-6-20**, as last amended by Chapter 48, Laws of Utah 1993
- 16-6-21**, as last amended by Chapter 143, Laws of Utah 1996
- 16-6-22**, as enacted by Chapter 17, Laws of Utah 1963
- 16-6-23**, as enacted by Chapter 17, Laws of Utah 1963
- 16-6-24**, as last amended by Chapter 86, Laws of Utah 1998
- 16-6-25**, as last amended by Chapter 48, Laws of Utah 1990
- 16-6-25.1**, as last amended by Chapter 108, Laws of Utah 1990
- 16-6-25.2**, as last amended by Chapter 108, Laws of Utah 1990
- 16-6-25.3**, as enacted by Chapter 178, Laws of Utah 1985
- 16-6-26**, as enacted by Chapter 17, Laws of Utah 1963
- 16-6-27**, as enacted by Chapter 17, Laws of Utah 1963
- 16-6-28**, as enacted by Chapter 17, Laws of Utah 1963
- 16-6-29**, as enacted by Chapter 17, Laws of Utah 1963
- 16-6-30**, as enacted by Chapter 17, Laws of Utah 1963
- 16-6-31**, as enacted by Chapter 17, Laws of Utah 1963
- 16-6-32**, as enacted by Chapter 17, Laws of Utah 1963
- 16-6-33**, as last amended by Chapter 66, Laws of Utah 1984
- 16-6-34**, as enacted by Chapter 17, Laws of Utah 1963
- 16-6-35**, as enacted by Chapter 17, Laws of Utah 1963
- 16-6-36**, as enacted by Chapter 17, Laws of Utah 1963
- 16-6-37**, as last amended by Chapter 79, Laws of Utah 1996
- 16-6-38**, as enacted by Chapter 17, Laws of Utah 1963
- 16-6-39**, as enacted by Chapter 17, Laws of Utah 1963
- 16-6-40**, as enacted by Chapter 17, Laws of Utah 1963
- 16-6-41**, as enacted by Chapter 17, Laws of Utah 1963

16-6-42, as last amended by Chapter 222, Laws of Utah 1988
16-6-43, as enacted by Chapter 17, Laws of Utah 1963
16-6-44, as enacted by Chapter 17, Laws of Utah 1963
16-6-45, as last amended by Chapter 178, Laws of Utah 1985
16-6-46, as last amended by Chapter 178, Laws of Utah 1985
16-6-47, as last amended by Chapter 178, Laws of Utah 1985
16-6-48, as enacted by Chapter 17, Laws of Utah 1963
16-6-49, as last amended by Chapter 277, Laws of Utah 1992
16-6-50, as enacted by Chapter 17, Laws of Utah 1963
16-6-51, as last amended by Chapter 178, Laws of Utah 1985
16-6-52, as last amended by Chapter 178, Laws of Utah 1985
16-6-53, as last amended by Chapter 66, Laws of Utah 1984
16-6-53.5, as enacted by Chapter 97, Laws of Utah 1989
16-6-54, as enacted by Chapter 17, Laws of Utah 1963
16-6-55, as enacted by Chapter 17, Laws of Utah 1963
16-6-56, as last amended by Chapter 68, Laws of Utah 1987
16-6-57, as last amended by Chapter 178, Laws of Utah 1985
16-6-58, as last amended by Chapter 66, Laws of Utah 1984
16-6-59, as enacted by Chapter 17, Laws of Utah 1963
16-6-60, as last amended by Chapter 277, Laws of Utah 1992
16-6-61, as last amended by Chapter 68, Laws of Utah 1987
16-6-62, as last amended by Chapter 68, Laws of Utah 1987
16-6-63, as last amended by Chapter 222, Laws of Utah 1988
16-6-64, as enacted by Chapter 17, Laws of Utah 1963
16-6-65, as last amended by Chapter 66, Laws of Utah 1984
16-6-66, as last amended by Chapter 178, Laws of Utah 1985
16-6-67, as last amended by Chapter 178, Laws of Utah 1985
16-6-68, as last amended by Chapter 108, Laws of Utah 1990

16-6-69, as last amended by Chapter 30, Laws of Utah 1992
16-6-70, as enacted by Chapter 17, Laws of Utah 1963
16-6-71, as enacted by Chapter 17, Laws of Utah 1963
16-6-72, as enacted by Chapter 17, Laws of Utah 1963
16-6-73, as enacted by Chapter 17, Laws of Utah 1963
16-6-74, as enacted by Chapter 17, Laws of Utah 1963
16-6-75, as last amended by Chapter 66, Laws of Utah 1984
16-6-76, as last amended by Chapter 10, Laws of Utah 1997
16-6-77, as last amended by Chapter 66, Laws of Utah 1984
16-6-78, as last amended by Chapter 66, Laws of Utah 1984
16-6-79, as last amended by Chapter 66, Laws of Utah 1984
16-6-80, as enacted by Chapter 17, Laws of Utah 1963
16-6-82, as enacted by Chapter 17, Laws of Utah 1963
16-6-83, as last amended by Chapter 178, Laws of Utah 1985
16-6-84, as last amended by Chapter 108, Laws of Utah 1990
16-6-85, as last amended by Chapter 66, Laws of Utah 1984
16-6-86, as last amended by Chapter 66, Laws of Utah 1987
16-6-87, as last amended by Chapter 108, Laws of Utah 1990
16-6-88, as last amended by Chapter 178, Laws of Utah 1985
16-6-89, as last amended by Chapter 66, Laws of Utah 1984
16-6-90, as last amended by Chapter 66, Laws of Utah 1984
16-6-91, as last amended by Chapter 178, Laws of Utah 1985
16-6-92, as last amended by Chapter 66, Laws of Utah 1984
16-6-93, as last amended by Chapter 178, Laws of Utah 1985
16-6-94, as last amended by Chapter 222, Laws of Utah 1988
16-6-95, as last amended by Chapter 66, Laws of Utah 1984
16-6-96, as enacted by Chapter 17, Laws of Utah 1963
16-6-97, as last amended by Chapter 66, Laws of Utah 1987

16-6-98, as last amended by Chapter 108, Laws of Utah 1990
16-6-99, as last amended by Chapter 28, Laws of Utah 1995
16-6-99.1, as last amended by Chapter 313, Laws of Utah 1994
16-6-100, as last amended by Chapter 313, Laws of Utah 1994
16-6-100.5, as last amended by Chapter 313, Laws of Utah 1994
16-6-101, as last amended by Chapter 313, Laws of Utah 1994
16-6-102, as last amended by Chapter 66, Laws of Utah 1984
16-6-103, as last amended by Chapter 161, Laws of Utah 1987
16-6-104, as last amended by Chapter 66, Laws of Utah 1984
16-6-105, as last amended by Chapter 66, Laws of Utah 1984
16-6-106, as enacted by Chapter 17, Laws of Utah 1963
16-6-107, as last amended by Chapter 166, Laws of Utah 1987
16-6-108, as last amended by Chapter 10, Laws of Utah 1997
16-6-109, as last amended by Chapter 66, Laws of Utah 1984
16-6-110, as enacted by Chapter 17, Laws of Utah 1963
16-6-112, as enacted by Chapter 66, Laws of Utah 1987

Be it enacted by the Legislature of the state of Utah:

Section 1. Section **3-1-25** is amended to read:

3-1-25. Filing of annual reports.

Domestic associations and foreign associations admitted to do business in this state shall file an annual report in accordance with [~~Sections 16-6-97 and 16-6-98~~] Section 16-6a-1607.

Section 2. Section **3-1-30** is amended to read:

3-1-30. Authorization for merger or consolidation with other associations or corporations -- Laws governing surviving or new corporation.

(1) Pursuant to a plan approved under this chapter, an agricultural cooperative association may merge or consolidate with:

- (a) one or more agricultural cooperative associations;
- (b) one or more domestic corporations governed by:

- (i) Title 16, Chapter 10a, Utah Revised Business Corporation Act; or
 - (ii) Title 16, Chapter [6] 6a, Utah Revised Nonprofit Corporation [~~and Cooperative Association~~] Act; or
 - (c) any combination of associations or corporations referred to in Subsection (1)(a) or (b).
- (2) The surviving or new corporation shall be governed by:
- (a) the Uniform Agricultural Cooperative Association Act; or
 - (b) Title 16, Chapter [6] 6a, Utah Revised Nonprofit Corporation [~~and Cooperative Association~~] Act.

Section 3. Section **3-1-31** is amended to read:

3-1-31. Contents and approval of plan of merger or consolidation.

- (1) The board of directors, board of trustees, or other governing board of each party to the merger or consolidation shall, by resolution adopted by each board, approve a plan of merger or consolidation.
- (2) The plan shall contain:
- (a) the name of:
 - (i) each association or corporation proposing to merge or consolidate; and
 - (ii) (A) the association or corporation into which they propose to merge or consolidate, also referred to as the surviving corporation; or
 - (B) the new corporation;
 - (b) the terms and conditions of the proposed merger or consolidation;
 - (c) the manner and basis of converting stock or shares of each party to the merger or consolidation, into stock, shares, or other securities or obligations of the surviving or new corporation;
 - (d) the manner and basis of converting membership interests of each party to the merger into membership interests, stock, shares, or other securities or obligations of the surviving or new corporation;
 - (e) the manner and basis of converting any certificates of interest, patronage refund certificates, or other interests in any fund, capital investment, savings, or reserve of each party to the

merger or consolidation into stock, shares, or other securities or obligations of or certificates of interest, patronage refund certificates, or other interests in any fund, capital investment, savings or reserve of the surviving or new corporation, including any changes to be made in the time and manner of payment of the certificates or interests;

(f) a statement electing whether the surviving or new corporation shall be governed by:

(i) the Uniform Agricultural Cooperative Association Act; or [by]

(ii) Title 16, Chapter [6] 6a, Utah Revised Nonprofit Corporation [~~and Cooperative Association~~] Act;

(g) a statement of any changes in the articles of incorporation of the surviving or new corporation effected by the merger or consolidation, including changes required by the law governing the surviving or new corporation; and

(h) any other provision relating to the proposed merger or consolidation considered to be necessary or desirable.

Section 4. Section **3-1-44** is amended to read:

3-1-44. Registered office and agent.

(1) An association shall continuously maintain a registered office in this state. The registered office may be the principal place of business of the association.

(2) (a) An association shall designate a registered agent.

(b) The registered agent may be a person residing in this state, a domestic corporation, or a foreign corporation authorized to transact business in this state.

(c) The registered agent's address shall be the same as that of the registered office.

(3) (a) An association shall file a statement with the Division of Corporations and Commercial Code designating or changing its registered office, its registered agent, or both.

(b) The statement in Subsection (3)(a) shall set forth:

(i) the name of the association;

(ii) the address of the association's registered office;

(iii) the name of the association's registered agent and [his] the registered agent's address; and

(iv) a statement that the designation or change was authorized by a resolution of the board

of directors.

(4) (a) A registered agent of an association may resign by filing with the division a signed written notice of resignation, including a statement that a signed copy of the notice has been given to the association at its principal place of business.

(b) The appointment of the agent terminates 30 days after notice is filed with the division.

(5) Service of process, notice, or any demand upon an association shall be made as provided in Section [~~16-6-25.3~~] 16-6a-504.

Section 5. Section **7-5-2** is amended to read:

7-5-2. Permit required to engage in trust business -- Exceptions.

(1) No trust company shall accept any appointment to act in any agency or fiduciary capacity, such as but not limited to that of personal representative, executor, administrator, conservator, guardian, assignee, receiver, depository, or trustee under order or judgment of any court or by authority of any law of this state or as trustee for any purpose permitted by law or otherwise engage in the trust business in this state, unless and until it has obtained from the commissioner a permit to act under this chapter. This provision shall not apply to any bank or other corporation authorized to engage and lawfully engaged in the trust business in this state before July 1, 1981.

(2) Nothing in this chapter prohibits:

(a) any corporation organized under Title 16, Chapter [~~6~~] 6a or [~~10~~] 10a, from acting as trustee of any employee benefit trust established for the employees of the corporation or the employees of one or more other corporations affiliated with the corporation;

(b) any corporation organized under Title 16, Chapter [~~6~~] 6a, Utah Revised Nonprofit Corporation Act, and owned or controlled by a charitable, benevolent, eleemosynary, or religious organization from acting as a trustee for that organization or members of that organization but not offering trust services to the general public;

(c) any corporation organized under Title 16, Chapter [~~6~~] 6a or [~~10~~] 10a, from holding in a fiduciary capacity the controlling shares of another corporation but not offering trust services to the general public; or

(d) any depository institution from holding in an agency or fiduciary capacity individual

retirement accounts or Keogh plan accounts established under Section 401 (a) or 408 (a) of Title 26 of the United States Code.

Section 6. Section **9-13-201** is amended to read:

9-13-201. Utah Technology Finance Corporation -- Independent public corporation.

(1) There is created an independent public corporation known as the "Utah Technology Finance Corporation."

(2) (a) The corporation shall operate as a nonprofit corporation in accordance with Title 16, Chapter [6] 6a, Utah Revised Nonprofit Corporation [~~and Cooperative Association~~] Act, to the extent that Title 16, Chapter [6] 6a, does not conflict with this chapter.

(b) The corporation shall file with the Division of Corporations and Commercial Code:

(i) articles of incorporation; and

(ii) any amendment to its articles of incorporation.

(c) In addition to the articles of incorporation, the corporation may adopt bylaws and operational policies that are consistent with this chapter.

(3) This chapter is a recodification of the repealed Title 9, Chapter 2, Part 7, Utah Technology Finance Corporation Act, and does not create a new corporation. The corporation referred to in this chapter is the ongoing enterprise of the Utah Technology Finance Corporation and this recodification does not impair any existing contractual relationships of the corporation.

Section 7. Section **11-32-3** is amended to read:

11-32-3. Creation of county interlocal finance authority as nonprofit corporation -- Organization -- Acquisition of delinquent tax receivables -- Personnel -- Duties of elected attorney and treasurer.

(1) The governing body of any county within the state may, by resolution, organize a nonprofit corporation as the financing authority for the county on behalf of public bodies within the county under this chapter, following the procedures set out in Title 16, Chapter [6] 6a, Utah Revised Nonprofit Corporation [~~and Cooperative Association~~] Act, solely for the purpose of accomplishing the public purposes for which the public bodies exist by financing the sale or assignment of the delinquent tax receivables within the county to the financing authority. The authority shall be known

as the "Interlocal Finance Authority of (name of county)."

(2) If the governing body of any county creates an authority on behalf of any other public body within the county, the resolution shall further state the name or names of the other public bodies. A certified copy of the resolution creating the authority shall be delivered to the governing body of the other public bodies. The governing bodies of each of the other public bodies shall either approve or reject the creation of the authority, but if no action has been taken within 30 days of delivery of the certified copy of the resolution to the governing body it shall be ~~[deemed]~~ considered rejected.

(3) Following the approval, rejection, or ~~[deemed]~~ considered rejection of the resolution by the governing bodies of each of the public bodies listed in the initial resolution, the county shall then amend the resolution to delete the public bodies rejecting the resolution and shall list the participant members of the authority.

(4) The governing bodies of the participant members shall approve the articles of incorporation and bylaws of the authority. Members of governing bodies of each of the participant members, or a paid employee of the governing body designated by the member, shall be selected to form and shall act as the board of trustees of the authority. The powers of the board of trustees may be vested in an executive committee to be selected from among the board of trustees by the members of the board of trustees. The articles of incorporation and bylaws shall provide that the members of the board of trustees of the authority may be removed and replaced by the governing body from which such member was selected at any time in its discretion. A majority of the governing bodies of the participant members, based upon a percentage of the property taxes levied for the year preceding the then current year, within the county may, alter or change the structure, organization, programs, or activities of the financing authority, subject to the rights of the holders of the authority's bonds and parties to its other obligations.

(5) Each financing authority may acquire by assignment the delinquent tax receivables of the participant members creating the financing authority, in accordance with the procedures and subject to the limitations of this chapter, in order to accomplish the public purposes for which the participant members exist.

(6) Except as limited by Subsection (7), a financing authority may contract for or employ all staff and other personnel necessary for the purpose of performing its functions and activities, including contracting with the participant members within the county that created it to utilize any of the personnel, property, or facilities of any of the participant members for that purpose. The authority may be reimbursed for such costs by the participant member as provided in its articles of incorporation or bylaws.

(7) (a) With respect to any county that creates a financing authority and which has an elected attorney or treasurer, or both, the elected attorney shall be the legal advisor to and provide all legal services for the authority, and the elected treasurer shall provide all accounting services for the authority. The authority shall reimburse the county for legal and accounting services so furnished by the county, based upon the actual cost of the services, including reasonable amounts allocated by the county for overhead, employee fringe benefits, and general and administrative expenses.

(b) The provisions of Subsection (7) may not prevent the financing authority from obtaining the accounting or auditing services from outside accountants or auditors with the consent of the elected treasurer and the governing bodies or from obtaining legal services from outside attorneys with the consent of the elected attorney and the governing bodies. The provisions of this subsection may not prevent the authority from obtaining the opinions of outside attorneys or accountants which are necessary for the issuance of the bonds of the authority.

(c) If 50% or more of the governing bodies of the participant members, based upon property taxes charged for the preceding year as a percentage of all of the property taxes charged within the county for that year, find it advisable that the authority retain legal or accounting services other than as described in Subsection (7)(a) they may direct the board of trustees to do so.

Section 8. Section **11-32-8** is amended to read:

11-32-8. Dissolution of financing authority.

(1) The governing body of a county may at any time dissolve a financing authority created by the county in the manner then provided in Title 16, Chapter [6] 6a, [the] Utah Revised Nonprofit Corporation [~~and Cooperative Association~~] Act, subject to the limitations of this chapter.

(2) A financing authority may not be dissolved unless all outstanding bonds and other

obligations of the authority are paid in full as to principal, interest, and redemption premiums, if any, or unless provision for the payment of them when due has been made.

(3) Upon the dissolution of a financing authority all assets and moneys of the authority remaining after a provision has been made for the payment of all outstanding bonds and obligations of the authority shall be transferred to the participant members as described in Section 11-32-15 or as agreed upon between the county and the other participant members.

Section 9. Section **16-6a-101** is enacted to read:

CHAPTER 6a. UTAH REVISED NONPROFIT CORPORATION ACT

Part 1. General Provisions

16-6a-101. Title.

This chapter is known as the "Utah Revised Nonprofit Corporation Act."

Section 10. Section **16-6a-102** is enacted to read:

16-6a-102. Definitions.

As used in this chapter:

(1) (a) "Address" means a location where mail can be delivered by the United States Postal Service.

(b) "Address" includes:

(i) a post office box number;

(ii) a rural free delivery route number; and

(iii) a street name and number.

(2) "Affiliate" means a person that directly or indirectly through one or more intermediaries controls, or is controlled by, or is under common control with, the person specified.

(3) "Assumed corporate name" means the name assumed for use in this state:

(a) by a:

(i) foreign corporation pursuant to Section 16-10a-1506; or

(ii) a foreign nonprofit corporation pursuant to Section 16-6a-1506; and

(b) because the corporate name of the foreign corporation described in Subsection (3)(a) is not available for use in this state.

(4) "Articles of incorporation" include:

(a) amended articles of incorporation;

(b) restated articles of incorporation;

(c) articles of merger; and

(d) a document of a similar import to the documents described in Subsection (4)(a) or (b).

(5) (a) Except as provided in Subsection (5)(b), "board of directors" means the body authorized to manage the affairs of the domestic or foreign nonprofit corporation.

(b) Notwithstanding Subsection (5)(a), a person may not be considered the board of directors because of powers delegated to that person pursuant to Subsection 16-6a-801(2).

(6) (a) "Bylaws" means the one or more codes of rules, other than the articles of incorporation, adopted pursuant to this chapter for the regulation or management of the affairs of the domestic or foreign nonprofit corporation irrespective of the name or names by which the codes of rules are designated.

(b) "Bylaws" includes:

(i) amended bylaws; and

(ii) restated bylaws.

(7) (a) "Cash" or "money" means:

(i) legal tender;

(ii) a negotiable instrument; or

(iii) other cash equivalent readily convertible into legal tender.

(b) "Cash" and "money" are used interchangeably in this chapter.

(8) (a) "Class" refers to a group of memberships that have the same rights with respect to voting, dissolution, redemption, transfer, or other characteristics.

(b) For purposes of Subsection (8)(a), rights are considered the same if they are determined by a formula applied uniformly to a group of memberships.

(9) (a) "Conspicuous" means so written that a reasonable person against whom the writing is to operate should have noticed it.

(b) "Conspicuous" includes printing or typing in:

- (i) italics;
- (ii) boldface;
- (iii) contrasting color;
- (iv) capitals; or
- (v) underlining.

(10) "Control" or a "controlling interest" means the direct or indirect possession of the power to direct or cause the direction of the management and policies of an entity by:

- (a) the ownership of voting shares;
- (b) contract; or
- (c) means other than those specified in Subsection (10)(a) or (b).

(11) "Cooperative nonprofit corporation" or "cooperative" means a nonprofit corporation organized or existing under this chapter subject to Section 16-6a-207.

(12) "Corporate name" means:

(a) the name of a domestic corporation as stated in the domestic corporation's articles of incorporation;

(b) the name of a domestic nonprofit corporation as stated in the domestic nonprofit corporation's articles of incorporation;

(c) the name of a foreign corporation as stated in the foreign corporation's:

- (i) articles of incorporation; or
- (ii) document of similar import to articles of incorporation; or

(d) the name of a foreign nonprofit corporation as stated in the foreign nonprofit corporation's:

- (i) articles of incorporation; or
- (ii) document of similar import to articles of incorporation.

(13) "Corporation" or "domestic corporation" means a corporation for profit, which is not a foreign corporation, incorporated under or subject to Chapter 10a, Utah Revised Business Corporation Act.

(14) "Delegate" means any person elected or appointed to vote in a representative assembly:

(a) for the election of a director; or

(b) on matters other than the election of a director.

(15) "Deliver" includes delivery by mail and any other means of transmission authorized by Section 16-6a-103, except that delivery to the division means actual receipt by the division.

(16) "Director" means a member of the board of directors.

(17) (a) "Distribution" means the payment of a dividend or any part of the income or profit of a nonprofit corporation to the nonprofit corporation's:

(i) members;

(ii) directors; or

(iii) officers.

(b) "Distribution" does not include fair-value payments for:

(i) goods sold; or

(ii) services received.

(18) "Division" means the Division of Corporations and Commercial Code.

(19) "Effective date," when referring to a document filed by the division, means the time and date determined in accordance with Section 16-6a-108.

(20) "Effective date of notice" means the date notice is effective as provided in Section 16-6a-103.

(21) (a) "Employee" includes an officer but not a director of a nonprofit corporation.

(b) Notwithstanding Subsection (21)(a), a director may accept duties that make that director an employee of a nonprofit corporation.

(22) "Executive director" means the executive director of the Department of Commerce.

(23) "Entity" includes:

(a) a domestic or foreign corporation;

(b) a domestic or foreign nonprofit corporation;

(c) a limited liability company;

(d) a profit or nonprofit unincorporated association;

(e) a business trust;

(f) an estate;

(g) a partnership;

(h) a trust;

(i) two or more persons having a joint or common economic interest;

(j) a state;

(k) the United States; or

(l) a foreign government.

(24) "Foreign corporation" means a corporation for profit incorporated under a law other than the laws of this state.

(25) "Foreign nonprofit corporation" means an entity:

(a) incorporated under a law other than the laws of this state; and

(b) that would be a nonprofit corporation if formed under the laws of this state.

(26) "Governmental subdivision" means:

(a) a county;

(b) a city;

(c) a town; or

(d) any other type of governmental subdivision authorized by the laws of this state.

(27) "Individual" means:

(a) a natural person;

(b) the estate of an incompetent individual; or

(c) the estate of a deceased individual.

(28) "Internal Revenue Code" means the federal "Internal Revenue Code of 1986," as amended from time to time, or to corresponding provisions of subsequent internal revenue laws of the United States of America.

(29) (a) "Mail," "mailed," or "mailing" means deposit, deposited, or depositing in the United States mail, properly addressed, first-class postage prepaid.

(b) "Mail," "mailed," or "mailing" includes registered or certified mail for which the proper fee has been paid.

(30) (a) "Member" means one or more persons identified as a member of a domestic or foreign nonprofit corporation in the articles of incorporation or bylaws of the nonprofit corporation pursuant to a procedure set forth:

- (i) in the articles of incorporation;
- (ii) in the bylaws; or
- (iii) by a resolution of the board of directors.

(b) "Member" includes "voting member."

(31) "Membership" refers to the rights and obligations of a member or members.

(32) "Nonprofit corporation" or "domestic nonprofit corporation" means an entity, which is not a foreign nonprofit corporation, incorporated under or subject to the provisions of this chapter.

(33) "Notice" is as provided in Section 16-6a-103.

(34) "Person" means an:

- (a) individual; or
- (b) entity.

(35) "Principal office" means:

(a) the office, in or out of this state, designated by a domestic or foreign nonprofit corporation as its principal office in the most recent document on file with the division providing that information, including:

- (i) an annual report;
- (ii) an application for a certificate of authority; or
- (iii) a notice of change of principal office; or

(b) if no principal office can be determined, a domestic or foreign nonprofit corporation's registered office.

(36) "Proceeding" includes:

- (a) a civil suit;
- (b) arbitration;
- (c) mediation;
- (d) a criminal action;

(e) an administrative action; or

(f) an investigatory action.

(37) "Receive," when used in reference to receipt of a writing or other document by a domestic or foreign nonprofit corporation, means the writing or other document is actually received:

(a) by the domestic or foreign nonprofit corporation at:

(i) its registered office in this state; or

(ii) its principal office;

(b) by the secretary of the domestic or foreign nonprofit corporation, wherever the secretary is found; or

(c) by any other person authorized by the bylaws or the board of directors to receive the writing or other document, wherever that person is found.

(38) (a) "Record date" means the date established under Part 6 or 7 on which a nonprofit corporation determines the identity of its members.

(b) The determination described in Subsection (38)(a) shall be made as of the close of business on the record date unless another time for doing so is specified when the record date is fixed.

(39) "Registered agent" means the registered agent of:

(a) a domestic nonprofit corporation required to be maintained pursuant to Subsection 16-6a-501(1)(b); or

(b) a foreign nonprofit corporation required to be maintained pursuant to Subsection 16-6a-1508(1)(b).

(40) "Registered office" means the office within this state designated by a domestic or foreign nonprofit corporation as its registered office in the most recent document on file with the division providing that information, including:

(a) articles of incorporation;

(b) an application for a certificate of authority; or

(c) a notice of change of registered office.

(41) "Related party to a director" means:

(a) the spouse of the director;

- (b) a child of the director;
- (c) a grandchild of the director;
- (d) a sibling of the director;
- (e) a parent of the director;
- (f) the spouse of an individual described in Subsections (41)(b) through (e);
- (g) an individual having the same home as the director;
- (h) a trust or estate of which the director or any other individual specified in this Subsection

(41) is a substantial beneficiary; or

(i) any of the following of which the director is a fiduciary:

- (i) a trust;
- (ii) an estate;
- (iii) an incompetent;
- (iv) a conservatee; or
- (v) a minor.

(42) "Secretary" means the corporate officer to whom the bylaws or the board of directors has delegated responsibility under Subsection 16-6a-818(3) for:

(a) the preparation and maintenance of:

- (i) minutes of the meetings of:
 - (A) the board of directors; or
 - (B) the members; and

(ii) the other records and information required to be kept by the nonprofit corporation pursuant to Section 16-6a-1601; and

(b) authenticating records of the nonprofit corporation.

(43) "State," when referring to a part of the United States, includes:

- (a) a state;
- (b) a commonwealth;
- (c) the District of Columbia;
- (d) an agency or governmental and political subdivision of a state, commonwealth, or District

of Columbia;

(e) territory or insular possession of the United States; or

(f) an agency or governmental and political subdivision of a territory or insular possession of the United States.

(44) "Street address" means:

(a) (i) street name and number;

(ii) city or town; and

(iii) United States post office zip code designation; or

(b) if, by reason of rural location or otherwise, a street name, number, city, or town does not exist, an appropriate description other than that described in Subsection (44)(a) fixing as nearly as possible the actual physical location but only if the information includes:

(i) the rural free delivery route;

(ii) the county; and

(iii) the United States post office zip code designation.

(45) "United States" includes any district, authority, office, bureau, commission, department, and any other agency of the United States of America.

(46) "Vote" includes authorization by:

(a) written ballot; and

(b) written consent.

(47) (a) "Voting group" means all the members of one or more classes of members or directors that, under this chapter, the articles of incorporation, or the bylaws, are entitled to vote and be counted together collectively on a matter.

(b) All members or directors entitled by this chapter, the articles of incorporation, or the bylaws to vote generally on a matter are for that purpose a single voting group.

(48) (a) "Voting member" means one or more persons who are entitled to vote for all matters required or permitted under this chapter to be submitted to a vote of the members, except as otherwise provided in the articles of incorporation or bylaws.

(b) A person is not a voting member solely because of:

- (i) a right the person has as a delegate;
- (ii) a right the person has to designate a director; or
- (iii) a right the person has as a director.

Section 11. Section **16-6a-103** is enacted to read:

16-6a-103. Notice.

(1) Notice given under this chapter shall be in writing unless oral notice is reasonable under the circumstances.

(2) (a) Notice may be communicated:

- (i) in person;
- (ii) by telephone;
- (iii) by any form of electronic communication; or
- (iv) by mail or private carrier.

(b) If the forms of personal notice described in Subsection (2)(a) are impracticable, notice may be communicated by:

- (i) a newspaper of general circulation in the county or similar governmental subdivision in which the corporation's principal or registered office is located; or
- (ii) radio, television, or other form of public broadcast communication in the county or similar governmental subdivision in which the corporation's principal or registered office is located.

(3) Written notice to a domestic or foreign nonprofit corporation authorized to conduct affairs in this state may be addressed to:

- (a) its registered agent at its registered office; or
- (b) the corporation's secretary at its principal office.

(4) (a) Written notice by a domestic or foreign nonprofit corporation to its members, is effective as to each member when mailed, if:

- (i) in a comprehensible form; and
- (ii) addressed to the member's address shown in the domestic or foreign nonprofit corporation's current record of members.

(b) If three successive notices given to a member pursuant to Subsection (5) have been

returned as undeliverable, further notices to that member are not necessary until another address of the member is made known to the nonprofit corporation.

(5) Except as provided in Subsection (4), written notice, if in a comprehensible form, is effective at the earliest of the following:

(a) when received;

(b) five days after it is mailed; or

(c) on the date shown on the return receipt if:

(i) sent by registered or certified mail;

(ii) sent return receipt requested; and

(iii) the receipt is signed by or on behalf of the addressee.

(6) Oral notice is effective when communicated if communicated in a comprehensible manner.

(7) Notice by publication is effective on the date of first publication.

(8) A written notice or report delivered as part of a newsletter, magazine, or other publication regularly sent to members shall constitute a written notice or report if:

(a) addressed or delivered to the member's address shown in the nonprofit corporation's current list of members; or

(b) if two or more members are residents of the same household and have the same address in the nonprofit corporation's current list of members, addressed or delivered to one of the members at the address appearing on the current list of members.

(9) (a) If this chapter prescribes notice requirements for particular circumstances, the notice requirements for the particular circumstances govern.

(b) If articles of incorporation or bylaws prescribe notice requirements not inconsistent with this section or other provisions of this chapter, the notice requirements of the articles of incorporation or bylaws govern.

Section 12. Section **16-6a-104** is enacted to read:

16-6a-104. Powers of the division.

The division has the power reasonably necessary to perform the duties required of the division under this chapter.

Section 13. Section **16-6a-105** is enacted to read:

16-6a-105. Filing requirements.

(1) To be entitled to filing by the division, a document shall satisfy the requirements of:

(a) this section; and

(b) any other section of this chapter that adds to or varies the requirements of this section.

(2) This chapter shall require or permit filing the document with the division.

(3) (a) A document shall contain the information required by this chapter.

(b) In addition to the document information required by this chapter, it may contain other information.

(4) A document shall be:

(a) typewritten; or

(b) machine printed.

(5) (a) A document shall be in the English language.

(b) A corporate name need not be in English if written in:

(i) English letters; or

(ii) Arabic or Roman numerals.

(c) Notwithstanding Subsection (5)(a), a certificate of existence required of a foreign nonprofit corporation need not be in English if accompanied by a reasonably authenticated English translation.

(6) (a) A document shall be:

(i) executed by a person in Subsection (6)(b); or

(ii) a true copy made by photographic, xerographic, electronic, or other process that provides similar copy accuracy of a document that has been executed by a person listed in Subsection (6)(b).

(b) A document shall be executed by:

(i) the chair of the board of directors of a domestic or foreign nonprofit corporation;

(ii) all of the directors of a domestic or foreign nonprofit corporation;

(iii) an officer of the domestic or foreign nonprofit corporation;

(iv) if directors have not been selected or the domestic or foreign nonprofit corporation has

not been formed, an incorporator;

(v) if the domestic or foreign nonprofit corporation is in the hands of a receiver, trustee, or other court-appointed fiduciary, that receiver, trustee, or court-appointed fiduciary; or

(vi) if the document is that of a registered agent:

(A) the registered agent, if the person is an individual; or

(B) a person authorized by the registered agent to execute the document, if the registered agent is an entity.

(7) A document shall state beneath or opposite the signature of the person executing the document:

(a) the signer's name; and

(b) the capacity in which the document is signed.

(8) A document may contain:

(a) the corporate seal;

(b) an attestation by the secretary or an assistant secretary; or

(c) an acknowledgment, verification, or proof.

(9) The signature of each person signing a document, whether or not the document contains an acknowledgment, verification, or proof permitted by Subsection (8), shall constitute the affirmation or acknowledgment of the person, under penalties of perjury, that:

(a) the document is:

(i) the person's act and deed; or

(ii) the act and deed of the entity on behalf of which the document is executed; and

(b) the facts stated in the document are true.

(10) If the division has prescribed a mandatory form or cover sheet for the document under Section 16-6a-106, a document shall be:

(a) in or on the prescribed form; or

(b) have the required cover sheet.

(11) A document shall be:

(a) delivered to the division for filing; and

(b) accompanied by:

(i) one exact or conformed copy, except as provided in Sections 16-6a-503 and 16-6a-1510;

(ii) the correct filing fee; and

(iii) any franchise tax, license fee, or penalty required by this chapter or other law.

(12) Except with respect to filings pursuant to Section 16-6a-503 or 16-6a-1510, a document shall state, or be accompanied by a writing stating, the address to which the division may send a copy upon completion of the filing.

Section 14. Section **16-6a-106** is enacted to read:

16-6a-106. Forms.

(1) (a) The division may prescribe forms or cover sheets for documents required or permitted to be filed by this chapter.

(b) If the division prescribes a form or cover sheet pursuant to Subsection (1)(a), the division shall provide the form or cover sheet on request.

(2) Notwithstanding Subsection (1):

(a) the use of a form or cover sheet is not mandatory unless the division specifically requires the use of the form or cover sheet; and

(b) a requirement that a form or cover sheet be used may not:

(i) preclude in any way the inclusion in any document of any item that is not prohibited to be included by this chapter; or

(ii) require the inclusion with the filed document of any item that is not otherwise required by this chapter.

Section 15. Section **16-6a-107** is enacted to read:

16-6a-107. Fees.

(1) Unless otherwise provided by statute, the division shall charge and collect a fee for services established by the division in accordance with Section 63-38-3.2 including fees:

(a) for furnishing a certified copy of any document, instrument, or paper relating to a domestic or foreign nonprofit corporation; and

(b) for the certificate and affixing the seal to a certified copy described in Subsection (1)(a).

(2) (a) The division shall provide expedited, 24-hour processing of any item under this section upon request.

(b) The division shall charge and collect additional fees established by the division in accordance with Section 63-38-3.2 for expedited service provided under Subsection (2)(a).

(3) (a) The division shall charge and collect a fee determined by the division in accordance with Section 63-38-3.2 at the time of any service of process on the director of the division as resident agent of a corporation.

(b) The fee paid under Subsection (3)(a) may be recovered as taxable costs by the party to the suit or action causing the service to be made if the party prevails in the suit or action.

Section 16. Section **16-6a-108** is enacted to read:

16-6a-108. Effective time and date of filed documents.

(1) (a) Except as provided in Subsection (2) and Subsection 16-6a-109(4), a document submitted to the division for filing under this chapter is effective:

(i) at the time of filing; and

(ii) on the date it is filed.

(b) The division's endorsement on the document as described in Subsection 16-6a-110(2) is evidence of the time and date of filing.

(2) (a) Unless otherwise provided in this chapter, a document, other than an application for a reserved or registered name, may specify conspicuously on its face:

(i) a delayed effective time;

(ii) a delayed effective date; or

(iii) both a delayed effective time and date.

(b) If in accordance with Subsection (2)(a), a delayed time, date, or both, is specified, the document becomes effective as provided in this Subsection (2).

(c) If both a delayed effective time and date are specified, the document becomes effective as specified.

(d) If a delayed effective time but no date is specified, the document is effective on the date it is filed, as that date is specified in the division's time and date endorsement on the document, at the

later of:

(i) the time specified on the document as its effective time; or

(ii) the time specified in the time and date endorsement.

(e) If a delayed effective date but no time is specified, the document is effective at the close of business on the date specified as the delayed effective date.

(f) Notwithstanding the other provisions of this Subsection (2), a delayed effective date for a document may not be later than 90 days after the date the document is filed. If a document specifies a delayed effective date that is more than 90 days after the date the document is filed, the document is effective 90 days after the day the document is filed.

(3) If a document specifies a delayed effective date pursuant to Subsection (2), the document may be prevented from becoming effective by the same domestic or foreign nonprofit corporation that originally submitted the document for filing delivering to the division, prior to the specified effective date of the document, a certificate of withdrawal:

(a) executed:

(i) on behalf of the same domestic or foreign nonprofit corporation that originally submitted the document for filing; and

(ii) in the same manner as the document being withdrawn;

(b) stating that:

(i) the document has been revoked by:

(A) appropriate corporate action; or

(B) court order or decree pursuant to Section 16-6a-1007; and

(ii) the document is void; and

(c) if a court order or decree pursuant to Section 16-6a-1007 revokes the document, the court order or decree was entered by a court having jurisdiction of the proceeding for the reorganization of the nonprofit corporation under a specified statute of the United States.

Section 17. Section **16-6a-109** is enacted to read:

16-6a-109. Correcting filed documents.

(1) A domestic or foreign nonprofit corporation may correct a document filed with the

division if the document:

(a) contains an incorrect statement; or

(b) was defectively executed, attested, sealed, verified, or acknowledged.

(2) A document is corrected by delivering to the division for filing articles of correction that:

(a) (i) describe the document, including its filing date; or

(ii) have attached a copy of the document;

(b) specify:

(i) (A) the incorrect statement; and

(B) the reason it is incorrect; or

(ii) the manner in which the execution, attestation, sealing, verification, or acknowledgment

was defective; and

(c) correct:

(i) the incorrect statement; or

(ii) defective execution, attestation, sealing, verification, or acknowledgment.

(3) Articles of correction may be executed by any person:

(a) designated in Subsection 16-6a-105(6); or

(b) who executed the document that is corrected.

(4) (a) Articles of correction are effective on the effective date of the document they correct

except as to a person:

(i) relying on the uncorrected document; and

(ii) adversely affected by the correction.

(b) As to a person described in Subsection (4)(a), the articles of correction are effective when

filed.

Section 18. Section **16-6a-110** is enacted to read:

16-6a-110. Filing duty of division.

(1) If a document delivered to the division for filing satisfies the requirements of Section 16-6a-105, the division shall file the document.

(2) (a) The division files a document by stamping or otherwise endorsing "Filed" together

with the name of the division and the date and time of acceptance for filing on both the document and the accompanying copy.

(b) After filing a document, except as provided in Sections 16-6a-503, 16-6a-1510, and 16-6a-1608, the division shall deliver the accompanying copy, with the receipt for any filing fees:

(i) (A) to the domestic or foreign nonprofit corporation for which the filing is made; or

(B) to the representative of the domestic or foreign nonprofit corporation for which the filing is made; and

(ii) at the address:

(A) indicated on the filing; or

(B) that the division determines to be appropriate.

(3) If the division refuses to file a document, the division within ten days after the day the document is delivered to the division shall return to the person requesting the filing:

(a) the document; and

(b) a written notice providing a brief explanation of the reason for the refusal to file.

(4) (a) The division's duty to file a document under this section is ministerial.

(b) Except as otherwise specifically provided in this chapter, the division's filing or refusal to file a document does not:

(i) affect the validity or invalidity of the document in whole or in part;

(ii) relate to the correctness or incorrectness of information contained in the document; or

(iii) create a presumption that:

(A) the document is valid or invalid; or

(B) information contained in the document is correct or incorrect.

Section 19. Section **16-6a-111** is enacted to read:

16-6a-111. Appeal from division's refusal to file document.

If the division refuses to file a document delivered to it for filing, in accordance with Title 63, Chapter 46b, Administrative Procedures Act, the following may appeal the refusal to the executive director:

(1) the domestic or foreign nonprofit corporation for which the filing was requested; or

(2) the representative of the domestic or foreign nonprofit corporation for which filing was requested.

Section 20. Section **16-6a-112** is enacted to read:

16-6a-112. Evidentiary effect of copy of filed document.

One or more of the following is conclusive evidence that the original document has been filed with the division:

(1) a certificate attached to a copy of a document filed by the division; or

(2) an endorsement, seal, or stamp placed on the copy by the division.

Section 21. Section **16-6a-113** is enacted to read:

16-6a-113. Certificates issued by the division.

(1) Any person may apply to the division for:

(a) a certificate of existence for a domestic nonprofit corporation;

(b) a certificate of authorization for a foreign nonprofit corporation; or

(c) a certificate that sets forth any facts of record in the division.

(2) A certificate of existence or certificate of authorization sets forth:

(a) (i) the domestic nonprofit corporation's corporate name; or

(ii) the foreign nonprofit corporation's corporate name registered in this state;

(b) that:

(i) (A) (I) the domestic nonprofit corporation is incorporated under the law of this state; and

(II) the date of its incorporation; or

(B) the foreign nonprofit corporation is authorized to conduct affairs in this state;

(c) that all fees, taxes, and penalties owed to this state have been paid, if:

(i) payment is reflected in the records of the division; and

(ii) nonpayment affects the existence or authorization of the domestic or foreign nonprofit corporation;

(d) that the domestic or foreign nonprofit corporation's most recent annual report required by Section 16-6a-1607 has been filed by the division;

(e) that articles of dissolution have not been filed by the division; and

(f) other facts of record in the division that may be requested by the applicant.

(3) Subject to any qualification stated in the certificate, a certificate issued by the division may be relied upon as conclusive evidence of the facts set forth in the certificate.

Section 22. Section **16-6a-114** is enacted to read:

16-6a-114. Penalty for signing false documents.

(1) It is unlawful for a person to sign a document:

(a) knowing it to be false in any material respect; and

(b) with intent that the document be delivered to the division for filing.

(2) An offense under this section is a class A misdemeanor punishable by a fine not to exceed the fine specified in Section 76-3-301.

Section 23. Section **16-6a-115** is enacted to read:

16-6a-115. Liability to third parties.

The directors, officers, employees, and members of a nonprofit corporation are not personally liable in their capacity as directors, officers, employees, and members for the acts, debts, liabilities, or obligations of a nonprofit corporation.

Section 24. Section **16-6a-116** is enacted to read:

16-6a-116. Private foundations.

Except as otherwise specified in the articles of incorporation, a nonprofit corporation that is a private foundation as defined in Section 509(a), Internal Revenue Code:

(1) shall make distributions for each taxable year at the time and in the manner as not to subject the nonprofit corporation to tax under Section 4942, Internal Revenue Code;

(2) may not engage in any act of self-dealing as defined in Section 4941(d), Internal Revenue Code;

(3) may not retain any excess business holdings as defined in Section 4943(c), Internal Revenue Code;

(4) may not make any investments that would subject the nonprofit corporation to taxation under Section 4944, Internal Revenue Code; and

(5) may not make any taxable expenditures as defined in Section 4945(d), Internal Revenue

Code.

Section 25. Section **16-6a-117** is enacted to read:

16-6a-117. Judicial relief.

(1) (a) A director, officer, delegate, or member may petition the applicable district court to take an action provided in Subsection (1)(b) if for any reason it is impractical or impossible for a nonprofit corporation in the manner prescribed by this chapter, its articles of incorporation, or bylaws to:

- (i) call or conduct a meeting of its members, delegates, or directors; or
- (ii) otherwise obtain the consent of its members, delegates, or directors.

(b) If a petition is filed under Subsection (1)(a), the applicable district court, in the manner it finds fair and equitable under the circumstances, may order that:

- (i) a meeting be called; or
- (ii) a written consent or other form of obtaining the vote of members, delegates, or directors be authorized.

(c) For purposes of this section, the applicable district court is:

- (i) the district court of the county in this state where the nonprofit corporation's principal office is located; or
- (ii) if the nonprofit corporation has no principal office in this state:
 - (A) the district court of the county in which the registered office is located; or
 - (B) if the nonprofit corporation has no registered office in this state, the district court in and for Salt Lake County.

(2) (a) A court specified in Subsection (1) shall, in an order issued pursuant to this section, provide for a method of notice reasonably designed to give actual notice to all persons who would be entitled to notice of a meeting held pursuant to this chapter, the articles of incorporation, or bylaws.

(b) The method of notice described in Subsection (1) complies with this section whether or not the method of notice:

- (i) results in actual notice to all persons described in Subsection (2)(a); or

(ii) conforms to the notice requirements that would otherwise apply.

(c) In a proceeding under this section, the court may determine who are the members or directors of a nonprofit corporation.

(3) An order issued pursuant to this section may dispense with any requirement relating to the holding of or voting at meetings or obtaining votes that would otherwise be imposed by this chapter, the articles of incorporation, or bylaws, including any requirement as to:

(a) quorums; or

(b) the number or percentage of votes needed for approval.

(4) (a) Whenever practical, any order issued pursuant to this section shall limit the subject matter of a meeting or other form of consent authorized to items the resolution of which will or may enable the nonprofit corporation to continue managing its affairs without further resort to this section, including amendments to the articles of incorporation or bylaws.

(b) Notwithstanding Subsection (4)(a), an order under this section may authorize the obtaining of whatever votes and approvals are necessary for the dissolution, merger, or sale of assets of a nonprofit corporation.

(5) A meeting or other method of obtaining the vote of members, delegates, or directors conducted pursuant to and that complies with an order issued under this section:

(a) is for all purposes a valid meeting or vote, as the case may be; and

(b) shall have the same force and effect as if it complied with every requirement imposed by this chapter, the articles of incorporation, or bylaws.

(6) In addition to a meeting held under this section, a court-ordered meeting may be held pursuant to Section 16-6a-703.

Section 26. Section **16-6a-118** is enacted to read:

16-6a-118. Electronic documents.

(1) Notwithstanding the other requirements of this chapter except subject to Section 16-6a-106, the division may by rule permit a writing required or permitted to be filed with the division under this chapter:

(a) to be delivered, mailed, or filed:

(i) in an electronic medium; or
(ii) by electronic transmission; or
(b) to be signed by photographic, electronic, or other means prescribed by rule, except that a writing signed in an electronic medium shall be signed by digital signature in accordance with Title 46, Chapter 3, Utah Digital Signature Act.

(2) The division may by rule provide for any writing required or permitted to be prepared, delivered, or mailed by the division under this chapter to be prepared, delivered, or mailed:

- (a) in an electronic medium; or
(b) by electronic transmission.

Section 27. Section **16-6a-201** is enacted to read:

Part 2. Incorporation

16-6a-201. Incorporators.

(1) One or more persons may act as incorporators of a nonprofit corporation by delivering to the division for filing articles of incorporation meeting the requirements of Section 16-6a-202.

(2) An incorporator who is a natural person shall be 18 years of age or older.

Section 28. Section **16-6a-202** is enacted to read:

16-6a-202. Articles of incorporation.

(1) The articles of incorporation shall set forth:

- (a) one or more purposes for which the nonprofit corporation is organized;
(b) a corporate name for the nonprofit corporation that satisfies the requirements of Section 16-6a-401;
(c) the street address of the nonprofit corporation's initial registered office;
(d) the name and signature of its initial registered agent at the office listed in Subsection (1)(c), which registered agent shall meet the requirements of Section 16-6a-501;
(e) the name and address of each incorporator;
(f) whether or not the nonprofit corporation will have voting members;
(g) if the nonprofit corporation is to issue shares of stock evidencing membership in the nonprofit corporation or interests in water or other property rights:

- (i) the aggregate number of shares that the nonprofit corporation has authority to issue; and
- (ii) if the shares are to be divided into classes:
 - (A) the number of shares of each class;
 - (B) the designation of each class; and
 - (C) a statement of the preferences, limitations, and relative rights of the shares of each class;

and

(h) provisions not inconsistent with law regarding the distribution of assets on dissolution.

(2) The articles of incorporation may but need not set forth:

(a) the names and addresses of the one or more individuals who are to serve as the initial

directors:

(b) provisions not inconsistent with law regarding:

(i) managing the business and regulating the affairs of the nonprofit corporation;

(ii) defining, limiting, and regulating the powers of:

(A) the nonprofit corporation;

(B) the board of directors of the nonprofit corporation; and

(C) the members of the nonprofit corporation or any class of members;

(iii) whether cumulative voting will be permitted; and

(iv) the characteristics, qualifications, rights, limitations, and obligations attaching to each or any class of members; and

(c) any provision that under this chapter is permitted to be in the articles of incorporation or required or permitted to be set forth in the bylaws, including elective provisions that in accordance with this chapter shall be included in the articles of incorporation to be effective.

(3) (a) It is sufficient under Subsection (1)(a) to state, either alone or with other purposes, that the purpose of the corporation is to engage in any lawful act for which a nonprofit corporation may be organized under this chapter.

(b) If the articles of incorporation include the statement described in Subsection (3)(a), all lawful acts and activities shall be within the purposes of the nonprofit corporation, except for express limitations, if any.

(4) The articles of incorporation need not set forth any corporate power enumerated in this chapter.

(5) The articles of incorporation shall:

(a) be signed by each incorporator; and

(b) meet the filing requirements of Section 16-6a-105.

(6) The appointment of the registered agent shall be signed by the registered agent on:

(a) the articles of incorporation; or

(b) an acknowledgment attached to the articles of incorporation.

(7) (a) If this chapter conditions any matter upon the presence of a provision in the bylaws, the condition is satisfied if the provision is present either in:

(i) the articles of incorporation; or

(ii) the bylaws.

(b) If this chapter conditions any matter upon the absence of a provision in the bylaws, the condition is satisfied only if the provision is absent from both:

(i) the articles of incorporation; and

(ii) the bylaws.

Section 29. Section **16-6a-203** is enacted to read:

16-6a-203. Incorporation.

(1) A nonprofit corporation is incorporated, and its corporate existence begins:

(a) when the articles of incorporation are filed by the division; or

(b) if a delayed effective date is specified pursuant to Subsection 16-6a-108(2), on the delayed effective date, unless a certificate of withdrawal is filed prior to the delayed effective date.

(2) The filing of the articles of incorporation by the division is conclusive proof that all conditions precedent to incorporation have been satisfied, except in a proceeding by the state to:

(a) cancel or revoke the incorporation; or

(b) involuntarily dissolve the nonprofit corporation.

Section 30. Section **16-6a-204** is enacted to read:

16-6a-204. Liability for preincorporation transactions.

All persons purporting to act as or on behalf of a nonprofit corporation, knowing there is no incorporation under this chapter, are jointly and severally liable for all liabilities created while so acting.

Section 31. Section **16-6a-205** is enacted to read:

16-6a-205. Organization of the corporation.

(1) After incorporation:

(a) if initial directors are named in the articles of incorporation, the initial directors may hold an organizational meeting, at the call of a majority of the initial directors, to complete the organization of the nonprofit corporation by:

(i) appointing officers;

(ii) adopting bylaws, if desired; and

(iii) carrying on any other business brought before the meeting; or

(b) if initial directors are not named in the articles of incorporation, until directors are elected, the incorporators may hold an organizational meeting at the call of a majority of the incorporators to do whatever is necessary and proper to complete the organization of the nonprofit corporation, including:

(i) the election of directors and officers;

(ii) the appointment of members; and

(iii) the adoption and amendment of bylaws.

(2) Action required or permitted by this chapter to be taken by incorporators at an organizational meeting may be taken without a meeting if the action taken is evidenced by one or more written consents that:

(a) describe the action taken; and

(b) are signed by each incorporator.

(3) An organizational meeting may be held in or out of this state.

Section 32. Section **16-6a-206** is enacted to read:

16-6a-206. Bylaws.

(1) (a) The board of directors of a nonprofit corporation may adopt initial bylaws for the

nonprofit corporation.

(b) If no directors of the nonprofit corporation have been elected, the incorporators may adopt initial bylaws for the nonprofit corporation.

(c) If neither the incorporators nor the board of directors have adopted initial bylaws, the members, if any, may adopt initial bylaws.

(2) The bylaws of a nonprofit corporation may contain any provision for managing the business and regulating the affairs of the nonprofit corporation that is not inconsistent with law or the articles of incorporation, including management and regulation of the nonprofit corporation in the event of an emergency.

Section 33. Section **16-6a-207** is enacted to read:

16-6a-207. Incorporation of cooperative association.

(1) (a) If a cooperative association meets the requirements of Subsection (1)(b), it may:

(i) be incorporated under this chapter; and

(ii) use the word "cooperative" as part of its corporate or business name.

(b) A cooperative association described in Subsection (1)(a):

(i) may not be:

(A) an association subject to the insurance or credit union laws of this state;

(B) a health insurance purchasing association as defined in Section 31A-34-103; or

(C) a health insurance purchasing alliance licensed under Title 31A, Chapter 34, Voluntary Health Insurance Purchasing Alliance Act; and

(ii) shall state in its articles of incorporation that:

(A) a member may not have more than one vote regardless of the number or amount of stock or membership capital owned by the member unless voting is based in whole or in part on the volume of patronage of the member with the cooperative association; and

(B) savings in excess of dividends and additions to reserves and surplus shall be distributed or allocated to members or patrons on the basis of patronage.

(2) (a) Any cooperative association incorporated in accordance with Subsection (1):

(i) shall have all the rights and be subject to the limitations provided in Section 3-1-11; and

(ii) may pay dividends on its stock, if it has stock, subject to the limitations of Section 3-1-11.

(b) The articles of incorporation or the bylaws of a cooperative association incorporated in accordance with Subsection (1) may provide for:

(i) the establishment and alteration of voting districts;

(ii) the election of delegates to represent:

(A) the districts described in Subsection (2)(b)(i); and

(B) the members of the districts described in Subsection (2)(b)(i);

(iii) the establishment and alteration of director districts; and

(iv) the election of directors to represent the districts described in Subsection (2)(b)(ii) by:

(A) the members of the districts; or

(B) delegates elected by the members.

(3) (a) A corporation organized under Title 3, Chapter 1, Uniform Agricultural Cooperative Association Act, may convert itself into a cooperative association subject to this chapter by adopting appropriate amendments to its articles of incorporation by which:

(i) it elects to become subject to this chapter; and

(ii) makes changes in its articles of incorporation that are:

(A) required by this chapter; and

(B) any other changes permitted by this chapter.

(b) The amendments described in Subsection (3)(a) shall be adopted and filed in the manner provided by the law then applicable to the cooperative nonprofit corporation.

(4) Notwithstanding Subsection (1), a health insurance purchasing association may not use the word "cooperative" or "alliance" but may use the word "association."

(5) Except as otherwise provided in this Section 16-6a-207, a cooperative nonprofit corporation shall be subject to this chapter.

Section 34. Section **16-6a-301** is enacted to read:

Part 3. Purposes And Powers

16-6a-301. Purposes.

(1) Every nonprofit corporation incorporated under this chapter that in its articles of

incorporation has a statement meeting the requirements of Subsection 16-6a-202(3)(a) may engage in any lawful activity except for express limitations set forth in the articles of incorporation.

(2) (a) A nonprofit corporation engaging in an activity that is subject to regulation under another statute of this state may incorporate under this chapter only if permitted by, and subject to all limitations of, the other statute.

(b) Without limiting Subsection (2)(a) and subject to Subsection (2)(c), an organization may not be organized under this chapter if the organization is subject to the:

(i) insurance laws of this state; or

(ii) laws governing depository institutions as defined in Section 7-1-103.

(c) Notwithstanding Subsection (2)(b), the following may be organized under this chapter:

(i) a health insurance purchasing association as defined in Section 31A-34-103; and

(ii) a health insurance purchasing alliance licensed under Title 31A, Chapter 34, Voluntary Health Insurance Purchasing Alliance Act.

Section 35. Section **16-6a-302** is enacted to read:

16-6a-302. General powers.

Unless its articles of incorporation provide otherwise, and except as restricted by the Utah Constitution, every nonprofit corporation has:

(1) perpetual duration and succession in its corporate name; and

(2) the same powers as an individual to do all things necessary or convenient to carry out its permitted activities and affairs, including without limitation the power to:

(a) sue and be sued, complain and defend in its corporate name;

(b) (i) have a corporate seal, that may be altered at will; and

(ii) use the corporate seal, or a facsimile of the corporate seal, by impressing or affixing it or in any other manner reproducing it;

(c) make and amend bylaws, not inconsistent with its articles of incorporation or with the laws of this state, for managing and regulating the affairs of the nonprofit corporation;

(d) purchase, receive, lease, or otherwise acquire, and own, hold, improve, use, and otherwise deal with, real or personal property, or any legal or equitable interest in property, wherever

located;

(e) sell, convey, mortgage, pledge, lease, exchange, and otherwise dispose of all or any part of its property and assets;

(f) purchase, receive, subscribe for, or otherwise acquire, own, hold, vote, use, sell, mortgage, lend, pledge, or otherwise dispose of, and deal in and with shares or other interests in, or obligations of, any other entity;

(g) make contracts and guarantees, incur liabilities, borrow money, issue its notes, bonds, and other obligations and secure any of its obligations by mortgage or pledge of any of its property, assets, franchises, or income;

(h) lend money, invest and reinvest its funds, and receive and hold real and personal property as security for repayment, except that a nonprofit corporation may not lend money to or guarantee the obligation of a director or officer of the nonprofit corporation;

(i) be an agent, associate, fiduciary, manager, member, partner, promoter, or trustee of, or to hold any similar position with, any entity;

(j) conduct its business, locate offices, and exercise the powers granted by this chapter within or without this state;

(k) (i) elect directors and appoint officers, employees, and agents of the nonprofit corporation;

(ii) define the duties of the directors, officers, employees, and agents; and

(iii) fix the compensation of the directors, officers, employees, and agents;

(l) pay compensation in a reasonable amount to its directors, officers, or members for services rendered, including:

(i) payment of advances for expenses reasonably expected to be incurred; and

(ii) expenses relating to relocation of directors, officers, or employees of a nonprofit corporation;

(m) pay pensions and establish pension plans, pension trusts, profit sharing plans, share bonus plans, share option plans, and benefit or incentive plans for any or all of its current or former directors, officers, employees, and agents;

(n) make contributions to or for any person for:
(i) the public welfare;
(ii) charitable, religious, scientific, or educational purposes; or
(iii) for other purposes that further the corporate interest;
(o) pursue any lawful activity that will aid governmental policy;
(p) make payments or do any other act, not inconsistent with law, that furthers the business and affairs of the nonprofit corporation;

(q) establish rules governing the conduct of the business and affairs of the nonprofit corporation in the event of an emergency;

(r) impose dues, assessments, admission fees, and transfer fees upon its members;

(s) (i) establish conditions for admission of members;

(ii) admit members; and

(iii) issue or transfer membership;

(t) carry on a business;

(u) indemnify current or former directors, officers, employees, fiduciaries, or agents as provided in this chapter;

(v) limit the liability of its directors as provided in Subsection 16-6a-823(1);

(w) cease its corporate activities and dissolve; and

(x) issue certificates or stock evidencing:

(i) membership in the nonprofit corporation; or

(ii) interests in water or other property rights.

Section 36. Section **16-6a-303** is enacted to read:

16-6a-303. Emergency powers.

(1) In anticipation of or during an emergency defined in Subsection (4), the board of directors may:

(a) modify lines of succession to accommodate the incapacity of any director, officer, employee, or agent;

(b) adopt bylaws to be effective only in an emergency; and

(c) (i) relocate the principal office;
(ii) designate an alternative principal office or regional office; or
(iii) authorize officers to relocate or designate an alternative principal office or regional office.

(2) During an emergency as defined in Subsection (4), unless emergency bylaws provide otherwise:

(a) notice of a meeting of the board of directors:
(i) need be given only to those directors whom it is practicable to reach; and
(ii) may be given in any practicable manner, including by publication or radio; and
(b) the officers of the nonprofit corporation present at a meeting of the board of directors may be considered to be directors for the meeting, in order of rank and within the same rank in order of seniority, as necessary to achieve a quorum.

(3) Corporate action taken in good faith during an emergency under this section to further the ordinary business affairs of the nonprofit corporation:

(a) binds the nonprofit corporation; and
(b) may not be the basis for the imposition of liability on any director, officer, employee, or agent of the nonprofit corporation on the ground that the action was not an authorized corporate action.

(4) An emergency exists for purposes of this section if a quorum of the directors cannot readily be obtained because of a catastrophic event.

Section 37. Section **16-6a-304** is enacted to read:

16-6a-304. Ultra vires.

(1) Except as provided in Subsection (2), the validity of corporate action may not be challenged on the ground that the nonprofit corporation lacks or lacked power to act.

(2) A nonprofit corporation's power to act may be challenged:

(a) in a proceeding against the nonprofit corporation to enjoin the act brought by:
(i) a director; or
(ii) one or more voting members in a derivative proceeding;

(b) in a proceeding by or in the right of the nonprofit corporation, whether directly, derivatively, or through a receiver, trustee, or other legal representative, against an incumbent or former director, officer, employee, or agent of the nonprofit corporation; or

(c) in a proceeding by the attorney general under Section 16-6a-1414.

(3) In a proceeding under Subsection (2)(a) to enjoin an unauthorized corporate act, the court may:

(a) enjoin or set aside the act, if:

(i) it would be equitable to do so; and

(ii) all affected persons are parties to the proceeding; and

(b) award damages for loss, including anticipated profits, suffered by the nonprofit corporation or another party because of an injunction issued under this section.

Section 38. Section **16-6a-401** is enacted to read:

Part 4. Name

16-6a-401. Corporate name.

(1) The corporate name of a nonprofit corporation:

(a) may, but need not contain:

(i) the word "corporation," "incorporated," or "company"; or

(ii) an abbreviation of "corporation," "incorporated," or "company";

(b) may not contain any word or phrase that indicates or implies that it is organized for any purpose other than one or more of the purposes contained in Section 16-6a-301 and its articles of incorporation;

(c) except as authorized by the division under Subsection (2), shall be distinguishable, as defined in Section 16-10a-401, from:

(i) the name of any domestic corporation incorporated in this state;

(ii) the name of any foreign corporation authorized to conduct affairs in this state;

(iii) the name of any domestic nonprofit corporation incorporated in this state;

(iv) the name of any foreign nonprofit corporation authorized to conduct affairs in this state;

(v) the name of any domestic limited liability company formed in this state;

- (vi) the name of any foreign limited liability company authorized to conduct affairs in this state;
- (vii) the name of any limited partnership formed or authorized to conduct affairs in this state;
- (viii) any name that is reserved under Section 16-6a-402 or 16-10a-402;
- (ix) the name of any entity that has registered its name under Section 42-2-5;
- (x) the name of any trademark or service mark registered by the division; or
- (xi) any assumed name filed under Section 42-2-5;
- (d) shall be, for purposes of recordation, either translated into English or transliterated into letters of the English alphabet if it is not in English;
- (e) without the written consent of the United States Olympic Committee, may not contain the words:
- (i) "Olympic";
- (ii) "Olympiad"; or
- (iii) "Citius Altius Fortius"; and
- (f) without the written consent of the State Board of Regents issued in accordance with Section 53B-5-114, may not contain the words:
- (i) "university";
- (ii) "college"; or
- (iii) "institute."
- (2) The division may authorize the use of the name applied for if:
- (a) the name is distinguishable from one or more of the names and trademarks described in Subsection (1)(c) that are on the division's records; or
- (b) if the applicant delivers to the division a certified copy of the final judgment of a court of competent jurisdiction establishing the applicant's right to use the name applied for in this state registered or reserved with the division pursuant to the laws of this state.
- (3) A corporation may use the name of another domestic or foreign corporation that is used in this state if:
- (a) the other corporation is incorporated or authorized to conduct affairs in this state; and

(b) the proposed user corporation:

(i) has merged with the other corporation;

(ii) has been formed by reorganization of the other corporation; or

(iii) has acquired all or substantially all of the assets, including the corporate name, of the other corporation.

(4) (a) A nonprofit corporation may apply to the division for authorization to file its articles of incorporation under, or to register or reserve, a name that is not distinguishable upon the division's records from one or more of the names described in Subsection (1).

(b) The division shall approve the application filed under Subsection (4)(a) if:

(i) the other person whose name is not distinguishable from the name under which the applicant desires to file, or which the applicant desires to register or reserve:

(A) consents to the filing, registration, or reservation in writing; and

(B) submits an undertaking in a form satisfactory to the division to change its name to a name that is distinguishable from the name of the applicant; or

(ii) the applicant delivers to the division a certified copy of the final judgment of a court of competent jurisdiction establishing the applicant's right to make the requested filing in this state under the name applied for.

(5) Only names of corporations may contain the:

(a) words "corporation," or "incorporated"; or

(b) abbreviation "corp." or "inc."

(6) The division may not issue a certificate of incorporation to any association violating the provisions of this section.

Section 39. Section **16-6a-402** is enacted to read:

16-6a-402. Reserved name.

(1) (a) Any person may apply for the reservation of the exclusive use of a corporate name by delivering an application for reservation of name to the division for filing, setting forth:

(i) the name and address of the applicant; and

(ii) the name proposed to be reserved.

(b) (i) If the division finds that the name applied for would be available for corporate use, the division shall reserve the name for the applicant's exclusive use for 120 days from the day the division receives the application under Subsection (1)(a).

(ii) A reservation may be renewed.

(2) The owner of a reserved corporate name may transfer the reservation to any other person by delivery to the division for filing of a notice of the transfer that has been executed by the owner and states:

(a) the reserved name;

(b) the name of the owner; and

(c) the name and address of the transferee.

(3) (a) The corporate name set forth in a document described in Subsection (3)(b) is reserved until the document:

(i) becomes effective pursuant to Subsection 16-6a-108(2); or

(ii) is withdrawn under Subsection 16-6a-108(3).

(b) Subsection (3)(a) applies to a document that:

(i) is one of the following:

(A) articles of incorporation;

(B) articles of amendment to articles of incorporation;

(C) restated articles of incorporation; or

(D) articles of merger;

(ii) specifies a delayed effective date pursuant to Subsection 16-6a-108(2);

(iii) sets forth a new corporate name; and

(iv) is filed by the division.

Section 40. Section **16-6a-403** is enacted to read:

16-6a-403. Corporate name -- Limited rights.

The authorization granted by the division to file articles of incorporation under a corporate name or to reserve a name does not:

(1) abrogate or limit the law governing unfair competition or unfair trade practices;

(2) derogate from the common law the principles of equity or the statutes of this state or of the United States with respect to the right to acquire and protect names and trademarks; or

(3) create an exclusive right in geographic or generic terms contained within a name.

Section 41. Section **16-6a-501** is enacted to read:

Part 5. Office and Agent

16-6a-501. Registered office and registered agent.

(1) A nonprofit corporation shall continuously maintain in this state:

(a) a registered office; and

(b) a registered agent.

(2) The registered agent required under Subsection (1) shall be:

(a) an individual:

(i) who resides in this state; and

(ii) whose business office is identical with the registered office;

(b) a domestic corporation or domestic nonprofit corporation whose business office is identical with the registered office;

(c) a foreign corporation or foreign nonprofit corporation:

(i) authorized to conduct affairs in this state; and

(ii) whose business office is identical with the registered office; or

(iii) a domestic limited liability company or foreign limited liability company:

(A) authorized to conduct affairs in this state; and

(B) whose business office is identical with the registered office.

(3) A corporation may not serve as its own registered agent.

Section 42. Section **16-6a-502** is enacted to read:

16-6a-502. Change of registered office or registered agent.

(1) (a) A nonprofit corporation may change its registered office or registered agent by delivering to the division for filing a statement of change that sets forth:

(i) the name of the nonprofit corporation;

(ii) the street address of its current registered office;

(iii) if the registered office is to be changed, the street address of the new registered office;
(iv) the name of its current registered agent;
(v) if the registered agent is to be changed:
(A) the name of the new registered agent; and
(B) the new registered agent's signed written consent to the appointment; and
(vi) that, after the change or changes are made, the street addresses of its registered office and the business office of its registered agent will be identical.

(b) Notwithstanding Subsection (1)(a)(v), the new registered agent's signed written consent to the appointment may be:

- (i) on the statement of change; or
- (ii) in a document accompanying the statement of change.

(2) If the street address of a registered agent's business office is changed, the street address of the registered office of any nonprofit corporation for which the person is the registered agent may be changed by:

- (a) giving written notice to the nonprofit corporation of the change; and
- (b) delivering to the division for filing a statement of change that:

- (i) complies with the requirements of Subsection (1);
- (ii) recites that the nonprofit corporation has been notified of the change, as provided in

Section 16-6a-103; and

- (iii) is signed by the registered agent.

Section 43. Section **16-6a-503** is enacted to read:

16-6a-503. Resignation of registered agent.

(1) (a) A registered agent of a nonprofit corporation may resign the agency appointment by delivering to the division for filing a statement of resignation pursuant to this section.

(b) The statement of resignation required by Subsection (1)(a) shall be:

- (i) signed by the resigning registered agent; and
- (ii) accompanied by two exact or conformed copies of the statement of resignation.

(c) The statement of resignation may include a statement that the registered office is also

discontinued.

(d) The statement of resignation shall include a declaration that notice of the resignation has been given to the nonprofit corporation at the principal office shown on the most recent annual report of the nonprofit corporation on file with the division.

(2) After filing the statement of resignation required by Subsection (1), the division shall mail:

(a) one copy of the statement of resignation to the registered office of the corporation; and

(b) one copy of the statement of resignation to the nonprofit corporation at the principal office if known by the division.

(3) Thirty-one days after the date on which the statement of resignation is filed:

(a) the agency appointment is terminated; and

(b) the registered office is discontinued, if so provided.

Section 44. Section **16-6a-504** is enacted to read:

16-6a-504. Service on corporation.

(1) A nonprofit corporation's registered agent is the nonprofit corporation's agent for service of process, notice, or demand required or permitted by law to be served on the nonprofit corporation.

(2) (a) If a nonprofit corporation has no registered agent, or the agent cannot with reasonable diligence be served, the nonprofit corporation may be served by registered or certified mail, return receipt requested, addressed to the nonprofit corporation at its principal office, if known by the division.

(b) Service is perfected under this Subsection (2) at the earliest of:

(a) the date the nonprofit corporation receives the process, notice, or demand;

(b) the date shown on the return receipt, if signed on behalf of the nonprofit corporation; or

(c) five days after mailing.

(3) This section does not prescribe the only means, or necessarily the required means, of serving a nonprofit corporation.

Section 45. Section **16-6a-601** is enacted to read:

Part 6. Members

16-6a-601. No requirement of members.

A nonprofit corporation is not required to have members.

Section 46. Section **16-6a-602** is enacted to read:

16-6a-602. Number and classes.

(1) A nonprofit corporation may have:

(a) one or more classes of voting or nonvoting members; and

(b) one or more members in each class described in Subsection (1)(a).

(2) The bylaws may designate:

(a) the class or classes of members; and

(b) the qualifications and rights of the members of each class of members including the matters or items for which voting members may vote.

Section 47. Section **16-6a-603** is enacted to read:

16-6a-603. Admission.

(1) The bylaws may establish criteria or procedures for admission of members.

(2) A person may not be admitted as a member without the person's consent.

(3) A nonprofit corporation may issue certificates evidencing membership in the nonprofit corporation.

Section 48. Section **16-6a-604** is enacted to read:

16-6a-604. Consideration.

Unless otherwise provided by the bylaws, a nonprofit corporation may admit members:

(1) for no consideration; or

(2) for such consideration as is determined by the board of directors.

Section 49. Section **16-6a-605** is enacted to read:

16-6a-605. Differences in rights and obligations of members.

Unless otherwise provided by this chapter or the bylaws:

(1) all voting members shall have the same rights and obligations with respect to voting and all other matters that this chapter specifically reserves to voting members; and

(2) with respect to matters not reserved under Subsection (1), all members, including voting members, shall have the same rights and obligations.

Section 50. Section **16-6a-606** is enacted to read:

16-6a-606. Transfers.

(1) Unless otherwise provided by the bylaws, a member of a nonprofit corporation may not transfer:

(a) a membership; or

(b) any right arising from a membership.

(2) Where transfer rights have been provided, a restriction on transfer rights may not be binding with respect to a member holding a membership issued prior to the adoption of the restriction, unless the restriction is approved by the affected member.

Section 51. Section **16-6a-607** is enacted to read:

16-6a-607. Creditor's action against member.

A proceeding may not be brought by a creditor to reach the liability, if any, of a member to the nonprofit corporation unless:

(1) (a) final judgment has been rendered in favor of the creditor against the nonprofit corporation; and

(b) execution has been returned unsatisfied in whole or in part; or

(2) a proceeding described in Subsection (1) would be useless.

Section 52. Section **16-6a-608** is enacted to read:

16-6a-608. Resignation.

(1) Unless otherwise provided by the bylaws, a member may resign at any time.

(2) The resignation of a member does not relieve the member from any obligation or commitment the member may have to the nonprofit corporation incurred or made prior to resignation.

Section 53. Section **16-6a-609** is enacted to read:

16-6a-609. Termination, expulsion, or suspension.

(1) Unless otherwise provided by the bylaws, except pursuant to a procedure that is fair and reasonable:

(a) a member of a nonprofit corporation may not be expelled or suspended; and

(b) membership in a nonprofit corporation may not be terminated or suspended.

(2) For purposes of this section, a procedure is fair and reasonable when either:

(a) the bylaws or a written policy of the board of directors set forth a procedure that provides:

(i) not less than 15 days prior written notice of:

(A) the expulsion, suspension, or termination; and

(B) the reasons for the expulsion, suspension, or termination; and

(ii) an opportunity for the member to be heard:

(A) orally or in writing;

(B) not less than five days before the effective date of the expulsion, suspension, or termination; and

(C) by one or more persons authorized to decide that the proposed expulsion, termination, or suspension not take place; or

(b) it is fair and reasonable taking into consideration all of the relevant facts and circumstances.

(3) For purposes of this section, any written notice given by mail shall be given by first-class or certified mail sent to the last address of the member shown on the nonprofit corporation's records.

(4) Unless otherwise provided by the bylaws, any proceeding challenging an expulsion, suspension, or termination, including a proceeding in which defective notice is alleged, shall be commenced within one year after the effective date of the expulsion, suspension, or termination.

(5) Unless otherwise provided by the bylaws, a member who has been expelled or suspended may be liable to the nonprofit corporation for dues, assessments, or fees as a result of an obligation incurred or commitment made prior to the effective date of the expulsion or suspension.

Section 54. Section **16-6a-610** is enacted to read:

16-6a-610. Purchase of memberships.

(1) Unless otherwise provided by the bylaws, a nonprofit corporation may not purchase the membership of a member:

(a) who resigns; or

(b) whose membership is terminated.

(2) (a) If so authorized, a nonprofit corporation may purchase the membership of a member who resigns or whose membership is terminated for the amount and pursuant to the conditions set forth in or authorized by:

(i) its bylaws; or

(ii) agreement with the affected member.

(b) A payment permitted under Subsection (2)(a) may not violate:

(i) Section 16-6a-1301; or

(ii) any other provision of this chapter.

Section 55. Section **16-6a-611** is enacted to read:

16-6a-611. No property right.

A member does not have a vested property right resulting from any provision in the articles of incorporation or the bylaws, including any provision relating to management, control, purpose, or duration of the nonprofit corporation.

Section 56. Section **16-6a-612** is enacted to read:

16-6a-612. Derivative suits.

(1) Without affecting the right of a member or director to bring a proceeding against a nonprofit corporation or its directors or officers, a proceeding may be brought in the right of a nonprofit corporation to procure a judgment in its favor by:

(a) a voting member; or

(b) a director.

(2) In a proceeding described in Subsection (1), each complainant shall be a voting member or director at the time of bringing the proceeding.

(3) (a) A complaint in a proceeding brought in the right of a nonprofit corporation shall be verified and allege with particularity:

(i) the demand made, if any, to obtain action by the directors; and

(ii) (A) why the complainant could not obtain the action; or

(B) why the complainant did not make the demand.

(b) If a demand for action was made and the nonprofit corporation's investigation of the

demand is in progress when the proceeding is filed, the court may stay the suit until the investigation is completed.

(4) (a) (i) In any action instituted in the right of a nonprofit corporation by one or more voting members, the court having jurisdiction over the matter may, at any time before final judgment, require the plaintiff to give security for the costs and reasonable expenses that may be:

(A) directly attributable to and incurred by the nonprofit corporation in the defense of the action; or

(B) incurred by other parties named as defendant for which the nonprofit corporation may become legally liable.

(ii) Notwithstanding Subsection (4)(a)(i), the security for the costs and reasonable expenses may not include fees of attorneys.

(b) The amount of the security permitted under this Subsection (4) may from time to time be increased or decreased, in the discretion of the court, upon showing that the security provided has or may become inadequate or excessive.

(c) If the court finds that the action was commenced without reasonable cause, the nonprofit corporation shall have recourse to the security permitted under this Subsection (4) in the amount the court shall determine upon the termination of the action.

(5) A procedure pursuant to this section shall comply with the applicable rules set forth in the Utah Rules of Civil Procedure, as amended from time to time.

(6) An action may not be commenced in this state by a member of a foreign nonprofit corporation in the right of a foreign nonprofit corporation unless the action is permitted by the laws of the state under which the foreign nonprofit corporation is incorporated.

Section 57. Section **16-6a-613** is enacted to read:

16-6a-613. Delegates.

(1) A nonprofit corporation may provide in its bylaws for delegates having some or all of the authority of members.

(2) The bylaws may set forth provisions relating to:

(a) the characteristics, qualifications, rights, limitations, and obligations of delegates,

including their selection and removal:

- (b) calling, noticing, holding, and conducting meetings of delegates; and
- (c) carrying on corporate activities during and between meetings of delegates.

Section 58. Section **16-6a-701** is enacted to read:

Part 7. Member Meetings and Voting

16-6a-701. Annual and regular meetings.

(1) Unless the bylaws eliminate the requirement for holding an annual meeting, a nonprofit corporation that has voting members shall hold a meeting of the voting members annually:

- (a) at a time and date stated in or fixed in accordance with the bylaws; or
- (b) if a time and date is not stated in or fixed in accordance with the bylaws, at a time and date stated in or fixed in accordance with a resolution of the board of directors.

(2) A nonprofit corporation with members may hold regular membership meetings at:

- (a) a time and date stated in or fixed in accordance with the bylaws; or
- (b) if a time and date is not stated in or fixed in accordance with the bylaws, at a time and date stated in or fixed in accordance with a resolution of the board of directors.

(3) (a) Annual and regular membership meetings may be held in or out of this state:

- (i) at the place stated in or fixed in accordance with the bylaws; or
- (ii) if no place is stated in or fixed in accordance with the bylaws, at a place stated in or fixed in accordance with a resolution of the board of directors.

(b) If no place is stated or fixed in accordance with Subsection (3)(a), annual and regular meetings shall be held at the nonprofit corporation's principal office.

(4) The failure to hold an annual or regular meeting at the time and date determined pursuant to Subsection (1) does not:

- (a) affect the validity of any corporate action; or
- (b) work a forfeiture or dissolution of the nonprofit corporation.

Section 59. Section **16-6a-702** is enacted to read:

16-6a-702. Special meetings.

(1) A nonprofit corporation shall hold a special meeting of its members:

(a) on call of:
(i) its board of directors; or
(ii) the person or persons authorized by the bylaws or resolution of the board of directors to call a special meeting; or

(b) unless otherwise provided by the bylaws, if the nonprofit corporation receives one or more written demands for the meeting, that:

(i) state the purpose or purposes for which the meeting is to be held; and
(ii) are signed and dated by members holding at least 10% of all the votes entitled pursuant to the bylaws to be cast on any issue proposed to be considered at the meeting.

(2) If not otherwise fixed under Section 16-6a-703 or 16-6a-706, the record date for determining the members entitled to demand a special meeting pursuant to Subsection (1)(b) is the later of the date of:

(a) the earliest of any of the demands pursuant to which the meeting is called; or
(b) the date that is 60 days before the date the first of the demands is received by the nonprofit corporation.

(3) If a notice for a special meeting demanded pursuant to Subsection (1)(b) is not given pursuant to Section 16-6a-704 within 30 days after the date the written demand is delivered to a corporate officer, regardless of the requirements of Subsection (4), a person signing the demand may:

(a) set the time and place of the meeting; and
(b) give notice pursuant to Section 16-6a-704.

(4) (a) A special meeting of the members may be held in or out of this state:

(i) at the place stated in or fixed in accordance with the bylaws; or
(ii) if a place is not stated in or fixed in accordance with the bylaws, at a place stated in or fixed in accordance with a resolution of the board of directors.

(b) If no place is stated or fixed in accordance with Subsection (3)(a) or (4)(a), a special meeting of the members shall be held at the nonprofit corporation's principal office.

(5) Unless otherwise provided by the bylaws, only business within the purposes described in the notice of the meeting required by Subsection 16-6a-704(3) may be conducted at a special meeting

of the members.

Section 60. Section **16-6a-703** is enacted to read:

16-6a-703. Court-ordered meeting.

(1) (a) Upon an application described in Subsection (1)(b) the holding of a meeting of the members may be summarily ordered by:

(i) the district court of the county in this state where the nonprofit corporation's principal office is located; or

(ii) if the nonprofit corporation has no principal office in this state:

(A) by the district court of the county in which its registered office is located; or

(B) if the nonprofit corporation has no registered office, by the district court in and for Salt Lake County.

(b) Subsection (1)(a) applies to an application by:

(i) any voting member entitled to participate in an annual meeting if an annual meeting was required to be held and was not held within 15 months after:

(A) the corporation's last annual meeting; or

(B) if there has been no annual meeting, the date of incorporation; or

(ii) any person who participated in a call of or demand for a special meeting effective under Subsection 16-6a-702(1), if:

(A) notice of the special meeting was not given within 30 days after:

(I) the date of the call; or

(II) the date the last of the demands necessary to require the calling of the meeting was received by the nonprofit corporation pursuant to Subsection 16-6a-702(1)(b); or

(B) the special meeting was not held in accordance with the notice.

(2) A court that orders a meeting under Subsection (1) may:

(a) fix the time and place of the meeting;

(b) determine the members entitled to participate in the meeting;

(c) specify a record date for determining members entitled to notice of and to vote at the meeting;

- (d) prescribe the form and content of the notice of the meeting;
- (e) (i) fix the quorum required for specific matters to be considered at the meeting; or
- (ii) direct that the votes represented at the meeting constitute a quorum for action on the specific matters to be considered at the meeting; and
- (f) enter other orders necessary or appropriate to accomplish the holding of the meeting.

Section 61. Section **16-6a-704** is enacted to read:

16-6a-704. Notice of meeting.

(1) A nonprofit corporation shall give to each member entitled to vote at the meeting notice consistent with its bylaws of meetings of members in a fair and reasonable manner.

(2) Any notice that conforms to the requirements of Subsection (3) is fair and reasonable, but other means of giving notice may also be fair and reasonable when all the circumstances are considered.

(3) Notice is fair and reasonable if:

(a) the nonprofit corporation notifies its members of the place, date, and time of each annual, regular, and special meeting of members:

(i) no fewer than ten days before the meeting;

(ii) if notice is mailed by other than first-class or registered mail, no fewer than 30 days, nor more than 60 days before the meeting date; and

(iii) if notice is given by newspaper as provided in Subsection 16-6a-103(2), by publication three separate times with:

(A) the first of the publications no more than 60 days before the meeting date; and

(B) the last of the publications no fewer than ten days before the meeting date;

(b) the notice of an annual or regular meeting includes a description of any matter or matters

that:

(i) must be approved by the members; or

(ii) for which the members' approval is sought under Sections 16-6a-825, 16-6a-910, 16-6a-1003, 16-6a-1010, 16-6a-1102, 16-6a-1202, and 16-6a-1402; and

(c) unless otherwise provided by this chapter or the bylaws, the notice of a special meeting

includes a description of the purpose or purposes for which the meeting is called.

(4) (a) Unless otherwise provided by the bylaws, if an annual, regular, or special meeting of members is adjourned to a different date, time, or place, notice need not be given of the new date, time, or place, if the new date, time, or place is announced at the meeting before adjournment.

(b) Notwithstanding Subsection (4)(a), if a new record date for the adjourned meeting is or shall be fixed under Section 16-6a-706, notice of the adjourned meeting shall be given under this section to the members of record as of the new record date.

(5) When giving notice of an annual, regular, or special meeting of members, a nonprofit corporation shall give notice of a matter a member intends to raise at the meeting if:

(a) requested in writing to do so by a person entitled to call a special meeting; and

(b) the request is received by the secretary or president of the nonprofit corporation at least ten days before the nonprofit corporation gives notice of the meeting.

Section 62. Section **16-6a-705** is enacted to read:

16-6a-705. Waiver of notice.

(1) (a) A member may waive any notice required by this chapter or by the bylaws, whether before or after the date or time stated in the notice as the date or time when any action will occur or has occurred.

(b) A waiver described in Subsection (1) shall be:

(i) in writing;

(ii) signed by the member entitled to the notice; and

(iii) delivered to the nonprofit corporation for:

(A) inclusion in the minutes; or

(B) filing with the corporate records.

(c) The delivery and filing required under Subsection (1)(b) may not be conditions of the effectiveness of the waiver.

(2) A member's attendance at a meeting:

(a) waives objection to lack of notice or defective notice of the meeting, unless the member at the beginning of the meeting objects to holding the meeting or transacting business at the meeting

because of lack of notice or defective notice; and

(b) waives objection to consideration of a particular matter at the meeting that is not within the purpose or purposes described in the meeting notice, unless the member objects to considering the matter when it is presented.

Section 63. Section **16-6a-706** is enacted to read:

16-6a-706. Record date -- Determining members entitled to notice and vote.

(1) (a) The bylaws may fix or provide the manner of fixing a date as the record date for determining the members entitled to notice of a members' meeting.

(b) If the bylaws do not fix or provide for fixing a record date described in Subsection (1)(a), the board of directors may fix a future date as the record date.

(c) If a record date is not fixed in accordance with Subsection (1)(a) or (b), members entitled to notice of the meeting are the members of the nonprofit corporation:

(i) at the close of business on the business day preceding the day on which notice is given;

or

(ii) if notice is waived, at the close of business on the business day preceding the day on which the meeting is held.

(2) (a) The bylaws may fix or provide the manner of fixing a date as the record date for determining the members entitled to vote at a members' meeting.

(b) If the bylaws do not fix or provide for fixing a record date described in Subsection (2)(a), the board may fix a future date as the record date.

(c) If a record date is not fixed in accordance with Subsection (2)(a) or (b), members entitled to vote at the meeting are the members of the nonprofit corporation:

(i) on the date of the meeting; and

(ii) who are otherwise eligible to vote.

(3) (a) The bylaws may fix or provide the manner for determining a date as the record date for the purpose of determining the members entitled to exercise any rights in respect of any other lawful action.

(b) If the bylaws do not fix or provide for fixing a record date described in Subsection (3)(a),

the board of directors may fix a future date as the record date.

(c) If a record date is not fixed in accordance with Subsection (3)(a) or (b), members entitled to exercise the right are members of the corporation at the later of:

(i) the close of business on the day on which the board adopts the resolution relating to the exercise of the right; or

(ii) the close of business on the 60th day before the date of the exercise of the right.

(4) A record date fixed under this section may not be more than 70 days before the meeting or action requiring a determination of members occurs.

(5) (a) A determination of members entitled to notice of or to vote at a meeting of members is effective for any adjournment of the meeting unless the board of directors fixes a new date for determining the right to notice or the right to vote.

(b) The board of directors shall fix a new date for determining the right to notice or the right to vote if the meeting is adjourned to a date more than 120 days after the record date for determining members entitled to notice of the original meeting.

(6) If a court orders a meeting adjourned to a date more than 120 days after the date fixed for the original meeting, the court may:

(a) provide that the original record date for notice or voting continues in effect; or

(b) fix a new record date for notice or voting.

Section 64. Section **16-6a-707** is enacted to read:

16-6a-707. Action without meeting.

(1) Unless otherwise provided in the articles of incorporation and Subsection (5), and subject to the limitations of Subsection 16-6a-1704(3), any action that may be taken at any annual or special meeting of members may be taken without a meeting and without prior notice, if one or more consents in writing, setting forth the action taken, are signed by the members having not less than the minimum voting power that would be necessary to authorize or take the action at a meeting at which all members entitled to vote on the action were present and voted.

(2) (a) Unless the written consents of all members entitled to vote have been obtained, notice of any member approval without a meeting shall be given at least ten days before the consummation

of the transaction, action, or event authorized by the member action to:

(i) those members entitled to vote who have not consented in writing; and

(ii) those members:

(A) not entitled to vote; and

(B) to whom this chapter requires that notice of the proposed action be given.

(b) The notice required pursuant to Subsection (2)(a) shall contain or be accompanied by the same material that under this chapter would have been required to be sent in a notice of meeting at which the proposed action would have been submitted to the members for action.

(3) Any member giving a written consent, or the member's proxyholder or a personal representative of the member or their respective proxyholder, may revoke the consent by a signed writing:

(a) describing the action;

(b) stating that the member's prior consent is revoked; and

(c) that is received by the nonprofit corporation prior to the effectiveness of the action.

(4) (a) A member action taken pursuant to this section is not effective unless all written consents on which the nonprofit corporation relies for the taking of an action pursuant to Subsection (1) are:

(i) received by the nonprofit corporation within a 60-day period; and

(ii) not revoked pursuant to Subsection (3).

(b) Action taken by the members pursuant to this section is effective:

(i) as of the date the last written consent necessary to effect the action is received by the nonprofit corporation; or

(ii) if all of the written consents necessary to effect the action specify a later date as the effective date of the action, the later date specified in the consents.

(c) If the nonprofit corporation has received written consents in accordance with Subsection (1) signed by all members entitled to vote with respect to the action, the effective date of the member action may be any date that is specified in all the written consents as the effective date of the member action.

(d) Unless otherwise provided by the bylaws, a written consent under this Subsection (4) may be received by the nonprofit corporation by electronically transmitted facsimile or other form of communication providing the corporation with a complete copy of the written consent, including a copy of the signature to the written consent.

(5) Notwithstanding Subsection (1), directors may not be elected by written consent except by unanimous written consent of all shares entitled to vote for the election of directors.

(6) If not otherwise determined under Section 16-6a-703 or 16-6a-706, the record date for determining the members entitled to take action without a meeting or entitled to be given notice under Subsection (2) of action taken without a meeting is the date the first member delivers to the nonprofit corporation a writing upon which the action is taken pursuant to Subsection (1).

(7) Action taken under this section has the same effect as action taken at a meeting of members and may be so described in any document.

Section 65. Section **16-6a-708** is enacted to read:

16-6a-708. Meetings by telecommunication.

(1) Unless otherwise provided in the bylaws, any or all of the members may participate in an annual, regular, or special meeting of the members by, or the meeting may be conducted through the use of, any means of communication by which all persons participating in the meeting may hear each other during the meeting.

(2) A member participating in a meeting by a means permitted under Subsection (1) is considered to be present in person at the meeting.

Section 66. Section **16-6a-709** is enacted to read:

16-6a-709. Action by written ballot.

(1) Unless otherwise provided by the bylaws, any action that may be taken at any annual, regular, or special meeting of members may be taken without a meeting if the nonprofit corporation delivers a written ballot to every member entitled to vote on the matter.

(2) A written ballot described in Subsection (1) shall:

(a) set forth each proposed action; and

(b) provide an opportunity to vote for or against each proposed action.

(3) Approval by written ballot pursuant to this section shall be valid only when:

(a) the number of votes cast by ballot equals or exceeds the quorum required to be present at a meeting authorizing the action; and

(b) the number of approvals equals or exceeds the number of votes that would be required to approve the matter at a meeting at which the total number of votes cast was the same as the number of votes cast by ballot.

(4) All solicitations for votes by written ballot shall:

(a) indicate the number of responses needed to meet the quorum requirements;

(b) state the percentage of approvals necessary to approve each matter other than election of directors;

(c) specify the time by which a ballot must be received by the nonprofit corporation in order to be counted; and

(d) be accompanied by written information sufficient to permit each person casting the ballot to reach an informed decision on the matter.

(5) Unless otherwise provided by the bylaws, a written ballot may not be revoked.

(6) Action taken under this section has the same effect as action taken at a meeting of members and may be described as such in any document.

Section 67. Section **16-6a-710** is enacted to read:

16-6a-710. Members' list for meeting and action by written ballot.

(1) (a) Unless otherwise provided by the bylaws, after fixing a record date for a notice of a meeting or for determining the members entitled to take action by written ballot, a nonprofit corporation shall prepare a list of the names of all its members who are:

(i) (A) entitled to notice of the meeting; and

(B) to vote at the meeting; or

(ii) to take the action by written ballot.

(b) The list required by Subsection (1) shall:

(i) be arranged by voting group;

(ii) be alphabetical within each voting group;

(iii) show the address of each member entitled to notice of, and to vote at, the meeting or to take such action by written ballot; and

(iv) show the number of votes each member is entitled to vote at the meeting or by written ballot.

(2) (a) If prepared in connection with a meeting of the members, the members' list required by Subsection (1) shall be available for inspection by any member entitled to vote at the meeting:

(i) (A) beginning the earlier of:

(I) ten days before the meeting for which the list was prepared; or

(II) two business days after notice of the meeting is given; and

(B) continuing through the meeting, and any adjournment of the meeting; and

(ii) (A) at the nonprofit corporation's principal office; or

(B) at a place identified in the notice of the meeting in the city where the meeting will be held.

(b) (i) The nonprofit corporation shall make the members' list required by Subsection (1) available at the meeting.

(ii) Any member entitled to vote at the meeting or an agent or attorney of a member entitled to vote at the meeting is entitled to inspect the members' list at any time during the meeting or any adjournment.

(c) A member entitled to vote at the meeting, or an agent or attorney of a member entitled to vote at the meeting, is entitled on written demand to inspect and, subject to Subsection 16-6a-1602(3) and Subsections 16-6a-1603(2) and (3), to copy a members' list required by Subsection (1):

(i) during:

(A) regular business hours; and

(B) the period it is available for inspection; and

(ii) at the member's expense.

(3) (a) On application of a member of a nonprofit corporation, the applicable district court may take an action described in Subsection (3)(b) if the nonprofit corporation refuses to allow a member entitled to vote at the meeting or by the written ballot, or an agent or attorney of a member

entitled to vote at the meeting or by the written ballot, to inspect or copy the members' list during the period it is required to be available for inspection under Subsection (2).

(b) Under Subsection (3)(a), the applicable court may:

(i) summarily order the inspection or copying of the members' list at the nonprofit corporation's expense; and

(ii) until the inspection or copying is complete:

(A) postpone or adjourn the meeting for which the members' list was prepared; or

(B) postpone the time when the nonprofit corporation must receive written ballots in connection with which the members' list was prepared.

(c) For purposes of this Subsection (3), the applicable court is:

(i) the district court of the county in this state where the nonprofit corporation's principal office is located; or

(ii) if the nonprofit corporation has no principal office in this state:

(A) the district court of the county where its registered office is located; or

(B) if the nonprofit corporation has no registered office in this state, the district court in and for Salt Lake County.

(4) If a court orders inspection or copying of a members' list pursuant to Subsection (3), unless the nonprofit corporation proves that it refused inspection or copying of the list in good faith because it had a reasonable basis for doubt about the right of the member or the agent or attorney of the member to inspect or copy the members' list:

(a) the court shall order the nonprofit corporation to pay the member's costs, including reasonable counsel fees, incurred in obtaining the order;

(b) the court may order the nonprofit corporation to pay the member for any damages the member incurred; and

(c) the court may grant the member any other remedy afforded the member by law.

(5) If a court orders inspection or copying of a members' list pursuant to Subsection (3), the court may impose reasonable restrictions on the use or distribution of the list by the member.

(6) Failure to prepare or make available the members' list does not affect the validity of action

taken at the meeting or by means of the written ballot.

Section 68. Section **16-6a-711** is enacted to read:

16-6a-711. Voting entitlement generally.

(1) Unless otherwise provided by the bylaws:

(a) only voting members shall be entitled to vote with respect to any matter required or permitted under this chapter to be submitted to a vote of the members;

(b) all references in this chapter to votes of or voting by the members shall be considered to permit voting only by the voting members; and

(c) voting members shall be entitled to vote with respect to all matters required or permitted under this chapter to be submitted to a vote of the members.

(2) Unless otherwise provided by the bylaws, each member entitled to vote shall be entitled to one vote on each matter submitted to a vote of members.

(3) Unless otherwise provided by the bylaws, if a membership stands of record in the names of two or more persons, the membership's acts with respect to voting shall have the following effect:

(a) if only one votes, the act binds all; and

(b) if more than one votes, the vote shall be divided on a pro-rata basis.

Section 69. Section **16-6a-712** is enacted to read:

16-6a-712. Proxies.

(1) Unless otherwise provided by the bylaws, a member entitled to vote may vote or otherwise act in person or by proxy.

(2) Without limiting the manner in which a member may appoint a proxy to vote or otherwise act for the member, Subsections (2)(a) and (b) constitute valid means of appointing a proxy.

(a) A member may appoint a proxy by signing an appointment form, either personally or by the member's attorney-in-fact.

(b) (i) Subject to Subsection (2)(b)(ii) a member may appoint a proxy by transmitting or authorizing the transmission of a telegram, teletype, facsimile, or other electronic transmission providing a written statement of the appointment to:

(A) the proxy;

(B) a proxy solicitor;

(C) a proxy support service organization;

(D) another person duly authorized by the proxy to receive appointments as agent for the proxy; or

(E) the nonprofit corporation.

(ii) An appointment transmitted under Subsection (2)(b)(i) shall set forth or be transmitted with written evidence from which it can be determined that the member transmitted or authorized the transmission of the appointment.

(3) (a) An appointment of a proxy is effective against the nonprofit corporation when received by the nonprofit corporation, including receipt by the nonprofit corporation of an appointment transmitted pursuant to Subsection (2)(b).

(b) An appointment is valid for 11 months unless a different period is expressly provided in the appointment form.

(4) Any complete copy, including an electronically transmitted facsimile, of an appointment of a proxy may be substituted for or used in lieu of the original appointment for any purpose for which the original appointment could be used.

(5) An appointment of a proxy is revocable by the member.

(6) An appointment of a proxy is revoked by the person appointing the proxy:

(a) attending any meeting and voting in person; or

(b) signing and delivering to the secretary or other officer or agent authorized to tabulate proxy votes:

(i) a writing stating that the appointment of the proxy is revoked; or

(ii) a subsequent appointment form.

(7) The death or incapacity of the member appointing a proxy does not affect the right of the nonprofit corporation to accept the proxy's authority unless notice of the death or incapacity is received by the secretary or other officer or agent authorized to tabulate votes before the proxy exercises the proxy's authority under the appointment.

(8) Subject to Section 16-6a-713 and to any express limitation on the proxy's authority

appearing on the appointment form, a nonprofit corporation is entitled to accept the proxy's vote or other action as that of the member making the appointment.

Section 70. Section **16-6a-713** is enacted to read:

16-6a-713. Nonprofit corporation's acceptance of votes.

(1) If the name signed on any of the following corresponds to the name of a member, the nonprofit corporation, if acting in good faith, may accept and give the following effect as the act of the member:

- (a) a vote;
- (b) a consent;
- (c) a written ballot;
- (d) a waiver;
- (e) a proxy appointment; or
- (f) a proxy appointment revocation.

(2) If the name signed on any writing listed in Subsection (1) does not correspond to the name of a member, the nonprofit corporation, if acting in good faith, may accept the writing and give it effect as the act of the member if:

- (a) (i) the member is an entity; and
- (ii) the name signed purports to be that of an officer or agent of the entity;
- (b) (i) the name signed purports to be that of an administrator, executor, guardian, or conservator representing the member; and
- (ii) evidence of fiduciary status acceptable to the nonprofit corporation with respect to the writing listed in Subsection (1) that:
 - (A) has been requested by the nonprofit corporation; and
 - (B) is presented to the nonprofit corporation;
- (c) (i) the name signed purports to be that of a receiver or trustee in bankruptcy of the member; and
- (ii) evidence of this status acceptable to the nonprofit corporation with respect to the writing listed in Subsection (1) that:

(A) has been requested by the nonprofit corporation; and
(B) is presented to the nonprofit corporation;
(d) (i) the name signed purports to be that of a pledgee, beneficial owner, or attorney-in-fact of the member; and

(ii) evidence acceptable to the nonprofit corporation of the signatory's authority to sign for the member has been presented with respect to the writing listed in Subsection (1) that:

(A) has been requested by the nonprofit corporation; and

(B) is presented to the nonprofit corporation;

(e) (i) two or more persons are the member as cotenants or fiduciaries;

(ii) the name signed purports to be the name of at least one of the cotenants or fiduciaries;

and

(iii) the person signing appears to be acting on behalf of all the cotenants or fiduciaries; or

(f) the acceptance of the writing listed in Subsection (1) is otherwise proper under rules established by the nonprofit corporation that are not inconsistent with this Subsection (2).

(3) The nonprofit corporation is entitled to reject a writing listed in Subsection (1) if the secretary or other officer or agent authorized to tabulate votes, acting in good faith, has reasonable basis for doubt about:

(a) the validity of the signature on it; or

(b) the signatory's authority to sign for the member.

(4) The nonprofit corporation and its officer or agent who accepts or rejects a writing listed in Subsection (1) in good faith and in accordance with the standards of this section are not liable in damages for the consequences of the acceptance or rejection.

(5) Corporate action based on the acceptance or rejection of a writing listed in Subsection (1) under this section is valid unless a court of competent jurisdiction determines otherwise.

Section 71. Section **16-6a-714** is enacted to read:

16-6a-714. Quorum and voting requirements for voting groups.

(1) (a) Members entitled to vote as a separate voting group may take action on a matter at a meeting only if a quorum of those members exists with respect to that matter.

(b) Unless otherwise provided in this chapter or the bylaws, a majority of the votes entitled to be cast on the matter by the voting group constitutes a quorum of that voting group for action on that matter.

(2) Once a member is represented for any purpose at a meeting, including the purpose of determining that a quorum exists, the member is considered present for quorum purposes:

(a) for the remainder of the meeting; and

(b) for any adjournment of that meeting, unless:

(i) otherwise provided in the bylaws; or

(ii) a new record date is or shall be set for that adjourned meeting.

(3) Action on a matter other than the election of directors by a voting group is approved if:

(a) a quorum exists;

(b) the votes cast within the voting group favoring the action exceed the votes cast within the voting group opposing the action; and

(c) a greater number of affirmative votes is not required by this chapter or the bylaws.

(4) The election of directors is governed by Section 16-6a-717.

Section 72. Section **16-6a-715** is enacted to read:

16-6a-715. Action by single and multiple voting groups.

(1) If this chapter or the bylaws provide for voting by a single voting group on a matter, action on that matter is taken when voted upon by that voting group as provided in Section 16-6a-714.

(2) (a) If this chapter or the bylaws provide for voting by two or more voting groups on a matter, action on that matter is taken only when voted upon by each of those voting groups counted separately as provided in Section 16-6a-714.

(b) One voting group may vote on a matter even though no action is taken by another voting group entitled to vote on the matter.

Section 73. Section **16-6a-716** is enacted to read:

16-6a-716. Greater quorum or voting requirements.

(1) The articles of incorporation or bylaws may provide for a greater:

(a) quorum requirement for members or voting groups than is provided for by this chapter;

or

(b) voting requirement for members or voting groups than is provided by this chapter.

(2) An amendment to the articles of incorporation or the bylaws that adds, changes, or deletes a greater quorum or voting requirement shall meet the same quorum requirement and be adopted by the same vote and voting groups required to take action under the greater of the quorum and voting requirements:

(a) then in effect; or

(b) proposed to be adopted.

Section 74. Section **16-6a-717** is enacted to read:

16-6a-717. Voting for directors -- Cumulative voting.

(1) If the bylaws provide for cumulative voting for directors by the voting members, voting members may cumulatively vote, by:

(a) multiplying the number of votes the voting members are entitled to cast by the number of directors for whom they are entitled to vote; and

(b) (i) casting the product for a single candidate; or

(ii) distributing the product among two or more candidates.

(2) Cumulative voting is not authorized at a particular meeting unless:

(a) the meeting notice or statement accompanying the notice states that cumulative voting will take place; or

(b) (i) a voting member gives notice during the meeting and before the vote is taken of the voting member's intent to cumulate votes; and

(ii) if one voting member gives this notice, all other voting members participating in the election are entitled to cumulate their votes without giving further notice.

(3) (a) In an election of multiple directors, that number of candidates equaling the number of directors to be elected, having the highest number of votes cast in favor of their election, are elected to the board of directors.

(b) When only one director is being voted upon, the affirmative vote of a majority of the

members constituting a quorum at the meeting at which the election occurs shall be required for election to the board of directors.

Section 75. Section **16-6a-718** is enacted to read:

16-6a-718. Voting agreements.

(1) Two or more members may provide for the manner in which they will vote by signing an agreement for that purpose.

(2) A voting agreement created under this section is specifically enforceable.

Section 76. Section **16-6a-801** is enacted to read:

Part 8. Directors and Officers

16-6a-801. Requirement for board of directors.

(1) A nonprofit corporation shall have a board of directors.

(2) (a) Except as provided in this chapter or Subsection (2)(b), all corporate powers shall be exercised by or under the authority of, and the business and affairs of the nonprofit corporation managed under the direction of, the board of directors.

(b) (i) The articles of incorporation may authorize one or more persons to exercise some or all of the powers that would otherwise be exercised by the board of directors.

(ii) To the extent the articles of incorporation authorize a person other than the board of directors to have the authority and perform a duty of the board of directors, the directors shall be relieved to that extent from such authority and duty.

(3) The board of directors may be divided into classes, each with such respective rights and duties as the articles of incorporation or bylaws may provide.

(4) The board of directors and the directors may be known by any other name designated in the bylaws.

Section 77. Section **16-6a-802** is enacted to read:

16-6a-802. Qualifications of directors.

(1) A director shall be:

(a) a natural person; and

(b) 18 years of age or older.

(2) The bylaws may prescribe other qualifications for directors in addition to the requirements under Subsection (1).

(3) A director need not be a resident of this state or a member of the nonprofit corporation unless required by the bylaws.

Section 78. Section **16-6a-803** is enacted to read:

16-6a-803. Number of directors.

(1) A board of directors shall consist of three or more directors, with the number specified in, or fixed in accordance with, the bylaws.

(2) (a) The bylaws may establish, or permit the voting members or the board of directors to establish, a range for the size of the board of directors by fixing a minimum and maximum number of directors.

(b) If a range for the size of the board of directors is established in accordance with Subsection (2)(a), the number of directors may be fixed or changed from time to time within the range by:

(i) the voting members; or

(ii) the board of directors.

Section 79. Section **16-6a-804** is enacted to read:

16-6a-804. Election, appointment, and designation of directors.

(1) (a) All directors except the initial directors shall be elected, appointed, or designated as provided in the bylaws.

(b) If no method of election, appointment, or designation is set forth in the bylaws, the directors other than the initial directors shall be elected as follows:

(i) if the nonprofit corporation has voting members, all directors except the initial directors shall be elected by the voting members at each annual meeting of the voting members; and

(ii) if the nonprofit corporation does not have voting members, all directors except the initial directors shall be elected by the board of directors.

(2) (a) The bylaws may authorize the election of all or a specified number or portion of directors, except the initial directors, by:

- (i) the members of one or more voting groups of voting members; or
- (ii) the directors of one or more authorized classes of directors.
- (b) A class of voting members or directors entitled to elect one or more directors is a separate voting group for purposes of the election of directors.
- (3) The bylaws may authorize the appointment of one or more directors by one or more persons, or by the holder of the office or position, as the bylaws shall specify.
- (4) The bylaws may provide for election of directors by voting members or delegates:
 - (a) on the basis of chapter or other organizational unit;
 - (b) by region or other geographic unit;
 - (c) by preferential voting; or
 - (d) by any other reasonable method.
- (5) For purposes of this chapter, designation occurs when the bylaws:
 - (a) name an individual as a director; or
 - (b) designate the holder of some office or position as a director.

Section 80. Section **16-6a-805** is enacted to read:

16-6a-805. Terms of directors generally.

- (1) (a) The bylaws may specify the terms of directors.
- (b) In the absence of any term specified in the bylaws, the term of each director shall be one year.
- (c) Unless otherwise provided in the bylaws, directors may be elected for successive terms.
- (2) Unless otherwise provided in the bylaws, the terms of the initial directors of a nonprofit corporation expire at the first meeting at which directors are elected or appointed.
- (3) A decrease in the number of directors or in the term of office does not shorten an incumbent director's term.
- (4) Unless otherwise provided in the bylaws, the term of a director filling a vacancy expires at the end of the unexpired term that the director is filling, except that if a director is elected to fill a vacancy created by reason of an increase in the number of directors, the term of the director shall expire on the later of:

(a) the next meeting at which directors are elected; or
(b) the term, if any, designated for the director at the time of the creation of the position being filled.

(5) Despite the expiration of a director's term, a director continues to serve until:

(a) the director's successor is elected, appointed, or designated and qualifies; or

(b) there is a decrease in the number of directors.

(6) A director whose term has expired may deliver to the division for filing a statement to that effect pursuant to Section 16-6a-1608.

Section 81. Section **16-6a-806** is enacted to read:

16-6a-806. Staggered terms for directors.

(1) The bylaws may provide for staggering the terms of directors by dividing the total number of directors into any number of groups.

(2) The terms of office of the several groups permitted under Subsection (1) need not be uniform.

Section 82. Section **16-6a-807** is enacted to read:

16-6a-807. Resignation of directors.

(1) A director may resign at any time by giving written notice of resignation to the nonprofit corporation.

(2) A resignation of a director is effective when the notice is received by the nonprofit corporation unless the notice specifies a later effective date.

(3) A director who resigns may deliver to the division for filing a statement that the director resigns pursuant to Section 16-6a-1608.

(4) The failure to attend or meet obligations shall be effective as a resignation at the time of the board of director's vote to confirm the failure if:

(a) at the beginning of a director's term on the board, the bylaws provide that a director may be considered to have resigned for failing to:

(i) attend a specified number of board meetings; or

(ii) meet other specified obligations of directors; and

(b) the failure to attend or meet obligations is confirmed by an affirmative vote of the board of directors.

Section 83. Section **16-6a-808** is enacted to read:

16-6a-808. Removal of directors.

(1) Directors elected by voting members or directors may be removed as provided in Subsections (1)(a) through (g).

(a) The voting members may remove one or more directors elected by them with or without cause unless the bylaws provide that directors may be removed only for cause.

(b) If a director is elected by a voting group, only that voting group may participate in the vote to remove that director.

(c) A director may be removed only if the number of votes cast to remove the director would be sufficient to elect the director at a meeting to elect directors.

(d) A director elected by voting members may be removed by the voting members only:

(i) at a meeting called for the purpose of removing that director; and

(ii) if the meeting notice states that the purpose, or one of the purposes, of the meeting is removal of the director.

(e) An entire board of directors may be removed under Subsections (1)(a) through (d).

(f) (i) Except as provided in Subsection (1)(f)(ii), a director elected by the board of directors may be removed with or without cause by the vote of a majority of the directors then in office or such greater number as is set forth in the bylaws.

(ii) A director elected by the board of directors to fill the vacancy of a director elected by the voting members may be removed without cause by the voting members but not the board of directors.

(g) A director who is removed pursuant to this section may deliver to the division for filing a statement to that effect pursuant to Section 16-6a-1608.

(2) Unless otherwise provided in the bylaws:

(a) an appointed director may be removed without cause by the person appointing the director;

(b) the person described in Subsection (2)(a) shall remove the director by giving written

notice of the removal to:

(i) the director; and

(ii) the nonprofit corporation; and

(c) unless the written notice described in Subsection (2)(b) specifies a future effective date,

a removal is effective when the notice is received by both:

(i) the director to be removed; and

(ii) the nonprofit corporation.

(3) A designated director, as provided in Subsection 16-6a-804(5), may be removed by an amendment to the bylaws deleting or changing the designation.

Section 84. Section **16-6a-809** is enacted to read:

16-6a-809. Removal of directors by judicial proceeding.

(1) (a) The applicable court may remove a director in a proceeding commenced either by the nonprofit corporation or by voting members holding at least 10% of the votes entitled to be cast in the election of the director's successor if the court finds that:

(i) the director engaged in:

(A) fraudulent or dishonest conduct; or

(B) gross abuse of authority or discretion with respect to the nonprofit corporation; or

(ii) (A) a final judgment has been entered finding that the director has violated a duty set forth in Part 4; and

(B) removal is in the best interests of the nonprofit corporation.

(b) For purposes of this Subsection (1), the applicable court is the:

(i) district court of the county in this state where a nonprofit corporation's principal office is located; or

(ii) if the nonprofit corporation has no principal office in this state:

(A) the district court of the county in which its registered office is located; or

(B) if the nonprofit corporation has no registered office, the district court for Salt Lake County.

(2) The court that removes a director may bar the director for a period prescribed by the

court from:

- (a) reelection;
- (b) reappointment; or
- (c) designation.

(3) If voting members commence a proceeding under Subsection (1), the voting members shall make the nonprofit corporation a party defendant.

(4) A director who is removed pursuant to this section may deliver to the division for filing a statement to that effect pursuant to Section 16-6a-1608.

Section 85. Section **16-6a-810** is enacted to read:

16-6a-810. Vacancy on board.

(1) Unless otherwise provided in the bylaws, if a vacancy occurs on a board of directors, including a vacancy resulting from an increase in the number of directors:

- (a) the voting members, if any, may fill the vacancy;
- (b) the board of directors may fill the vacancy; or

(c) if the directors remaining in office constitute fewer than a quorum of the board of directors, the remaining directors may fill the vacancy by the affirmative vote of a majority of all the directors remaining in office.

(2) Notwithstanding Subsection (1), unless otherwise provided in the bylaws, if the vacant office was held by a director elected by a voting group of voting members:

(a) if one or more of the remaining directors were elected by the same voting group of voting members:

(i) only the directors elected by the same voting group of voting members are entitled to vote to fill the vacancy if it is filled by directors; and

(ii) the directors elected by the same voting group of voting members may fill the vacancy by the affirmative vote of a majority of the directors remaining in office; and

(b) only that voting group is entitled to vote to fill the vacancy if it is filled by the voting members.

(3) Notwithstanding Subsection (1) and unless otherwise provided in the bylaws, only the

directors elected by the same voting group of directors are entitled to vote to fill the vacancy if:

(a) the vacant office was held by a director elected by a voting group of directors; and

(b) any persons in that voting group remain as directors.

(4) Unless otherwise provided in the bylaws, if a vacant office was held by an appointed director, only the person who appointed the director may fill the vacancy.

(5) (a) If a vacant office was held by a designated director, as provided in Subsection 16-6a-804(5), the vacancy shall be filled as provided in the bylaws.

(b) In the absence of an applicable bylaw provision, the vacancy may not be filled by the board.

(6) A vacancy that will occur at a specific later date by reason of a resignation effective at a later date under Subsection 16-6a-807(2) or otherwise, may be filled before the vacancy occurs, but the new director may not take office until the vacancy occurs.

Section 86. Section **16-6a-811** is enacted to read:

16-6a-811. Compensation of directors.

Unless otherwise provided in the bylaws, the board of directors may authorize and fix the compensation of directors.

Section 87. Section **16-6a-812** is enacted to read:

16-6a-812. Meetings.

(1) The board of directors may hold regular or special meetings in or out of this state.

(2) (a) Unless otherwise provided in the bylaws, the board of directors may permit any director to participate in a regular or special meeting by, or conduct the meeting through the use of, any means of communication by which all directors participating may hear each other during the meeting.

(b) A director participating in a meeting by a means permitted under Subsection (1) is considered to be present in person at the meeting.

Section 88. Section **16-6a-813** is enacted to read:

16-6a-813. Action without meeting.

(1) Unless otherwise provided in the bylaws, any action required or permitted by this chapter

to be taken at a board of directors' meeting may be taken without a meeting if each and every member of the board in writing either:

(a) votes for the action; or

(b) (i) (A) votes against the action; or

(B) abstains from voting; and

(ii) waives the right to demand that action not be taken without a meeting.

(2) Action is taken under this section only if the affirmative vote for the action equals or exceeds the minimum number of votes that would be necessary to take the action at a meeting at which all of the directors then in office were present and voted.

(3) (a) An action taken pursuant to this section may not be effective unless the nonprofit corporation receives writings:

(i) describing the action taken;

(ii) otherwise satisfying the requirements of Subsection (1);

(iii) signed by all directors; and

(iv) not revoked pursuant to Subsection (4).

(b) Unless otherwise provided by the bylaws, a writing described in Subsection (3)(a) may be received by the nonprofit corporation by electronically transmitted facsimile or other form of wire or wireless communication providing the nonprofit corporation with a complete copy of the document, including a copy of the signature on the document.

(c) A director's right to demand that action not be taken without a meeting shall be considered to have been waived if the nonprofit corporation receives a writing satisfying the requirements of Subsection (1) that has been signed by the director and not revoked pursuant to Subsection (4).

(d) Action taken pursuant to this section shall be effective when the last writing necessary to effect the action is received by the nonprofit corporation, unless the writings describing the action taken set forth a different effective date.

(4) If the writing is received by the nonprofit corporation before the last writing necessary to effect the action is received by the nonprofit corporation, any director who has signed a writing

pursuant to this section may revoke the writing by a writing signed and dated by the director:

(a) describing the action; and

(b) stating that the director's prior vote with respect to the writing is revoked.

(5) Action taken pursuant to this section:

(a) has the same effect as action taken at a meeting of directors; and

(b) may be described as an action taken at a meeting of directors in any document.

Section 89. Section **16-6a-814** is enacted to read:

16-6a-814. Notice of meeting.

(1) Unless otherwise provided in this chapter or in the bylaws, regular meetings of the board of directors may be held without notice of the date, time, place, or purpose of the meeting.

(2) (a) Unless the bylaws provide for a longer or shorter period, special meetings of the board of directors shall be preceded by at least two days notice of the date, time, and place of the meeting.

(b) The notice required by Subsection (2)(a) need not describe the purpose of the special meeting unless otherwise required by this chapter or the bylaws.

Section 90. Section **16-6a-815** is enacted to read:

16-6a-815. Waiver of notice.

(1) (a) A director may waive any notice of a meeting before or after the time and date of the meeting stated in the notice.

(b) Except as provided by Subsection (2), the waiver shall:

(i) be in writing;

(ii) signed by the director entitled to the notice; and

(iii) be delivered to the nonprofit corporation for filing with the corporate records.

(c) The delivery and filing required by Subsection (1)(b) may not be conditions of the effectiveness of the waiver.

(2) A director's attendance at or participation in a meeting waives any required notice to that director of the meeting unless:

(a) (i) at the beginning of the meeting or promptly upon the director's later arrival, the director objects to holding the meeting or transacting business at the meeting because of lack of

notice or defective notice; and

(ii) after objecting, the director does not vote for or assent to action taken at the meeting; or

(b) if special notice was required of a particular purpose pursuant to Subsection

16-6a-814(2):

(i) the director objects to transacting business with respect to the purpose for which the special notice was required; and

(ii) after objecting, the director does not vote for or assent to action taken at the meeting with respect to the purpose.

Section 91. Section **16-6a-816** is enacted to read:

16-6a-816. Quorum and voting.

(1) Unless a greater or lesser number is required by the bylaws, a quorum of a board of directors consists of a majority of the number of directors in office immediately before the meeting begins.

(2) The bylaws may authorize a quorum of a board of directors to consist of:

(a) no fewer than 1/3 of the number of directors fixed if the corporation has a fixed board size; or

(b) if a range for the size of the board is established pursuant to Subsection 16-6a-803(2), no fewer than 1/3 of the number of directors:

(i) fixed in accordance with Subsection 16-6a-803(2); or

(ii) in office immediately before the meeting begins, if no number is fixed in accordance with Subsection 16-6a-803(2).

(3) If a quorum is present when a vote is taken, the affirmative vote of a majority of directors present is the act of the board of directors unless the vote of a greater number of directors is required by this chapter or the bylaws.

(4) (a) If provided in the bylaws, for purposes of determining a quorum with respect to a particular proposal, and for purposes of casting a vote for or against a particular proposal, a director may be considered to be present at a meeting and to vote if the director has granted a signed written proxy:

(i) to another director who is present at the meeting; and
(ii) authorizing the other director to cast the vote that is directed to be cast by the written proxy with respect to the particular proposal that is described with reasonable specificity in the proxy.

(b) Except as provided in this Subsection (4) and as permitted by Section 16-6a-813, directors may not vote or otherwise act by proxy.

(c) Notwithstanding Subsection (4)(a), a director may grant a proxy to a person who is not a director if permitted by the bylaws.

(5) A director who is present at a meeting of the board of directors when corporate action is taken is considered to have assented to all action taken at the meeting unless:

(a) (i) the director objects at the beginning of the meeting, or promptly upon the director's arrival, to holding the meeting or transacting business at the meeting; and

(ii) after objecting, the director does not vote for or assent to any action taken at the meeting;

(b) the director contemporaneously requests that the director's dissent or abstention as to any specific action taken be entered in the minutes of the meeting; or

(c) the director causes written notice of the director's dissent or abstention as to any specific action to be received by:

(i) the presiding officer of the meeting before adjournment of the meeting; or

(ii) the nonprofit corporation promptly after adjournment of the meeting.

(6) The right of dissent or abstention pursuant to Subsection (5) as to a specific action is not available to a director who votes in favor of the action taken.

Section 92. Section **16-6a-817** is enacted to read:

16-6a-817. Committees of the board.

(1) Unless otherwise provided in the bylaws and subject to the provisions of Section 16-6a-906, the board of directors may:

(a) create one or more committees of the board; and

(b) appoint one or more directors to serve on the committees created under Subsection

(1)(a).

(2) Unless otherwise provided in the bylaws, the creation of a committee of the board and

appointment of directors to it shall be approved by the greater of:

(a) a majority of all the directors in office when the action is taken; or

(b) the number of directors required by the bylaws to take action under Section 16-6a-816.

(3) Unless otherwise provided in the bylaws, a committee of the board and the members of the committee are subject to Sections 16-6a-812 through 16-6a-816, which govern:

(a) meetings;

(b) action without meeting;

(c) notice;

(d) waiver of notice; and

(e) quorum and voting requirements.

(4) To the extent specified in the bylaws or by the board of directors, each committee of the board shall have the authority of the board of directors under Section 16-6a-801.

(5) The creation of, delegation of authority to, or action by a committee does not alone constitute compliance by a director with the standards of conduct described in Section 16-6a-822.

(6) (a) Subject to Subsection (6)(b), nothing in this part shall prohibit or restrict a nonprofit corporation from establishing in its bylaws or by action of the board of directors or otherwise one or more committees, advisory boards, auxiliaries, or other bodies of any kind:

(i) having the members and rules of procedure as the bylaws or board of directors may provide;

(ii) established to provide the advice, service, and assistance to the nonprofit corporation as may be specified in the bylaws or by the board of directors; and

(iii) established to carry out the duties and responsibilities for the nonprofit corporation, as may be specified in the bylaws or by the board of directors.

(b) Notwithstanding Subsection (6)(a), if any committee or other body established under Subsection (6)(a) has one or more members who are entitled to vote on committee matters and who are not then also directors, the committee or other body may not exercise any power or authority reserved to the board of directors, in this chapter or in the bylaws.

Section 93. Section **16-6a-818** is enacted to read:

16-6a-818. Officers.

(1) (a) A nonprofit corporation shall have the officers designated:

(i) in its bylaws; or

(ii) by the board of directors in a manner not inconsistent with the bylaws.

(b) An officer shall be:

(i) a natural person; and

(ii) 18 years of age or older.

(c) An officer need not be a director or a member of the nonprofit corporation, unless the bylaws so prescribe.

(2) (a) An officer may be appointed by the board of directors or in such other manner as the board of directors or bylaws may provide.

(b) An appointed officer may appoint one or more officers or assistant officers if authorized by:

(i) the bylaws; or

(ii) the board of directors.

(3) The bylaws or the board of directors shall delegate to the secretary or to one or more other persons responsibility for:

(a) the preparation and maintenance of:

(i) minutes of the directors' and members' meetings; and

(ii) other records and information required to be kept by the nonprofit corporation under Section 16-6a-1601; and

(b) authenticating records of the nonprofit corporation.

(4) The same individual may simultaneously hold more than one office in a nonprofit corporation.

Section 94. Section **16-6a-819** is enacted to read:

16-6a-819. Duties of officers.

Each officer shall have the authority and shall perform the duties set forth with respect to the office:

- (1) in the bylaws; or
- (2) to the extent not inconsistent with the bylaws, prescribed with respect to the office by:
 - (a) the board of directors; or
 - (b) an officer authorized by the board of directors.

Section 95. Section **16-6a-820** is enacted to read:

16-6a-820. Resignation and removal of officers.

- (1) An officer may resign at any time by giving written notice of resignation to the nonprofit corporation.
- (2) A resignation of an officer is effective when the notice is received by the nonprofit corporation unless the notice specifies a later effective date.
- (3) If a resignation is made effective at a later date, the board of directors may:
 - (a) (i) permit the officer to remain in office until the effective date; and
 - (ii) fill the pending vacancy before the effective date if the successor does not take office until the effective date; or
- (b) (i) remove the officer at any time before the effective date; and
 - (ii) fill the vacancy created by the removal.
- (4) (a) Unless otherwise provided in the bylaws, the board of directors may remove any officer at any time with or without cause.

- (b) The bylaws or the board of directors may make provisions for the removal of officers by:
 - (i) other officers; or
 - (ii) the voting members.

(5) An officer who resigns, is removed, or whose appointment has expired may deliver to the division for filing a statement to that effect pursuant to Section 16-6a-1608.

Section 96. Section **16-6a-821** is enacted to read:

16-6a-821. Contract rights with respect to officers.

- (1) The appointment of an officer does not itself create contract rights.
- (2) (a) An officer's removal does not affect the officer's contract rights, if any, with the nonprofit corporation.

(b) An officer's resignation does not affect the nonprofit corporation's contract rights, if any, with the officer.

Section 97. Section **16-6a-822** is enacted to read:

16-6a-822. General standards of conduct for directors and officers.

(1) (a) A director shall discharge the director's duties as a director, including the director's duties as a member of a committee of the board, in accordance with Subsection (2).

(b) An officer with discretionary authority shall discharge the officer's duties under that authority in accordance with Subsection (2).

(2) A director or an officer described in Subsection (1) shall discharge the director or officer's duties:

(a) in good faith;

(b) with the care an ordinarily prudent person in a like position would exercise under similar circumstances; and

(c) in a manner the director or officer reasonably believes to be in the best interests of the nonprofit corporation.

(3) In discharging duties, a director or officer is entitled to rely on information, opinions, reports, or statements, including financial statements and other financial data, if prepared or presented by:

(a) one or more officers or employees of the nonprofit corporation whom the director or officer reasonably believes to be reliable and competent in the matters presented;

(b) legal counsel, a public accountant, or another person as to matters the director or officer reasonably believes are within the person's professional or expert competence;

(c) religious authorities or ministers, priests, rabbis, or other persons:

(i) whose position or duties in the nonprofit corporation, or in a religious organization with which the nonprofit corporation is affiliated, the director or officer believes justify reliance and confidence; and

(ii) who the director or officer believes to be reliable and competent in the matters presented;

or

(d) in the case of a director, a committee of the board of directors of which the director is not a member if the director reasonably believes the committee merits confidence.

(4) A director or officer is not acting in good faith if the director or officer has knowledge concerning the matter in question that makes reliance otherwise permitted by Subsection (3) unwarranted.

(5) A director, regardless of title, may not be considered to be a trustee with respect to any property held or administered by the nonprofit corporation including property that may be subject to restrictions imposed by the donor or transferor of the property.

(6) A director or officer is not liable to the nonprofit corporation, its members, or any conservator or receiver, or any assignee or successor-in-interest of the nonprofit corporation or member, for any action taken, or any failure to take any action, as an officer or director, as the case may be, unless:

(a) the director or officer has breached or failed to perform the duties of the office as set forth in this section; and

(b) the breach or failure to perform constitutes:

(i) willful misconduct; or

(ii) intentional infliction of harm on:

(A) the nonprofit corporation; or

(B) the members of the nonprofit corporation.

Section 98. Section **16-6a-823** is enacted to read:

16-6a-823. Limitation of liability of directors.

(1) (a) Except as provided in Subsection (1)(b) and without limiting the generality of Subsection 16-6a-822(6), a nonprofit corporation may eliminate or limit the liability of a director to the nonprofit corporation or to its members for monetary damages for any action taken or any failure to take any action as a director, if:

(i) so provided in:

(A) the articles of incorporation;

(B) the bylaws; or

(C) a resolution; and

(ii) to the extent permitted in Subsection (3).

(b) Subsection (1)(a) does not permit a nonprofit corporation from eliminating or limiting the liability of a director for:

(i) the amount of a financial benefit received by a director to which the director is not entitled;

(ii) an intentional infliction of harm on:

(A) the nonprofit corporation; or

(B) the members of a nonprofit corporation;

(iii) an intentional violation of criminal law; or

(iv) a violation of Section 16-6a-824.

(2) A provision authorized under this section may not eliminate or limit the liability of a director for any act or omission occurring prior to the date when the provision becomes effective.

(3) Any provision authorized under this section to be included in the articles of incorporation may be adopted in the bylaws or by resolution, but only if the provision is approved by the same percentage of members of each voting group as would be required to approve an amendment to the articles of incorporation including the provision.

(4) Any foreign nonprofit corporation authorized to transact business in this state, except as otherwise provided by law, may adopt any provision authorized under this section.

Section 99. Section **16-6a-824** is enacted to read:

16-6a-824. Liability of directors for unlawful distributions.

(1) (a) A director who votes for or assents to a distribution made in violation of Section 16-6a-1301 or the articles of incorporation is personally liable to the corporation for the amount of the distribution that exceeds what could have been distributed without violating Section 16-6a-1301 or the articles of incorporation, if it is established that the director's duties were not performed in compliance with Section 16-6a-822.

(b) In any proceeding commenced under this section, a director has all of the defenses ordinarily available to a director.

(2) A director held liable under Subsection (1) for an unlawful distribution is entitled to

contribution:

(a) from every other director who could be held liable under Subsection (1) for the unlawful distribution; and

(b) from each member who accepted the distribution knowing the distribution was made in violation of Section 16-6a-1301 or the articles of incorporation.

(3) The amount of the contribution from each member under Subsection (2)(b) is the amount of the distribution to the member multiplied by the percentage of the amount of distribution to all members that exceeded what could have been distributed to members without violating Section 16-6a-1301 or the articles of incorporation.

Section 100. Section **16-6a-825** is enacted to read:

16-6a-825. Conflicting interest transaction.

(1) As used in this section, "conflicting interest transaction" means a contract, transaction, or other financial relationship between a nonprofit corporation and:

(a) a director of the nonprofit corporation;

(b) a party related to a director; or

(c) an entity in which a director of the nonprofit corporation:

(i) is a director or officer; or

(ii) has a financial interest.

(2) Except as otherwise provided in this section, upon the finding of a conflicting interest transaction, in an action properly brought before it, a court may:

(a) rule that the conflicting interest transaction is void or voidable;

(b) enjoin or set aside the conflict of interest transaction; or

(c) determine that the conflicting interest transaction gives rise to an award of damages or other sanctions.

(3) (a) A loan may not be made by a corporation to its directors or officers.

(b) A director or officer who assents to or participates in the making of a loan in violation of Subsection (3)(a) shall be liable to the corporation for the amount of the loan until the repayment of the loan.

(4) (a) If the conditions of Subsection (4)(b) are met, a conflicting interest transaction may not be void or voidable or be enjoined, set aside, or give rise to an award of damages or other sanctions in a proceeding by a member or by or in the right of the nonprofit corporation, solely because:

(i) the conflicting interest transaction involves:

(A) a director of the nonprofit corporation;

(B) a party related to a director; or

(C) an entity in which a director of the nonprofit corporation is a director or officer or has a financial interest;

(ii) the director is present at or participates in the meeting of the nonprofit corporation's board of directors or of the committee of the board of directors that authorizes, approves, or ratifies the conflicting interest transaction; or

(iii) the director's vote is counted for the purpose described in Subsection (4)(a)(ii).

(b) Subsection (4)(a) applies if:

(i) (A) the material facts as to the director's relationship or interest and as to the conflicting interest transaction are disclosed or are known to the board of directors or the committee; and

(B) the board of directors or committee in good faith authorizes, approves, or ratifies the conflicting interest transaction by the affirmative vote of a majority of the disinterested directors, even though the disinterested directors are less than a quorum;

(ii) (A) the material facts as to the director's relationship or interest and as to the conflicting interest transaction are disclosed or are known to the members entitled to vote on the conflicting interest transaction; and

(B) the conflicting interest transaction is specifically authorized, approved, or ratified in good faith by a vote of the members entitled to vote thereon; or

(iii) the conflicting interest transaction is fair as to the nonprofit corporation.

(5) Common or interested directors may be counted in determining the presence of a quorum at a meeting of the board of directors or of a committee that authorizes, approves, or ratifies the conflicting interest transaction.

Section 101. Section **16-6a-826** is enacted to read:

16-6a-826. Common members, directors, or officers.

(1) Two or more nonprofit corporations may have members, directors, or officers that are common to each nonprofit corporation.

(2) The fact of common members, directors, or officers in one or more nonprofit corporations may not, by itself, create an inference that the nonprofit corporations individually or collectively:

(a) are agents or alter egos of one another; or

(b) have been formed or availed of, for an improper purpose.

(3) The doctrine of "piercing the corporate veil" may not be applied to one or more nonprofit corporations solely because of the fact of common members, directors, or officers.

Section 102. Section **16-6a-901** is enacted to read:

Part 9. Indemnification

16-6a-901. Indemnification definitions.

As used in this part:

(1) (a) "Director" means an individual who:

(i) is or was a director of a nonprofit corporation; or

(ii) while a director of a nonprofit corporation at the nonprofit corporation's request, is or was serving as a director, officer, partner, member, manager, trustee, employee, fiduciary, or agent of:

(A) another domestic or foreign corporation;

(B) another nonprofit corporation;

(C) another person; or

(D) an employee benefit plan.

(b) A director is considered to be serving an employee benefit plan at the nonprofit corporation's request if the director's duties to the nonprofit corporation also impose duties on, or otherwise involve services by, the director to the employee benefit plan or to participants in or beneficiaries of the employee benefit plan.

(c) "Director" includes, unless the context requires otherwise, the estate or personal

representative of a director.

(2) "Expenses" includes attorneys' fees.

(3) "Liability" means the obligation incurred with respect to a proceeding to pay a judgment, settlement, penalty, or fine, including:

(a) an excise tax assessed with respect to an employee benefit plan; or

(b) reasonable expenses.

(4) "Nonprofit corporation" includes any domestic or foreign entity that is a predecessor of a nonprofit corporation by reason of a merger or other transaction in which the predecessor's existence ceased upon consummation of the transaction.

(5) (a) "Officer," "employee," "fiduciary," and "agent" include any person who, while serving the indicated relationship to the nonprofit corporation, at the nonprofit corporation's request, is or was serving as a director, officer, partner, trustee, employee, fiduciary, or agent of:

(i) another domestic or foreign corporation;

(ii) another person; or

(iii) an employee benefit plan.

(b) An officer, employee, fiduciary, or agent is considered to be serving an employee benefit plan at the nonprofit corporation's request if that person's duties to the nonprofit corporation also impose duties on, or otherwise involve services by, that person to the plan or participants in, or beneficiaries of the plan.

(c) Unless the context requires otherwise, "officer," "employee," "fiduciary," and "agent" include the estates or personal representatives of the officer, employee, fiduciary, or agent.

(6) (a) "Official capacity" means:

(i) when used with respect to a director, the office of director in a corporation; and

(ii) when used with respect to a person other than a director, as contemplated in Section 16-6a-907, the office in a corporation held by the officer or the employment, fiduciary, or agency relationship undertaken by the person on behalf of the corporation.

(b) "Official capacity" does not include service for any:

(i) other foreign or domestic corporation;

(ii) other person; or

(iii) employee benefit plan.

(7) "Party" includes an individual who was, is, or is threatened to be made a named defendant or respondent in a proceeding.

(8) "Proceeding" means any threatened, pending, or completed action, suit, or proceeding, whether civil, criminal, administrative, or investigative and whether formal or informal.

Section 103. Section **16-6a-902** is enacted to read:

16-6a-902. Authority to indemnify directors.

(1) Except as provided in Subsection (4), a nonprofit corporation may indemnify an individual made a party to a proceeding because the individual is or was a director, against liability incurred in the proceeding if:

(a) the individual's conduct was in good faith;

(b) the individual reasonably believed that the individual's conduct was in, or not opposed to, the corporation's best interests; and

(c) in the case of any criminal proceeding, the individual had no reasonable cause to believe the individual's conduct was unlawful.

(2) A director's conduct with respect to any employee benefit plan for a purpose the director reasonably believed to be in or not opposed to the interests of the participants in and beneficiaries of the plan is conduct that satisfies the requirement of Subsection (1)(b).

(3) The termination of a proceeding by judgment, order, settlement, conviction, or upon a plea of nolo contendere or its equivalent is not, of itself, determinative that the director did not meet the standard of conduct described in this section.

(4) A nonprofit corporation may not indemnify a director under this section:

(a) in connection with a proceeding by or in the right of the nonprofit corporation in which the director was adjudged liable to the nonprofit corporation; or

(b) in connection with any other proceeding charging that the director derived an improper personal benefit, whether or not involving action in the director's official capacity, in which proceeding the director was adjudged liable on the basis that the director derived an improper

personal benefit.

(5) Indemnification permitted under this section in connection with a proceeding by or in the right of the nonprofit corporation is limited to reasonable expenses incurred in connection with the proceeding.

Section 104. Section **16-6a-903** is enacted to read:

16-6a-903. Mandatory indemnification of directors.

(1) Unless limited by its articles of incorporation, a nonprofit corporation shall indemnify a director described in Subsection (2) against reasonable expenses incurred by the director in connection with the proceeding or claim with respect to which the director has been successful.

(2) Subsection (1) applies to a director who was successful, on the merits or otherwise, in the defense of:

(a) any proceeding to which the director was a party because the director is or was a director of the nonprofit corporation; or

(b) any claim, issue, or matter in the proceeding, to which the director was a party because the director is or was a director of the nonprofit corporation.

Section 105. Section **16-6a-904** is enacted to read:

16-6a-904. Advance of expenses for directors.

(1) A nonprofit corporation may pay for or reimburse the reasonable expenses incurred by a director who is a party to a proceeding in advance of final disposition of the proceeding if:

(a) the director furnishes the nonprofit corporation a written affirmation of the director's good faith belief that the director has met the applicable standard of conduct described in Section 16-6a-902;

(b) the director furnishes the nonprofit corporation a written undertaking, executed personally or on the director's behalf, to repay the advance, if it is ultimately determined that the director did not meet the standard of conduct; and

(c) a determination is made that the facts then known to those making the determination would not preclude indemnification under this part.

(2) The undertaking required by Subsection (1)(b):

(a) shall be an unlimited general obligation of the director;

(b) need not be secured; and

(c) may be accepted without reference to financial ability to make repayment.

(3) Determinations and authorizations of payments under this section shall be made in the manner specified in Section 16-6a-906.

Section 106. Section **16-6a-905** is enacted to read:

16-6a-905. Court-ordered indemnification of directors.

(1) Unless a nonprofit corporation's articles of incorporation provide otherwise, a director of the nonprofit corporation who is or was a party to a proceeding may apply for indemnification to:

(a) the court conducting the proceeding; or

(b) another court of competent jurisdiction.

(2) On receipt of an application described in Subsection (1), the court, after giving any notice the court considers necessary, may order indemnification in the following manner:

(a) if the court determines that the director is entitled to mandatory indemnification under Section 16-6a-903, the court shall:

(i) order indemnification; and

(ii) order the nonprofit corporation to pay the director's reasonable expenses incurred to obtain court-ordered indemnification; and

(b) if the court determines that the director is fairly and reasonably entitled to indemnification in view of all the relevant circumstances, whether or not the director met the applicable standard of conduct set forth in Section 16-6a-902 or was adjudged liable as described in Subsection 16-6a-902(4), the court may order indemnification as the court determines to be proper, except that the indemnification with respect to any proceeding in which liability has been adjudged in the circumstances described in Subsection 16-6a-902(4) is limited to reasonable expenses incurred.

Section 107. Section **16-6a-906** is enacted to read:

16-6a-906. Determination and authorization of indemnification of directors.

(1) (a) A nonprofit corporation may not indemnify a director under Section 16-6a-902 unless authorized in the specific case after a determination has been made that indemnification of the director

is permissible in the circumstances because the director has met the standard of conduct set forth in Section 16-6a-902.

(b) A nonprofit corporation may not advance expenses to a director under Section 16-6a-904 unless:

(i) authorized in the specific case after the written affirmation and undertaking required by Subsections 16-6a-904(1)(a) and (1)(b) are received; and

(ii) the determination required by Subsection 16-6a-904(1)(c) has been made.

(2) (a) The determinations required by Subsection (1) shall be made:

(i) by the board of directors by a majority vote of those present at a meeting at which a quorum is present if only those directors not parties to the proceeding are counted in satisfying the quorum;

(ii) if a quorum cannot be obtained under Subsection (2)(a)(i), by a majority vote of a committee of the board of directors:

(A) designated by the board of directors; and

(B) consisting of two or more directors not parties to the proceeding; or

(iii) by persons listed in Subsection (3).

(b) The directors who are parties to the proceeding may participate in the designation of directors for the committee described in Subsection (2)(a)(ii).

(3) (a) The determination required to be made by Subsection (1) shall be made by a person described in Subsection (3)(b) if:

(i) (A) a quorum cannot be obtained in accordance with Subsection (2)(a)(i); and

(B) a committee cannot be established under Subsection (2)(a)(ii); or

(ii) even if a quorum is obtained or a committee is designated, a majority of the directors constituting the quorum or committee directs.

(b) If a condition described in Subsection (3)(a) is met, the determination required to be made by Subsection (1) shall be made:

(i) by independent legal counsel selected by:

(A) a vote of the board of directors or the committee in the manner specified in Subsection

(2)(a)(i) or (ii); or

(B) if a quorum of the full board cannot be obtained and a committee cannot be established, by independent legal counsel selected by a majority vote of the full board of directors; or

(ii) by the voting members, but a voting member may not vote on the determination if the voting member is:

(A) a director; and

(B) at the time seeking indemnification.

(4) (a) Except as provided in Subsection (4)(b), an authorization of indemnification and advance of expenses shall be made in the same manner as the determination that indemnification or advance of expenses is permissible.

(b) Notwithstanding Subsection (4)(a), if the determination that indemnification or advance of expenses is permissible is made by independent legal counsel, authorization of indemnification and advance of expenses shall be made by the body that selected the independent legal counsel.

Section 108. Section **16-6a-907** is enacted to read:

16-6a-907. Indemnification of officers, employees, fiduciaries, and agents.

Unless a nonprofit corporation's articles of incorporation provide otherwise:

(1) to the same extent as a director, an officer of the nonprofit corporation is entitled to:

(a) mandatory indemnification under Section 16-6a-903; and

(b) apply for court-ordered indemnification under Section 16-6a-905;

(2) the nonprofit corporation may indemnify and advance expenses to an officer, employee, fiduciary, or agent of the corporation to the same extent as to a director; and

(3) a nonprofit corporation may indemnify and advance expenses to an officer, employee, fiduciary, or agent who is not a director to a greater extent if:

(a) not inconsistent with public policy; and

(b) provided for by:

(i) its articles of incorporation or bylaws;

(ii) general or specific action of its board of directors; or

(iii) contract.

Section 109. Section **16-6a-908** is enacted to read:

16-6a-908. Insurance.

(1) A nonprofit corporation may purchase and maintain liability insurance:

(a) on behalf of a person who:

(i) is or was a director, officer, employee, fiduciary, or agent of the nonprofit corporation;

or

(ii) while serving as a director, officer, employee, fiduciary, or agent of the nonprofit corporation at the request of the nonprofit corporation, is or was serving as a director, officer, partner, trustee, employee, fiduciary, or agent of:

(A) another foreign or domestic nonprofit corporation;

(B) other person; or

(C) an employee benefit plan; and

(b) against liability asserted against or incurred by the person in that capacity or arising from the person's status as a director, officer, employee, fiduciary, or agent, whether or not the nonprofit corporation would have power to indemnify the person against the same liability under Section 16-6a-902, 16-6a-903, or 16-6a-907.

(2) Insurance may be procured from any insurance company designated by the board of directors, whether the insurance company is formed under the laws of this state or any other jurisdiction of the United States or elsewhere, including any insurance company in which the nonprofit corporation has an equity or any other interest through stock ownership or otherwise.

Section 110. Section **16-6a-909** is enacted to read:

16-6a-909. Limitations on indemnification of directors.

(1) (a) A provision treating a nonprofit corporation's indemnification of, or advance for expenses to, directors that is contained in the following is valid only if and to the extent the provision is not inconsistent with this part:

(i) the articles of incorporation or bylaws of the nonprofit corporation;

(ii) a resolution of the nonprofit corporation's members or board of directors;

(iii) a contract, except an insurance policy; or

(iv) other writing.

(b) If the articles of incorporation limit indemnification or advance of expenses, indemnification and advance of expenses are valid only to the extent not inconsistent with the articles of incorporation.

(2) This part does not limit a nonprofit corporation's power to pay or reimburse expenses incurred by a director in connection with the director's appearance as a witness in a proceeding at a time when the director has not been made a named defendant or respondent to the proceeding.

Section 111. Section **16-6a-910** is enacted to read:

16-6a-910. Notice to voting members of indemnification of director.

(1) If a nonprofit corporation indemnifies or advances expenses to a director under this part in connection with a proceeding by or in the right of the nonprofit corporation, the nonprofit corporation shall give written notice of the indemnification or advance to the voting members with or before the notice of the next voting members' meeting.

(2) If the next voting member action after the indemnification or advance is taken without a meeting at the instigation of the board of directors, the notice shall be given to the voting members at or before the time the first voting member signs a writing consenting to the action.

Section 112. Section **16-6a-1001** is enacted to read:

Part 10. Amendment of Articles of Incorporation and Bylaws

16-6a-1001. Authority to amend articles of incorporation.

(1) A nonprofit corporation may amend its articles of incorporation at any time to:

(a) add or change a provision that is required or permitted in the articles of incorporation;

or

(b) delete a provision not required in the articles of incorporation.

(2) Whether a provision is required or permitted in the articles of incorporation is determined as of the effective date of the amendment.

Section 113. Section **16-6a-1002** is enacted to read:

16-6a-1002. Amendment of articles of incorporation by board of directors or incorporators.

(1) Unless otherwise provided in the articles of incorporation, the board of directors may adopt, without member approval, one or more amendments to the articles of incorporation to:

(a) delete the names and addresses of the initial directors;

(b) delete the name and address of the initial registered agent or registered office, if a statement of change is on file with the division;

(c) change the corporate name by:

(i) substituting the word "corporation," "incorporated," "company," "limited," or an abbreviation of any such word for a similar word or abbreviation in the name; or

(ii) adding, deleting, or changing a geographical attribution; or

(d) make any other change expressly permitted by this chapter to be made without member action.

(2) The board of directors may adopt, without member action, one or more amendments to the articles of incorporation to change the corporate name, if necessary, in connection with the reinstatement of a nonprofit corporation pursuant to Section 16-6a-1412.

(3) (a) Subject to any approval required pursuant to Section 16-6a-1012, if a nonprofit corporation has no members, no members entitled to vote on amendments, or no members yet admitted to membership, one or more amendments to the nonprofit corporation's articles of incorporation may be adopted by:

(i) its incorporators until directors have been chosen; or

(ii) its directors after the directors have been chosen.

(b) A nonprofit corporation described in Subsection (3)(a) shall provide notice of any meeting at which an amendment is to be voted upon.

(c) The notice required by Subsection (3)(b) shall:

(i) be in accordance with Section 16-6a-814;

(ii) state that the purpose, or one of the purposes, of the meeting is to consider a proposed amendment to the articles of incorporation; and

(iii) (A) contain or be accompanied by a copy or summary of the amendment; or

(B) state the general nature of the amendment.

(d) An amendment described in Subsection (3)(a) shall be approved:

(i) by a majority of the incorporators, until directors have been chosen; or

(ii) after directors are chosen by a majority of the directors in office at the time the amendment is adopted.

Section 114. Section **16-6a-1003** is enacted to read:

16-6a-1003. Amendment of articles of incorporation by board of directors and members.

(1) The board of directors or the members representing at least 10% of all of the votes entitled to be cast on the amendment may propose an amendment to the articles of incorporation for submission to the members unless a different vote or voting class is required by:

(a) this chapter;

(b) the articles of incorporation;

(c) the bylaws; or

(d) the members or the board of directors acting pursuant to Subsection (5).

(2) For an amendment to the articles of incorporation to be adopted pursuant to Subsection (1):

(a) the board of directors shall recommend the amendment to the members unless:

(i) the amendment is proposed by members; or

(ii) the board of directors:

(A) determines that because of conflict of interest or other special circumstances it should make no recommendation; and

(B) communicates the basis for its determination to the members with the amendment; and

(b) the members entitled to vote on the amendment shall approve the amendment as provided in Subsection (5).

(3) The proposing board of directors or the proposing members may condition the effectiveness of the amendment on any basis.

(4) (a) The nonprofit corporation shall give notice, in accordance with Section 16-6a-704, to each member entitled to vote on the amendment of the members' meeting at which the amendment

will be voted upon.

(b) The notice required by Subsection (4)(a) shall:

(i) state that the purpose, or one of the purposes, of the meeting is to consider the amendment; and

(ii) (A) contain or be accompanied by a copy or a summary of the amendment; or

(B) shall state the general nature of the amendment.

(5) The amendment shall be approved by the votes required by Sections 16-6a-714 and 16-6a-715 by every voting group entitled to vote on the amendment unless a greater vote is required by:

(a) this chapter;

(b) the articles of incorporation;

(c) bylaws adopted by the members; or

(d) the proposing board of directors or the proposing members acting pursuant to Subsection (3).

(6) If the board of directors or the members seek to have the amendment approved by the members by written consent, the material soliciting the approval shall contain or be accompanied by a copy or summary of the amendment.

Section 115. Section **16-6a-1004** is enacted to read:

16-6a-1004. Voting on amendments of articles of incorporation by voting groups.

(1) Unless otherwise provided by this chapter or the articles of incorporation, if membership voting is otherwise required by this chapter, the members of a class who are entitled to vote are entitled to vote as a separate voting group on an amendment to the articles of incorporation if the amendment would:

(a) affect the rights, privileges, preferences, restrictions, or conditions of that class as to voting, dissolution, redemption, or transfer of memberships in a manner different than the amendment would affect another class;

(b) change the rights, privileges, preferences, restrictions, or conditions of that class as to voting, dissolution, redemption, or transfer by changing the rights, privileges, preferences,

restrictions, or conditions of another class;

- (c) increase or decrease the number of memberships authorized for that class;
- (d) increase the number of memberships authorized for another class;
- (e) effect an exchange, reclassification, or termination of the memberships of that class; or
- (f) authorize a new class of memberships.

(2) If a class is to be divided into two or more classes as a result of an amendment to the articles of incorporation, the amendment shall be approved by the members of each class that would be created by the amendment.

Section 116. Section **16-6a-1005** is enacted to read:

16-6a-1005. Articles of amendment to articles of incorporation.

A nonprofit corporation amending its articles of incorporation shall deliver to the division for filing articles of amendment setting forth:

- (1) the name of the nonprofit corporation;
- (2) the text of each amendment adopted;
- (3) the date of each amendment's adoption;
- (4) if the amendment was adopted by the board of directors or incorporators without member action, a statement to that effect and that:
 - (a) the nonprofit corporation does not have members; or
 - (b) member action was not required;
- (5) if the amendment was adopted by the members, a statement that the number of votes cast for the amendment by the members or by each voting group entitled to vote separately on the amendment was sufficient for approval by the members or voting group respectively; and
- (6) if approval of the amendment by some person or persons other than the members, the board of directors, or the incorporators is required pursuant to Section 16-6a-1013, a statement that the approval was obtained.

Section 117. Section **16-6a-1006** is enacted to read:

16-6a-1006. Restated articles of incorporation.

- (1) (a) The board of directors may restate the articles of incorporation at any time with or

without member action.

(b) The incorporators of a nonprofit corporation may restate the articles of incorporation at any time if the nonprofit corporation:

(i) has no members; and

(ii) no directors have been chosen.

(2) (a) The restatement may include one or more amendments to the articles of incorporation.

(b) Notwithstanding Subsection (1), if the restatement includes an amendment requiring member approval, it shall be adopted as provided in Section 16-6a-1003.

(3) (a) If the board of directors submits a restatement for member action, the nonprofit corporation shall give notice, in accordance with Section 16-6a-704, to each member entitled to vote on the restatement of the members' meeting at which the restatement will be voted upon.

(b) The notice required by Subsection (3)(a) shall:

(i) state that the purpose, or one of the purposes, of the meeting is to consider the restatement; and

(ii) contain or be accompanied by a copy of the restatement that identifies any amendment or other change it would make in the articles of incorporation.

(4) A nonprofit corporation restating its articles of incorporation shall deliver to the division for filing articles of restatement setting forth:

(a) the name of the nonprofit corporation;

(b) the text of the restated articles of incorporation;

(c) if the restatement contains an amendment to the articles of incorporation that was adopted by the members, the information required by Subsection 16-6a-1005(5); and

(d) if the restatement was adopted by the board of directors or incorporators without member action, a statement to that effect and that member action was not required.

(5) Upon filing by the division or at any later effective date determined pursuant to Section 16-6a-108, restated articles of incorporation supersede the original articles of incorporation and all prior amendments to the original articles of incorporation.

Section 118. Section **16-6a-1007** is enacted to read:

16-6a-1007. Amendment of articles of incorporation pursuant to reorganization.

(1) Articles of incorporation may be amended, without action by the board of directors or members, to carry out a plan of reorganization ordered or decreed by a court of competent jurisdiction under a statute of this state or of the United States if the articles of incorporation after amendment contain only provisions required or permitted by Section 16-6a-202.

(2) For an amendment to the articles of incorporation to be made pursuant to Subsection (1), one or more individuals designated by the court shall deliver to the division for filing articles of amendment setting forth:

- (a) the name of the nonprofit corporation;
- (b) the text of each amendment approved by the court;
- (c) the date of the court's order or decree approving the articles of amendment;
- (d) the title of the reorganization proceeding in which the order or decree was entered; and
- (e) a statement that the court had jurisdiction of the proceeding under a specified statute of this state or of the United States.

(3) This section does not apply after entry of a final decree in the reorganization proceeding even though the court retains jurisdiction of the proceeding for limited purposes unrelated to consummation of the reorganization plan.

Section 119. Section **16-6a-1008** is enacted to read:

16-6a-1008. Conversion to a corporation.

(1) (a) A domestic nonprofit corporation may convert to a corporation subject to Title 16, Chapter 10a, Utah Revised Business Corporation Act, by filing an amendment of its articles of incorporation with the division pursuant to this section.

(b) The day on which a nonprofit domestic corporation files an amendment under this section, the domestic nonprofit corporation becomes a corporation subject to Title 16, Chapter 10a, Utah Revised Business Corporation Act.

(2) The amendment of the articles of incorporation to convert to a corporation shall:

- (a) revise the statement of purpose;
- (b) delete:

- (i) the authorization for members; and
- (ii) any other provisions relating to memberships;
- (c) authorize shares:
 - (i) stating the number of shares; and
 - (ii) including the information required by Section 16-10a-601 with respect to each class of shares the corporation is to be authorized to issue;
- (d) make such other changes as may be necessary or desired; and
- (e) if the corporation has any members, provide for:
 - (i) the cancellation of the memberships; or
 - (ii) the conversion of the memberships to shares of the corporation.
- (3) If the nonprofit corporation has any voting members, an amendment to convert to a corporation shall be approved by all of the members regardless of limitations or restrictions on the voting rights of the members.
- (4) If an amendment to the articles of incorporation filed pursuant to this section is included in a merger agreement, this section applies, except that any provisions for cancellation or conversion of memberships:

- (a) shall be in the merger agreement; and
- (b) may not be in the amendment of the articles of incorporation.

Section 120. Section **16-6a-1009** is enacted to read:

16-6a-1009. Effect of amendment of articles of incorporation.

(1) An amendment to the articles of incorporation does not affect:

- (a) any existing right of persons other than members;
- (b) any cause of action existing against or in favor of the nonprofit corporation; or
- (c) any proceeding to which the nonprofit corporation is a party.

(2) An amendment changing a nonprofit corporation's corporate name does not abate a proceeding brought by or against a nonprofit corporation in its former corporate name.

Section 121. Section **16-6a-1010** is enacted to read:

16-6a-1010. Amendment of bylaws by board of directors or members.

(1) The board of directors may amend the bylaws at any time to add, change, or delete a provision, unless:

(a) this chapter or the articles of incorporation or bylaws:

(i) reserve the power exclusively to the members in whole or part; or

(ii) otherwise prohibit the board of directors from amending the bylaws to add, change, or delete a provision; or

(b) it would result in a change of the rights, privileges, preferences, restrictions, or conditions of a membership class as to voting, dissolution, redemption, or transfer by changing the rights, privileges, preferences, restrictions, or conditions of another class.

(2) (a) The members may amend the bylaws even though the bylaws may also be amended by the board of directors.

(b) Amendments to the bylaws by members shall be made in accordance with Sections 16-6a-1003 and 16-6a-1004 as if each reference in Sections 16-6a-1003 and 16-6a-1004 to the article of incorporation was a reference to the bylaws.

Section 122. Section **16-6a-1011** is enacted to read:

16-6a-1011. Bylaw changing quorum or voting requirement for members.

(1) (a) If authorized by the articles of incorporation, the members may adopt, amend, or repeal bylaws that fix a greater quorum or voting requirement for members, or voting groups of members, than is required by this chapter.

(b) An action by the members under Subsection (1)(a) is subject to Parts 6 and 7.

(2) Bylaws that fix a greater quorum requirement or a greater voting requirement for members pursuant to Section 16-6a-716 may not be amended by the board of directors.

Section 123. Section **16-6a-1012** is enacted to read:

16-6a-1012. Bylaw changing quorum or voting requirement for directors.

(1) Bylaws that fix a greater quorum or voting requirement for the board of directors may be amended:

(a) if adopted by the members, only by the members; or

(b) if adopted by the board of directors, by:

- (i) the members; or
- (ii) the board of directors.

(2) Bylaws adopted or amended by the members that fix a greater quorum or voting requirement for the board of directors may provide that the bylaws may be amended only by a specified vote of:

- (a) the members; or
- (b) the board of directors.

(3) Action by the board of directors under Subsection (1)(b) to adopt or amend bylaws that change the quorum or voting requirement for the board of directors shall meet the greater of the quorum and voting requirement for taking the action:

- (a) then in effect; or
- (b) proposed to be adopted.

Section 124. Section **16-6a-1013** is enacted to read:

16-6a-1013. Approval by third persons.

(1) The articles of incorporation may require an amendment to the articles of incorporation or bylaws to be approved in writing by a specified person or persons other than the board of directors.

(2) A provision permitted under Subsection (1) may only be amended with the approval in writing of the person or persons specified in the provision.

Section 125. Section **16-6a-1014** is enacted to read:

16-6a-1014. Amendment terminating members or redeeming or canceling memberships.

(1) An amendment to the articles of incorporation or bylaws of a nonprofit corporation shall meet the requirements of this chapter and this section if the amendment would:

- (a) terminate all members or any class of members; or
- (b) redeem or cancel all memberships or any class of memberships.

(2) Before adopting a resolution proposing an amendment as described in Subsection (1), the board of directors of a nonprofit corporation shall give notice of the general nature of the amendment

to the members.

Section 126. Section **16-6a-1101** is enacted to read:

Part 11. Merger

16-6a-1101. Merger.

(1) One or more nonprofit corporations may merge into another nonprofit corporation if:

(a) the board of directors of each nonprofit corporation adopts a plan of merger; and

(b) required by Section 16-6a-1102, the members of the nonprofit corporation entitled to vote on the plan of merger, approve the plan of merger.

(2) The plan of merger required by Subsection (1) shall set forth:

(a) the name of each nonprofit corporation planning to merge;

(b) the name of the surviving nonprofit corporation into which each nonprofit corporation plans to merge;

(c) the terms and conditions of the merger;

(d) the manner and basis of converting in whole or part the memberships of each nonprofit corporation, if any, into memberships, obligations, or other interests of:

(i) the surviving nonprofit corporation;

(ii) any other entity; or

(iii) into money or other property; and

(e) any amendments to the articles of incorporation of the surviving nonprofit corporation to be effected by the merger.

(3) In addition to the provisions required by Subsection (2), the plan of merger may set forth other provisions relating to the merger.

Section 127. Section **16-6a-1102** is enacted to read:

16-6a-1102. Action on plan of merger.

(1) After adopting the plan of merger, the board of directors of each nonprofit corporation that is a party to the merger shall submit the plan of merger to its members, if any are entitled to vote on the plan of merger, for approval.

(2) If the nonprofit corporation has members entitled to vote with respect to the approval of

a plan of merger, a plan of merger is approved by the members if:

(a) (i) the board of directors recommends the plan of merger to the members entitled to vote on the plan of merger; or

(ii) (A) the board of directors determines that, because of conflict of interest or other special circumstances, it should make no recommendation; and

(B) communicates the basis for its determination to the members with the plan; and

(b) the members entitled to vote on the plan of merger approve the plan as provided in Subsection (7).

(3) After adopting the plan of merger, the board of directors of each nonprofit corporation party to the merger shall submit the plan of merger for written approval by any person or persons:

(a) whose approval is required by the articles of incorporation of the nonprofit corporation; and

(b) as required by Section 16-6a-1013 for an amendment to the articles of incorporation or bylaws.

(4) (a) If the nonprofit corporation does not have members entitled to vote on a merger, the merger shall be approved and adopted by a majority of the directors elected and in office at the time the plan of merger is considered by the board of directors.

(b) The nonprofit corporation shall provide notice of any meeting of the board of directors at which the approval described in Subsection (4)(a) is to be obtained in accordance with Section 16-6a-814.

(c) The notice required by Subsection (4)(b) shall state that the purpose, or one of the purposes, of the meeting is to consider the proposed merger.

(5) The board of directors may condition the effectiveness of the plan of merger on any basis.

(6) (a) The nonprofit corporation shall give notice, in accordance with Section 16-6a-704, to each member entitled to vote on the plan of merger of the members' meeting at which the plan will be voted on.

(b) The notice required by Subsection (6)(a) shall:

(i) state that the purpose, or one of the purposes, of the meeting is to consider the plan of

merger; and

(ii) contain or be accompanied by a copy of the plan of merger or a summary of the plan of merger.

(7) The plan of merger shall be approved by the votes required by Sections 16-6a-714 and 16-6a-715 by every voting group entitled to vote on the plan of merger unless a greater vote is required by:

(a) this chapter;

(b) the articles of incorporation;

(c) bylaws adopted by the members; or

(d) the board of directors acting pursuant to Subsection (5).

(8) Separate voting by voting groups is required on a plan of merger if the plan contains a provision that, if contained in an amendment to the articles of incorporation, would require action by one or more separate voting groups on the amendment.

Section 128. Section **16-6a-1103** is enacted to read:

16-6a-1103. Articles of merger.

(1) After a plan of merger is approved, pursuant to Section 16-6a-1102, the surviving nonprofit corporation shall deliver to the division for filing articles of merger setting forth:

(a) the plan of merger;

(b) if member approval was not required:

(i) a statement to the effect that member approval was not required; and

(ii) a statement that the plan of merger was approved by a sufficient vote of the board of directors of the nonprofit corporation;

(c) if approval of the members of one or more nonprofit corporations party to the merger was required, a statement that the number of votes cast for the plan by each voting group entitled to vote separately on the merger was sufficient for approval by that voting group; and

(d) if approval of the plan by some person or persons other than the members or the board of directors is required pursuant to Subsection 16-6a-1102(3), a statement that the approval was obtained.

(2) A merger takes effect upon the effective date stated in the articles of merger, which may not be prior to the date the articles of merger are filed.

(3) Articles of merger shall be executed by each party to the merger.

Section 129. Section **16-6a-1104** is enacted to read:

16-6a-1104. Effect of merger.

(1) When a merger takes effect:

(a) every other nonprofit corporation party to the merger merges into the surviving nonprofit corporation;

(b) the separate existence of every nonprofit corporation party to the merger except the surviving nonprofit corporation ceases;

(c) the title to all real estate and other property owned by every other nonprofit corporation party to the merger is transferred to and vested in the surviving nonprofit corporation without reversion or impairment;

(d) the surviving nonprofit corporation has all liabilities of each nonprofit corporation party to the merger;

(e) (i) a proceeding pending by or against any nonprofit corporation party to the merger may be continued as if the merger did not occur; or

(ii) the surviving nonprofit corporation may be substituted in the proceeding for the nonprofit corporation whose existence ceased;

(f) the articles of incorporation of the surviving nonprofit corporation are amended to the extent provided in the plan of merger; and

(g) the memberships of each nonprofit corporation party to the merger that are to be converted into memberships, obligations, or other interests of the surviving nonprofit corporation or into money or other property are converted, and the former holders of the memberships are entitled only to the rights provided in the articles of merger.

(2) (a) A transfer to and vesting in the surviving nonprofit corporation described in Subsection (1)(c) occurs by operation of law.

(b) Consent or approval of any other person may not be required in connection with any

transfer or vesting unless the consent or approval is specifically required in the event of merger by:

(i) law; or

(ii) express provision in any contract, agreement, decree, order, or other instrument to which any of the nonprofit corporations so merged is a party or by which it is bound.

Section 130. Section **16-6a-1105** is enacted to read:

16-6a-1105. Merger with foreign nonprofit corporation.

(1) One or more domestic nonprofit corporations may merge with one or more foreign nonprofit corporations if:

(a) the merger is permitted by the law of the state or country under whose law each foreign nonprofit corporation is incorporated;

(b) each foreign nonprofit corporation complies with the provisions of the law described in Subsection (1)(a) in effecting the merger;

(c) if the foreign corporation is the surviving nonprofit corporation of the merger, the foreign corporation:

(i) complies with Section 16-6a-1103; and

(ii) in addition to the information required by Section 16-6a-1103, provides the address of its principal office; and

(d) each domestic nonprofit corporation complies with:

(i) the applicable provisions of Sections 16-6a-1101 and 16-6a-1102; and

(ii) if it is the surviving nonprofit corporation of the merger, with Section 16-6a-1103.

(2) Upon the merger taking effect, a surviving foreign nonprofit corporation of a merger shall:

(a) (i) maintain a registered agent to accept service in any proceeding based on a cause of action arising with respect to any domestic nonprofit corporation that is merged into the foreign nonprofit corporation; or

(ii) be considered to have authorized service of process on it in connection with any proceeding described in Subsection (2)(a)(i) by registered or certified mail, return receipt requested, to the address of its principal office as:

- (A) set forth in the articles of merger; or
- (B) as last changed in a notice delivered to the division; and
- (b) shall comply with this chapter if it is to conduct affairs in this state.
- (3) Service effected pursuant to Subsection (2)(a)(ii) is perfected at the earliest of:
 - (a) the date the foreign nonprofit corporation receives the process, notice, or demand;
 - (b) the date shown on the return receipt, if signed on behalf of the foreign nonprofit

corporation; or

- (c) five days after mailing.

(4) Subsection (2) does not prescribe the only means, or necessarily the required means, of serving a surviving foreign nonprofit corporation of a merger.

Section 131. Section **16-6a-1201** is enacted to read:

Part 12. Sale of Property

16-6a-1201. Sale of property.

(1) Unless the bylaws otherwise provide, a nonprofit corporation may, as authorized by the board of directors:

(a) sell, lease, exchange, or otherwise dispose of all or substantially all of its property in the usual and regular course of business; or

(b) mortgage, pledge, dedicate to the repayment of indebtedness, whether with or without recourse, or otherwise encumber all or substantially all of its property whether or not in the usual and regular course of business.

(2) Unless otherwise provided in the bylaws, approval of a transaction described in this section by the members is not required.

Section 132. Section **16-6a-1202** is enacted to read:

16-6a-1202. Sale of property other than in regular course of activities.

(1) (a) A nonprofit corporation may sell, lease, exchange, or otherwise dispose of all, or substantially all, of its property, with or without its good will, other than in the usual and regular course of business on the terms and conditions and for the consideration determined by the board of directors, if:

(i) the board of directors proposes the transaction; and

(ii) the members entitled to vote on the transaction approve the transaction.

(b) A sale, lease, exchange, or other disposition of all, or substantially all, of the property of a nonprofit corporation, with or without its good will, in connection with its dissolution, other than in the usual and regular course of business, and other than pursuant to a court order, shall be subject to this section.

(c) A sale, lease, exchange, or other disposition of all, or substantially all, of the property of a nonprofit corporation, with or without its good will, pursuant to a court order is not subject to this section.

(2) (a) A nonprofit corporation shall comply with Subsection (2)(b) to vote or otherwise consent with respect to the sale, lease, exchange, or other disposition of all, or substantially all, of the property with or without the good will of another entity that the nonprofit corporation controls if:

(i) the nonprofit corporation is entitled to vote or otherwise consent; and

(ii) the property interests held by the nonprofit corporation in the other entity constitute all, or substantially all, of the property of the nonprofit corporation.

(b) A nonprofit corporation may vote or otherwise consent to a transaction described in Subsection (2)(a) only if:

(i) the board of the directors of the nonprofit corporation proposes the vote or consent; and

(ii) the members, if any are entitled to vote on the vote or consent, approve giving the vote or consent.

(3) For a transaction described in Subsection (1) or a consent described in Subsection (2) to be approved by the members:

(a) (i) the board of directors shall recommend the transaction or the consent to the members;

or

(ii) the board of directors shall:

(A) determine that because of a conflict of interest or other special circumstance it should make no recommendation; and

(B) communicate the basis for its determination to the members at a membership meeting

with the submission of the transaction or consent; and

(b) the members entitled to vote on the transaction or the consent shall approve the transaction or the consent as provided in Subsection (6).

(4) The board of directors may condition the effectiveness of the transaction or the consent on any basis.

(5) (a) The nonprofit corporation shall give notice, in accordance with Section 16-6a-704 to each member entitled to vote on the transaction described in Subsection (1) or the consent described in Subsection (2), of the members' meeting at which the transaction or the consent will be voted upon.

(b) The notice required by Subsection (1) shall:

(i) state that the purpose, or one of the purposes, of the meeting is to consider:

(A) in the case of action pursuant to Subsection (1), the sale, lease, exchange, or other disposition of all, or substantially all, of the property of the nonprofit corporation; or

(B) in the case of action pursuant to Subsection (2), the nonprofit corporation's consent to the sale, lease, exchange, or other disposition of all, or substantially all, of the property of another entity, the property interests of which:

(I) are held by the nonprofit corporation; and

(II) constitute all, or substantially all, of the property of the nonprofit corporation;

(ii) contain or be accompanied by a description of:

(A) the transaction, in the case of action pursuant to Subsection (1); or

(B) the transaction underlying the consent, in the case of action pursuant to Subsection (2);

and

(iii) in the case of action pursuant to Subsection (2), identify the entity whose property is the subject of the transaction.

(6) The transaction described in Subsection (1) or the consent described in Subsection (2) shall be approved by the votes required by Sections 16-6a-714 and 16-6a-715 by every voting group entitled to vote on the transaction or the consent unless a greater vote is required by:

(a) this chapter;

(b) the articles of incorporation;

(c) bylaws adopted by the members; or

(d) the board of directors acting pursuant to Subsection (4).

(7) After a transaction described in Subsection (1) or a consent described in Subsection (2) is authorized, the transaction may be abandoned or the consent withheld or revoked, subject to any contractual rights or other limitations on such abandonment, withholding, or revocation, without further action by the members.

(8) A transaction that constitutes a distribution is governed by Part 13 and not by this section.

Section 133. Section **16-6a-1301** is enacted to read:

Part 13. Distributions

16-6a-1301. Distributions prohibited.

Except as authorized by Section 16-6a-1302, a nonprofit corporation may not make a distribution.

Section 134. Section **16-6a-1302** is enacted to read:

16-6a-1302. Authorized distributions.

(1) A nonprofit corporation may:

(a) make distributions of its income or assets to a member that is a domestic or foreign nonprofit corporation;

(b) pay compensation in a reasonable amount to its members, directors, or officers for services rendered;

(c) if a cooperative nonprofit corporation, make distributions consistent with its purposes;
and

(d) confer benefits upon its members in conformity with its purposes.

(2) A nonprofit corporation may make distributions upon dissolution in conformity with this chapter.

Section 135. Section **16-6a-1401** is enacted to read:

Part 14. Dissolution

16-6a-1401. Dissolution by incorporators or directors if no members.

(1) If a nonprofit corporation has no members, the following may authorize the dissolution

of the nonprofit corporation:

- (a) a majority of its directors; or
- (b) if it has no directors, a majority of its incorporators.

(2) The directors or incorporators in approving dissolution shall adopt a plan of dissolution indicating to whom the assets owned or held by the nonprofit corporation will be distributed after all creditors have been paid.

Section 136. Section **16-6a-1402** is enacted to read:

16-6a-1402. Dissolution by directors and members.

(1) If a nonprofit corporation has members, dissolution of a nonprofit corporation may be authorized in the manner provided in Subsection (2).

(2) For a proposal to dissolve the nonprofit corporation to be authorized:

- (a) the board of directors shall adopt the proposal to dissolve;
- (b) the board of directors shall:

(i) recommend the proposal to dissolve to the members; or

(ii) (A) determine that because of a conflict of interest or other special circumstance, it should make no recommendation; and

(B) communicate the basis for its determination to the members; and

(c) the members entitled to vote on the proposal to dissolve shall approve the proposal to dissolve as provided in Subsection (5).

(3) The board of directors may condition the effectiveness of the dissolution, and the members may condition their approval of the dissolution, on any basis.

(4) (a) The nonprofit corporation shall give notice, in accordance with Section 16-6a-704, to each member entitled to vote on the proposal of the members' meeting at which the proposal to dissolve will be voted on.

(b) The notice required by Subsection (4)(a) shall:

(i) state that the purpose, or one of the purposes, of the meeting is to consider the proposal to dissolve the nonprofit corporation; and

(ii) contain or be accompanied by a copy of the proposal or a summary of the proposal.

(5) The proposal to dissolve shall be approved by the votes required by Sections 16-6a-714 and 16-6a-715 by every voting group entitled to vote on the proposal to dissolve unless a greater vote is required by:

- (a) this chapter;
- (b) the articles of incorporation;
- (c) bylaws adopted by the members; or
- (d) the board of directors acting pursuant to Subsection (3).

(6) The plan of dissolution shall indicate to whom the assets owned or held by the nonprofit corporation will be distributed after all creditors have been paid.

Section 137. Section **16-6a-1403** is enacted to read:

16-6a-1403. Articles of dissolution.

(1) At any time after dissolution is authorized, the nonprofit corporation may dissolve by delivering to the division for filing articles of dissolution setting forth:

- (a) the name of the nonprofit corporation;
 - (b) (i) (A) the address of the nonprofit corporation's principal office; or
(B) if a principal office is not to be maintained, a statement that the nonprofit corporation will not maintain a principal office; and
 - (ii) if different from the address of the principal office or if no principal office is to be maintained, the address to which service of process may be mailed pursuant to Section 16-6a-1409;
 - (c) the date dissolution was authorized;
 - (d) if dissolution was authorized by the directors or the incorporators pursuant to Section 16-6a-1401, a statement to that effect;
 - (e) if dissolution was approved by the members pursuant to Section 16-6a-1402, a statement that the number of votes cast for the proposal to dissolve by each voting group entitled to vote separately on the proposal was sufficient for approval by that voting group; and
 - (f) any additional information as the division determines is necessary or appropriate.
- (2) A nonprofit corporation is dissolved upon the effective date of its articles of dissolution.
- (3) Articles of dissolution need not be filed by a nonprofit corporation that is dissolved

pursuant to Section 16-6a-1418.

Section 138. Section **16-6a-1404** is enacted to read:

16-6a-1404. Revocation of dissolution.

(1) A nonprofit corporation may revoke its dissolution within 120 days after the effective date of the dissolution.

(2) (a) Except as provided in Subsection (2)(b), revocation of dissolution shall be authorized in the same manner as the dissolution was authorized.

(b) The board of directors may revoke the dissolution without member action if:

(i) the dissolution is authorized pursuant to Section 16-6a-1402; and

(ii) the authorization permitted revocation by action of the board of directors alone.

(3) (a) After the revocation of dissolution is authorized, the nonprofit corporation may revoke the dissolution by delivering to the division for filing, within 120 days after the effective date of dissolution:

(i) articles of revocation of dissolution; and

(ii) a copy of its articles of dissolution.

(b) The articles of revocation of dissolution shall set forth:

(i) the name of the nonprofit corporation;

(ii) the effective date of the dissolution that was revoked;

(iii) the date that the revocation of dissolution was authorized;

(iv) if, pursuant to Subsection (2), the directors or the incorporators revoked a dissolution authorized under Section 16-6a-1401, a statement that the revocation of dissolution was authorized by the directors or the incorporators, as the case may be;

(v) if, pursuant to Subsection (2), the directors revoked a dissolution approved by the members, a statement that the revocation was permitted by action of the directors pursuant to that approval; and

(vi) if the revocation of dissolution was approved pursuant to Subsection (2) by the members, a statement that the number of votes cast for revocation of dissolution by each voting group entitled to vote separately on the proposal to dissolve was sufficient for approval by that voting group.

(4) (a) Revocation of dissolution is effective as provided in Subsection 16-6a-108(1).

(b) A delayed effective date may not be specified pursuant to Subsection 16-6a-108(2).

(5) When the revocation of dissolution is effective:

(a) the revocation relates back to and takes effect as of the effective date of the dissolution;

and

(b) the nonprofit corporation may carry on its activities and use its corporate name as if dissolution had never occurred.

Section 139. Section **16-6a-1405** is enacted to read:

16-6a-1405. Effect of dissolution.

(1) A dissolved nonprofit corporation continues its corporate existence but may not carry on any activities except as is appropriate to wind up and liquidate its affairs, including:

(a) collecting its assets;

(b) returning, transferring, or conveying assets held by the nonprofit corporation upon a condition requiring return, transfer, or conveyance, which condition occurs by reason of the dissolution, in accordance with the condition;

(c) transferring, subject to any contractual or legal requirements, its assets as provided in or authorized by its articles of incorporation or bylaws;

(d) discharging or making provision for discharging its liabilities; and

(e) doing every other act necessary to wind up and liquidate its assets and affairs.

(2) (a) Unless otherwise provided in the articles of incorporation or bylaws, upon dissolution of a nonprofit corporation described under Section 501(c)(3), Internal Revenue Code, and exempt from tax under Section 501(a), Internal Revenue Code, or corresponding section of any future federal tax code, the assets of the nonprofit corporation shall be distributed:

(i) for one or more exempt purposes under Section 501, Internal Revenue Code;

(ii) to the federal government for a public purpose; or

(iii) to a state or local government, for a public purpose.

(b) Any assets not disposed of under Subsection (2)(a) shall be disposed of by the district court for the county in which the principal office of the nonprofit corporation is then located,

exclusively as determined by the court:

(i) for one or more exempt purposes under Section 501, Internal Revenue Code; or

(ii) to organizations that are organized and operated exclusively for exempt or public purposes.

(3) Dissolution of a nonprofit corporation does not:

(a) transfer title to the nonprofit corporation's property;

(b) subject its directors or officers to standards of conduct different from those prescribed in this chapter;

(c) change quorum or voting requirements for its board of directors or members;

(d) change provisions for selection, resignation, or removal of its directors or officers, or

both;

(e) change provisions for amending its bylaws or its articles of incorporation;

(f) prevent commencement of a proceeding by or against the nonprofit corporation in its corporate name; or

(g) abate or suspend a proceeding pending by or against the nonprofit corporation on the effective date of dissolution.

Section 140. Section **16-6a-1406** is enacted to read:

16-6a-1406. Disposition of known claims by notification.

(1) A dissolved nonprofit corporation may dispose of the known claims against it by following the procedures described in this section.

(2) A dissolved nonprofit corporation electing to dispose of known claims pursuant to this section may give written notice of the dissolution to known claimants at any time after the effective date of the dissolution. The written notice shall:

(a) describe the information that shall be included in a claim;

(b) provide an address to which written notice of any claim shall be given to the nonprofit corporation;

(c) state the deadline by which the dissolved nonprofit corporation shall receive a claim, which may not be fewer than 120 days after the effective date of the notice; and

(d) state that unless sooner barred by any other state statute limiting actions, a claim will be barred if not received by the deadline stated in Subsection (2)(d).

(3) Unless sooner barred by any other statute limiting actions, a claim against the dissolved nonprofit corporation is barred if:

(a) (i) a claimant was given notice under Subsection (2); and

(ii) the claim is not received by the dissolved nonprofit corporation by the deadline stated in the notice; or

(b) (i) the dissolved nonprofit corporation delivers to the claimant written notice of rejection of the claim within 90 days after receipt of the claim; and

(ii) the claimant whose claim was rejected by the dissolved nonprofit corporation does not commence a proceeding to enforce the claim within 90 days after the effective date of the rejection notice.

(4) Claims that are not rejected by the dissolved nonprofit corporation in writing within 90 days after receipt of the claim by the dissolved nonprofit corporation shall be considered accepted.

(5) The failure of the dissolved nonprofit corporation to give notice to any known claimant pursuant to Subsection (2) does not affect the disposition under this section of any claim held by any other known claimant.

(6) For purposes of this section:

(a) "claim" does not include:

(i) a contingent liability; or

(ii) a claim based on an event occurring after the effective date of dissolution; and

(b) an action to enforce a claim includes:

(i) any civil action; and

(ii) any arbitration under any agreement for binding arbitration between the dissolved nonprofit corporation and the claimant.

Section 141. Section **16-6a-1407** is enacted to read:

16-6a-1407. Disposition of claims by publication.

(1) A dissolved nonprofit corporation may publish notice of its dissolution and request that

persons with claims against the nonprofit corporation present them in accordance with the notice.

(2) The notice described in Subsection (1) shall:

(a) be published one time in a newspaper of general circulation in the county where:

(i) the dissolved nonprofit corporation's principal office is located; or

(ii) if the dissolved nonprofit corporation has no principal office in this state, its registered office is or was last located;

(b) describe the information that shall be included in a claim;

(c) provide an address at which any claim shall be given to the nonprofit corporation; and

(d) state that unless sooner barred by any other statute limiting actions, a claim will be barred if an action to enforce the claim is not commenced within three years after publication of the notice.

(3) If the dissolved nonprofit corporation publishes a newspaper notice in accordance with Subsection (2), then unless sooner barred under Section 16-6a-1406 or under any other statute limiting actions, the claim of any claimant against the dissolved nonprofit corporation is barred unless the claimant commences an action to enforce the claim against the dissolved nonprofit corporation within three years after the publication date of the notice.

(4) For purposes of this section:

(a) "claim" means any claim, including claims of this state, whether:

(i) known;

(ii) due or to become due;

(iii) absolute or contingent;

(iv) liquidated or unliquidated;

(v) founded on contract, tort, or other legal basis; or

(vi) otherwise; and

(b) an action to enforce a claim includes:

(i) any civil action; and

(ii) any arbitration under any agreement for binding arbitration between the dissolved nonprofit corporation and the claimant.

Section 142. Section **16-6a-1408** is enacted to read:

16-6a-1408. Enforcement of claims against dissolved nonprofit corporation.

(1) Subject to Subsection (2), a claim may be enforced under Section 16-6a-1406 or 16-6a-1407:

(a) against the dissolved nonprofit corporation to the extent of its undistributed assets; and
(b) if assets have been distributed in liquidation, against any person, other than a creditor of the nonprofit corporation, to whom the nonprofit corporation distributed its property.

(2) Notwithstanding Subsection (1), a distributee's total liability for all claims under this section may not exceed the total value of assets distributed to the distributee, as the value is determined at the time of distribution.

(3) (a) A distributee required to return any portion of the value of assets received by the distributee in liquidation shall be entitled to contribution from all other distributees.

(b) Each contribution under Subsection (3)(a):
(i) shall be in accordance with the contributing distributee's rights and interests; and
(ii) may not exceed the value of the assets received by the contributing distributee in liquidation.

Section 143. Section **16-6a-1409** is enacted to read:

16-6a-1409. Service on dissolved nonprofit corporation.

(1) A dissolved nonprofit corporation shall:
(a) maintain a registered agent to accept service of process on its behalf; or
(b) be considered to have authorized service of process on it by registered or certified mail, return receipt requested, to:

(i) the address of its principal office, if any:
(A) as set forth in its articles of dissolution; or
(B) as last changed by notice delivered to the division for filing; or
(ii) the address for service of process that:
(A) is stated in its articles of dissolution; or
(B) as last changed by notice delivered to the division for filing.
(2) Service effected pursuant to Subsection (1)(b) is perfected at the earliest of:

- (a) the date the dissolved nonprofit corporation receives the process, notice, or demand;
- (b) the date shown on the return receipt, if signed on behalf of the dissolved nonprofit corporation; or
- (c) five days after mailing.
- (3) Subsection (1) does not prescribe the only means, or necessarily the required means, of serving a dissolved nonprofit corporation.

Section 144. Section **16-6a-1410** is enacted to read:

16-6a-1410. Grounds for administrative dissolution.

The division may commence a proceeding under Section 16-6a-1411 for administrative dissolution of a nonprofit corporation if:

- (1) the nonprofit corporation does not pay when they are due any taxes, fees, or penalties imposed by this chapter or other applicable laws of this state;
- (2) the nonprofit corporation does not deliver its annual report to the division when it is due;
- (3) the nonprofit corporation is without:
 - (a) a registered agent; or
 - (b) a registered office;
- (4) the nonprofit corporation does not give notice to the division that:
 - (a) its registered agent or registered office has been changed;
 - (b) its registered agent has resigned;
 - (c) its registered office has been discontinued; or
 - (d) the nonprofit corporation's period of duration stated in its articles of incorporation expires.

Section 145. Section **16-6a-1411** is enacted to read:

16-6a-1411. Procedure for and effect of administrative dissolution.

- (1) If the division determines that one or more grounds exist under Section 16-6a-1410 for dissolving a nonprofit corporation, the division shall mail to the nonprofit corporation written notice of the determination, stating the one or more grounds for administrative dissolution.
- (2) (a) If the nonprofit corporation does not correct each ground for dissolution, or

demonstrate to the reasonable satisfaction of the division that each ground determined by the division does not exist, within 60 days after mailing of the notice contemplated in Subsection (1), the division shall administratively dissolve the nonprofit corporation.

(b) If a nonprofit corporation is dissolved under Subsection (2)(a), the division shall mail written notice of the administrative dissolution to the dissolved nonprofit corporation stating the date of dissolution specified in Subsection (2)(d).

(c) The division shall mail written notice of the administrative dissolution to:

(i) the last registered agent of the dissolved nonprofit corporation; or

(ii) if there is no registered agent of record, at least one officer of the nonprofit corporation.

(d) A nonprofit corporation's date of dissolution is five days after the date the division mails written notice of dissolution under Subsection (2)(b).

(3) (a) Except as provided in Subsection (3)(b), a nonprofit corporation administratively dissolved continues its corporate existence but may not carry on any activities except as is appropriate to:

(i) wind up and liquidate its affairs under Section 16-6a-1405; and

(ii) to give notice to claimants in the manner provided in Sections 16-6a-1406 and 16-6a-1407.

(b) If the corporation is reinstated in accordance with Section 16-6a-1412, business conducted by the corporation during a period of administrative dissolution is unaffected by the dissolution.

(4) The administrative dissolution of a nonprofit corporation does not terminate the authority of its registered agent.

(5) (a) Upon the administrative dissolution of a nonprofit corporation, the division shall be the dissolved nonprofit corporation's agent for service of process.

(b) Service of process on the division under this Subsection (5) is service on the dissolved nonprofit corporation.

(c) Upon receipt of process, the division shall deliver a copy of the process to the dissolved nonprofit corporation at its principal office.

(6) A notice mailed under this section shall be:

(a) mailed first class, postage prepaid; and

(b) addressed to the most current mailing address appearing on the records of the division

for:

(i) the registered agent of the nonprofit corporation, if the notice is required to be mailed to the registered agent; or

(ii) the officer of the nonprofit corporation that is mailed the notice if the notice is required to be mailed to an officer of the nonprofit corporation.

Section 146. Section **16-6a-1412** is enacted to read:

16-6a-1412. Reinstatement following administrative dissolution -- Reinstatement after voluntary dissolution.

(1) A nonprofit corporation administratively dissolved under Section 16-6a-1411 may apply to the division for reinstatement within two years after the effective date of dissolution by delivering to the division for filing an application for reinstatement that states:

(a) the effective date of its administrative dissolution and its corporate name on the effective date of dissolution;

(b) that the ground or grounds for dissolution:

(i) did not exist; or

(ii) have been eliminated;

(c) (i) the corporate name under which the nonprofit corporation is being reinstated; and

(ii) the corporate name that satisfies the requirements of Section 16-6a-401;

(d) that all taxes, fees, or penalties imposed pursuant to this chapter, otherwise owed by the nonprofit corporation to the State Tax Commission, or otherwise imposed by the applicable laws of this state have been paid;

(e) the address of its registered office;

(f) the name of its registered agent at the office stated in Subsection (1)(e); and

(g) the additional information as the division determines is necessary or appropriate.

(2) The nonprofit corporation shall include in or with the application for reinstatement:

(a) the written consent to appointment by the designated registered agent; and
(b) a certificate from the State Tax Commission reciting that all taxes owed by the nonprofit corporation have been paid.

(3) (a) The division shall revoke the administrative dissolution if:

(i) the division determines that the application for reinstatement contains the information required by Subsections (1) and (2); and

(ii) that the information is correct.

(b) The division shall mail written notice of the revocation to the nonprofit corporation in the manner provided in Subsection 16-6a-1411(6) stating the effective date of the dissolution.

(4) When the reinstatement is effective:

(a) the reinstatement relates back to and takes effect as of the effective date of the administrative dissolution;

(b) the nonprofit corporation may carry on its activities, under the name stated pursuant to Subsection (1)(c), as if the administrative dissolution had never occurred; and

(c) an act of the corporation during the period of dissolution is effective and enforceable as if the administrative dissolution had never occurred.

(5) (a) The division may make rules for the reinstatement of a nonprofit corporation voluntarily dissolved.

(b) The rules made under Subsection (5)(a) shall be substantially similar to the requirements of this section for reinstatement of a nonprofit corporation that is administratively dissolved.

Section 147. Section **16-6a-1413** is enacted to read:

16-6a-1413. Appeal from denial of reinstatement.

(1) If the division denies a nonprofit corporation's application for reinstatement following administrative dissolution under Section 16-6a-1411, the division shall mail to the nonprofit corporation in the manner provided in Subsection 16-6a-1411(6) written notice:

(a) setting forth the reasons for denying the application; and

(b) stating that the nonprofit corporation has the right to appeal the division's determination to the executive director as provided in Subsection (2).

(2) If the division denies a nonprofit corporation's application for reinstatement following administrative dissolution, in accordance with Title 63, Chapter 46b, Administrative Procedures Act, the following may appeal the denial to the executive director:

- (a) the nonprofit corporation for which the reinstatement was requested; or
- (b) the representative of the nonprofit corporation for which reinstatement was requested.

Section 148. Section **16-6a-1414** is enacted to read:

16-6a-1414. Grounds for judicial dissolution.

(1) A nonprofit corporation may be dissolved in a proceeding by the attorney general or the division director if it is established that:

- (a) the nonprofit corporation obtained its articles of incorporation through fraud; or
- (b) the nonprofit corporation has continued to exceed or abuse the authority conferred upon it by law.

(2) A nonprofit corporation may be dissolved in a proceeding by a member or director if it is established that:

- (a) (i) the directors are deadlocked in the management of the corporate affairs;
- (ii) the members, if any, are unable to break the deadlock; and
- (iii) irreparable injury to the nonprofit corporation is threatened or being suffered;
- (b) the directors or those in control of the nonprofit corporation have acted, are acting, or will act in a manner that is illegal, oppressive, or fraudulent;
- (c) the members are deadlocked in voting power and have failed, for a period that includes at least two consecutive annual meeting dates, to elect successors to directors whose terms have expired or would have expired upon the election of their successors; or
- (d) the corporate assets are being misapplied or wasted.

(3) A nonprofit corporation may be dissolved in a proceeding by a creditor if it is established that:

- (a) (i) the creditor's claim has been reduced to judgment;
- (ii) the execution on the judgment has been returned unsatisfied; and
- (iii) the nonprofit corporation is insolvent; or

(b) (i) the nonprofit corporation is insolvent; and
(ii) the nonprofit corporation has admitted in writing that the creditor's claim is due and owing.

(4) (a) If a nonprofit corporation has been dissolved by voluntary or administrative action taken under this part:

(i) the nonprofit corporation may bring a proceeding to wind up and liquidate its business and affairs under judicial supervision in accordance with Section 16-6a-1405; and

(ii) the attorney general, a director, a member, or a creditor may bring a proceeding to wind up and liquidate the affairs of the nonprofit corporation under judicial supervision in accordance with Section 16-6a-1405, upon establishing the grounds set forth in Subsections (1) through (3).

(b) As used in Sections 16-6a-1415 through 16-6a-1417:

(i) a "judicial proceeding to dissolve the nonprofit corporation" includes a proceeding brought under this Subsection (4); and

(ii) a "decree of dissolution" includes an order of a court entered in a proceeding under this Subsection (4) that directs that the affairs of a nonprofit corporation shall be wound up and liquidated under judicial supervision.

Section 149. Section **16-6a-1415** is enacted to read:

16-6a-1415. Procedure for judicial dissolution.

(1) (a) A proceeding by the attorney general or director of the division to dissolve a nonprofit corporation shall be brought in:

(i) the district court of the county in this state where the nonprofit corporation's principal office or registered office is located; or

(ii) if the nonprofit corporation has no principal or registered office in this state, in the district court in and for Salt Lake County.

(b) A proceeding brought by a party that is not listed in Subsection (1)(a) but is named in Section 16-6a-1414 shall be brought in:

(i) the district court of the county in this state where the nonprofit corporation's principal office is located; or

(ii) if it has no principal office in this state, in the district court of the county where its registered office is or was last located.

(2) It is not necessary to make directors or members parties to a proceeding to dissolve a nonprofit corporation unless relief is sought against the directors or members individually.

(3) A court in a proceeding brought to dissolve a nonprofit corporation may:

(a) issue injunctions;

(b) appoint a receiver or custodian pendente lite with all powers and duties the court directs;

or

(c) take other action required to preserve the corporate assets wherever located, and carry on the activities of the nonprofit corporation until a full hearing can be held.

Section 150. Section **16-6a-1416** is enacted to read:

16-6a-1416. Receivership or custodianship.

(1) (a) A court in a judicial proceeding brought to dissolve a nonprofit corporation may appoint:

(i) one or more receivers to wind up and liquidate the affairs of the nonprofit corporation;

or

(ii) one or more custodians to manage the affairs of the nonprofit corporation.

(b) Before appointing a receiver or custodian, the court shall hold a hearing, after giving notice to:

(i) all parties to the proceeding; and

(ii) any interested persons designated by the court.

(c) The court appointing a receiver or custodian has exclusive jurisdiction over the nonprofit corporation and all of its property, wherever located.

(d) The court may appoint as a receiver or custodian:

(i) an individual;

(ii) a domestic or foreign corporation authorized to conduct affairs in this state; or

(iii) a domestic or foreign nonprofit corporation authorized to conduct affairs in this state.

(e) The court may require the receiver or custodian to post bond, with or without sureties,

in an amount specified by the court.

(2) The court shall describe the powers and duties of the receiver or custodian in its appointing order that may be amended from time to time. Among other powers the receiver shall have the power to:

(a) dispose of all or any part of the property of the nonprofit corporation, wherever located:

(i) at a public or private sale; and

(ii) if authorized by the court; and

(b) sue and defend in the receiver's own name as receiver of the nonprofit corporation in all courts.

(4) The custodian may exercise all of the powers of the nonprofit corporation, through or in place of its board of directors or officers, to the extent necessary to manage the affairs of the nonprofit corporation in the best interests of its members and creditors.

(5) If doing so is in the best interests of the nonprofit corporation and its members and creditors, the court may:

(a) during a receivership, redesignate the receiver as a custodian; and

(b) during a custodianship, redesignate the custodian as a receiver.

(6) The court from time to time during the receivership or custodianship may order compensation paid and expense disbursements or reimbursements made from the assets of the nonprofit corporation or proceeds from the sale of the assets to:

(a) the receiver;

(b) the custodian; or

(c) the receiver's or custodian's attorney.

Section 151. Section **16-6a-1417** is enacted to read:

16-6a-1417. Decree of dissolution.

(1) If after a hearing the court determines that one or more grounds for judicial dissolution described in Section 16-6a-1414 exist:

(a) the court may enter a decree:

(i) dissolving the nonprofit corporation; and

(ii) specifying the effective date of the dissolution; and
(b) the clerk of the court shall deliver a certified copy of the decree to the division which shall file it accordingly.

(2) After entering the decree of dissolution, the court shall direct:

(a) the winding up and liquidation of the nonprofit corporation's affairs in accordance with Section 16-6a-1405; and

(b) the giving of notice to:

(i) (A) the nonprofit corporation's registered agent; or

(B) the division if it has no registered agent; and

(ii) to claimants in accordance with Sections 16-6a-1406 and 16-6a-1407.

(3) The court's order or decision may be appealed as in other civil proceedings.

Section 152. Section **16-6a-1418** is enacted to read:

16-6a-1418. Dissolution upon expiration of period of duration.

(1) A nonprofit corporation shall be dissolved upon and by reason of the expiration of its period of duration, if any, stated in its articles of incorporation.

(2) For purposes of this section:

(a) a provision in the articles of incorporation is considered a provision for a period of duration if it is to the effect that the nonprofit corporation or its existence shall be terminated:

(i) at a specified date;

(ii) after a stated period of time;

(iii) upon a contingency; or

(iv) any event similar to those described in Subsections (2)(a)(i) through (iii); and

(b) the following shall be considered to be the expiration of the nonprofit corporation's period of duration:

(i) the occurrence of the specified date;

(ii) the expiration of the stated period of time;

(iii) the occurrence of the contingency; or

(iv) the satisfaction of the provision described in Subsection (2)(a)(iv).

Section 153. Section **16-6a-1419** is enacted to read:

16-6a-1419. Deposit with state treasurer.

Assets of a dissolved nonprofit corporation that should be transferred to a creditor, claimant, or member of the nonprofit corporation shall be reduced to cash and deposited with the state treasurer in accordance with Title 67, Chapter 4a, Unclaimed Property Act, if the creditor, claimant, or member:

- (1) cannot be found; or
- (2) is not legally competent to receive the assets.

Section 154. Section **16-6a-1501** is enacted to read:

Part 15. Foreign Nonprofit Corporations

16-6a-1501. Authority to conduct affairs required.

(1) (a) A foreign nonprofit corporation may not conduct affairs in this state until its application for authority to conduct affairs is filed by the division.

(b) This part shall be applicable to foreign nonprofit corporations that conduct affairs governed by other statutes of this state only to the extent this part is not inconsistent with such other statutes.

(2) A foreign nonprofit corporation may not be considered to be conducting affairs in this state within the meaning of Subsection (1) by reason of carrying on in this state any one or more of the following activities:

- (a) maintaining, defending, or settling in its own behalf any proceeding or dispute;
- (b) holding meetings of its board of directors or members or carrying on other activities concerning internal corporate affairs;
- (c) maintaining bank accounts;
- (d) maintaining offices or agencies for the transfer, exchange, and registration of memberships or securities;
- (e) maintaining trustees or depositories with respect to the memberships or securities described in Subsection (2)(d);
- (f) selling through independent contractors;

(g) soliciting or obtaining orders, if the orders require acceptance outside this state before they become contracts, whether by mail or through employees or agents or otherwise;

(h) creating, as borrower or lender, or acquiring indebtedness, mortgages, or other security interests in real or personal property;

(i) securing or collecting debts in its own behalf or enforcing mortgages or security interests in property securing the debts;

(j) owning, without more, real or personal property;

(k) conducting an isolated transaction that is:

(i) completed within 30 days; and

(ii) not one in the course of repeated transactions of a like nature;

(l) conducting affairs in interstate commerce;

(m) granting funds;

(n) distributing information to its members; or

(o) any other activity not considered to constitute conducting affairs in this state in the discretion of the division.

(3) The list of activities in Subsection (2) is not exhaustive.

(4) Nothing in this section shall limit or affect the right to subject a foreign nonprofit corporation that does not, or is not required to, have authority to conduct affairs in this state:

(a) to the jurisdiction of the courts of this state; or

(b) to serve upon any foreign nonprofit corporation any process, notice, or demand required or permitted by law to be served upon a nonprofit corporation pursuant to:

(i) any applicable provision of law; or

(ii) any applicable rules of civil procedure.

Section 155. Section **16-6a-1502** is enacted to read:

16-6a-1502. Consequences of conducting affairs without authority.

(1) A foreign nonprofit corporation, its successor, or anyone acting on its behalf, conducting affairs in this state without authority may not be permitted to maintain a proceeding in any court in this state until an application for authority to conduct affairs is filed.

(2) (a) A foreign nonprofit corporation or successor that conducts affairs in this state without authority shall be liable to this state in an amount equal to the sum of:

(i) all fees imposed by this chapter or prior law that would have been paid for all years or portions of years during which it conducted affairs in this state without authority; and

(ii) all penalties imposed by the division for failure to pay the fees described in Subsection (2)(a)(i).

(b) An application for authority to conduct affairs may not be filed until payment of the amounts due under this Subsection (2) is made.

(3) (a) A court may stay a proceeding commenced by a foreign nonprofit corporation, its successor, or assignee until it determines whether the foreign corporation, its successor, or assignee is required to file an application for authority to conduct affairs.

(b) If the court determines that a foreign nonprofit corporation, its successor, or assignee is required to file an application for authority to conduct affairs, the court may further stay the proceeding until the required application for authority to conduct affairs has been filed with the division.

(4) (a) A foreign nonprofit corporation that conducts affairs in this state without authority is subject to a civil penalty, payable to this state, of \$100 for each day in which it transacts business in this state without authority.

(b) Notwithstanding Subsection (4)(a), the civil penalty imposed under Subsection (4)(a) may not exceed a total of \$5,000 for each year.

(c) The following are subject to a civil penalty payable to the state not exceeding \$1,000:

(i) each officer of a foreign nonprofit corporation who authorizes, directs, or participates in the conducting of affairs in this state without authority; and

(ii) each agent of a foreign nonprofit corporation who transacts business in this state on behalf of a foreign nonprofit corporation that is not authorized.

(d) The division may make rules to carry out the provisions of this Subsection (4), including procedures to request the division to abate a penalty imposed.

(e) If the division imposes a civil penalty under this Subsection (4) on a foreign nonprofit

corporation, in accordance with Title 63, Chapter 46b, Administrative Procedures Act, the following may appeal the civil penalty to the executive director:

- (i) the foreign nonprofit corporation; or
- (ii) the representative of the foreign nonprofit corporation.

(5) (a) The civil penalties set forth in Subsection (4) may be recovered in an action brought:

- (i) in an appropriate court in Salt Lake County; or
- (ii) in any other county in this state in which the foreign nonprofit corporation:
 - (A) has a registered, principal, or business office; or
 - (B) has conducted affairs.

(b) Upon a finding by the court that a foreign nonprofit corporation or any of its officers or agents have conducted affairs in this state in violation of this part, in addition to or instead of a civil penalty, the court shall issue an injunction restraining:

- (i) the further conducting of affairs of the foreign nonprofit corporation; and
- (ii) the further exercise of any corporate rights and privileges in this state.

(c) Upon issuance of the injunction described in Subsection (5)(b), the foreign nonprofit corporation shall be enjoined from conducting affairs in this state until:

- (i) all civil penalties have been paid, plus any interest and court costs assessed by the court;
and
- (ii) the foreign nonprofit corporation has otherwise complied with the provisions of this part.

(6) Notwithstanding Subsections (1) and (2), the failure of a foreign corporation to have authority to conduct affairs in this state does not:

- (a) impair the validity of its corporate acts; or
- (b) prevent the foreign nonprofit corporation from defending any proceeding in this state.

Section 156. Section **16-6a-1503** is enacted to read:

16-6a-1503. Application for authority to conduct affairs.

(1) A foreign nonprofit corporation may apply for authority to conduct affairs in this state by delivering to the division for filing an application for authority to conduct affairs setting forth:

- (a) its corporate name and its assumed corporate name, if any;

(b) the name of the state or country under whose law it is incorporated;
(c) its date of incorporation;
(d) its period of duration;
(e) the street address of its principal office;
(f) the address of its registered office;
(g) the name of its registered agent at the office listed in Subsection (1)(f);
(h) the names and usual business addresses of its current directors and officers;
(i) the date it commenced or expects to commence conducting affairs in this state; and
(j) such additional information as the division determines is necessary or appropriate to determine whether the application for authority to conduct affairs should be filed.

(2) With the completed application required by Subsection (1) the foreign nonprofit corporation shall deliver to the division for a certificate of existence, or a document of similar import that is:

(a) authenticated by the division or other official having custody of corporate records in the state or country under whose law it is incorporated; and

(b) dated within 90 days before the filing of the application for authority to conduct affairs.

(3) The foreign nonprofit corporation shall include in the application for authority to conduct affairs, or in an accompanying document, written consent to appointment by its designated registered agent.

Section 157. Section **16-6a-1504** is enacted to read:

16-6a-1504. Amended application for authority to conduct affairs.

(1) A foreign nonprofit corporation authorized to conduct affairs in this state shall deliver an amended application for authority to conduct affairs to the division for filing if the foreign nonprofit corporation changes:

(a) its corporate name;

(b) its assumed corporate name;

(c) the period of its duration; or

(d) the state or country of its incorporation.

(2) The requirements of Section 16-6a-1503 for filing an original application for authority to conduct affairs apply to filing an amended application for authority to conduct affairs under this section.

Section 158. Section **16-6a-1505** is enacted to read:

16-6a-1505. Effect of filing an application for authority to conduct affairs.

(1) Filing an application for authority to conduct affairs authorizes the foreign nonprofit corporation to conduct affairs in this state, subject to the right of the state to revoke the authority as provided in this part.

(2) A foreign nonprofit corporation that has authority to conduct affairs in this state:

(a) has the same rights and privileges as, but no greater rights or privileges than, a domestic nonprofit corporation of like character; and

(b) except as otherwise provided by this chapter, is subject to the same duties, restrictions, penalties, and liabilities imposed on or later to be imposed on, a domestic nonprofit corporation of like character.

(3) This chapter does not authorize this state to regulate the organization or internal affairs of a foreign nonprofit corporation authorized to conduct affairs in this state.

Section 159. Section **16-6a-1506** is enacted to read:

16-6a-1506. Corporate name and assumed corporate name of foreign nonprofit corporation.

(1) (a) Except as provided in Subsection (2), if the corporate name of a foreign nonprofit corporation does not satisfy the requirements of Section 16-6a-401, to obtain authority to conduct affairs in this state, the corporation shall assume for use in this state a name that satisfies the requirements of Section 16-6a-401.

(b) Section 16-6a-401 applies to domestic corporations.

(2) A foreign nonprofit corporation may obtain authority to conduct affairs in this state with a name that does not meet the requirements of Subsection (1) because it is not distinguishable as required under Subsection 16-6a-401(2), if the foreign nonprofit corporation delivers to the division for filing either:

(a) (i) a written consent to the foreign nonprofit corporation's use of the name, given and signed by the other person entitled to the use of the name; and

(ii) a written undertaking by the other person, in a form satisfactory to the division, to change its name to a name that is distinguishable from the name of the applicant; or

(b) a certified copy of a final judgment of a court of competent jurisdiction establishing the prior right of the foreign nonprofit corporation to use the requested name in this state.

(3) A foreign nonprofit corporation may use in this state the name, including the fictitious name, of another domestic or foreign nonprofit corporation that is used or registered in this state if:

(a) the other corporation is incorporated or authorized to conduct affairs in this state; and

(b) the foreign nonprofit corporation:

(i) has merged with the other corporation; or

(ii) has been formed by reorganization of the other corporation.

(4) If a foreign nonprofit corporation authorized to conduct affairs in this state, whether under its corporate name or an assumed corporate name, changes its corporate name to one that does not satisfy the requirements of Subsections (1) through (3), or the requirements of Section 16-6a-401, the foreign nonprofit corporation:

(a) may not conduct affairs in this state under the changed name;

(b) shall use an assumed corporate name that does meet the requirements of this section; and

(c) shall deliver to the division for filing an amended application for authority to conduct affairs pursuant to Section 16-6a-1504.

Section 160. Section **16-6a-1507** is enacted to read:

16-6a-1507. Registered name of foreign nonprofit corporation.

(1) (a) A foreign nonprofit corporation may register its corporate name as provided in this section if the name would be available for use as a corporate name for a domestic nonprofit corporation under Section 16-6a-401.

(b) If the foreign nonprofit corporation's corporate name would not be available for use as a corporate name for a domestic nonprofit corporation, the foreign nonprofit corporation may register its corporate name modified by the addition of any of the following words or abbreviations, if the

modified name would be available for use under Section 16-6a-401:

(i) "corporation";

(ii) "incorporated";

(iii) "company";

(iv) "corp.";

(v) "inc."; or

(vi) "co."

(2) A foreign nonprofit corporation registers its corporate name, or its corporate name with any addition permitted by Subsection (1), by delivering to the division for filing an application for registration:

(a) setting forth:

(i) its corporate name;

(ii) the name to be registered that shall meet the requirements of Section 16-6a-401 that apply to domestic nonprofit corporations;

(iii) the state or country and date of incorporation; and

(iv) a brief description of the nature of the business in which it is engaged; and

(b) accompanied by a certificate of existence, or a document of similar import from the state or country of incorporation as evidence that the foreign corporation is in existence or has authority to conduct affairs under the laws of the state or country in which it is organized.

(3) (a) A name is registered for the applicant upon the effective date of the application.

(b) An initial registration is effective for one year.

(4) (a) A foreign nonprofit corporation that has in effect a registration of its corporate name as permitted by Subsection (1) may renew the registration by delivering to the division for filing a renewal application for registration, that complies with the requirements of Subsection (2).

(b) When filed, the renewal application for registration renews the registration for the year following filing.

(5) (a) A foreign nonprofit corporation that has in effect registration of its corporate name may:

(i) apply for authority to conduct affairs in this state under the registered name in accordance with the procedure set forth in this part; or

(ii) assign the registration to another foreign nonprofit corporation by delivering to the division for filing an assignment of the registration that states:

(A) the registered name;

(B) the name of the assigning foreign nonprofit corporation;

(C) the name of the assignee; and

(D) the assignee's application for registration of the name.

(b) The assignee's application for registration of the name required by Subsection (5)(a) shall meet the requirements of this part.

(6) (a) A foreign nonprofit corporation that has in effect registration of its corporate name may terminate the registration at any time by delivering to the division for filing a statement of termination:

(i) setting forth the corporate name; and

(ii) stating that the registration is terminated.

(b) A registration automatically terminates upon the filing of an application for authority to conduct affairs in this state under the registered name.

(7) The registration of a corporate name under Subsection (1) constitutes authority by the division to file an application meeting the requirements of this part for authority to conduct affairs in this state under the registered name, but the authorization is subject to the limitations applicable to corporate names as set forth in Section 16-6a-403.

Section 161. Section **16-6a-1508** is enacted to read:

16-6a-1508. Registered office and registered agent of foreign nonprofit corporation.

(1) Each foreign nonprofit corporation authorized to conduct affairs in this state shall continuously maintain in this state:

(a) a registered office; and

(b) a registered agent, who shall be:

(i) an individual:

- (A) who resides in this state; and
- (B) whose business office is identical with the registered office;
- (ii) a domestic corporation or domestic nonprofit corporation whose business office is identical with the registered office;
 - (iii) a foreign corporation or foreign nonprofit corporation:
 - (A) authorized to conduct affairs in this state; and
 - (B) whose business office is identical with the registered office; or
 - (iv) a domestic limited liability company or foreign limited liability company:
 - (A) authorized to conduct affairs in this state; and
 - (B) whose business office is identical with the registered office.
- (2) A foreign nonprofit corporation may not serve as its own registered agent.

Section 162. Section **16-6a-1509** is enacted to read:

16-6a-1509. Change of registered office or registered agent of foreign nonprofit corporation.

(1) A foreign nonprofit corporation authorized to conduct affairs in this state may change its registered office or its registered agent by delivering to the division for filing a statement of change that sets forth:

- (a) its corporate name and its assumed corporate name, if any;
 - (b) the street address of its current registered office;
 - (c) the street address of the new registered office if the registered office is to be changed;
 - (d) the name of its current registered agent;
 - (e) if the registered agent is to be changed:
 - (i) the name of the new registered agent; and
 - (ii) the new registered agent's written consent to the appointment, either on the statement of change or in an accompanying document; and
 - (f) that the street addresses of its registered office and the business office of its registered agent will be identical after the change or changes reflected in the statement are made.
- (2) If the street address of a registered agent's business office is changed, the registered agent

may change the street address of the registered office of any foreign nonprofit corporation for which the registered agent is the registered agent by:

- (a) giving written notice to the foreign nonprofit corporation of the change; and
- (b) signing and delivering to the division for filing a statement of change that:
 - (i) complies with the requirements of Subsection (1); and
 - (ii) recites that the foreign nonprofit corporation has been given notice of the change.

Section 163. Section **16-6a-1510** is enacted to read:

16-6a-1510. Resignation of registered agent of foreign nonprofit corporation.

(1) (a) The registered agent of a foreign nonprofit corporation authorized to conduct affairs in this state may resign the agency appointment by delivering to the division for filing a statement of resignation, that shall:

- (i) be signed by the resigning registered agent; and
- (ii) be accompanied by two exact or conformed copies of the statement of resignation; and
- (iii) include a declaration that notice of the resignation has been given to the foreign nonprofit

corporation.

(b) The statement of resignation may include a statement that the registered office is also discontinued.

(2) After filing the statement of resignation, the division shall deliver:

(a) one copy of the statement of resignation to the registered office of the foreign nonprofit corporation; and

(b) one copy of the statement of resignation to its principal office, if known.

(3) The agency appointment terminates, and the registered office discontinues if so provided, 31 days after the filing date of the statement of resignation.

Section 164. Section **16-6a-1511** is enacted to read:

16-6a-1511. Service on foreign nonprofit corporation.

(1) The registered agent of a foreign nonprofit corporation authorized to conduct affairs in this state is the foreign corporation's agent for service of process, notice, or demand required or permitted by law to be served on the foreign nonprofit corporation.

(2) (a) If a foreign nonprofit corporation authorized to conduct affairs in this state has no registered agent or if the registered agent cannot with reasonable diligence be served, the foreign nonprofit corporation may be served by registered or certified mail, return receipt requested, addressed to the foreign nonprofit corporation at its principal office.

(b) Service is perfected under this Subsection (2) at the earliest of:

(i) the date the foreign nonprofit corporation receives the process, notice, or demand;

(ii) the date shown on the return receipt, if signed on behalf of the foreign nonprofit corporation; or

(iii) five days after mailing.

(3) This section does not prescribe the only means, or necessarily the required means, of serving a foreign nonprofit corporation authorized to conduct affairs in this state.

Section 165. Section **16-6a-1512** is enacted to read:

16-6a-1512. Merger of foreign nonprofit corporations authorized to conduct affairs in this state.

(1) If two or more foreign nonprofit corporations authorized to conduct affairs in this state are a party to a statutory merger permitted by the laws of the state or country under the laws of which they are incorporated within 30 days after the merger becomes effective, the surviving nonprofit corporation shall file with the division a certificate of fact of merger certified by the proper officer of the state or country under the laws of which the statutory merger was effected.

(2) It is not necessary for a foreign nonprofit corporation authorized to conduct affairs in this state that is a party to a statutory merger described in Subsection (1) to procure a new or amended certificate of authority to conduct affairs in this state unless the name of the surviving nonprofit corporation is changed by the statutory merger.

Section 166. Section **16-6a-1513** is enacted to read:

16-6a-1513. Withdrawal of foreign nonprofit corporation.

(1) A foreign nonprofit corporation authorized to conduct affairs in this state may not withdraw from this state until its application for withdrawal has been filed by the division.

(2) A foreign nonprofit corporation authorized to conduct affairs in this state may apply for

withdrawal by delivering to the division for filing an application for withdrawal setting forth:

- (a) its corporate name and its assumed name, if any;
- (b) the name of the state or country under whose law it is incorporated;
- (c) (i) (A) the address of its principal office; or
(B) if a principal office is not to be maintained, a statement that the foreign nonprofit corporation will not maintain a principal office; and
 - (ii) if different from the address of the principal office or if no principal office is to be maintained, the address to which service of process may be mailed pursuant to Section 16-6a-1514;
- (d) that the foreign nonprofit corporation is not conducting affairs in this state;
- (e) that it surrenders its authority to conduct affairs in this state;
- (f) whether its registered agent will continue to be authorized to accept service on its behalf in any proceeding based on a cause of action arising during the time it was authorized to conduct affairs in this state; and
- (g) any additional information that the division determines is necessary or appropriate to:
 - (i) determine whether the foreign nonprofit corporation is entitled to withdraw; and
 - (ii) determine and assess any unpaid taxes, fees, and penalties payable by the foreign nonprofit corporation as prescribed by this chapter.

(3) A foreign nonprofit corporation's application for withdrawal may not be filed by the division until:

- (a) all outstanding fees and state tax obligations have been paid; and
- (b) the division has received a certificate from the State Tax Commission reciting that all taxes owed by the foreign nonprofit corporation have been paid.

Section 167. Section **16-6a-1514** is enacted to read:

16-6a-1514. Service on withdrawn foreign nonprofit corporation.

(1) A foreign nonprofit corporation that has withdrawn from this state pursuant to Section 16-6a-1513 shall:

- (a) maintain a registered agent in this state to accept service on its behalf in any proceeding based on a cause of action arising during the time it was authorized to conduct affairs in this state,

in which case:

(i) the continued authority of the registered agent shall be specified in the application for withdrawal; and

(ii) any change shall be governed by the procedure set forth in Section 16-6a-1509 which applies to foreign nonprofit corporations authorized to conduct affairs in this state; or

(b) be considered to have authorized service of process on it in connection with any cause of action by registered or certified mail, return receipt requested, to:

(i) the address of its principal office, if any:

(A) set forth in its application for withdrawal; or

(B) as last changed by notice delivered to the division for filing; or

(ii) the address for service of process:

(A) that is stated in its application for withdrawal; or

(B) as last changed by notice delivered to the division for filing.

(2) Service effected pursuant to Subsection (1)(b) is perfected at the earliest of:

(a) the date the withdrawn foreign nonprofit corporation receives the process, notice, or demand;

(b) the date shown on the return receipt, if signed on behalf of the withdrawn foreign nonprofit corporation; or

(c) five days after mailing.

(3) Subsection (1) does not prescribe the only means, or necessarily the required means, of serving a withdrawn foreign nonprofit corporation.

Section 168. Section **16-6a-1515** is enacted to read:

16-6a-1515. Grounds for revocation.

The division may commence a proceeding under Section 16-6a-1516 to revoke the authority of a foreign nonprofit corporation to conduct affairs in this state if:

(1) the foreign nonprofit corporation does not deliver its annual report to the division when it is due;

(2) the foreign nonprofit corporation does not pay when they are due any taxes, fees, or

penalties imposed by this chapter or other applicable laws of this state:

(3) the foreign nonprofit corporation is without a registered agent or registered office in this state;

(4) the foreign nonprofit corporation does not inform the division under Section 16-6a-1509 or 16-6a-1510 that:

(a) its registered agent or registered office has changed;

(b) its registered agent has resigned; or

(c) its registered office has been discontinued;

(5) an incorporator, director, officer, or agent of the foreign nonprofit corporation signs a document knowing it is false in any material respect with intent that the document be delivered to the division for filing; or

(6) the division receives a duly authenticated certificate from the division or other official having custody of corporate records in the state or country under whose law the foreign nonprofit corporation is incorporated stating that the foreign nonprofit corporation has dissolved or disappeared as the result of a merger.

Section 169. Section **16-6a-1516** is enacted to read:

16-6a-1516. Procedure for and effect of revocation.

(1) If the division determines that one or more grounds exist under Section 16-6a-1515 for revoking the authority of a foreign nonprofit corporation to conduct affairs in this state, the division shall mail to the foreign nonprofit corporation with written notice of the division's determination stating the grounds.

(2) (a) If the foreign nonprofit corporation does not correct each ground for revocation or demonstrate to the reasonable satisfaction of the division that each ground determined by the division does not exist, within 60 days after mailing of the notice under Subsection (1), the division shall revoke the foreign nonprofit corporation's authority to conduct affairs in this state.

(b) If a foreign nonprofit corporation's authority to conduct affairs in this state is revoked under Subsection (2)(a), the division shall:

(i) mail a written notice of the revocation to the foreign nonprofit corporation stating the

effective date of the revocation; and

(ii) mail a copy of the notice to:

(A) the last registered agent of the foreign nonprofit corporation; or

(B) if there is no registered agent of record, at least one officer of the corporation.

(3) The authority of a foreign nonprofit corporation to conduct affairs in this state ceases on the date shown on the division's certificate revoking the foreign nonprofit corporation's certificate of authority.

(4) Revocation of a foreign nonprofit corporation's authority to conduct affairs in this state does not terminate the authority of the registered agent of the foreign nonprofit corporation.

(5) (a) Upon the revocation of a foreign nonprofit corporation's authority to conduct affairs in this state, the division becomes an agent for the foreign nonprofit corporation for service of process in any proceeding based on a cause of action which arose during the time the foreign nonprofit corporation conducted affairs in this state or was authorized to conduct affairs in this state.

(b) Service of process on the division under this Subsection (5) is service on the foreign nonprofit corporation.

(c) Upon receipt of process, the division shall mail a copy of the process to the foreign nonprofit corporation at its principal office, if known.

(6) A notice mailed under this section shall be:

(a) mailed first class, postage prepaid; and

(b) addressed to the most current mailing address appearing on the records of the division for:

(i) the registered agent of the nonprofit corporation, if the notice is required to be mailed to the registered agent; or

(ii) the officer of the nonprofit corporation that is mailed the notice if the notice is required to be mailed to an officer of the nonprofit corporation.

Section 170. Section **16-6a-1517** is enacted to read:

16-6a-1517. Appeal from revocation.

If the division revokes the authority of a foreign nonprofit corporation to conduct affairs in

this state, in accordance with Title 63, Chapter 46b, Administrative Procedures Act, the following may appeal the refusal to the executive director:

- (1) the foreign nonprofit corporation; or
- (2) the representative of the foreign nonprofit corporation.

Section 171. Section **16-6a-1518** is enacted to read:

16-6a-1518. Domestication of foreign nonprofit corporations.

(1) (a) Any foreign nonprofit corporation may become a domestic nonprofit corporation:

(i) by delivering to the division for filing articles of domestication meeting the requirements of Subsection (2);

(ii) if the board of directors of the foreign nonprofit corporation adopts the articles of domestication; and

(iii) its members, if any, approve the domestication.

(b) The adoption and approval of the domestication shall be in accordance with the consent requirements of Section 16-6a-1003 for amending articles of incorporation.

(2) (a) The articles of domestication shall meet the requirements applicable to articles of incorporation set forth in Sections 16-6a-105 and 16-6a-202, except that:

(i) the articles of domestication need not name, or be signed by, the incorporators of the foreign nonprofit corporation; and

(ii) any reference to the foreign nonprofit corporation's registered office, registered agent, or directors shall be to:

(A) the registered office and agent in Utah; and

(B) the directors in office at the time of filing the articles of domestication.

(b) The articles of domestication shall set forth:

(i) the date on which and jurisdiction where the foreign nonprofit corporation was first formed, incorporated, or otherwise came into being;

(ii) the name of the foreign nonprofit corporation immediately prior to the filing of the articles of domestication;

(iii) any jurisdiction that constituted the seat, location of incorporation, principal place of

business, or central administration of the foreign nonprofit corporation immediately prior to the filing of the articles of domestication; and

(iv) a statement that the articles of domestication were:

(A) adopted by the foreign nonprofit corporation's board of directors; and

(B) approved by its members, if any.

(3) (a) Upon the filing of articles of domestication with the division, the foreign nonprofit corporation shall:

(i) be domesticated in this state;

(ii) be subject to all of the provisions of this chapter after the date of filing the articles of domestication; and

(iii) continue as if it had been incorporated under this chapter.

(b) Notwithstanding any other provisions of this chapter, the existence of the foreign nonprofit corporation shall be considered to have commenced on the date the foreign nonprofit corporation commenced its existence in the jurisdiction in which the foreign nonprofit corporation was first formed, incorporated, or otherwise came into being.

(4) The articles of domestication, upon filing with the division, shall:

(a) become the articles of incorporation of the foreign nonprofit corporation; and

(b) be subject to amendments or restatement the same as any other articles of incorporation under this chapter.

(5) The domestication of any foreign nonprofit corporation in this state may not be considered to affect any obligation or liability of the foreign nonprofit corporation incurred prior to its domestication.

(6) The filing of the articles of domestication may not affect the choice of law applicable to the foreign nonprofit corporation, except that from the date the articles of domestication are filed, the law of Utah, including the provisions of this chapter, shall apply to the foreign nonprofit corporation to the same extent as if the foreign nonprofit corporation had been incorporated as a domestic nonprofit corporation of this state on that date.

Section 172. Section **16-6a-1601** is enacted to read:

Part 16. Records, Information, and Reports**16-6a-1601. Corporate records.**

(1) A nonprofit corporation shall keep as permanent records:

(a) minutes of all meetings of its members and board of directors;

(b) a record of all actions taken by the members or board of directors without a meeting;

(c) a record of all actions taken by a committee of the board of directors in place of the board of directors on behalf of the nonprofit corporation; and

(d) a record of all waivers of notices of meetings of members and of the board of directors or any committee of the board of directors.

(2) A nonprofit corporation shall maintain appropriate accounting records.

(3) A nonprofit corporation or its agent shall maintain a record of its members in a form that permits preparation of a list of the name and address of all members:

(a) in alphabetical order, by class; and

(b) showing the number of votes each member is entitled to vote.

(4) A nonprofit corporation shall maintain its records in written form or in another form capable of conversion into written form within a reasonable time.

(5) A nonprofit corporation shall keep a copy of each of the following records at its principal office:

(a) its articles of incorporation;

(b) its bylaws;

(c) resolutions adopted by its board of directors relating to the characteristics, qualifications, rights, limitations, and obligations of members or any class or category of members;

(d) the minutes of all members' meetings for a period of three years;

(e) records of all action taken by members without a meeting, for a period of three years;

(f) all written communications to members generally as members for a period of three years;

(g) a list of the names and business or home addresses of its current directors and officers;

(h) a copy of its most recent annual report delivered to the division under Section

16-6a-1607; and

(i) all financial statements prepared for periods ending during the last three years that a member could have requested under Section 16-6a-1606.

Section 173. Section **16-6a-1602** is enacted to read:

16-6a-1602. Inspection of records by directors and members.

(1) A director or member is entitled to inspect and copy any of the records of the nonprofit corporation described in Subsection 16-6a-1601(5):

(a) during regular business hours;

(b) at the nonprofit corporation's principal office; and

(c) if the director or member gives the nonprofit corporation written demand, at least five business days before the date on which the member wishes to inspect and copy the records.

(2) In addition to the rights set forth in Subsection (1), a director or member is entitled to inspect and copy any of the other records of the nonprofit corporation:

(a) during regular business hours;

(b) at a reasonable location specified by the nonprofit corporation; and

(c) at least five business days before the date on which the member wishes to inspect and copy the records, if the director or member:

(i) meets the requirements of Subsection (3); and

(ii) gives the nonprofit corporation written demand.

(3) A director or member may inspect and copy the records described in Subsection (2) only if:

(a) the demand is made:

(i) in good faith; and

(ii) for a proper purpose;

(b) the director or member describes with reasonable particularity the purpose and the records the director or member desires to inspect; and

(c) the records are directly connected with the described purpose.

(4) Notwithstanding Section 16-6a-102, for purposes of this section:

(a) "member" includes:

(i) a beneficial owner whose membership interest is held in a voting trust; and
(ii) any other beneficial owner of a membership interest who establishes beneficial ownership;
and

(b) "proper purpose" means a purpose reasonably related to the demanding member's or director's interest as a member or director.

(5) The right of inspection granted by this section may not be abolished or limited by the articles of incorporation or bylaws.

(6) This section does not affect:

(a) the right of a director or member to inspect records under Section 16-6a-710;

(b) the right of a member to inspect records to the same extent as any other litigant if the member is in litigation with the nonprofit corporation; or

(c) the power of a court, independent of this chapter, to compel the production of corporate records for examination.

(7) A director or member may not use any information obtained through the inspection or copying of records permitted by Subsection (2) for any purposes other than those set forth in a demand made under Subsection (3).

Section 174. Section **16-6a-1603** is enacted to read:

16-6a-1603. Scope of member's inspection right.

(1) A director or member's agent or attorney has the same inspection and copying rights as the director or member.

(2) The right to copy records under Section 16-6a-1602 includes, if reasonable, the right to receive copies made by photographic, xerographic, electronic, or other means.

(3) Except as provided in Section 16-6a-1606, the nonprofit corporation may impose a reasonable charge covering the costs of labor and material for copies of any documents provided to the director or member. The charge may not exceed the estimated cost of production and reproduction of the records.

(4) The nonprofit corporation may comply with a director's or member's demand to inspect the record of members under Subsection 16-6a-1601(3) by furnishing to the director or member a list

of directors or members that:

(a) complies with Subsection 16-6a-1601(3); and

(b) is compiled no earlier than the date of the director's or member's demand.

Section 175. Section **16-6a-1604** is enacted to read:

16-6a-1604. Court-ordered inspection of corporate records.

(1) (a) A director or member may petition the applicable court if:

(i) a nonprofit corporation refuses to allow a director or member, or the director's or member's agent or attorney, to inspect or copy any records that the director or member is entitled to inspect or copy under Subsection 16-6a-1602(1); and

(ii) the director or member complies with Subsection 16-6a-1602(1).

(b) If petitioned under Subsection (1)(a), the court may summarily order the inspection or copying of the records demanded at the nonprofit corporation's expense on an expedited basis.

(2) (a) A director or member may petition the applicable court if:

(i) a nonprofit corporation refuses to allow a director or member, or the director's or member's agent or attorney, to inspect or copy any records that the director or member is entitled to inspect or copy pursuant to Subsections 16-6a-1602(2) and (3) within a reasonable time following the director's or member's demand; and

(ii) the director or member complies with Subsections 16-6a-1602(2) and (3).

(b) If the court is petitioned under Subsection (2)(a), the court may summarily order the inspection or copying of the records demanded.

(3) If a court orders inspection or copying of the records demanded under Subsection (1) or (2), unless the nonprofit corporation proves that it refused inspection or copying in good faith because it had a reasonable basis for doubt about the right of the director or member, or the director's or member's agent or attorney, to inspect or copy the records demanded:

(a) the court shall also order the nonprofit corporation to pay the director's or member's costs, including reasonable counsel fees, incurred to obtain the order;

(b) the court may order the nonprofit corporation to pay the director or member for any damages the member incurred;

(c) if inspection or copying is ordered pursuant to Subsection (2), the court may order the nonprofit corporation to pay the director's or member's inspection and copying expenses; and

(d) the court may grant the director or member any other remedy provided by law.

(4) If a court orders inspection or copying of records demanded, it may impose reasonable restrictions on the use or distribution of the records by the demanding director or member.

(5) For purposes of this section, the applicable court is:

(a) the district court of the county in this state where the nonprofit corporation's principal office is located; or

(b) if the nonprofit corporation has no principal office in this state:

(i) the district court of the county in which its registered office is located; or

(ii) if the nonprofit corporation has no registered office, the district court in and for Salt Lake County.

Section 176. Section **16-6a-1605** is enacted to read:

16-6a-1605. Limitations on use of membership list.

(1) Without consent of the board of directors, a membership list or any part of a membership list may not be obtained or used by any person for any purpose unrelated to a member's interest as a member.

(2) Without limiting the generality of Subsection (1), without the consent of the board of directors, a membership list or any part of a membership list may not be:

(a) used to solicit money or property unless the money or property will be used solely to solicit the votes of the members in an election to be held by the nonprofit corporation;

(b) used for any commercial purpose; or

(c) sold to or purchased by any person.

Section 177. Section **16-6a-1606** is enacted to read:

16-6a-1606. Financial statements.

Upon the written request of any member, a nonprofit corporation shall mail to the member the following that show in reasonable detail the assets and liabilities and results of the operations of the nonprofit corporation:

(1) its most recent annual financial statements, if any; and

(2) its most recently published financial statements, if any.

Section 178. Section **16-6a-1607** is enacted to read:

16-6a-1607. Annual report for division.

(1) Each domestic nonprofit corporation, and each foreign nonprofit corporation authorized to conduct affairs in this state, shall deliver to the division for filing an annual report on a form provided by the division that sets forth:

(a) (i) the corporate name of the domestic or foreign nonprofit corporation; and

(ii) any assumed corporate name of the foreign nonprofit corporation;

(b) the state or country under whose law it is incorporated;

(c) the street address of its registered office in this state;

(d) the name of its registered agent at the office listed in Subsection (1)(c);

(e) the street address of its principal office; and

(f) the names and addresses of its directors and principal officers.

(2) The division shall deliver a copy of the prescribed form of annual report to each domestic nonprofit corporation and each foreign nonprofit corporation authorized to conduct affairs in this state.

(3) Information in the annual report shall be current as of the date the annual report is executed on behalf of the nonprofit corporation.

(4) (a) The annual report of a domestic or foreign nonprofit corporation shall be delivered annually to the division no later than the end of the second calendar month following the calendar month in which the report form is mailed by the division.

(b) Proof to the satisfaction of the division that the nonprofit corporation has mailed an annual report form is considered in compliance with this Subsection (4).

(5) (a) If an annual report contains the information required by this section, the division shall file it.

(b) If an annual report does not contain the information required by this section, the division shall promptly notify the reporting domestic or foreign nonprofit corporation in writing and return

the annual report to it for correction.

(c) If an annual report that is rejected under Subsection (5)(b) was otherwise timely filed and is corrected to contain the information required by this section and delivered to the division within 30 days after the effective date of the notice of rejection, the annual report is considered to be timely filed.

(6) The fact that an individual's name is signed on an annual report form is prima facie evidence for division purposes that the individual is authorized to certify the report on behalf of the nonprofit corporation.

(7) The annual report form provided by the division may be designed to provide a simplified certification by the nonprofit corporation if no changes have been made in the required information from the last preceding report filed.

(8) A domestic or foreign nonprofit corporation may, but may not be required to, deliver to the division for filing an amendment to its annual report reflecting any change in the information contained in its annual report as last amended.

Section 179. Section **16-6a-1608** is enacted to read:

16-6a-1608. Statement of person named as director or officer.

Any person named as a director or officer of a domestic or foreign nonprofit corporation in an annual report or other document on file with the division may, if that person does not hold the named position, deliver to the division for filing a statement setting forth:

(1) that person's name;

(2) the domestic or foreign nonprofit corporation's name;

(3) information sufficient to identify the report or other document in which the person is named as a director or officer; and

(4) (a) the date on which the person ceased to be a director or officer of the domestic or foreign nonprofit corporation; or

(b) a statement that the person did not hold the position for which the person was named in the corporate report or other document.

Section 180. Section **16-6a-1609** is enacted to read:

16-6a-1609. Interrogatories by division.

(1) (a) The division may give interrogatories reasonably necessary to ascertain whether the nonprofit corporation has complied with the provisions of this chapter applicable to the nonprofit corporation to:

(i) any domestic or foreign nonprofit corporation subject to the provisions of this chapter;

and

(ii) to any officer or director of a corporation described in Subsection (1)(a)(i).

(b) The interrogatories described in Subsection (1) shall be answered within:

(i) 30 days after the mailing of the interrogatories; or

(ii) additional time as fixed by the division.

(c) The answers to the interrogatories shall be:

(i) full and complete; and

(ii) made in writing.

(d) (i) If the interrogatories are directed to an individual, the interrogatories shall be answered by the individual.

(ii) If directed to a nonprofit corporation, the interrogatories shall be answered by:

(A) the chair of the board of directors of the nonprofit corporation;

(B) all of its directors;

(C) one of its officers; or

(D) any other person authorized to answer the interrogatories as the nonprofit corporation's agent.

(e) (i) The division need not file any document to which the interrogatories relate until the interrogatories are answered as provided in this section.

(ii) Notwithstanding Subsection (1)(e)(i), the division need not file a document to which the interrogator relates if the answers to the interrogatory disclose that the document is not in conformity with the provisions of this chapter.

(f) The division shall certify to the attorney general, for such action as the attorney general considers appropriate, all interrogatories and answers to interrogatories that disclose a violation of

this chapter.

(2) (a) Interrogatories given by the division under Subsection (1), and the answers to interrogatories, may not be open to public inspection.

(b) The division may not disclose any facts or information obtained from the interrogatories or answers to the interrogatories, except:

(i) as the official duties of the division may require the facts or information to be made public;
or

(ii) in the event the interrogatories or the answers to the interrogatories are required for evidence in any criminal proceedings or in any other action by this state.

(3) Each domestic or foreign nonprofit corporation that fails or refuses to answer truthfully and fully, within the time prescribed by Subsection (1), interrogatories given to the domestic or foreign nonprofit corporation by the division in accordance with Subsection (1) is guilty of a class C misdemeanor and, upon conviction, shall be punished by a fine of not more than \$500.

(4) Each officer and director of a domestic or foreign nonprofit corporation who fails or refuses to answer truthfully and fully, within the time prescribed by Subsection (1), interrogatories given to the officer or director by the division in accordance with Subsection (1) is guilty of a class B misdemeanor and, upon conviction, shall be punished by a fine of not more than \$1,000.

(5) The attorney general may enforce this section in an action brought in:

(a) the district court of the county in this state where the nonprofit corporation's principal office or registered office is located; or

(b) if the nonprofit corporation has no principal or registered office in this state, in the district court in and for Salt Lake County.

Section 181. Section **16-6a-1701** is enacted to read:

Part 17. Transitional Provisions and Scope of Chapter

16-6a-1701. Application to existing domestic nonprofit corporations -- Reports of domestic and foreign nonprofit corporation.

(1) Except as otherwise provided in Section 16-6a-1704, this chapter applies to domestic nonprofit corporations as follows:

(a) domestic nonprofit corporations in existence on April 30, 2001, that were incorporated under any general statute of this state providing for incorporation of nonprofit corporations, including all nonprofit corporations organized under any former provisions of Title 16, Chapter 6, Utah Nonprofit Corporation and Co-operative Association Act;

(b) mutual irrigation, canal, ditch, reservoir, and water companies and water users' associations organized and existing under the laws of this state on April 30, 2001;

(c) corporations organized under the provisions of Title 16, Chapter 7, Corporations Sole, for purposes of applying all provisions relating to merger or consolidation; and

(d) to actions taken by the directors, officers, and members of the entities described in Subsections (1)(a), (b), and (c) after April 30, 2001.

(2) Domestic nonprofit corporations to which this chapter applies, that are organized and existing under the laws of this state on April 30, 2001:

(a) shall continue in existence with all the rights and privileges applicable to nonprofit corporations organized under this chapter; and

(b) from April 30, 2001 shall have all the rights and privileges and shall be subject to all the remedies, restrictions, liabilities, and duties prescribed in this chapter except as otherwise specifically provided in this chapter.

(3) Every existing domestic nonprofit corporation and foreign nonprofit corporation qualified to conduct affairs in this state on April 30, 2001 shall file an annual report with the division setting forth the information prescribed by Section 16-6a-1607. The annual report shall be filed at such time as would have been required had this chapter not taken effect and shall be filed annually thereafter as required in Section 16-6a-1607.

Section 182. Section **16-6a-1702** is enacted to read:

16-6a-1702. Application to foreign nonprofit corporations.

(1) A foreign nonprofit corporation authorized to conduct affairs in this state on April 30, 2001, is subject to this chapter, but is not required to obtain a new certificate of authority to conduct affairs under this chapter.

(2) A foreign nonprofit corporation that is qualified to do business in this state under the

provisions of Title 16, Chapter 8, which provisions were repealed by Chapter 28, Laws of Utah 1961, shall be authorized to transact business in this state subject to all of the limitations, restrictions, liabilities, and duties prescribed in this chapter.

(3) This chapter shall apply to all foreign nonprofit corporations sole qualified to do business in this state with respect to mergers and consolidations.

Section 183. Section **16-6a-1703** is enacted to read:

16-6a-1703. Nonapplicability of chapter.

This chapter does not apply to:

(1) corporations sole, except with respect to mergers and consolidations; or

(2) domestic or foreign nonprofit corporations governed by Title 3, Chapter 1, General

Provisions Relating to Agricultural Cooperative Associations.

Section 184. Section **16-6a-1704** is enacted to read:

16-6a-1704. Saving provisions.

(1) (a) Except as provided in Subsection (2), the repeal of any statute by this act does not affect:

(i) the operation of the statute or any action taken under it before its repeal;

(ii) any ratification, right, remedy, privilege, obligation, or liability acquired, accrued, or incurred under the statute before its repeal;

(iii) any violation of the statute, or any penalty, forfeiture, or punishment incurred because of the violation of the statute before its repeal; or

(iv) any proceeding, reorganization, or dissolution commenced under the statute before its repeal.

(b) A proceeding, reorganization, or dissolution described in Subsection (1)(a)(iv) may be completed in accordance with the repealed statute as if the statute had not been repealed.

(2) If a penalty or punishment imposed for violation of a statute repealed by this act is reduced by this act, the penalty or punishment if not already imposed shall be imposed in accordance with this act.

(3) Section 16-6a-707 does not operate to permit a corporation in existence prior to April

30, 2001, to take action by the written consent of fewer than all of the members entitled to vote with respect to the subject matter of the action, until the date a resolution providing otherwise is approved either:

(a) by a consent in writing:

(i) setting forth the proposed resolution; and

(ii) signed by all of the members entitled to vote with respect to the subject matter of the resolution; or

(b) at a duly convened meeting of members, by the vote of the same percentage of members of each voting group as would be required to include the resolution in an amendment to the corporation's articles of incorporation.

(4) Indemnification for an act or omission of a director or officer of a nonprofit corporation if the act or omission occurs prior to April 30, 2001, is governed by Title 16, Chapter 6, Utah Nonprofit Corporation and Co-operative Association Act, in effect as of April 29, 2001.

Section 185. Section **16-10a-1008.3** is enacted to read:

16-10a-1008.3. Conversion to a nonprofit corporation.

(1) (a) A corporation may convert to a nonprofit corporation subject to Title 16, Chapter 6, Utah Nonprofit Corporation and Co-operative Association Act, by filing an amendment of its articles of incorporation pursuant to this section.

(b) The day on which a corporation files an amendment under this section, the corporation becomes a nonprofit corporation subject to Title 16, Chapter 6, Utah Nonprofit Corporation and Co-operative Association Act.

(2) The amendment of the articles of incorporation to convert to a nonprofit corporation shall:

(a) revise the statement of purposes of the corporation;

(b) delete:

(i) the authorization for shares; and

(ii) any provision relating to authorized or issued shares;

(c) if any shares have been issued, provide for:

- (i) the cancellation of issued shares; or
- (ii) the conversion of the shares to membership interests in the nonprofit corporation; and
- (d) make such other changes as may be necessary or desired.

(3) If the corporation has issued shares, an amendment to convert to a nonprofit corporation shall be approved by all of the outstanding shares of all classes of shares regardless of limitations or restrictions on the voting rights of the shares.

(4) If an amendment pursuant to this section is included in a merger agreement, this section applies, except that any provision for the cancellation or conversion of shares shall be set forth in the merger agreement and not in the amendment of the articles of incorporation.

Section 186. Section **16-10a-1008.5** is enacted to read:

16-10a-1008.5. Conversion to a nonprofit corporation.

(1) (a) A corporation may convert to a nonprofit corporation subject to Title 16, Chapter 6a, Utah Revised Nonprofit Corporation Act, by filing an amendment of its articles of incorporation pursuant to this section.

(b) The day on which a corporation files an amendment under this section, the corporation becomes a nonprofit corporation subject to Title 16, Chapter 6a, Utah Revised Nonprofit Corporation Act.

(2) The amendment of the articles of incorporation to convert to a nonprofit corporation shall:

(a) revise the statement of purposes of the corporation;

(b) delete:

(i) the authorization for shares; and

(ii) any provision relating to authorized or issued shares;

(c) if any shares have been issued, provide for:

(i) the cancellation of issued shares; or

(ii) the conversion of the shares to membership interests in the nonprofit corporation; and

(d) make such other changes as may be necessary or desired.

(3) If the corporation has issued shares, an amendment to convert to a nonprofit corporation

shall be approved by all of the outstanding shares of all classes of shares regardless of limitations or restrictions on the voting rights of the shares.

(4) If an amendment pursuant to this section is included in a merger agreement, this section applies, except that any provision for the cancellation or conversion of shares shall be set forth in the merger agreement and not in the amendment of the articles of incorporation.

Section 187. Section **16-7-13** is amended to read:

16-7-13. Merger and consolidation.

(1) As long as the surviving corporation qualifies for tax exempt status under Internal Revenue Code Section 501(c)(3), any corporation organized under this chapter may merge with one or more domestic or foreign corporations organized or authorized to do business in this state under this title, or with one or more nonprofit domestic or foreign corporations organized or authorized to do business in this state under this title.

(2) (a) Articles of merger or consolidation shall be adopted by the appropriate incorporator or the successor to an incorporator as described in Section 16-7-2. If there is no such incorporator or successor, the articles shall be signed by the officer or official authorized to administer the affairs and property of the corporation according to the practices and procedures of the church, denomination, or religious society.

(b) The articles of merger or consolidation shall be adopted by any merging or consolidating corporation organized under Title 16, Chapter ~~[6]~~ 6a, Utah Revised Nonprofit Corporation ~~[and Cooperative Association]~~ Act, as provided in ~~[Section 16-6-56]~~ Sections 16-6a-1101 and 16-6a-1102.

(3) The effect of a merger or consolidation under this section is the same as provided in Section ~~[16-6-59]~~ 16-6a-1104.

Section 188. Section **16-7-14** is amended to read:

16-7-14. Restatement of articles of incorporation.

(1) A corporation sole organized under this chapter may restate its articles of incorporation in the same manner allowed nonprofit corporations under Section ~~[16-6-53.5]~~ 16-6a-1006.

(2) The restated articles shall be adopted on behalf of the corporation by the appropriate

incorporator or the successor to an incorporator as described in Section 16-7-2. If there is no such incorporator or successor, the articles shall be signed by the officer or official authorized to administer the affairs and property of the corporation according to the practices and procedures of the church, denomination, or religious society.

Section 189. Section **17A-3-903** is amended to read:

17A-3-903. Organization of nonprofit corporation as building authority -- Powers and duties.

(1) The governing body of a public body may organize a nonprofit corporation as the building authority for the public body under this part, following the procedures set out in ~~the~~ Title 16, Chapter 6a, Utah Revised Nonprofit Corporation [and Cooperative Association] Act [~~(Title 16, Chapter 6, Article 2)~~], solely for the purpose of accomplishing the public purposes for which the public body exists by acquiring, improving, or extending one or more projects and financing their costs on behalf of the public body. The authority shall be known as the "Municipal Building Authority of (name of public body)." The governing body shall approve the articles of incorporation and bylaws of the authority and shall act as the members of the board of trustees of the authority. The articles of incorporation and bylaws shall provide that members of the board of trustees of the authority may be removed and replaced by the governing authority at any time in its discretion. The governing body may, at its sole discretion and at any time, alter or change the structure, organization, programs, or activities of the building authority, subject to the rights of holders of the authority's bonds and parties to its other obligations.

(2) Each building authority is authorized to acquire, improve, or extend one or more projects and to finance their costs on behalf of the public body that created it, in accordance with the procedures and subject to the limitations of this part, in order to accomplish the public purposes for which the public body exists.

(3) Except as limited by Subsection (4), a building authority may contract for or employ all staff and other personnel necessary for the purpose of performing its functions and activities, including contracting with the public body that created it to utilize the personnel, property, or facilities of the public body for that purpose, and may include the costs of the contracted services and

employed staff and personnel in the rentals and charges payable to it under leases or agreements between it and the public body.

(4) (a) With respect to any public body that creates a building authority and which has an elected attorney or auditor, or both, the elected attorney shall be the legal advisor to and provide all legal services for the authority, and the elected auditor shall provide all accounting and auditing services for the authority. The authority shall reimburse the public body for legal, accounting, and auditing services so furnished by the public body, based upon the actual cost of the services including reasonable amounts allocated by the public body for overhead, employee fringe benefits, and general and administrative expenses.

(b) The provisions of this Subsection (4) shall not prevent the building authority from obtaining accounting or auditing services from outside accountants or auditors with the consent of the elected auditor and the governing body or from obtaining legal services from outside attorneys with the consent of the elected attorney and the governing body, nor shall the provisions of this Subsection (4) prevent the authority from obtaining the opinions of outside attorneys or accountants which are necessary for the issuance of the bonds of the authority.

(c) Except those services that are paid for from bond proceeds, the building authority may include the cost of legal, accounting, and auditing services in the rentals and charges payable to it under leases or agreements between it and the public body.

Section 190. Section **21-1-2** is amended to read:

21-1-2. Fees of lieutenant governor.

In addition to the fees prescribed by Title 16, Chapter 6a, Utah Revised Nonprofit Corporation Act, and Title 16, Chapter 10a, Utah Revised Business Corporation Act, [and Title 16, Chapter 6, Utah Nonprofit Corporation and Cooperative Association Act,] the lieutenant governor shall receive and determine fees pursuant to Section 63-38-3.2 for the following:

(1) for a copy of any law, resolution, record, or other document or paper on file in ~~his~~ the lieutenant governor's office, other than documents or papers filed under Title 16, Chapter 6a, Utah Revised Nonprofit Corporation Act, and Title 16, Chapter 10a, Utah Revised Business Corporation Act~~[, and Title 16, Chapter 6, Utah Nonprofit Corporation and Cooperative Association Act]~~;

(2) for affixing certificate and the Great Seal of the state, except on documents filed under Title 16, Chapter 6a, Utah Revised Nonprofit Corporation Act, and Title 16, Chapter 10a, Utah Revised Business Corporation Act, ~~and Title 16, Chapter 6, Utah Nonprofit Corporation and Cooperative Association Act~~];

(3) for each commission signed by the governor, except that no charge may be made for commissions to public officers serving without compensation;

(4) for each warrant of arrest issued by the governor and attested by the lieutenant governor upon the requisition of any other state or territory;

(5) for recording miscellaneous papers or documents;

(6) for filing any paper or document not otherwise provided for; and

(7) for searching records and archives of the state, except that no member of the Legislature or other state or county officer may be charged for any search relative to matters appertaining to the duties of his office or for a certified copy of any law or resolution relative to his official duties passed by the Legislature.

Section 191. Section **21-1-2.5** is amended to read:

21-1-2.5. Fees of Division of Corporations and Commercial Code.

In addition to the fees prescribed by Title 16, Chapter 6a, Utah Revised Nonprofit Corporation Act, and Title 16, Chapter 10a, Utah Revised Business Corporation Act, ~~[and Title 16, Chapter 6, Utah Nonprofit Corporation and Cooperative Association Act,~~] the Division of Corporations and Commercial Code shall receive and determine fees pursuant to Section 63-38-3.2 for filing articles of incorporation or amendments of insurance corporations, of canal or irrigation corporations organized for furnishing water to lands owned by the members thereof exclusively, or of water users' associations organized in conformity with the requirements of the United States under the Reclamation Act of June 17, 1902, and which are authorized to furnish water only to their stockholders. No license fee may be imposed on insurance corporations, canal or irrigation corporations organized for furnishing water to lands owned by the members thereof exclusively, or water users' associations organized in conformity with the requirements of the United States under the Reclamation Act of June 17, 1902, and which are authorized to furnish water only to the

stockholders at the time any such corporation files its articles of incorporation, articles of amendment increasing the number of authorized shares, or articles of merger or consolidation, any provision of Title 16, Chapter 10a, Utah Revised Business Corporation Act, to the contrary notwithstanding.

Section 192. Section **31A-5-101** is amended to read:

31A-5-101. Definitions.

In this chapter, unless the context requires otherwise:

(1) The definitions applicable to the Utah Revised Business Corporation Act in Subsections 16-10a-102(2), (22), and (23) apply to stock corporations.

(2) The definitions applicable to nonprofit corporations in Subsections [~~16-6-19(1), (2), (8), (10), and (12)~~] 16-6a-102(4), (6), and (30) apply to mutuals.

(3) "Promoter securities" are securities issued by a stock insurer to the incorporators, directors, officers, or their families or nominees at any time prior to, and up to one year following, the issuance of a certificate of authority to the stock insurer.

Section 193. Section **31A-5-102** is amended to read:

31A-5-102. Scope and purposes.

(1) (a) Except as expressly provided otherwise in this title, this chapter applies to all corporations organized under Utah law and doing an insurance business as defined under Section 31A-1-301, except those expressly governed by other chapters of this title. This chapter applies to corporations doing a reinsurance business, whether or not they do other insurance business.

(b) Except as expressly provided otherwise, this chapter does not apply to nondomestic insurers.

(c) Except as provided otherwise in this title, Title 16, Chapter [~~6~~] 6a, Utah Revised Nonprofit Corporation [~~and Co-operative Association~~] Act, and Title 16, Chapter 10a, Utah Revised Business Corporation Act, apply to corporations under this chapter.

(d) If Title 16, Chapter [~~6~~] 6a, or Title 16, Chapter 10a, conflict with this title, this title governs.

(2) The purposes of this chapter include:

(a) to provide a procedure for the formation of insurance corporations;

(b) to assure the solidity of insurance corporations by providing an organizational framework to facilitate sound management, sound operation, and sound regulation;

(c) to provide fair means of corporate transformation; and

(d) where feasible, to strengthen internal corporate democracy through enhancing shareholder and policyholder participation.

Section 194. Section **31A-5-104** is amended to read:

31A-5-104. General corporate powers and procedures.

(1) (a) Subject to other provisions of this code, Section 16-10a-302 applies to stock and mutual insurance corporations.

(b) Subject to other specific provisions of this title, a domestic insurance corporation may participate in any activity permitted as a promoter, partner, member, associate, or manager of any partnership, joint venture, trust, or other enterprise.

(2) Subsections 16-10a-303(2)(a) and (b) apply to stock corporations, and Section 16-10a-622 applies to mutuals.

(3) Whenever a seal is required on a corporate document, writing or printing the word "Seal" constitutes a valid seal.

(4) In waiving notice and in informal actions by shareholders, members, or directors, Sections 16-10a-704, 16-10a-706, and 16-10a-823 apply to stock corporations, and Sections [~~16-6-32~~] 16-6a-705 and [~~16-6-33~~] 16-6a-707 apply to mutuals.

(5) A life insurance corporation may hold assets under Section 31A-22-410 as general corporate assets or as trustee.

Section 195. Section **31A-5-203** is amended to read:

31A-5-203. Articles and bylaws.

(1) The articles of incorporation requirements in Section 16-10a-202 apply to the articles of a stock corporation, except that:

(a) the name of the corporation shall comply with Sections 16-10a-401 and 31A-1-109 and the name of any new or renamed corporation shall include the word "insurance" or a term of equivalent meaning;

(b) authorized shares shall conform to Subsection 31A-5-305(1) and the capital provided for shall conform to Section 31A-5-211; and

(c) beginning on July 1, 1988, the purposes of the corporation are limited to those permitted by Section 31A-4-107.

(2) The articles of incorporation requirements in Section [~~16-6-46~~] 16-6a-202, except Subsections [~~16-6-46 (1)(e) and (f)~~] 16-6a-202(1)(g) and (h), apply to the articles of a mutual except that:

(a) The name of the corporation shall comply with Sections [~~16-6-24~~] 16-6a-401 and 31A-1-109 and the name of any new or renamed corporation shall include the words "mutual" and "insurance" or terms of equivalent meaning.

(b) If any mutual bonds are authorized, they shall comply with Subsection 31A-5-305(2)(a).

(c) The purposes of the corporation may not include doing a title insurance business, and shall be limited to those purposes permitted by Section 31A-4-107.

(d) If assessable policies are permitted, the articles shall contain provisions giving assessment liabilities and procedures, including a provision specifying the classes of business on which assessment may be separately levied.

(e) The articles may specify those classes of persons who may be policyholders, or prescribe the procedure for establishing or removing restrictions on the classes of persons who may be policyholders. The articles shall also state that each policyholder is a member of the corporation.

(3) Sections 16-10a-830 and 16-10a-831 apply to stock corporations and Section [~~16-6-40~~] 16-6a-818 applies to mutuals. The articles or bylaws shall designate three or more principal offices the principal officers of the corporation shall hold. The principal offices shall be held by at least three separate natural persons.

(4) The bylaws of a domestic corporation shall comply with this chapter. A copy of the bylaws, and any amendments to them, shall be filed with the commissioner within 60 days after their adoption. Subject to Subsection (4), Subsections 31A-5-204(2)(c) and (5), Subsection 31A-5-213(4), and Section 16-10a-206 apply to stock corporations and Section [~~16-6-44~~] 16-6a-206 applies to mutuals.

Section 196. Section **31A-5-219** is amended to read:

31A-5-219. Amendment of articles.

(1) Subject to Subsection (3) and to the requirements of the Insurance Code, a stock corporation may amend its articles under Sections 16-10a-1001 through 16-10a-1009 and a mutual may amend its articles under Sections [~~16-6-49~~] 16-6a-1001 through [~~16-6-51~~] 16-6a-1005 in any manner, including substantial changes of its original purposes. No amendment may be made contrary to Subsections 31A-5-203(1) through (3).

(2) An amendment becomes effective when the properly adopted and filed articles of amendment are approved by the commissioner.

(3) Section 16-10a-1009 applies to stock corporations and the second paragraph of Section [~~16-6-53~~] 16-6a-1009 applies to mutuals.

Section 197. Section **31A-5-404** is amended to read:

31A-5-404. Communications to shareholders, policyholders, and voting members -- Commissioner's attendance at meetings.

(1) (a) Sections 16-10a-1601 through 16-10a-1604 apply to the books and records and their inspection by shareholders of stock corporations. Section [~~16-6-41~~] 16-6a-1602 applies to the books and records and inspection rights of policyholders or voting members of mutuals. However, the inspection of the records of the names and addresses of policyholders or voting members of mutuals is permitted only to communicate with other policyholders or voting members regarding the nomination and election of candidates for the board, or for other corporate matters which may be submitted to a vote of the policyholders or voting members. No person may, directly or indirectly, use any information obtained in an inspection for any other purpose.

(b) Any books, records, or minutes may be in written form or in any other form capable of being converted into written form within a reasonable time.

(c) Any provision of this chapter or of any articles or bylaws of a mutual, which requires keeping a record of the names and addresses of policyholders entitled to vote or voting members, is complied with by keeping a record of the names of policyholders or voting members and the names and addresses of insureds or persons paying premiums. This provision requires mailing or sending

of notices, reports, proposals, ballots, or other materials to policyholders or voting members of record.

(2) Subject to Subsection (4), the commissioner may by rule prescribe that copies of specified classes of communications circulated generally by a corporation to shareholders, policyholders, or voting members be communicated to the commissioner at the same time.

(3) Subject to Subsection (4), the commissioner may attend any shareholders', policyholders', or voting members' meeting as an observer.

(4) Subsection (3) and, so far as it relates to communications to shareholders, Subsection (2) do not apply to stock corporations whose voting shares are owned by a single person, or whose shareholders are either members of the board or are explicitly represented on it.

Section 198. Section **31A-5-405** is amended to read:

31A-5-405. Meetings of mutuals and mutual policyholders' and members' voting rights.

(1) Subject to this section, Sections [~~16-6-27~~] 16-6a-701, [~~16-6-28~~] 16-6a-702, 16-6a-704, and [~~16-6-29~~] 16-6a-714 apply to the meetings of members, the notice, and the voting in mutuals. Subject to this section and Section 31A-5-409, Section [~~16-6-30~~] 16-6a-711 applies to the voting of members of mutuals.

(2) (a) Policyholders or voting members in all mutuals have the right to vote on conversion, voluntary dissolution, amendment of the articles, and the election of directors except public directors appointed under Subsection 31A-5-409(1). The mutual may adopt reasonable provisions in its bylaws to determine which individual among joint policyholders may exercise a voting right and how to deal with cases where the same individual is one of several joint policyholders in various policies.

(b) The articles of any mutual may give the policyholders or voting members additional voting rights. These articles may require a greater percentage of affirmative votes to approve an action than the statutes require.

(3) The articles or bylaws shall contain rules governing voting procedures and voting eligibility consistent with Subsection (1). No amendment to these rules is effective until at least 30 days after it has been filed with the commissioner.

(4) (a) The articles or bylaws may provide for regular or special meetings of the policyholders or voting members, and, if meetings are not provided for, then mail elections shall be provided for in lieu of elections at meetings.

(b) Notice of the time and place of regular meetings or elections shall be given to each policyholder or voting member in a reasonable manner as the commissioner approves or requires. Changes may be made by written notice mailed, properly addressed, and stamped, to the last-known address of all policyholders or voting members.

(5) The articles may provide that representatives or delegates selected by the policyholders or voting members shall be from specific geographical districts or defined classes of policyholders or voting members, as determined on a reasonable basis. After the representative assembly has been selected by the policyholder or voting members, the assembly or the respective classes of policyholders or voting members may choose replacements for members unable to complete their terms, if the articles provide for their replacement. The vote of a person holding a valid proxy is treated as the vote of the policyholders or voting members who gave the proxy.

Section 199. Section **31A-5-407** is amended to read:

31A-5-407. Board of directors.

(1) Subject to this section, Sections 16-10a-801 through 16-10a-803, 16-10a-805, and 16-10a-811 apply to the board of directors of a stock corporation and Sections [~~16-6-34~~] 16-6a-802 and [~~16-6-35~~] 16-6a-805 apply to the governing board and trustees of mutuals.

(2) A majority of the directors shall be residents of this state unless the commissioner is satisfied that the corporation's financial condition, management, and other circumstances give assurance that the interests of insureds and the public will not be endangered by the majority being nonresidents.

(3) Employees and agents of a corporation that receive more than 10% of their income from the corporation, and persons related to any of them within the second degree by blood or marriage, if directors, are considered "inside directors." Inside directors may not constitute a majority of the corporation's board.

(4) Subsections (2) and (3) and the required number of directors for committees under

Subsection 31A-5-412 (1) do not apply to an insurance subsidiary authorized under Subsection 31A-5-218 (1), nor to a stock insurance corporation, more than 50% of whose outstanding shares entitled to vote are owned or controlled by a single person or all of whose voting shareholders are either members of or are individually represented on the board.

(5) If the directors of a corporation are divided into classes by the articles or the bylaws, no class may contain fewer than one-third of the total number of directors. Subject to this requirement, Section 16-10a-804 applies to the classification of directors of stock corporations. When classes of trustees or directors are provided in a mutual corporation, the terms of office of the several classes need not be uniform.

(6) The board shall manage the business and affairs of the corporation and may not delegate its power or responsibility, except as authorized by Section 31A-5-412.

(7) Section 16-10a-824 applies to the determination of a quorum of directors of a stock corporation and Section ~~[16-6-37]~~ 16-6a-816 applies to the determination of a quorum of trustees for a mutual, except as specifically provided otherwise in this title.

(8) (a) Sections 16-10a-820 and 16-10a-821 apply to the meetings and action without a meeting of the board of directors of stock corporations ~~[and Section 16-6-39 applies]~~.

(b) Sections 16-6a-812 through 16-6a-819 apply to the meetings and notice of mutuals.

(9) Sections 16-10a-1601 through 16-10a-1604 apply to stock corporations and Section ~~[16-6-41]~~ 16-6a-1602 applies to mutuals regarding the examination of books and records of these entities.

Section 200. Section **31A-5-409** is amended to read:

31A-5-409. Selection and removal of directors and officers of mutuals.

(1) The articles of a mutual may provide that any number of the directors are public directors chosen under a plan proposed by the corporation and approved by the commissioner. The plan shall assure true public representation on the board. The persons nominated as directors shall have insurance business or general experience that qualifies them to serve responsibly and impartially.

(2) Directors not chosen under Subsection (1) are elected by the policyholders or voting members. If directors are divided into classes, one class shall be elected at least every four years, for

a term not exceeding six years.

(3) A director may be removed from office for cause by an affirmative vote of a majority of the full board at a meeting of the board called for that purpose.

(4) Subject to Subsections (1), (2), and (3), Section [~~16-6-36~~] 16-6a-810 applies to vacancies on the governing board.

Section 201. Section **31A-5-410** is amended to read:

31A-5-410. Supervision of management changes.

(1) (a) The name of a person selected as a director or principal officer of a corporation, together with pertinent biographical and other data the commissioner requires by rule, shall be reported to the commissioner immediately after the selection.

(b) For five years after the initial issuance of a certificate of authority to a corporation, the commissioner may, within 30 days after receipt of a report under Subsection (1)(a), disapprove any person selected who fails to satisfy the commissioner that he is trustworthy and has the competence and experience necessary to discharge his responsibilities.

(2) Whenever a director or principal officer of a corporation is removed under Section 16-10a-808 or 16-10a-832, [~~the third paragraph of Section 16-6-40, or Subsection~~] Subsections 16-6a-820(4) and 31A-5-409(3), the removal shall be reported to the commissioner immediately, together with a statement of the reasons for the removal.

(3) If the commissioner finds, after a hearing, that a director or officer is incompetent or untrustworthy, or has wilfully violated this code, a rule adopted under Subsection 31A-2-201(3), or an order issued under Subsection 31A-2-201(4), and that the incompetence, untrustworthiness, or the violation endangers the interests of insureds or the public, he may order the removal of the director or officer.

Section 202. Section **31A-5-415** is amended to read:

31A-5-415. Officers', directors', and employees' liability and indemnification.

(1) Section 16-10a-841 applies to the liabilities of directors of a stock corporation. [~~Section 16-6-43~~] Subsection 16-6a-825(3) applies to loans to trustees and officers of a mutual. A director who votes for or assents to a violation of Subsection 16-6a-825(3) or Section 16-10a-842 [~~or Section~~

~~16-6-43~~] is jointly and severally liable to the corporation for any loss on the distribution.

(2) Part 9, Indemnification, of Title 16, Chapter 10a, Utah Revised Business Corporation Act, applies to stock and mutual corporations, but no indemnification may be paid until 30 or more days after sending a notice to the commissioner of the full details of the proposed indemnification. The commissioner may bring an action in Third Judicial District Court for Salt Lake County to have such indemnification enjoined. The court may enjoin the indemnification to the extent it would render the insurer in a hazardous condition, or exacerbate an existing financially hazardous condition.

Section 203. Section **31A-5-503** is amended to read:

31A-5-503. Merger and consolidation of mutuals.

Any two or more mutuals may merge or consolidate, under the procedures set forth under Title 16, Chapter ~~[6]~~ 6a, Utah Revised Nonprofit Corporation Act. All mergers of mutuals are subject to ~~[the provisions of]~~ Chapter 16.

Section 204. Section **31A-5-504** is amended to read:

31A-5-504. Voluntary dissolution of domestic insurance corporations.

(1) Under this section, a domestic stock insurance corporation may dissolve under the provisions of Sections 16-10a-1401 through 16-10a-1405. Under this section, a domestic mutual insurance corporation may dissolve under ~~[the provisions of Sections 16-6-62 through 16-6-67, except that Subsections 16-6-63(4), 16-6-64(2), 16-6-65(2), and 16-6-66(3) do not apply]~~ Section 16-6a-1405.

(2) At least 60 days prior to the submission to shareholders or policyholders of any proposed voluntary dissolution of an insurance corporation, the plan of dissolution shall be filed with the commissioner. The commissioner may require the submission of any additional information that will establish the financial condition of the corporation or other facts relevant to the proposed dissolution. If the shareholders or policyholders adopt the resolution to dissolve, the commissioner shall, within 30 days after the adoption of the resolution, begin an examination of the corporation. He shall approve the dissolution unless he finds, after a hearing, that the corporation is insolvent or may become insolvent in the process of dissolution. Upon approval, the corporation may transfer all its obligations under insurance policies to other insurers approved by the commissioner and then may

dissolve under Subsection (1). If the commissioner disapproves, the commissioner shall petition the court for a liquidation under Section 31A-27-307.

(3) During the liquidation under Subsection (1), the corporation may apply to the commissioner to have the liquidation continued under his supervision. After receiving this application, the commissioner shall apply to the court for a liquidation under Section 31A-27-307.

(4) If the corporation revokes the voluntary dissolution proceedings under Section 16-6a-1404 or 16-10a-1404 [~~or 16-6-65~~], it shall file a copy of the revocation of voluntary dissolution proceedings with the commissioner.

(5) In distributing the assets in the dissolution of a nonlife mutual, Subsection 31A-27-337(4) applies.

(6) No remedy available to or against the corporation, its directors, officers, or shareholders is taken away or impaired if an action or other proceeding is brought within two years after dissolution for any right or claim existing, or any liability incurred, prior to the voluntary dissolution under this section. This action or proceeding may be prosecuted or defended by the corporation in its corporate name. The shareholders, directors, and officers may take appropriate corporate or other action to protect the remedy, right, or claim. A corporation which is dissolved by the expiration of its period of duration may amend its articles of incorporation during the two years to provide for perpetual existence.

(7) During the voluntary dissolution of a domestic insurance corporation under this section, its corporate existence continues to allow the winding up of the corporation's affairs regarding any property and assets not distributed or otherwise disposed of prior to dissolution. To effect that purpose, the corporation may sell or otherwise dispose of the property and assets, sue and be sued, contract, and exercise all other necessary powers.

Section 205. Section **31A-5-508** is amended to read:

31A-5-508. Transfer of business or assets.

(1) In the sale, lease, exchange, or mortgage of assets with or without shareholder action, and concerning the rights of dissenting shareholders in those transactions, Sections 16-10a-1201, 16-10a-1202, 16-10a-1320 through 16-10a-1328, 16-10a-1330, and 16-10a-1331 apply to stock

corporations. In the sale, lease, exchange, or mortgage of assets, Section [~~16-6-61~~] 16-6a-1201 applies to mutuals.

(2) Chapter 16 applies to:

(a) the sale of a domestic insurer's assets or book of business, other than in the ordinary course of business; or

(b) the insurer entering into contracts of reinsurance which have substantially the same effect as a merger.

Section 206. Section **31A-7-103** is amended to read:

31A-7-103. Applicability of other provisions.

(1) Except for exemptions specifically granted under this title, nonprofit health service insurance corporations organized or operating under this chapter are subject to all of the provisions of this title.

(2) Nonprofit health service corporations are exempt from the provisions of Chapter 5 except where sections or parts are specifically referenced and made applicable in this chapter, in which case the referenced provisions under Chapter 5 that apply to mutual corporations apply to nonprofit health service insurance corporations.

(3) Title 16, Chapter [~~6~~] 6a, Utah Revised Nonprofit Corporation Act, and Title 16, Chapter 10a, Utah Revised Business Corporation Act, do not apply to nonprofit health service insurance corporations except as specifically made applicable by:

(a) this chapter;

(b) a provision adopted by reference under this chapter; or

(c) a rule adopted by the commissioner to deal with corporate law issues of nonprofit health service insurance corporations which are not settled under this chapter.

(4) Any insurer authorized under this chapter that is not in compliance with the applicable capital and surplus requirements, yet has assets in excess of its liabilities, has until July 1, 1988, to comply with the applicable capital and surplus requirements. One-half of any shortage in capital and surplus on July 1, 1986, shall be remedied by July 1, 1987.

Section 207. Section **31A-7-201** is amended to read:

31A-7-201. Organization, incorporation, and licensing.

Part II of Chapter 5 governs the organization, incorporation, and licensing of nonprofit health service corporations with the following exceptions:

- (1) Section [~~16-6-45~~] 16-6a-201 applies in place of Section 31A-5-202.
- (2) Sections [~~16-6-24~~] 16-6a-401 and 31A-1-109 apply in place of Subsection 31A-5-203(2)(a).
- (3) The last sentence of Subsection 31A-5-203(2)(e) does not apply.
- (4) Sections 31A-5-214 and 31A-5-215 do not apply to nonprofit health service insurance corporations.

Section 208. Section **31A-7-202** is amended to read:

31A-7-202. Members.

[~~Section 16-6-26 applies~~] Sections 16-6a-601 and 16-6a-602 apply to members of corporations organized or operating under this chapter. Sections [~~16-6-27 through 16-6-30~~] 16-6a-701, 16-6a-702, 16-6a-704, 16-6a-711, and 16-6a-712 apply to corporations organized or operating under this chapter which have members.

Section 209. Section **31A-7-303** is amended to read:

31A-7-303. Board of directors.

(1) Subject to other provisions under this section, Sections [~~16-6-34~~] 16-6a-801 through [~~16-6-37 and Section 16-6-39~~] 16-6a-805, and Sections 16-6a-810, 16-6a-812, 16-6a-814, 16-6a-815, and 16-6a-816 apply to the board of directors of insurers organized or operating under this chapter.

(2) The property and lawful business of every corporation subject to this chapter shall be held and managed by a governing board of trustees or directors with the powers and authority as is necessary or incidental to the complete execution of the purposes of each corporation as limited by its articles of incorporation and bylaws. [~~No~~] A board may not consist of less than five members. A majority of the directors shall be residents of Utah.

(3) Any person employed by or receiving more than 10% of his income from a corporation licensed under this chapter, and any person related to that person within the second degree by blood

or marriage, is an "insider." Insiders may not constitute a majority of the board of a corporation organized and operating under this chapter.

(4) The board shall manage the business and affairs of the corporation and may not delegate its power or responsibility to do so, except to the extent authorized by Section 31A-7-307.

(5) Section [~~16-6-39~~] 16-6a-814 applies to the place and notice of directors' meetings.

(6) Any director may be removed from office for cause by an affirmative vote of a majority of the full board at a meeting of the board called for that purpose.

Section 210. Section **31A-7-304** is amended to read:

31A-7-304. Waiver and consent.

Sections [~~16-6-32~~] 16-6a-813 and [~~16-6-33~~] 16-6a-815 apply to waiver and consent in corporations organized or operating under this chapter.

Section 211. Section **31A-7-313** is amended to read:

31A-7-313. Books and records.

Section [~~16-6-41~~] 16-6a-1602 applies to the books and records of corporations organized and operating under this chapter.

Section 212. Section **31A-8-103** is amended to read:

31A-8-103. Applicability to other provisions of law.

(1) Except for exemptions specifically granted under this title, organizations are subject to regulation under all of the provisions of this title. Notwithstanding any provision of this title, organizations licensed under this chapter are wholly exempt from the provisions of Chapters 7, 9, 10, 11, 12, 13, 19, and 28. In addition, organizations are not subject to:

- (a) Chapter 3, except for Part I;
- (b) Section 31A-4-107;
- (c) Chapter 5, except for provisions specifically made applicable by this chapter;
- (d) Chapter 14, except for provisions specifically made applicable by this chapter;
- (e) Chapters 17 and 18, except as made applicable by the commissioner by rule consistent with this chapter; and
- (f) Chapter 22, except for Parts VI, VII, and XII.

(2) The commissioner may by rule waive other specific provisions of this title that he considers inapplicable to health maintenance organizations or limited health plans, upon a finding that such a waiver will not endanger the interests of enrollees, investors, or the public.

(3) Title 16, Chapter [6] ~~6a~~, Utah Revised Nonprofit Corporation [~~and Co-operative Association~~] Act, and Title 16, Chapter 10a, Utah Revised Business Corporation Act, do not apply to organizations except as specifically made applicable by:

- (a) this chapter;
- (b) a provision referenced under this chapter; or
- (c) a rule adopted by the commissioner to deal with corporate law issues of health maintenance organizations that are not settled under this chapter.

(4) Whenever in this chapter a section, subsection, or paragraph of Chapter 5 or 14 is made applicable to organizations, the application is of those provisions that apply to mutual corporations if the organization is nonprofit and of those that apply to stock corporations if the organization is for profit. Whenever a provision under Chapter 5 or 14 is made applicable to organizations under this chapter, "mutual" means nonprofit organization.

(5) Solicitation of enrollees by an organization is not a violation of any provision of law relating to solicitation or advertising by health professionals if that solicitation is made in accordance with the provisions of this chapter and Chapter 23.

(6) Nothing in this title prohibits any health maintenance organization from meeting the requirements of any federal law that enables the health maintenance organization to receive federal funds or to obtain or maintain federal qualification status.

(7) Except as provided in Section 31A-8-501, organizations are exempt from statutes in this title or department rules that restrict or limit their freedom of choice in contracting with or selecting health care providers, including Section 31A-22-618.

(8) Organizations are exempt from the assessment or payment of premium taxes imposed by Sections 59-9-101 through 59-9-104.

Section 213. Section **31A-8-204** is amended to read:

31A-8-204. Articles and bylaws.

(1) The articles of a nonprofit organization shall conform to Subsections [~~16-6-46~~ 16-6a-202](1)(a) through [~~(d) and (1)(g) through (i)~~] (f). The articles of other organizations shall conform to Section 16-10a-202. In addition:

(a) the powers of the corporation shall be limited to those permitted under Section 31A-8-105;

(b) the articles shall state whether the organization is a health maintenance organization or a limited health plan;

(c) the articles shall state the services to be provided or for which indemnity is to be paid, which services provided and indemnity guaranteed shall be consistent with the organization's designation under Subsection (1)(b);

(d) the articles shall state that as to health care services for which individual providers are required to be licensed, the services provided by the organization shall be provided by persons properly licensed to perform the services;

(e) the articles shall state whether providers of services are subject to assessment or withholding to pay operating costs or financial deficits;

(f) the articles shall state, for organizations having members, how persons become members and that only members vote; and

(g) the articles of an organization not having members shall state how the directors of the organization shall be selected and removed.

(2) The articles or bylaws shall designate three or more officers as the principal officers of the corporation. The principal offices shall be held by at least three separate natural persons.

(3) Section 31A-5-219 applies to amendments to articles of organizations.

(4) Organizations shall adopt and maintain bylaws. Section [~~16-6-44~~ 16-6a-206] applies to organizations, except for the statement that bylaws need not be adopted.

Section 214. Section **31A-8-406** is amended to read:

31A-8-406. Distribution by nonprofit organizations.

A nonprofit organization may pay compensation in a reasonable amount to its members, trustees, or officers for services rendered, may make reasonable incentive payments to its providers,

may confer benefits upon its members in conformity with its purposes, may pay interest on certificates of indebtedness issued by it evidencing capital contributions, and upon dissolution or final liquidation may make distributions to its members as permitted by ~~the~~ Title 16, Chapter 6a, Utah Revised Nonprofit Corporation [and Co-operative Association] Act, [Section 16-6-18, et seq.,] and no such payment, benefit, or distribution shall be considered to be a dividend or distribution of income. Notwithstanding Section 31A-8-105, and in addition to the powers granted in that section, a nonprofit organization has all powers conferred upon it by Section ~~[16-6-22]~~ 16-6a-302.

Section 215. Section **31A-9-101** is amended to read:

31A-9-101. Definitions.

(1) As used in this chapter:

(a) "Fraternal" or "fraternal benefit society" means a corporation organized or operating under this chapter that:

(i) has no capital stock;

(ii) exists solely for:

(A) the benefit of its members and their beneficiaries; and

(B) any lawful social, intellectual, educational, charitable, benevolent, moral, fraternal, patriotic, or religious purpose for the benefit of its members or the public, carried on through voluntary activity of its members in their local lodges or through institutional programs of the fraternal or its local lodges;

(iii) has a lodge system;

(iv) has a representative form of government; and

(v) provides insurance benefits authorized under this chapter.

(b) "Laws of a fraternal" include its articles of incorporation and bylaws, however designated.

(c) "Lodge system" means one in which:

(i) there is a supreme governing body;

(ii) subordinate to the supreme governing body are local lodges, however designated, into which natural persons are admitted as members in accordance with the laws of the fraternal;

(iii) the local lodges are required by the laws of the fraternal to hold regular meetings at least

monthly; and

(iv) the local lodges regularly engage in programs involving member participation to implement the purposes of Subsection (1)(a)(ii).

(d) "Representative form of government" means the fraternal complies with Section 31A-9-403.

(2) In any provisions of law made applicable to fraternal by this chapter, the technical terms used in those provisions are applicable to fraternal despite the use of other parallel terms by fraternal.

(3) The definitions provided in Subsections [~~16-6-19 (1), (2), (8), (10), and (12)~~] 16-6a-102(4), (6), and (30), and Section 31A-1-301 apply to fraternal.

Section 216. Section **31A-9-105** is amended to read:

31A-9-105. General corporate powers and procedures.

(1) Section 16-10a-302 applies to the general powers of fraternal.

(2) [~~Subsections 16-6-23(1) and (2) apply~~] Section 16-6a-304 applies to ultra vires issues in fraternal.

(3) Subsection 31A-5-104(3) applies to the omission of a seal in a fraternal.

(4) Sections [~~16-6-32~~] 16-6a-705 and [~~16-6-33~~] 16-6a-707 apply to waiver of notice and consent to action without a meeting in a fraternal.

(5) Subsection 31A-5-104(5) applies to the power to hold assets as a trustee in a fraternal.

Section 217. Section **31A-9-204** is amended to read:

31A-9-204. Articles of incorporation and bylaws.

(1) The articles of incorporation shall set forth:

(a) the name of the corporation, which shall include the word "fraternal" or words of equivalent meaning;

(b) the location of the principal office of the fraternal, which shall be in this state;

(c) the purposes of the corporation, which shall include one or more of the purposes specified in Subsection 31A-9-101(1)(a)(ii)(B), but shall otherwise be restricted to those permitted under Section 31A-4-107;

- (d) the classes of members, and the qualifications and rights of the members of each class;
 - (e) a description of the fraternal's representative form of government, conforming to Section 31A-9-403;
 - (f) the manner in which local lodges or branches may be formed and the powers they shall have, or a statement that the formation and powers of local lodges or branches is provided for in the bylaws;
 - (g) a provision for fraternal bonds, if any are to be authorized, which shall conform to Section 31A-9-303; and
 - (h) a provision for amendment of the articles, which shall conform to Section 31A-9-213.
- (2) The articles of incorporation are not required to recite the corporate powers enumerated in this chapter, as these powers are authorized by law.
- (3) Section [~~16-6-40~~] 16-6a-818 applies to the officers of fraternal. The articles or bylaws shall specifically designate three or more offices, which shall be held by the principal officers of the fraternal. The principal offices shall be held by at least three separate natural persons.
- (4) The bylaws shall comply with the provisions of this chapter. A copy of the bylaws and any amendments to them shall be filed with the commissioner promptly after their adoption. Notice of amendments to the bylaws shall be given promptly to members. Subject to this chapter, Section [~~16-6-44~~] 16-6a-206 applies to the bylaws and resolutions of fraternal.

Section 218. Section **31A-9-212** is amended to read:

31A-9-212. Separate accounts and subsidiaries.

- (1) Except as provided in Subsections (2) and (3), Sections 31A-5-217 and 31A-5-218 apply to separate accounts and subsidiaries of fraternal. If a fraternal issues contracts on a variable basis, Subsections 31A-22-902 (2) and (6) and 31A-9-209 (2) do not apply, except that Subsection 31A-9-209(2) applies to any benefits contained in the variable contracts which are fixed or guaranteed dollar amounts.
- (2) If a fraternal engages in any insurance business other than life, disability, annuities, property, or liability insurance, it shall do so through a subsidiary under Section 31A-5-218.
- (3) (a) A local lodge may incorporate under Title 16, Chapter [6] 6a, Utah Revised Nonprofit

Corporation Act, or the corresponding law of the state where it is located, to carry out the noninsurance activities of the local lodge.

(b) Corporations may be formed under Title 16, Chapter [6] 6a, Utah Revised Nonprofit Corporation Act, to implement Subsection 31A-9-602(2).

Section 219. Section **31A-9-405** is amended to read:

31A-9-405. Board of directors.

(1) [~~Section 16-6-34 applies~~] Sections 16-6a-801 and 16-6a-802 apply to fraternal, except that the supreme governing body may act as the board of directors if it meets at least quarterly. Subsections 31A-5-407(2) through (9) apply to fraternal, except that the word "mutual" shall be read "fraternal" and the references to other sections of Chapter 5 shall be to the corresponding sections of Chapter 9.

(2) The terms of directors and officers may not exceed four years.

Section 220. Section **31A-9-406** is amended to read:

31A-9-406. Removal of directors and filling of vacancies.

(1) A director may be removed from office for cause by an affirmative vote of a majority of the full board of directors at a meeting of the board called for that purpose or may be removed under [~~Paragraph 3 of Section 16-6-40~~] Subsection 16-6a-820(4).

(2) Any vacancy occurring in the board, including a vacancy created by an increase in the number of directors, may be filled by the affirmative vote of a majority of the directors then in office, although less than a quorum.

(3) If the laws of the fraternal provide that at least [~~two-thirds~~] 2/3 of the directors are elected by the members, elected director vacancies may be filled by the board for the remainder of the terms for which there are vacancies.

(4) If the vacancy is to be filled other than by a regular election, the election by the board is effective only until a reasonable time has elapsed for choosing the director in that other manner.

(5) If less than [~~two-thirds~~] 2/3 of the directors are elected by the members, elected director vacancies may be filled by the directors only until the next succeeding regular election. At that time, the elected director vacancy may be filled for the remainder of the term for which there is a vacancy.

A director elected under this section to fill the unexpired term of an elected director is an elected director within the meaning of Subsection 31A-9-403(1)(a).

(6) If the board ceases to exist, the commissioner shall arrange the necessary procedures for holding elections to create a new board.

Section 221. Section **31A-9-502** is amended to read:

31A-9-502. Voluntary dissolution of solvent domestic fraternal.

(1) Subject to this section, a domestic fraternal may voluntarily dissolve under Sections ~~[16-6-62]~~ 16-6a-1401 through ~~[16-6-67, except that Subsections 16-6-63 (4), 16-6-64 (2), 16-6-65 (2) and 16-6-66 (3) do not apply]~~ 16-6a-1405.

(2) The proposal for voluntary dissolution shall be filed with the commissioner at least 60 days prior to the submission of that proposal to the supreme governing body or the members. The commissioner may require the submission of additional information necessary to establish the financial condition of the fraternal or other facts relevant to the proposed dissolution. If the supreme governing body or the members adopt the resolution to dissolve, by a majority of those voting or a larger number as required by the laws of the fraternal, the commissioner shall, within 30 days after the adoption of the resolution, begin to examine the fraternal. The commissioner shall approve the dissolution unless he finds, after the examination and a hearing, that it is insolvent or may become insolvent in the process of dissolution. Upon approval, the fraternal may provide for a transfer to other fraternal approved by the commissioner of all its obligations under insurance policies and then may dissolve under Subsection (1). If the commissioner disapproves, he shall petition the court for liquidation under Section 31A-27-307.

(3) During the liquidation under Sections ~~[16-6-63]~~ 16-6a-1401 through ~~[16-6-66]~~ 16-6a-1408, the fraternal may apply to the commissioner to have the liquidation continued under the commissioner's supervision. Upon receiving this request, the commissioner shall apply to the court for liquidation under Section 31A-27-307.

(4) If the fraternal revokes the voluntary dissolution proceedings under Section ~~[16-6-65]~~ 16-6a-1404, a copy of the revocation of voluntary dissolution proceedings shall be filed with the commissioner.

(5) Subsections 31A-5-504(6) and (7) apply to the survival of remedies and continuance of corporate existence of a voluntarily dissolved fraternal.

Section 222. Section **31A-11-105** is amended to read:

31A-11-105. Application of Title 16 -- Incorporation of domestic motor clubs.

Domestic corporations acting or applying to act as a motor club under this chapter are subject to Title 16, Chapter 10a, Utah Revised Business Corporation Act, if for profit, or Title 16, Chapter [6] 6a, Utah Revised Nonprofit Corporation Act, if not for profit. The Division of Corporations and Commercial Code in the Department of Commerce issues certificates of incorporation for domestic corporations acting as motor clubs under this chapter, unless they are Chapter 5 corporations. This section does not negate the requirement of a motor club obtaining a certificate of authority from the commissioner. Section [~~16-6-21~~] 16-6a-301 does not apply to bar a not-for-profit motor club from organizing under Title 16, Chapter [6] 6a, Utah Revised Nonprofit Corporation Act.

Section 223. Section **31A-14-205** is amended to read:

31A-14-205. Requirements from other applicable chapters.

(1) A foreign insurer may not be authorized to do business in this state, unless it strictly complies with the following requirements:

(a) Foreign insurers shall comply with the solvency standard set forth in Chapter 17, Part 6, Risk-Based Capital, including maintenance of minimum capital or permanent surplus under Section 31A-5-211.

(b) A foreign insurer proposing to market securities in this state shall comply with Sections 31A-5-301, 31A-5-302, and 31A-5-305, unless this marketing is subject to United States Securities and Exchange Commission regulation.

(c) Section 16-10a-1506 applies to the corporate name and the change of name of foreign stock insurers. Section [~~16-6-82~~] 16-6a-1507 applies to the change of name of foreign mutual insurers.

(d) Subsection 31A-5-203(2)(c) applies to other business of foreign mutual insurers.

(e) Subsection 31A-5-404(2), as modified by Subsection 31A-5-404(4), applies to communications to shareholders, policyholders, or voting members of mutuals by foreign insurers.

(f) Section 31A-5-413 applies to interlocking directorates of foreign insurers.

(g) Subsection 31A-5-203(2)(d) applies to assessment liability in foreign insurers issuing assessable policies in any state.

(2) The commissioner may issue orders imposing and eliminating restrictions to foreign insurers under Section 31A-5-103.

(3) After a hearing, the commissioner may by order apply any of the provisions of Sections 31A-5-307, 31A-5-414, 31A-5-418 to a foreign corporation after finding that it is necessary for the protection of the interests of its insureds, creditors, or the public in this state. This Subsection (3) may be applied to a foreign insurer without a hearing if done under a reciprocal agreement with the domiciliary regulatory authority.

(4) If any provision made applicable to a foreign insurer under this section conflicts with the law of the insurer's domicile so that it is impossible for the corporation to comply with both laws, the law of the domicile governs.

(5) This section does not excuse or exempt any foreign insurer from complying with the provisions of this title which are otherwise applicable to a foreign insurer.

(6) This section does not apply to foreign fraternal insurers.

(7) If a licensed foreign insurer is in rehabilitation or liquidation proceedings or is found to be insolvent in its state of domicile, the commissioner may, without hearing, suspend the insurer's certificate of authority to do business in this state.

Section 224. Section **31A-14-210** is amended to read:

31A-14-210. Requirements for foreign fraternal.

(1) A foreign fraternal may not be authorized to do business in this state under Section 31A-14-203, unless it strictly complies with:

(a) the financial requirements of Section 31A-9-209 and Chapter 17, Part 6, Risk-Based Capital;

(b) the requirements of Section [~~16-6-24~~] 16-6a-1506 and Subsection 31A-5-410(1)(a), the reporting requirements of Subsection 31A-5-410(2), Section 31A-5-413 whenever removal is made involuntarily under the laws of the domicile, Section 31A-9-202, and Subsections 31A-9-204(1) (c),

31A-9-402(2), and 31A-9-602(1); and

(c) for five years after the initial issuance of a certificate of authority in its domiciliary jurisdiction, the requirements of Subsection 31A-9-213(2).

(2) (a) No foreign fraternal may be authorized to do business in this state unless it substantially complies with Sections 31A-5-217 and 31A-5-218, except that the approval requirement of Subsection 31A-5-217(2) does not apply.

(b) When any corporate reorganization, transformation, or liquidation of a foreign fraternal, or any levy to cover a deficiency under a law comparable to Subsection 31A-9-209(2), is formally initiated by the fraternal, by the official act of the domiciliary commissioner, or by any other official, the fraternal shall promptly give written notice to the commissioner.

(3) The commissioner may issue orders imposing and eliminating restrictions under Section 31A-9-103 that are applicable to foreign fraternal.

(4) (a) After a hearing, the commissioner may, by order, apply any of the provisions of Sections 31A-9-213, 31A-9-404, 31A-9-411, 31A-9-413, or Subsection 31A-5-415(2) to a foreign fraternal after finding that it is necessary for the protection of the interests of its members, creditors, or the public in this state.

(b) If any provision made applicable to the foreign fraternal under Subsection (4)(a) conflicts with a provision of the law of the domicile, so that it is impossible for the fraternal to comply with both, the law of the domicile governs.

Section 225. Section **31A-22-1305** is amended to read:

31A-22-1305. Persons authorized to issue annuities.

No person may issue an annuity to another person unless the issuer is:

- (1) an insurer authorized to issue annuities under Chapter 5, 9, or 14;
- (2) a domestic corporation created under Title 16, Chapter [6] 6a, Utah Revised Nonprofit Corporation Act, or other applicable law, or a foreign corporation conducted without profit, which is engaged solely in bona fide charitable, religious, missionary, educational, medical, or philanthropic activities; or
- (3) a natural person who issues an annuity to his spouse, children, grandchildren,

great-grandchildren, parents, grandparents, uncles, aunts, brothers, sisters, nieces, or nephews, whether those relationships are by birth, marriage, or legal adoption.

Section 226. Section **31A-27-335** is amended to read:

31A-27-335. Priority of distribution.

(1) (a) Every claim in each class of claims from the insurer's estate shall be paid in full or adequate funds retained for the payment before the members of the next class receive any payment.

(b) Once the funds are retained by the liquidator and approved by the court, the insurer's estate shall have no further liability to members of that class except to the extent of the retained funds and any other undistributed funds.

(c) Subclasses may not be established within any class.

(d) A claim by a shareholder, policyholder, or other creditor may not be permitted to circumvent the priority classes through the use of equitable remedies.

(2) The classes and order of distribution are as described in Subsections (2)(a) through (i).

(a) Class one is the costs and expenses of administration expressly approved by the liquidator, including:

(i) the actual and necessary costs of preserving or recovering the assets of the insurer;

(ii) compensation for all authorized services rendered in the supervision, rehabilitation, or liquidation;

(iii) any necessary filing fees;

(iv) the fees and mileage payable to witnesses; and

(v) reasonable attorney's fees and other professional services rendered in the supervision, rehabilitation, or liquidation.

(b) (i) Class two is the administrative expenses of guaranty associations.

(ii) For purposes of this section, "administrative expenses of a guaranty association" means the reasonable expenses incurred by a guaranty association:

(A) when the expenses are not payments or expenses that are required to be incurred as direct policy benefits in fulfillment of the terms of the insurance contract or policy; and

(B) that are of the type and nature that, but for the activities of the guaranty association,

otherwise would have been incurred by the liquidator, including:

(I) evaluations of policy coverage;

(II) activities involved in the adjustment and settlement of claims under policies, including those of in-house or outside adjusters; and

(III) the reasonable expenses incurred in connection with the arrangements for ongoing coverage through transfer to other insurers, policy exchanges, or maintaining policies in force.

(iii) The liquidator may in the liquidator's sole discretion approve as an administrative expense of a guaranty association any other reasonable expenses of the guaranty association if the liquidator finds:

(A) the expenses are not expenses required to be paid or incurred as direct policy benefits by the terms of the policy; and

(B) the expenses were incurred in furtherance of activities that provided material economic benefit to the estate as a whole, irrespective of whether the activities resulted in additional benefits to covered claimants.

(iv) The court shall approve the expenses approved by the liquidator under Subsection (2)(b)(iii) unless the court finds the liquidator abused the liquidator's discretion in approving the expenses.

(c) (i) Class three is all claims under policies for losses incurred including:

(A) claims of the federal, state, or local government;

(B) third party claims;

(C) claims for unearned premiums; and

(D) claims of a guaranty association, other than those included in class two, including claims for payment of covered claims or covered obligations of the insurer.

(ii) All claims under life and health insurance and annuity policies shall be treated as loss claims.

(iii) That portion of any loss for which indemnification is provided by other benefits or advantages recovered or recoverable by the claimant are not included in this class, other than benefits or advantages recovered or recoverable in discharge of familial obligations of support, by way of

succession at death, as proceeds of life insurance, or as gratuities. A payment made by an employer to the employer's employee may not be treated as a gratuity.

(iv) Notwithstanding Subsections (2)(c)(i), (ii), and (iii), the following claims shall be excluded from class three priority:

(A) obligations of the insolvent insurer arising out of reinsurance contracts;

(B) obligations incurred after:

(I) the expiration date of the insurance policy;

(II) the policy has been replaced by the insured;

(III) the policy has been canceled at the insured's request; or

(IV) the policy has been canceled as provided in the chapter;

(C) obligations to insurers, insurance pools, or underwriting associations and their claims for contribution, indemnity, or subrogation, equitable or otherwise;

(D) any claim that is in excess of any applicable limits provided in the insurance policy issued by the insolvent insurer;

(E) any amount accrued as punitive or exemplary damages unless expressly covered under the terms of the policy; and

(F) tort claims of any kind against the insurer, and claims against the insurer for bad faith or wrongful settlement practices.

(v) Notwithstanding Subsection (2)(c)(iv)(B), unearned premium claims on policies, other than reinsurance agreements, may not be excluded.

(d) Class four is claims of the federal government other than those claims included under class three.

(e) (i) Class five is debts due employees for services, benefits, contractual or otherwise due, arising out of reasonable compensation to employees for services performed:

(A) to the extent that they:

(I) do not exceed two months of monetary compensation; and

(II) represent payment for services performed within six months before the filing of the petition for liquidation; or

(B) if rehabilitation preceded liquidation, within one year before the filing of the petition for rehabilitation.

(ii) Principal officers and directors are not entitled to the benefit of class five priority except as otherwise approved by the liquidator and the court.

(iii) Class five priority shall be in lieu of any other similar priority that may be authorized by law as to wages or compensation of employees.

(f) (i) Class six is claims of:

(A) any person, including claims of state or local governments, except those specifically classified elsewhere in this section; or

(B) attorneys for fees and expenses owed them by a person for services rendered in opposing a formal delinquency proceeding.

(ii) To prove the claim for attorneys' fees and expenses, the claimant shall show that:

(A) the insurer that is the subject of the delinquency proceeding incurred the fees and expenses based on its best knowledge, information, and belief, formed after reasonable inquiry indicating opposition was:

(I) in the best interests of the person;

(II) well grounded in fact; and

(III) warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law; and

(B) opposition was not pursued for any improper purpose, such as to:

(I) harass;

(II) cause unnecessary delay; or

(III) cause needless increase in the cost of litigation.

(g) (i) Class seven is claims of any state or local government for a penalty or forfeiture, but only to the extent of the pecuniary loss sustained from the act, transaction, or proceeding out of which the penalty or forfeiture arose, including the reasonable and actual costs incurred from the act, transaction, or proceeding.

(ii) The remainder of the claims shall be postponed to class eight claims.

(h) Class eight is:

- (i) surplus or contribution notes or similar obligations;
- (ii) premium refunds on assessable policies;
- (iii) interest on claims of classes one through seven; and
- (iv) any other claims specifically subordinated to this class.

(i) Class nine is claims of shareholders or other owners, including policyholders of a mutual insurance corporation within the limits of Subsection 31A-27-337(4)(b) except as they may be qualified in class three or four.

(3) (a) If the liquidator determines that the assets of the estate will be sufficient to pay all class one claims in full, class two claims shall be paid currently, only after the liquidator secures from each of the guaranty associations receiving disbursements under this section an agreement to return to the liquidator the disbursements, together with investment income actually earned on the disbursements, as may be required to pay class one claims.

(b) A guaranty association entering into an agreement under Subsection (3)(a) may not be required to post a bond.

(4) As to a nonprofit corporation organized and operating under Chapter 7 with assets not fully liquidated under Subsections (1) and (2), the remaining assets shall be distributed under Subsections [~~16-6-70(2), (3), (4), and (5)~~] 16-6a-1405(1)(b) and (c) and Subsection 16-6a-1405(2).

(5) (a) If any claimant of this state, another state, or foreign country is entitled to or receives a distribution upon the claimant's claim out of a statutory deposit or the proceeds of any bond or other asset located in another state or foreign country, unless the deposit or proceeds shall have been delivered to the domiciliary liquidator, the claimant is not entitled to any further distribution from the liquidator until and unless all other claimants of the same class, irrespective of residence or place of the acts or contracts upon which their claims are based, shall have received an equal distribution upon their claims.

(b) After the equalization under Subsection (5)(a), the claimants of the same class are entitled to share in the further distributions by the liquidator, along with and like all other creditors of the same class, wherever the claimants reside.

(6) Upon the declaration of a distribution, the liquidator shall apply the amount of the distribution against any indebtedness owed to the insurer by the person entitled to the distribution. There shall be no claim allowed for and deductible charged by a guaranty association or entity performing a similar function.

(7) This section applies retrospectively to any proceeding under this chapter initiated after January 1, 1992.

Section 227. Section **31A-34-105** is amended to read:

31A-34-105. Association requirements.

(1) A nonprofit corporation organized under Title 16, Chapter [6] 6a, Utah Revised Nonprofit Corporation Act, may only hold itself out as a voluntary health insurance purchasing association if it:

- (a) is organized by participating employers;
- (b) is governed and controlled by participating employers;
- (c) does not bear risk; and
- (d) has filed with the commissioner:
 - (i) its articles of incorporation and bylaws; and
 - (ii) a completed form provided by the department.

(2) A voluntary health insurance purchasing association is not an alliance under this chapter, is not exempt from state or federal antitrust laws, and is therefore not subject to the regulation of this chapter, except as provided in this section.

Section 228. Section **31A-34-108** is amended to read:

31A-34-108. Powers of and restrictions on alliances.

- (1) An alliance may only exercise the powers necessary to:
- (a) make health insurance available to its members and enrollees from multiple unaffiliated insurers through the use of coordinated actuarial models, coordinated underwriting, or coordinated marketing methodologies; and
 - (b) subject to Subsection (3)(d), make available to its members other related insurance products and services, including dental, vision, and life insurance.

(2) In addition to the powers granted to a nonprofit corporation in Title 16, Chapter [6] 6a, Utah Revised Nonprofit Corporation Act, or to the powers of a trust under common law, the powers of an alliance include:

(a) setting reasonable fees and conditions for membership, which may vary by group size, to reflect reasonable and necessary costs incurred in administering the alliance;

(b) providing or contracting for premium collection services consistent with the requirements of Title 31A, Chapter 25; or

(c) contracting with qualified independent third parties for any service necessary to carry out the powers and duties authorized or required by this chapter.

(3) Notwithstanding Subsection (1), an alliance may not:

(a) purchase health care services;

(b) assume risk for the cost or provision of health services;

(c) contract with health care providers for the provision of health care services to enrollees;

or

(d) condition alliance membership on the purchase or subscription of a product or service other than health insurance.

Section 229. Section **41-22-2** is amended to read:

41-22-2. Definitions.

As used in this chapter:

(1) "Advisory council" means the Off-highway Vehicle Advisory Council appointed by the Board of Parks and Recreation.

(2) "All-terrain type I vehicle" means any motor vehicle 50 inches or less in width, having an unladen dry weight of 800 pounds or less, traveling on three or more low pressure tires, having a seat designed to be straddled by the operator, and designed for or capable of travel over unimproved terrain.

(3) "All-terrain type II vehicle" means any other motor vehicle, not defined in Subsection (2), (9), or (19), designed for or capable of travel over unimproved terrain. This term does not include golf carts, any vehicle designed to carry a disabled person, any vehicle not specifically designed for

recreational use, or farm tractors as defined under Section 41-1a-102.

(4) "Board" means the Board of Parks and Recreation.

(5) "Dealer" means a person engaged in the business of selling off-highway vehicles at wholesale or retail.

(6) "Division" means the Division of Parks and Recreation.

(7) "Low pressure tire" means any pneumatic tire six inches or more in width designed for use on wheels with rim diameter of 12 inches or less and utilizing an operating pressure of ten pounds per square inch or less as recommended by the vehicle manufacturer.

(8) "Manufacturer" means a person engaged in the business of manufacturing off-highway vehicles.

(9) "Motorcycle" means every motor vehicle having a saddle for the use of the operator and designed to travel on not more than two tires.

(10) "Motor vehicle" means every vehicle which is self-propelled.

(11) "Off-highway vehicle" means any snowmobile, all-terrain type I vehicle, all-terrain type II vehicle, or motorcycle.

(12) "Off-highway implement of husbandry" means every all-terrain type I vehicle, motorcycle, or snowmobile which is used by the owner or his agent for agricultural operations.

(13) "Operate" means to control the movement of or otherwise use an off-highway vehicle.

(14) "Operator" means the person who is in actual physical control of an off-highway vehicle.

(15) "Organized user group" means an off-highway vehicle organization incorporated as a nonprofit corporation in the state under Title 16, Chapter [6] 6a, Utah Revised Nonprofit Corporation [~~and Co-operative Association~~] Act, for the purpose of promoting the interests of off-highway vehicle recreation.

(16) "Owner" means a person, other than a person with a security interest, having a property interest or title to an off-highway vehicle and entitled to the use and possession of that vehicle.

(17) "Public land" means land owned or administered by any federal or state agency or any political subdivision of the state.

(18) "Register" means the act of assigning a registration number to an off-highway vehicle.

(19) "Roadway" is used as defined in Section 41-6-1.

(20) "Snowmobile" means any motor vehicle designed for travel on snow or ice and steered and supported in whole or in part by skis, belts, cleats, runners, or low pressure tires.

(21) "Street or highway" means the entire width between boundary lines of every way or place of whatever nature, when any part of it is open to the use of the public for vehicular travel.

Section 230. Section **48-2b-106** is amended to read:

48-2b-106. Name -- Exclusive right.

(1) The name of each limited liability company as set forth in the articles of organization:

(a) shall contain the terms:

(i) "limited company";

(ii) "limited liability company";

(iii) "L.C."; or

(iv) "L.L.C.";

(b) may not contain:

(i) the terms:

(A) "association";

(B) "corporation";

(C) "incorporated";

(D) "limited partnership";

(E) "limited";

(F) "L.P."; or

(G) "Ltd."; or

(ii) words or any abbreviation with a similar meaning to those described in Subsection

(1)(b)(i) in any other language;

(c) without the written consent of the United States Olympic Committee, may not contain the words:

(i) "Olympic";

(ii) "Olympiad"; or

(iii) "Citius Altius Fortius"; and

(d) without the written consent of the State Board of Regents in accordance with Section 53B-5-114, may not contain the words:

(i) "university";

(ii) "college"; or

(iii) "institute."

(2) (a) A person or entity, other than a limited liability company formed or registered under this chapter, may not use in its name in this state any of the terms:

(i) "limited liability company";

(ii) "limited company";

(iii) "L.L.C.";

(iv) "L.C.";

(v) "LLC"; or

(vi) "LC".

(b) Notwithstanding Subsection (2)(a):

(i) a foreign corporation whose actual name includes the word "limited" or "Ltd." may use its actual name in this state if it also uses:

(A) "corporation";

(B) "incorporated"; or

(C) an abbreviation of the words listed in this Subsection (2)(b)(i); or

(ii) a limited liability partnership may use in its name the terms:

(A) "limited liability partnership";

(B) "L.L.P."; or

(C) "LLP".

(3) Except as authorized by Subsection (4), the name of a limited liability company must be distinguishable as defined in Subsection (5) upon the records of the division from:

(a) the name of any limited partnership formed or authorized to transact business in this state;

(b) the name of any limited liability company formed or authorized to transact business in this

state;

(c) the corporate name of any corporation incorporated or authorized to transact business in the state;

(d) any limited partnership name reserved under this chapter;

(e) any limited liability company name reserved under this chapter;

(f) any corporate name reserved under:

~~[(i)]~~ (i) Title 16, Chapter ~~[6]~~ 6a, Utah Revised Nonprofit Corporation ~~[and Cooperative Association]~~ Act, as amended;

~~[(i)]~~ (ii) Title 16, Chapter 10a, Utah Revised Business Corporation Act, as amended; or

(g) any fictitious name adopted by a foreign corporation, limited partnership, or limited liability company authorized to transact business in this state because its real name is unavailable;

(h) any corporate name of a not-for-profit corporation incorporated or authorized to transact business in this state; and

(i) any assumed name, trademark, or service mark registered by the division.

(4) (a) A limited liability company may apply to the division for approval to file its articles of organization under or to reserve a name that is not distinguishable upon the division's records from one or more of the names described in Subsection (3).

(b) The division shall approve the name for which the company applies under Subsection (4)(a) if:

(i) the other person whose name is not distinguishable from the name under which the applicant desires to file:

(A) consents to the filing in writing; and

(B) submits an undertaking in a form satisfactory to the division to change its name to a name that is distinguishable from the name of the applicant; or

(ii) the applicant delivers to the division a certified copy of the final judgment of a court of competent jurisdiction establishing the applicant's right to use the name in this state.

(5) A name is distinguishable from other names, trademarks, and service marks registered with the division if it contains one or more different letters or numerals from other names upon the

division's records.

(6) The following differences are not distinguishing:

(a) the terms:

(i) "corporation";

(ii) "incorporated";

(iii) "company";

(iv) "limited partnership";

(v) "limited";

(vi) "L.P.";

(vii) "Ltd.";

(viii) "limited liability company";

(ix) "limited company";

(x) "L.C."; or

(xi) "L.L.C.";

(b) an abbreviation of a word listed in Subsection (6)(a);

(c) the presence or absence of the words or symbols of the words "the," "and," "a," or "plus";

(d) differences in punctuation and special characters;

(e) differences in capitalization;

(f) for a limited liability company that is formed in or registered as a foreign limited liability company in this state on or after May 4, 1998, differences between singular and plural forms of words; or

(g) differences in whether the letters or numbers immediately follow each other or are separated by one or more spaces if:

(i) the sequence of letters or numbers is identical; and

(ii) the limited liability company is formed in or registered as a foreign limited liability company in this state on or after May 3, 1999.

(7) The director of the division shall have the power and authority reasonably necessary to interpret and efficiently administer this section and to perform the duties imposed on the division by

this section.

(8) A name that implies that a limited liability company is an agency of this state or any of its political subdivisions, if it is not actually such a legally established agency or subdivision, may not be approved for filing by the division.

(9) The exclusive right to a name may be reserved by:

(a) any person intending to:

(i) organize a limited liability company under this chapter; and

(ii) adopt that name;

(b) any limited liability company or any foreign limited liability company registered in this state intending to adopt that name;

(c) any foreign limited liability company intending to:

(i) register in this state; and

(ii) adopt that name; and

(d) any person intending to:

(i) organize a foreign limited liability company;

(ii) have the company register in this state; and

(iii) adopt that name.

(10) (a) The reservation described in Subsection (9)(a) shall be made by filing with the division an application executed under penalty of perjury by the applicant to reserve a specified name.

(b) If the division finds that the name is available for use by a limited liability company or a foreign limited liability company, it shall reserve the name exclusively for the applicant for a period of 120 days. The name reservation may be renewed for any number of subsequent periods of 120 days.

(c) The exclusive right to a reserved name may be transferred to any other person by filing with the division a notice of the transfer executed under penalty of perjury by the applicant for whom the name was reserved and specifying the name and address of the transferee.

(11) (a) The requirements of Subsection (1)(d) do not apply to a limited liability company that is formed in or registered as a foreign limited liability company in this state on or before May 4,

1998, until December 31, 1998.

(b) On or after January 1, 1999, any limited liability company formed in or registered as a foreign limited liability company in this state shall comply with the requirements of Subsection (1)(d).

Section 231. Section **53B-5-114** is amended to read:

53B-5-114. Consent to use of educational terms in business names.

(1) For purposes of this section:

(a) "Business name" means a name filed with the Division of Corporations and Commercial Code under:

(i) Section [~~16-6-24~~] 16-6a-401;

(ii) Section 16-10a-401;

(iii) Section 42-2-6.6;

(iv) Section 48-2a-102; or

(v) Section 48-2b-106.

(b) "Educational term" means the term:

(i) "university";

(ii) "college"; or

(iii) "institution."

(2) If a statute listed in Subsection (1)(a) requires the written consent of the board to file a business name with the Division of Corporations and Commercial Code that includes an educational term, the board may consent to the use of an educational term in accordance with this statute.

(3) The board shall consent to the use of an educational term in a business name if the person seeking to file the name:

(a) is registered under this chapter;

(b) is exempt from the chapter under Section 53B-5-105; or

(c) (i) is not engaged in educational activities; and

(ii) does not represent that it is engaged in educational activities.

(4) The board may withhold consent to use of an educational term in a business name if the person seeking to file the name:

- (a) offers, sells, or awards a degree or any other type of educational credential; and
- (b) fails to provide bona fide instruction through student-faculty interaction according to the standards and criteria established by the board under Subsection 53B-5-104(5).

Section 232. Section **59-8-103** is amended to read:

59-8-103. Definitions.

As used in this chapter:

(1) "Corporation" means:

(a) any domestic corporation organized under Title 16, Chapter ~~[6-01]~~ 6a, Utah Revised Nonprofit Corporation Act;

(b) any foreign corporation engaged in business in this state under Sections ~~[16-6-79]~~ 16-6a-1501 through ~~[16-6-96,]~~ 16-6a-1518; or

(c) any legal or administrative entity created under Section 11-13-5.5.

(2) "Engaging in business" means carrying on or causing to be carried on any activity through which goods or services are made or rendered by the taxpayer, except as provided in Section 59-7-102.

(3) "Gross receipts" means the totality of the consideration that the taxpayer receives for any good or service produced or rendered in the state without any deduction or expense paid or accrued in respect to it.

(4) "Taxpayer" means any corporation, other than an eleemosynary, religious, or charitable institution, any insurance company, credit union, or Subchapter S organization, any nonprofit hospital, educational, welfare, or employee representation organization, or any mutual benefit association engaged in business in the state that is not otherwise required to pay income or franchise tax to the state under Title 59, Chapter 7.

Section 233. Section **63-11-3.1** is amended to read:

63-11-3.1. Definitions.

As used in Sections 63-11-3.1 through 63-11-3.3:

(1) "Board" means the board of trustees of This is the Place Foundation.

(2) "Division" means the Division of Parks and Recreation.

(3) "Foundation" means This is the Place Foundation, a private nonprofit corporation formed pursuant to Title 16, Chapter [6] 6a, Utah Revised Nonprofit Corporation [~~and Co-operative Association~~] Act.

(4) "Monument" means This is the Place Monument at This is the Place State Park.

(5) "Park" means This is the Place State Park, property owned by the state of Utah located at 2601 East Sunnyside Avenue, Salt Lake City.

Section 234. Repealer.

This act repeals:

Section 16-6-18, Short title.

Section 16-6-19, Definitions.

Section 16-6-20, Applicability.

Section 16-6-21, Purposes.

Section 16-6-22, General powers.

Section 16-6-23, Defense of ultra vires.

Section 16-6-24, Corporate name -- Contents.

Section 16-6-25, Corporate name -- Reservation.

Section 16-6-25.1, Registered office -- Appointment of registered agent Disclosure.

Section 16-6-25.2, Change of registered office or registered agent -- Resignation of registered agent.

Section 16-6-25.3, Service of process on registered agent or director of division.

Section 16-6-26, Members -- Classes -- Provisions of articles of incorporation or bylaws -- Liability.

Section 16-6-27, Meetings of members -- Annual and special meetings.

Section 16-6-28, Meetings of members -- Notice.

Section 16-6-29, Voting -- Quorum.

Section 16-6-30, Voting -- Rights of members.

Section 16-6-31, Voting -- Provisions of articles control.

Section 16-6-32, Waiver of notice.

- Section 16-6-33, **Consent to action without meeting.**
- Section 16-6-34, **Governing board -- Qualifications for trustees.**
- Section 16-6-35, **Trustees -- Number -- Election or appointment -- Terms.**
- Section 16-6-36, **Vacancies in governing board.**
- Section 16-6-37, **Voting rights -- Proxy -- Quorum of trustees.**
- Section 16-6-38, **Committees.**
- Section 16-6-39, **Meetings of governing board -- Notice and waiver of notice.**
- Section 16-6-40, **Officers.**
- Section 16-6-41, **Inspection of books and records -- Report to members.**
- Section 16-6-42, **Issuance of certificates or stock -- Compensation to members, trustees, or officers -- Effect of distributions on dissolution or liquidation.**
- Section 16-6-43, **Loans to trustees or officers prohibited.**
- Section 16-6-44, **Bylaws -- Resolutions.**
- Section 16-6-45, **Incorporators.**
- Section 16-6-46, **Articles of incorporation.**
- Section 16-6-47, **Filing articles of incorporation.**
- Section 16-6-48, **Effect of issuance of certificate of incorporation.**
- Section 16-6-49, **Right to amend articles of incorporation -- Conversion to business corporation.**
- Section 16-6-50, **Procedure to amend articles of incorporation.**
- Section 16-6-51, **Articles of amendment.**
- Section 16-6-52, **Filing articles of amendment.**
- Section 16-6-53, **Effect of certificate of amendment.**
- Section 16-6-53.5, **Restated articles of incorporation -- Filing -- Issuance and effect of issuance of certificate of restatement.**
- Section 16-6-54, **Procedure for merger.**
- Section 16-6-55, **Procedure for consolidation.**
- Section 16-6-56, **Approval of merger or consolidation.**

Section 16-6-57, Articles of merger or consolidation.

Section 16-6-58, Effective date of merger or consolidation.

Section 16-6-59, Effect of merger or consolidation.

Section 16-6-60, Merger or consolidation of foreign or domestic corporations.

Section 16-6-61, Sale, lease, exchange or mortgage of assets.

Section 16-6-62, Voluntary dissolution.

Section 16-6-63, Distribution of assets.

Section 16-6-64, Plan of distribution.

Section 16-6-65, Revocation of voluntary dissolution proceedings.

Section 16-6-66, Articles of dissolution.

Section 16-6-67, Filing articles of dissolution.

Section 16-6-68, Involuntary dissolution.

Section 16-6-69, Jurisdiction of court to liquidate assets and affairs of nonprofit corporation.

Section 16-6-70, Procedure in liquidation of nonprofit corporation.

Section 16-6-71, Qualification of receivers.

Section 16-6-72, Filing of claims in liquidation proceedings.

Section 16-6-73, Discontinuance of liquidation proceedings.

Section 16-6-74, Decree dissolving corporation.

Section 16-6-75, Filing decree dissolving corporation.

Section 16-6-76, Deposits with state treasurer.

Section 16-6-77, Survival of remedy after dissolution.

Section 16-6-78, Continuance of corporate existence after dissolution.

Section 16-6-79, Admission of foreign corporation.

Section 16-6-80, Powers of foreign corporation.

Section 16-6-82, Change of name by foreign corporation.

Section 16-6-83, Application for certificate of authority by foreign corporation.

Section 16-6-84, Filing application for certificate of authority by foreign corporation.

Section 16-6-85, Effect of certificate of authority of foreign corporation.

**Section 16-6-86, Registered office and registered agent of foreign corporation -
Appointment of registered agent.**

Section 16-6-87, Change of registered office or registered agent of foreign corporation.

Section 16-6-88, Service of process on foreign corporation.

Section 16-6-89, Amendment of articles of incorporation of foreign corporation.

**Section 16-6-90, Merger of foreign corporation authorized to conduct affairs in this
state.**

Section 16-6-91, Amended certificate of authority of foreign corporation.

Section 16-6-92, Withdrawal of foreign corporation.

Section 16-6-93, Filing application for withdrawal by foreign corporation.

Section 16-6-94, Revocation of certificate of authority of foreign corporation.

Section 16-6-95, Issuance of certificate of revocation of foreign corporation.

**Section 16-6-96, Conducting affairs without certificate of authority by foreign
corporation.**

**Section 16-6-97, Annual report of domestic and foreign nonprofit corporations --
Contents.**

**Section 16-6-98, Annual report of domestic and foreign nonprofit corporations -- Filing
-- Certification.**

Section 16-6-99, Delinquency -- Notice.

Section 16-6-99.1, Suspension -- Notice -- Failure to remove suspension.

Section 16-6-100, Fees.

Section 16-6-100.5, Expedited document processing for items under Section 16-6-100.

**Section 16-6-101, Fees for certified copies and for accepting service of process as
resident agent.**

Section 16-6-102, Powers of division.

**Section 16-6-103, Procedure upon disapproval of document or revocation of certificate
of authority -- Venue for judicial review.**

Section **16-6-104**, **Certificates and certified copies to be received in evidence.**

Section **16-6-105**, **Use of particular forms not mandatory.**

Section **16-6-106**, **Liability for unauthorized assumption of corporate powers.**

Section **16-6-107**, **Personal liability of a trustee or officer limited -- Trustee or officer signing false document as misdemeanor.**

Section **16-6-108**, **Incorporation of co-operative association.**

Section **16-6-109**, **Continuation of existing domestic and foreign nonprofit corporations.**

Section **16-6-110**, **Effect of repeal of prior law.**

Section **16-6-112**, **Correction of technical errors in instruments.**

Section 235. **Effective date.**

(1) Section 16-10a-1008.3 takes effect on May 1, 2000 and is repealed April 30, 2001, on which date Section 16-10a-1008.5 takes effect.

(2) The remaining sections of this act take effect on April 30, 2001.

Section 236. **Coordination clause.**

If this bill and H.B. 114, Business Entity Amendments, both pass, it is the intent of the Legislature that the following citations in Subsection 42-2-6(2) as amended by H.B. 114 be changed as follows:

(1) Subsection 16-6-19(4) shall be changed to Subsection 16-6a-102(34); and

(2) Subsection 16-6-19(7) shall be changed to Subsection 16-6a-102(25).