

Senator Lyle W. Hillyard proposes to substitute the following bill:

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 FORPROFIT 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

- 26 **11-32-3**, as last amended by Chapter 235, Laws of Utah 1995
- 27 **11-32-8**, as enacted by Chapter 143, Laws of Utah 1987
- 28 **16-7-13**, as enacted by Chapter 48, Laws of Utah 1993
- 29 **16-7-14**, as enacted by Chapter 48, Laws of Utah 1993
- 30 **17A-3-903**, as renumbered and amended by Chapter 186, Laws of Utah 1990
- 31 **21-1-2**, as last amended by Chapter 313, Laws of Utah 1994
- 32 **21-1-2.5**, as last amended by Chapter 313, Laws of Utah 1994
- 33 **31A-5-101**, as last amended by Chapter 6, Laws of Utah 1992, Third Special Session
- 34 **31A-5-102**, as last amended by Chapter 131, Laws of Utah 1999
- 35 **31A-5-104**, as last amended by Chapter 277, Laws of Utah 1992
- 36 **31A-5-203**, as last amended by Chapter 344, Laws of Utah 1995
- 37 **31A-5-219**, as last amended by Chapter 277, Laws of Utah 1992
- 38 **31A-5-404**, as last amended by Chapter 277, Laws of Utah 1992
- 39 **31A-5-405**, as last amended by Chapter 95, Laws of Utah 1987
- 40 **31A-5-407**, as last amended by Chapter 277, Laws of Utah 1992
- 41 **31A-5-409**, as last amended by Chapter 22, Laws of Utah 1989
- 42 **31A-5-410**, as last amended by Chapter 277, Laws of Utah 1992
- 43 **31A-5-415**, as last amended by Chapter 9, Laws of Utah 1996, Second Special Session
- 44 **31A-5-503**, as enacted by Chapter 242, Laws of Utah 1985
- 45 **31A-5-504**, as last amended by Chapter 277, Laws of Utah 1992
- 46 **31A-5-508**, as last amended by Chapter 20, Laws of Utah 1995
- 47 **31A-7-103**, as last amended by Chapter 277, Laws of Utah 1992
- 48 **31A-7-201**, as last amended by Chapter 344, Laws of Utah 1995
- 49 **31A-7-202**, as last amended by Chapter 91, Laws of Utah 1987
- 50 **31A-7-303**, as last amended by Chapter 91, Laws of Utah 1987
- 51 **31A-7-304**, as enacted by Chapter 242, Laws of Utah 1985
- 52 **31A-7-313**, as enacted by Chapter 242, Laws of Utah 1985
- 53 **31A-8-103**, as last amended by Chapter 44, Laws of Utah 1997
- 54 **31A-8-204**, as last amended by Chapter 79, Laws of Utah 1996
- 55 **31A-8-406**, as enacted by Chapter 204, Laws of Utah 1986
- 56 **31A-9-101**, as last amended by Chapter 327, Laws of Utah 1990

- 57 **31A-9-105**, as last amended by Chapter 277, Laws of Utah 1992
- 58 **31A-9-204**, as last amended by Chapter 91, Laws of Utah 1987
- 59 **31A-9-212**, as last amended by Chapter 91, Laws of Utah 1987
- 60 **31A-9-405**, as enacted by Chapter 242, Laws of Utah 1985
- 61 **31A-9-406**, as enacted by Chapter 242, Laws of Utah 1985
- 62 **31A-9-502**, as enacted by Chapter 242, Laws of Utah 1985
- 63 **31A-11-105**, as last amended by Chapter 277, Laws of Utah 1992
- 64 **31A-14-205**, as last amended by Chapter 9, Laws of Utah 1996, Second Special Session
- 65 **31A-14-210**, as last amended by Chapter 9, Laws of Utah 1996, Second Special Session
- 66 **31A-22-1305**, as enacted by Chapter 204, Laws of Utah 1986
- 67 **31A-27-335**, as last amended by Chapter 131, Laws of Utah 1999
- 68 **31A-34-105**, No change since 1953
- 69 **31A-34-108**, No change since 1953
- 70 **41-22-2**, as last amended by Chapter 73, Laws of Utah 1999
- 71 **48-2b-106**, as last amended by Chapter 38, Laws of Utah 1999
- 72 **53B-5-114**, as enacted by Chapter 86, Laws of Utah 1998
- 73 **59-8-103**, as last amended by Chapter 278, Laws of Utah 1995
- 74 **63-11-3.1**, as enacted by Chapter 225, Laws of Utah 1998

75 ENACTS:

- 76 **16-6a-101**, Utah Code Annotated 1953
- 77 **16-6a-102**, Utah Code Annotated 1953
- 78 **16-6a-103**, Utah Code Annotated 1953
- 79 **16-6a-104**, Utah Code Annotated 1953
- 80 **16-6a-105**, Utah Code Annotated 1953
- 81 **16-6a-106**, Utah Code Annotated 1953
- 82 **16-6a-107**, Utah Code Annotated 1953
- 83 **16-6a-108**, Utah Code Annotated 1953
- 84 **16-6a-109**, Utah Code Annotated 1953
- 85 **16-6a-110**, Utah Code Annotated 1953
- 86 **16-6a-111**, Utah Code Annotated 1953
- 87 **16-6a-112**, Utah Code Annotated 1953

- 88 **16-6a-113**, Utah Code Annotated 1953
- 89 **16-6a-114**, Utah Code Annotated 1953
- 90 **16-6a-115**, Utah Code Annotated 1953
- 91 **16-6a-116**, Utah Code Annotated 1953
- 92 **16-6a-117**, Utah Code Annotated 1953
- 93 **16-6a-118**, Utah Code Annotated 1953
- 94 **16-6a-201**, Utah Code Annotated 1953
- 95 **16-6a-202**, Utah Code Annotated 1953
- 96 **16-6a-203**, Utah Code Annotated 1953
- 97 **16-6a-204**, Utah Code Annotated 1953
- 98 **16-6a-205**, Utah Code Annotated 1953
- 99 **16-6a-206**, Utah Code Annotated 1953
- 100 **16-6a-207**, Utah Code Annotated 1953
- 101 **16-6a-301**, Utah Code Annotated 1953
- 102 **16-6a-302**, Utah Code Annotated 1953
- 103 **16-6a-303**, Utah Code Annotated 1953
- 104 **16-6a-304**, Utah Code Annotated 1953
- 105 **16-6a-401**, Utah Code Annotated 1953
- 106 **16-6a-402**, Utah Code Annotated 1953
- 107 **16-6a-403**, Utah Code Annotated 1953
- 108 **16-6a-501**, Utah Code Annotated 1953
- 109 **16-6a-502**, Utah Code Annotated 1953
- 110 **16-6a-503**, Utah Code Annotated 1953
- 111 **16-6a-504**, Utah Code Annotated 1953
- 112 **16-6a-601**, Utah Code Annotated 1953
- 113 **16-6a-602**, Utah Code Annotated 1953
- 114 **16-6a-603**, Utah Code Annotated 1953
- 115 **16-6a-604**, Utah Code Annotated 1953
- 116 **16-6a-605**, Utah Code Annotated 1953
- 117 **16-6a-606**, Utah Code Annotated 1953
- 118 **16-6a-607**, Utah Code Annotated 1953

- 119 **16-6a-608**, Utah Code Annotated 1953
- 120 **16-6a-609**, Utah Code Annotated 1953
- 121 **16-6a-610**, Utah Code Annotated 1953
- 122 **16-6a-611**, Utah Code Annotated 1953
- 123 **16-6a-612**, Utah Code Annotated 1953
- 124 **16-6a-613**, Utah Code Annotated 1953
- 125 **16-6a-701**, Utah Code Annotated 1953
- 126 **16-6a-702**, Utah Code Annotated 1953
- 127 **16-6a-703**, Utah Code Annotated 1953
- 128 **16-6a-704**, Utah Code Annotated 1953
- 129 **16-6a-705**, Utah Code Annotated 1953
- 130 **16-6a-706**, Utah Code Annotated 1953
- 131 **16-6a-707**, Utah Code Annotated 1953
- 132 **16-6a-708**, Utah Code Annotated 1953
- 133 **16-6a-709**, Utah Code Annotated 1953
- 134 **16-6a-710**, Utah Code Annotated 1953
- 135 **16-6a-711**, Utah Code Annotated 1953
- 136 **16-6a-712**, Utah Code Annotated 1953
- 137 **16-6a-713**, Utah Code Annotated 1953
- 138 **16-6a-714**, Utah Code Annotated 1953
- 139 **16-6a-715**, Utah Code Annotated 1953
- 140 **16-6a-716**, Utah Code Annotated 1953
- 141 **16-6a-717**, Utah Code Annotated 1953
- 142 **16-6a-718**, Utah Code Annotated 1953
- 143 **16-6a-801**, Utah Code Annotated 1953
- 144 **16-6a-802**, Utah Code Annotated 1953
- 145 **16-6a-803**, Utah Code Annotated 1953
- 146 **16-6a-804**, Utah Code Annotated 1953
- 147 **16-6a-805**, Utah Code Annotated 1953
- 148 **16-6a-806**, Utah Code Annotated 1953
- 149 **16-6a-807**, Utah Code Annotated 1953

- 150 **16-6a-808**, Utah Code Annotated 1953
- 151 **16-6a-809**, Utah Code Annotated 1953
- 152 **16-6a-810**, Utah Code Annotated 1953
- 153 **16-6a-811**, Utah Code Annotated 1953
- 154 **16-6a-812**, Utah Code Annotated 1953
- 155 **16-6a-813**, Utah Code Annotated 1953
- 156 **16-6a-814**, Utah Code Annotated 1953
- 157 **16-6a-815**, Utah Code Annotated 1953
- 158 **16-6a-816**, Utah Code Annotated 1953
- 159 **16-6a-817**, Utah Code Annotated 1953
- 160 **16-6a-818**, Utah Code Annotated 1953
- 161 **16-6a-819**, Utah Code Annotated 1953
- 162 **16-6a-820**, Utah Code Annotated 1953
- 163 **16-6a-821**, Utah Code Annotated 1953
- 164 **16-6a-822**, Utah Code Annotated 1953
- 165 **16-6a-823**, Utah Code Annotated 1953
- 166 **16-6a-824**, Utah Code Annotated 1953
- 167 **16-6a-825**, Utah Code Annotated 1953
- 168 **16-6a-826**, Utah Code Annotated 1953
- 169 **16-6a-901**, Utah Code Annotated 1953
- 170 **16-6a-902**, Utah Code Annotated 1953
- 171 **16-6a-903**, Utah Code Annotated 1953
- 172 **16-6a-904**, Utah Code Annotated 1953
- 173 **16-6a-905**, Utah Code Annotated 1953
- 174 **16-6a-906**, Utah Code Annotated 1953
- 175 **16-6a-907**, Utah Code Annotated 1953
- 176 **16-6a-908**, Utah Code Annotated 1953
- 177 **16-6a-909**, Utah Code Annotated 1953
- 178 **16-6a-910**, Utah Code Annotated 1953
- 179 **16-6a-1001**, Utah Code Annotated 1953
- 180 **16-6a-1002**, Utah Code Annotated 1953

- 181 **16-6a-1003**, Utah Code Annotated 1953
- 182 **16-6a-1004**, Utah Code Annotated 1953
- 183 **16-6a-1005**, Utah Code Annotated 1953
- 184 **16-6a-1006**, Utah Code Annotated 1953
- 185 **16-6a-1007**, Utah Code Annotated 1953
- 186 **16-6a-1008**, Utah Code Annotated 1953
- 187 **16-6a-1009**, Utah Code Annotated 1953
- 188 **16-6a-1010**, Utah Code Annotated 1953
- 189 **16-6a-1011**, Utah Code Annotated 1953
- 190 **16-6a-1012**, Utah Code Annotated 1953
- 191 **16-6a-1013**, Utah Code Annotated 1953
- 192 **16-6a-1014**, Utah Code Annotated 1953
- 193 **16-6a-1101**, Utah Code Annotated 1953
- 194 **16-6a-1102**, Utah Code Annotated 1953
- 195 **16-6a-1103**, Utah Code Annotated 1953
- 196 **16-6a-1104**, Utah Code Annotated 1953
- 197 **16-6a-1105**, Utah Code Annotated 1953
- 198 **16-6a-1201**, Utah Code Annotated 1953
- 199 **16-6a-1202**, Utah Code Annotated 1953
- 200 **16-6a-1301**, Utah Code Annotated 1953
- 201 **16-6a-1302**, Utah Code Annotated 1953
- 202 **16-6a-1401**, Utah Code Annotated 1953
- 203 **16-6a-1402**, Utah Code Annotated 1953
- 204 **16-6a-1403**, Utah Code Annotated 1953
- 205 **16-6a-1404**, Utah Code Annotated 1953
- 206 **16-6a-1405**, Utah Code Annotated 1953
- 207 **16-6a-1406**, Utah Code Annotated 1953
- 208 **16-6a-1407**, Utah Code Annotated 1953
- 209 **16-6a-1408**, Utah Code Annotated 1953
- 210 **16-6a-1409**, Utah Code Annotated 1953
- 211 **16-6a-1410**, Utah Code Annotated 1953

- 212 **16-6a-1411**, Utah Code Annotated 1953
- 213 **16-6a-1412**, Utah Code Annotated 1953
- 214 **16-6a-1413**, Utah Code Annotated 1953
- 215 **16-6a-1414**, Utah Code Annotated 1953
- 216 **16-6a-1415**, Utah Code Annotated 1953
- 217 **16-6a-1416**, Utah Code Annotated 1953
- 218 **16-6a-1417**, Utah Code Annotated 1953
- 219 **16-6a-1418**, Utah Code Annotated 1953
- 220 **16-6a-1419**, Utah Code Annotated 1953
- 221 **16-6a-1501**, Utah Code Annotated 1953
- 222 **16-6a-1502**, Utah Code Annotated 1953
- 223 **16-6a-1503**, Utah Code Annotated 1953
- 224 **16-6a-1504**, Utah Code Annotated 1953
- 225 **16-6a-1505**, Utah Code Annotated 1953
- 226 **16-6a-1506**, Utah Code Annotated 1953
- 227 **16-6a-1507**, Utah Code Annotated 1953
- 228 **16-6a-1508**, Utah Code Annotated 1953
- 229 **16-6a-1509**, Utah Code Annotated 1953
- 230 **16-6a-1510**, Utah Code Annotated 1953
- 231 **16-6a-1511**, Utah Code Annotated 1953
- 232 **16-6a-1512**, Utah Code Annotated 1953
- 233 **16-6a-1513**, Utah Code Annotated 1953
- 234 **16-6a-1514**, Utah Code Annotated 1953
- 235 **16-6a-1515**, Utah Code Annotated 1953
- 236 **16-6a-1516**, Utah Code Annotated 1953
- 237 **16-6a-1517**, Utah Code Annotated 1953
- 238 **16-6a-1518**, Utah Code Annotated 1953
- 239 **16-6a-1601**, Utah Code Annotated 1953
- 240 **16-6a-1602**, Utah Code Annotated 1953
- 241 **16-6a-1603**, Utah Code Annotated 1953
- 242 **16-6a-1604**, Utah Code Annotated 1953

- 243 **16-6a-1605**, Utah Code Annotated 1953
- 244 **16-6a-1606**, Utah Code Annotated 1953
- 245 **16-6a-1607**, Utah Code Annotated 1953
- 246 **16-6a-1608**, Utah Code Annotated 1953
- 247 **16-6a-1609**, Utah Code Annotated 1953
- 248 **16-6a-1701**, Utah Code Annotated 1953
- 249 **16-6a-1702**, Utah Code Annotated 1953
- 250 **16-6a-1703**, Utah Code Annotated 1953
- 251 **16-6a-1704**, Utah Code Annotated 1953
- 252 **16-10a-1008.5**, Utah Code Annotated 1953
- 253 REPEALS:
- 254 **16-6-18**, as enacted by Chapter 17, Laws of Utah 1963
- 255 **16-6-19**, as last amended by Chapter 108, Laws of Utah 1990
- 256 **16-6-20**, as last amended by Chapter 48, Laws of Utah 1993
- 257 **16-6-21**, as last amended by Chapter 143, Laws of Utah 1996
- 258 **16-6-22**, as enacted by Chapter 17, Laws of Utah 1963
- 259 **16-6-23**, as enacted by Chapter 17, Laws of Utah 1963
- 260 **16-6-24**, as last amended by Chapter 86, Laws of Utah 1998
- 261 **16-6-25**, as last amended by Chapter 48, Laws of Utah 1990
- 262 **16-6-25.1**, as last amended by Chapter 108, Laws of Utah 1990
- 263 **16-6-25.2**, as last amended by Chapter 108, Laws of Utah 1990
- 264 **16-6-25.3**, as enacted by Chapter 178, Laws of Utah 1985
- 265 **16-6-26**, as enacted by Chapter 17, Laws of Utah 1963
- 266 **16-6-27**, as enacted by Chapter 17, Laws of Utah 1963
- 267 **16-6-28**, as enacted by Chapter 17, Laws of Utah 1963
- 268 **16-6-29**, as enacted by Chapter 17, Laws of Utah 1963
- 269 **16-6-30**, as enacted by Chapter 17, Laws of Utah 1963
- 270 **16-6-31**, as enacted by Chapter 17, Laws of Utah 1963
- 271 **16-6-32**, as enacted by Chapter 17, Laws of Utah 1963
- 272 **16-6-33**, as last amended by Chapter 66, Laws of Utah 1984
- 273 **16-6-34**, as enacted by Chapter 17, Laws of Utah 1963

- 274 **16-6-35**, as enacted by Chapter 17, Laws of Utah 1963
- 275 **16-6-36**, as enacted by Chapter 17, Laws of Utah 1963
- 276 **16-6-37**, as last amended by Chapter 79, Laws of Utah 1996
- 277 **16-6-38**, as enacted by Chapter 17, Laws of Utah 1963
- 278 **16-6-39**, as enacted by Chapter 17, Laws of Utah 1963
- 279 **16-6-40**, as enacted by Chapter 17, Laws of Utah 1963
- 280 **16-6-41**, as enacted by Chapter 17, Laws of Utah 1963
- 281 **16-6-42**, as last amended by Chapter 222, Laws of Utah 1988
- 282 **16-6-43**, as enacted by Chapter 17, Laws of Utah 1963
- 283 **16-6-44**, as enacted by Chapter 17, Laws of Utah 1963
- 284 **16-6-45**, as last amended by Chapter 178, Laws of Utah 1985
- 285 **16-6-46**, as last amended by Chapter 178, Laws of Utah 1985
- 286 **16-6-47**, as last amended by Chapter 178, Laws of Utah 1985
- 287 **16-6-48**, as enacted by Chapter 17, Laws of Utah 1963
- 288 **16-6-49**, as last amended by Chapter 277, Laws of Utah 1992
- 289 **16-6-50**, as enacted by Chapter 17, Laws of Utah 1963
- 290 **16-6-51**, as last amended by Chapter 178, Laws of Utah 1985
- 291 **16-6-52**, as last amended by Chapter 178, Laws of Utah 1985
- 292 **16-6-53**, as last amended by Chapter 66, Laws of Utah 1984
- 293 **16-6-53.5**, as enacted by Chapter 97, Laws of Utah 1989
- 294 **16-6-54**, as enacted by Chapter 17, Laws of Utah 1963
- 295 **16-6-55**, as enacted by Chapter 17, Laws of Utah 1963
- 296 **16-6-56**, as last amended by Chapter 68, Laws of Utah 1987
- 297 **16-6-57**, as last amended by Chapter 178, Laws of Utah 1985
- 298 **16-6-58**, as last amended by Chapter 66, Laws of Utah 1984
- 299 **16-6-59**, as enacted by Chapter 17, Laws of Utah 1963
- 300 **16-6-60**, as last amended by Chapter 277, Laws of Utah 1992
- 301 **16-6-61**, as last amended by Chapter 68, Laws of Utah 1987
- 302 **16-6-62**, as last amended by Chapter 68, Laws of Utah 1987
- 303 **16-6-63**, as last amended by Chapter 222, Laws of Utah 1988
- 304 **16-6-64**, as enacted by Chapter 17, Laws of Utah 1963

305 **16-6-65**, as last amended by Chapter 66, Laws of Utah 1984
306 **16-6-66**, as last amended by Chapter 178, Laws of Utah 1985
307 **16-6-67**, as last amended by Chapter 178, Laws of Utah 1985
308 **16-6-68**, as last amended by Chapter 108, Laws of Utah 1990
309 **16-6-69**, as last amended by Chapter 30, Laws of Utah 1992
310 **16-6-70**, as enacted by Chapter 17, Laws of Utah 1963
311 **16-6-71**, as enacted by Chapter 17, Laws of Utah 1963
312 **16-6-72**, as enacted by Chapter 17, Laws of Utah 1963
313 **16-6-73**, as enacted by Chapter 17, Laws of Utah 1963
314 **16-6-74**, as enacted by Chapter 17, Laws of Utah 1963
315 **16-6-75**, as last amended by Chapter 66, Laws of Utah 1984
316 **16-6-76**, as last amended by Chapter 10, Laws of Utah 1997
317 **16-6-77**, as last amended by Chapter 66, Laws of Utah 1984
318 **16-6-78**, as last amended by Chapter 66, Laws of Utah 1984
319 **16-6-79**, as last amended by Chapter 66, Laws of Utah 1984
320 **16-6-80**, as enacted by Chapter 17, Laws of Utah 1963
321 **16-6-82**, as enacted by Chapter 17, Laws of Utah 1963
322 **16-6-83**, as last amended by Chapter 178, Laws of Utah 1985
323 **16-6-84**, as last amended by Chapter 108, Laws of Utah 1990
324 **16-6-85**, as last amended by Chapter 66, Laws of Utah 1984
325 **16-6-86**, as last amended by Chapter 66, Laws of Utah 1987
326 **16-6-87**, as last amended by Chapter 108, Laws of Utah 1990
327 **16-6-88**, as last amended by Chapter 178, Laws of Utah 1985
328 **16-6-89**, as last amended by Chapter 66, Laws of Utah 1984
329 **16-6-90**, as last amended by Chapter 66, Laws of Utah 1984
330 **16-6-91**, as last amended by Chapter 178, Laws of Utah 1985
331 **16-6-92**, as last amended by Chapter 66, Laws of Utah 1984
332 **16-6-93**, as last amended by Chapter 178, Laws of Utah 1985
333 **16-6-94**, as last amended by Chapter 222, Laws of Utah 1988
334 **16-6-95**, as last amended by Chapter 66, Laws of Utah 1984
335 **16-6-96**, as enacted by Chapter 17, Laws of Utah 1963

- 336 **16-6-97**, as last amended by Chapter 66, Laws of Utah 1987
337 **16-6-98**, as last amended by Chapter 108, Laws of Utah 1990
338 **16-6-99**, as last amended by Chapter 28, Laws of Utah 1995
339 **16-6-99.1**, as last amended by Chapter 313, Laws of Utah 1994
340 **16-6-100**, as last amended by Chapter 313, Laws of Utah 1994
341 **16-6-100.5**, as last amended by Chapter 313, Laws of Utah 1994
342 **16-6-101**, as last amended by Chapter 313, Laws of Utah 1994
343 **16-6-102**, as last amended by Chapter 66, Laws of Utah 1984
344 **16-6-103**, as last amended by Chapter 161, Laws of Utah 1987
345 **16-6-104**, as last amended by Chapter 66, Laws of Utah 1984
346 **16-6-105**, as last amended by Chapter 66, Laws of Utah 1984
347 **16-6-106**, as enacted by Chapter 17, Laws of Utah 1963
348 **16-6-107**, as last amended by Chapter 166, Laws of Utah 1987
349 **16-6-108**, as last amended by Chapter 10, Laws of Utah 1997
350 **16-6-109**, as last amended by Chapter 66, Laws of Utah 1984
351 **16-6-110**, as enacted by Chapter 17, Laws of Utah 1963
352 **16-6-112**, as enacted by Chapter 66, Laws of Utah 1987

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

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

355 **3-1-25. Filing of annual reports.**

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

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

359 **3-1-30. Authorization for merger or consolidation with other associations or**
360 **corporations -- Laws governing surviving or new corporation.**

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

363 (a) one or more agricultural cooperative associations;

364 (b) one or more domestic corporations governed by:

365 (i) Title 16, Chapter 10a, Utah Revised Business Corporation Act; or

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

367 Association] Act; or

368 (c) any combination of associations or corporations referred to in Subsection (1)(a) or (b).

369 (2) The surviving or new corporation shall be governed by:

370 (a) the Uniform Agricultural Cooperative Association Act; or

371 (b) Title 16, Chapter [6] 6a, Utah Revised Nonprofit Corporation [~~and Cooperative~~
372 Association] Act.

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

374 **3-1-31. Contents and approval of plan of merger or consolidation.**

375 (1) The board of directors, board of trustees, or other governing board of each party to the
376 merger or consolidation shall, by resolution adopted by each board, approve a plan of merger or
377 consolidation.

378 (2) The plan shall contain:

379 (a) the name of:

380 (i) each association or corporation proposing to merge or consolidate; and

381 (ii) (A) the association or corporation into which they propose to merge or consolidate,
382 also referred to as the surviving corporation; or

383 (B) the new corporation;

384 (b) the terms and conditions of the proposed merger or consolidation;

385 (c) the manner and basis of converting stock or shares of each party to the merger or
386 consolidation, into stock, shares, or other securities or obligations of the surviving or new
387 corporation;

388 (d) the manner and basis of converting membership interests of each party to the merger
389 into membership interests, stock, shares, or other securities or obligations of the surviving or new
390 corporation;

391 (e) the manner and basis of converting any certificates of interest, patronage refund
392 certificates, or other interests in any fund, capital investment, savings, or reserve of each party to
393 the merger or consolidation into stock, shares, or other securities or obligations of or certificates
394 of interest, patronage refund certificates, or other interests in any fund, capital investment, savings
395 or reserve of the surviving or new corporation, including any changes to be made in the time and
396 manner of payment of the certificates or interests;

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

398 (i) the Uniform Agricultural Cooperative Association Act; or [by]
399 (ii) Title 16, Chapter [6] 6a, Utah Revised Nonprofit Corporation [~~and Cooperative~~
400 Association] Act;

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

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

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

407 **3-1-44. Registered office and agent.**

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

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

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

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

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

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

417 (i) the name of the association;

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

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

420 and

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

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

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

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

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

430 **7-5-2. Permit required to engage in trust business -- Exceptions.**

431 (1) No trust company shall accept any appointment to act in any agency or fiduciary
432 capacity, such as but not limited to that of personal representative, executor, administrator,
433 conservator, guardian, assignee, receiver, depository, or trustee under order or judgment of any
434 court or by authority of any law of this state or as trustee for any purpose permitted by law or
435 otherwise engage in the trust business in this state, unless and until it has obtained from the
436 commissioner a permit to act under this chapter. This provision shall not apply to any bank or other
437 corporation authorized to engage and lawfully engaged in the trust business in this state before July
438 1, 1981.

439 (2) Nothing in this chapter prohibits:

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

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

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

450 (d) any depository institution from holding in an agency or fiduciary capacity individual
451 retirement accounts or Keogh plan accounts established under Section 401 (a) or 408 (a) of Title
452 26 of the United States Code.

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

454 **9-13-201. Utah Technology Finance Corporation -- Independent public corporation.**

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

457 (2) (a) The corporation shall operate as a nonprofit corporation in accordance with Title
458 16, Chapter [6] 6a, Utah Revised Nonprofit Corporation [and Cooperative Association] Act, to the
459 extent that Title 16, Chapter [6] 6a, does not conflict with this chapter.

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

461 (i) articles of incorporation; and

462 (ii) any amendment to its articles of incorporation.

463 (c) In addition to the articles of incorporation, the corporation may adopt bylaws and

464 operational policies that are consistent with this chapter.

465 (3) This chapter is a recodification of the repealed Title 9, Chapter 2, Part 7, Utah

466 Technology Finance Corporation Act, and does not create a new corporation. The corporation

467 referred to in this chapter is the ongoing enterprise of the Utah Technology Finance Corporation

468 and this recodification does not impair any existing contractual relationships of the corporation.

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

470 **11-32-3. Creation of county interlocal finance authority as nonprofit corporation --**

471 **Organization -- Acquisition of delinquent tax receivables -- Personnel -- Duties of elected**

472 **attorney and treasurer.**

473 (1) The governing body of any county within the state may, by resolution, organize a

474 nonprofit corporation as the financing authority for the county on behalf of public bodies within

475 the county under this chapter, following the procedures set out in Title 16, Chapter [6] 6a, Utah

476 Revised Nonprofit Corporation [~~and Cooperative Association~~] Act, solely for the purpose of

477 accomplishing the public purposes for which the public bodies exist by financing the sale or

478 assignment of the delinquent tax receivables within the county to the financing authority. The

479 authority shall be known as the "Interlocal Finance Authority of (name of county)."

480 (2) If the governing body of any county creates an authority on behalf of any other public

481 body within the county, the resolution shall further state the name or names of the other public

482 bodies. A certified copy of the resolution creating the authority shall be delivered to the governing

483 body of the other public bodies. The governing bodies of each of the other public bodies shall

484 either approve or reject the creation of the authority, but if no action has been taken within 30 days

485 of delivery of the certified copy of the resolution to the governing body it shall be [~~deemed~~]

486 considered rejected.

487 (3) Following the approval, rejection, or [~~deemed~~] considered rejection of the resolution

488 by the governing bodies of each of the public bodies listed in the initial resolution, the county shall

489 then amend the resolution to delete the public bodies rejecting the resolution and shall list the

490 participant members of the authority.

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

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

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

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

520 (b) The provisions of Subsection (7) may not prevent the financing authority from
521 obtaining the accounting or auditing services from outside accountants or auditors with the consent

522 of the elected treasurer and the governing bodies or from obtaining legal services from outside
523 attorneys with the consent of the elected attorney and the governing bodies. The provisions of this
524 subsection may not prevent the authority from obtaining the opinions of outside attorneys or
525 accountants which are necessary for the issuance of the bonds of the authority.

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

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

531 **11-32-8. Dissolution of financing authority.**

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

536 (2) A financing authority may not be dissolved unless all outstanding bonds and other
537 obligations of the authority are paid in full as to principal, interest, and redemption premiums, if
538 any, or unless provision for the payment of them when due has been made.

539 (3) Upon the dissolution of a financing authority all assets and moneys of the authority
540 remaining after a provision has been made for the payment of all outstanding bonds and
541 obligations of the authority shall be transferred to the participant members as described in Section
542 11-32-15 or as agreed upon between the county and the other participant members.

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

544 **CHAPTER 6a. UTAH REVISED NONPROFIT CORPORATION ACT**

545 **Part 1. General Provisions**

546 **16-6a-101. Title.**

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

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

549 **16-6a-102. Definitions.**

550 As used in this chapter:

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

- 553 (b) "Address" includes:
554 (i) a post office box number;
555 (ii) a rural free delivery route number; and
556 (iii) a street name and number.
- 557 (2) "Affiliate" means a person that directly or indirectly through one or more
558 intermediaries controls, or is controlled by, or is under common control with, the person specified.
- 559 (3) "Assumed corporate name" means the name assumed for use in this state:
560 (a) by a:
561 (i) foreign corporation pursuant to Section 16-10a-1506; or
562 (ii) a foreign nonprofit corporation pursuant to Section 16-6a-1506; and
563 (b) because the corporate name of the foreign corporation described in Subsection (3)(a)
564 is not available for use in this state.
- 565 (4) "Articles of incorporation" include:
566 (a) amended articles of incorporation;
567 (b) restated articles of incorporation;
568 (c) articles of merger; and
569 (d) a document of a similar import to the documents described in Subsection (4)(a) or (b).
- 570 (5) (a) Except as provided in Subsection (5)(b), "board of directors" means the body
571 authorized to manage the affairs of the domestic or foreign nonprofit corporation.
- 572 (b) Notwithstanding Subsection (5)(a), a person may not be considered the board of
573 directors because of powers delegated to that person pursuant to Subsection 16-6a-801(2).
- 574 (6) (a) "Bylaws" means the one or more codes of rules, other than the articles of
575 incorporation, adopted pursuant to this chapter for the regulation or management of the affairs of
576 the domestic or foreign nonprofit corporation irrespective of the name or names by which the
577 codes of rules are designated.
- 578 (b) "Bylaws" includes:
579 (i) amended bylaws; and
580 (ii) restated bylaws.
- 581 (7) (a) "Cash" or "money" means:
582 (i) legal tender;
583 (ii) a negotiable instrument; or

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

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

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

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

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

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

593 (i) italics;

594 (ii) boldface;

595 (iii) contrasting color;

596 (iv) capitals; or

597 (v) underlining.

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

600 (a) the ownership of voting shares;

601 (b) contract; or

602 (c) means other than those specified in Subsection (10)(a) or (b).

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

605 (12) "Corporate name" means:

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

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

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

611 (i) articles of incorporation; or

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

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

615 (i) articles of incorporation; or

616 (ii) document of similar import to articles of incorporation.

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

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

622 (a) for the election of a director; or

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

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

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

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

629 (i) members;

630 (ii) directors; or

631 (iii) officers.

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

633 (i) goods sold; or

634 (ii) services received.

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

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

638 (20) "Effective date of notice" means the date notice is effective as provided in Section
639 16-6a-103.

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

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

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

644 (23) "Entity" includes:

645 (a) a domestic or foreign corporation;

- 646 (b) a domestic or foreign nonprofit corporation;
- 647 (c) a limited liability company;
- 648 (d) a profit or nonprofit unincorporated association;
- 649 (e) a business trust;
- 650 (f) an estate;
- 651 (g) a partnership;
- 652 (h) a trust;
- 653 (i) two or more persons having a joint or common economic interest;
- 654 (j) a state;
- 655 (k) the United States; or
- 656 (l) a foreign government.
- 657 (24) "Foreign corporation" means a corporation for profit incorporated under a law other
- 658 than the laws of this state.
- 659 (25) "Foreign nonprofit corporation" means an entity:
- 660 (a) incorporated under a law other than the laws of this state; and
- 661 (b) that would be a nonprofit corporation if formed under the laws of this state.
- 662 (26) "Governmental subdivision" means:
- 663 (a) a county;
- 664 (b) a city;
- 665 (c) a town; or
- 666 (d) any other type of governmental subdivision authorized by the laws of this state.
- 667 (27) "Individual" means:
- 668 (a) a natural person;
- 669 (b) the estate of an incompetent individual; or
- 670 (c) the estate of a deceased individual.
- 671 (28) "Internal Revenue Code" means the federal "Internal Revenue Code of 1986," as
- 672 amended from time to time, or to corresponding provisions of subsequent internal revenue laws
- 673 of the United States of America.
- 674 (29) (a) "Mail," "mailed," or "mailing" means deposit, deposited, or depositing in the
- 675 United States mail, properly addressed, first-class postage prepaid.
- 676 (b) "Mail," "mailed," or "mailing" includes registered or certified mail for which the proper

677 fee has been paid.

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

681 (i) in the articles of incorporation;

682 (ii) in the bylaws; or

683 (iii) by a resolution of the board of directors.

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

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

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

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

690 (34) "Person" means an:

691 (a) individual; or

692 (b) entity.

693 (35) "Principal office" means:

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

697 (i) an annual report;

698 (ii) an application for a certificate of authority; or

699 (iii) a notice of change of principal office; or

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

702 (36) "Proceeding" includes:

703 (a) a civil suit;

704 (b) arbitration;

705 (c) mediation;

706 (d) a criminal action;

707 (e) an administrative action; or

708 (f) an investigatory action.

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

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

713 (i) its registered office in this state; or

714 (ii) its principal office;

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

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

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

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

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

725 (a) a domestic nonprofit corporation required to be maintained pursuant to Subsection
726 16-6a-501(1)(b); or

727 (b) a foreign nonprofit corporation required to be maintained pursuant to Subsection
728 16-6a-1508(1)(b).

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

732 (a) articles of incorporation;

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

734 (c) a notice of change of registered office.

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

736 (a) the spouse of the director;

737 (b) a child of the director;

738 (c) a grandchild of the director;

- 739 (d) a sibling of the director;
740 (e) a parent of the director;
741 (f) the spouse of an individual described in Subsections (41)(b) through (e);
742 (g) an individual having the same home as the director;
743 (h) a trust or estate of which the director or any other individual specified in this
744 Subsection (41) is a substantial beneficiary; or
745 (i) any of the following of which the director is a fiduciary:
746 (i) a trust;
747 (ii) an estate;
748 (iii) an incompetent;
749 (iv) a conservatee; or
750 (v) a minor.
751 (42) "Secretary" means the corporate officer to whom the bylaws or the board of directors
752 has delegated responsibility under Subsection 16-6a-818(3) for:
753 (a) the preparation and maintenance of:
754 (i) minutes of the meetings of:
755 (A) the board of directors; or
756 (B) the members; and
757 (ii) the other records and information required to be kept by the nonprofit corporation
758 pursuant to Section 16-6a-1601; and
759 (b) authenticating records of the nonprofit corporation.
760 (43) "State," when referring to a part of the United States, includes:
761 (a) a state;
762 (b) a commonwealth;
763 (c) the District of Columbia;
764 (d) an agency or governmental and political subdivision of a state, commonwealth, or
765 District of Columbia;
766 (e) territory or insular possession of the United States; or
767 (f) an agency or governmental and political subdivision of a territory or insular possession
768 of the United States.
769 (44) "Street address" means:

770 (a) (i) street name and number;
771 (ii) city or town; and
772 (iii) United States post office zip code designation; or
773 (b) if, by reason of rural location or otherwise, a street name, number, city, or town does
774 not exist, an appropriate description other than that described in Subsection (44)(a) fixing as nearly
775 as possible the actual physical location but only if the information includes:
776 (i) the rural free delivery route;
777 (ii) the county; and
778 (iii) the United States post office zip code designation.
779 (45) "United States" includes any district, authority, office, bureau, commission,
780 department, and any other agency of the United States of America.
781 (46) "Vote" includes authorization by:
782 (a) written ballot; and
783 (b) written consent.
784 (47) (a) "Voting group" means all the members of one or more classes of members or
785 directors that, under this chapter, the articles of incorporation, or the bylaws, are entitled to vote
786 and be counted together collectively on a matter.
787 (b) All members or directors entitled by this chapter, the articles of incorporation, or the
788 bylaws to vote generally on a matter are for that purpose a single voting group.
789 (48) (a) "Voting member" means one or more persons who are entitled to vote for all
790 matters required or permitted under this chapter to be submitted to a vote of the members, except
791 as otherwise provided in the articles of incorporation or bylaws.
792 (b) A person is not a voting member solely because of:
793 (i) a right the person has as a delegate;
794 (ii) a right the person has to designate a director; or
795 (iii) a right the person has as a director.
796 Section 11. Section **16-6a-103** is enacted to read:
797 **16-6a-103. Notice.**
798 (1) Notice given under this chapter shall be in writing unless oral notice is reasonable
799 under the circumstances.
800 (2) (a) Notice may be communicated:

- 801 (i) in person;
802 (ii) by telephone;
803 (iii) by any form of electronic communication; or
804 (iv) by mail or private carrier.
805 (b) If the forms of personal notice described in Subsection (2)(a) are impracticable, notice
806 may be communicated by:
807 (i) a newspaper of general circulation in the county or similar governmental subdivision
808 in which the corporation's principal or registered office is located; or
809 (ii) radio, television, or other form of public broadcast communication in the county or
810 similar governmental subdivision in which the corporation's principal or registered office is
811 located.
812 (3) Written notice to a domestic or foreign nonprofit corporation authorized to conduct
813 affairs in this state may be addressed to:
814 (a) its registered agent at its registered office; or
815 (b) the corporation's secretary at its principal office.
816 (4) (a) Written notice by a domestic or foreign nonprofit corporation to its members, is
817 effective as to each member when mailed, if:
818 (i) in a comprehensible form; and
819 (ii) addressed to the member's address shown in the domestic or foreign nonprofit
820 corporation's current record of members.
821 (b) If three successive notices given to a member pursuant to Subsection (5) have been
822 returned as undeliverable, further notices to that member are not necessary until another address
823 of the member is made known to the nonprofit corporation.
824 (5) Except as provided in Subsection (4), written notice, if in a comprehensible form, is
825 effective at the earliest of the following:
826 (a) when received;
827 (b) five days after it is mailed; or
828 (c) on the date shown on the return receipt if:
829 (i) sent by registered or certified mail;
830 (ii) sent return receipt requested; and
831 (iii) the receipt is signed by or on behalf of the addressee.

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

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

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

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

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

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

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

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

848 **16-6a-104. Powers of the division.**

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

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

852 **16-6a-105. Filing requirements.**

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

854 (a) this section; and

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

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

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

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

860 (4) A document shall be:

861 (a) typewritten; or

862 (b) machine printed.

- 863 (5) (a) A document shall be in the English language.
864 (b) A corporate name need not be in English if written in:
865 (i) English letters; or
866 (ii) Arabic or Roman numerals.
867 (c) Notwithstanding Subsection (5)(a), a certificate of existence required of a foreign
868 nonprofit corporation need not be in English if accompanied by a reasonably authenticated English
869 translation.
- 870 (6) (a) A document shall be:
871 (i) executed by a person in Subsection (6)(b); or
872 (ii) a true copy made by photographic, xerographic, electronic, or other process that
873 provides similar copy accuracy of a document that has been executed by a person listed in
874 Subsection (6)(b).
- 875 (b) A document shall be executed by:
876 (i) the chair of the board of directors of a domestic or foreign nonprofit corporation;
877 (ii) all of the directors of a domestic or foreign nonprofit corporation;
878 (iii) an officer of the domestic or foreign nonprofit corporation;
879 (iv) if directors have not been selected or the domestic or foreign nonprofit corporation has
880 not been formed, an incorporator;
881 (v) if the domestic or foreign nonprofit corporation is in the hands of a receiver, trustee,
882 or other court-appointed fiduciary, that receiver, trustee, or court-appointed fiduciary; or
883 (vi) if the document is that of a registered agent:
884 (A) the registered agent, if the person is an individual; or
885 (B) a person authorized by the registered agent to execute the document, if the registered
886 agent is an entity.
- 887 (7) A document shall state beneath or opposite the signature of the person executing the
888 document:
889 (a) the signer's name; and
890 (b) the capacity in which the document is signed.
- 891 (8) A document may contain:
892 (a) the corporate seal;
893 (b) an attestation by the secretary or an assistant secretary; or

894 (c) an acknowledgment, verification, or proof.

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

898 (a) the document is:

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

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

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

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

904 (a) in or on the prescribed form; or

905 (b) have the required cover sheet.

906 (11) A document shall be:

907 (a) delivered to the division for filing; and

908 (b) accompanied by:

909 (i) one exact or conformed copy, except as provided in Sections 16-6a-503 and
910 16-6a-1510;

911 (ii) the correct filing fee; and

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

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

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

917 **16-6a-106. Forms.**

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

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

922 (2) Notwithstanding Subsection (1):

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

925 (b) a requirement that a form or cover sheet be used may not:
926 (i) preclude in any way the inclusion in any document of any item that is not prohibited to
927 be included by this chapter; or
928 (ii) require the inclusion with the filed document of any item that is not otherwise required
929 by this chapter.

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

931 **16-6a-107. Fees.**

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

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

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

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

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

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

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

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

948 **16-6a-108. Effective time and date of filed documents.**

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

951 (i) at the time of filing; and

952 (ii) on the date it is filed.

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

955 (2) (a) Unless otherwise provided in this chapter, a document, other than an application

956 for a reserved or registered name, may specify conspicuously on its face:

957 (i) a delayed effective time;

958 (ii) a delayed effective date; or

959 (iii) both a delayed effective time and date.

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

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

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

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

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

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

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

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

979 (a) executed:

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

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

983 (b) stating that:

984 (i) the document has been revoked by:

985 (A) appropriate corporate action; or

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

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

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

992 **16-6a-109. Correcting filed documents.**

993 (1) A domestic or foreign nonprofit corporation may correct a document filed with the
994 division if the document:

995 (a) contains an incorrect statement; or

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

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

998 that:

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

1000 (ii) have attached a copy of the document;

1001 (b) specify:

1002 (i) (A) the incorrect statement; and

1003 (B) the reason it is incorrect; or

1004 (ii) the manner in which the execution, attestation, sealing, verification, or

1005 acknowledgment was defective; and

1006 (c) correct:

1007 (i) the incorrect statement; or

1008 (ii) defective execution, attestation, sealing, verification, or acknowledgment.

1009 (3) Articles of correction may be executed by any person:

1010 (a) designated in Subsection 16-6a-105(6); or

1011 (b) who executed the document that is corrected.

1012 (4) (a) Articles of correction are effective on the effective date of the document they

1013 correct except as to a person:

1014 (i) relying on the uncorrected document; and

1015 (ii) adversely affected by the correction.

1016 (b) As to a person described in Subsection (4)(a), the articles of correction are effective

1017 when filed.

1018 Section 18. Section **16-6a-110** is enacted to read:

1019 **16-6a-110. Filing duty of division.**

1020 (1) If a document delivered to the division for filing satisfies the requirements of Section
1021 16-6a-105, the division shall file the document.

1022 (2) (a) The division files a document by stamping or otherwise endorsing "Filed" together
1023 with the name of the division and the date and time of acceptance for filing on both the document
1024 and the accompanying copy.

1025 (b) After filing a document, except as provided in Sections 16-6a-503, 16-6a-1510, and
1026 16-6a-1608, the division shall deliver the accompanying copy, with the receipt for any filing fees:

1027 (i) (A) to the domestic or foreign nonprofit corporation for which the filing is made; or

1028 (B) to the representative of the domestic or foreign nonprofit corporation for which the
1029 filing is made; and

1030 (ii) at the address:

1031 (A) indicated on the filing; or

1032 (B) that the division determines to be appropriate.

1033 (3) If the division refuses to file a document, the division within ten days after the day the
1034 document is delivered to the division shall return to the person requesting the filing:

1035 (a) the document; and

1036 (b) a written notice providing a brief explanation of the reason for the refusal to file.

1037 (4) (a) The division's duty to file a document under this section is ministerial.

1038 (b) Except as otherwise specifically provided in this chapter, the division's filing or refusal
1039 to file a document does not:

1040 (i) affect the validity or invalidity of the document in whole or in part;

1041 (ii) relate to the correctness or incorrectness of information contained in the document; or

1042 (iii) create a presumption that:

1043 (A) the document is valid or invalid; or

1044 (B) information contained in the document is correct or incorrect.

1045 Section 19. Section **16-6a-111** is enacted to read:

1046 **16-6a-111. Appeal from division's refusal to file document.**

1047 If the division refuses to file a document delivered to it for filing, in accordance with Title
1048 63, Chapter 46b, Administrative Procedures Act, the following may appeal the refusal to the

1049 executive director:

1050 (1) the domestic or foreign nonprofit corporation for which the filing was requested; or

1051 (2) the representative of the domestic or foreign nonprofit corporation for which filing was
1052 requested.

1053 Section 20. Section **16-6a-112** is enacted to read:

1054 **16-6a-112. Evidentiary effect of copy of filed document.**

1055 One or more of the following is conclusive evidence that the original document has been
1056 filed with the division:

1057 (1) a certificate attached to a copy of a document filed by the division; or

1058 (2) an endorsement, seal, or stamp placed on the copy by the division.

1059 Section 21. Section **16-6a-113** is enacted to read:

1060 **16-6a-113. Certificates issued by the division.**

1061 (1) Any person may apply to the division for:

1062 (a) a certificate of existence for a domestic nonprofit corporation;

1063 (b) a certificate of authorization for a foreign nonprofit corporation; or

1064 (c) a certificate that sets forth any facts of record in the division.

1065 (2) A certificate of existence or certificate of authorization sets forth:

1066 (a) (i) the domestic nonprofit corporation's corporate name; or

1067 (ii) the foreign nonprofit corporation's corporate name registered in this state;

1068 (b) that:

1069 (i) (A) (I) the domestic nonprofit corporation is incorporated under the law of this state;

1070 and

1071 (II) the date of its incorporation; or

1072 (B) the foreign nonprofit corporation is authorized to conduct affairs in this state;

1073 (c) that all fees, taxes, and penalties owed to this state have been paid, if:

1074 (i) payment is reflected in the records of the division; and

1075 (ii) nonpayment affects the existence or authorization of the domestic or foreign nonprofit
1076 corporation;

1077 (d) that the domestic or foreign nonprofit corporation's most recent annual report required
1078 by Section 16-6a-1607 has been filed by the division;

1079 (e) that articles of dissolution have not been filed by the division; and

1080 (f) other facts of record in the division that may be requested by the applicant.
1081 (3) Subject to any qualification stated in the certificate, a certificate issued by the division
1082 may be relied upon as conclusive evidence of the facts set forth in the certificate.

1083 Section 22. Section **16-6a-114** is enacted to read:

1084 **16-6a-114. Penalty for signing false documents.**

1085 (1) It is unlawful for a person to sign a document:

1086 (a) knowing it to be false in any material respect; and

1087 (b) with intent that the document be delivered to the division for filing.

1088 (2) An offense under this section is a class A misdemeanor punishable by a fine not to
1089 exceed the fine specified in Section 76-3-301.

1090 Section 23. Section **16-6a-115** is enacted to read:

1091 **16-6a-115. Liability to third parties.**

1092 The directors, officers, employees, and members of a nonprofit corporation are not
1093 personally liable in their capacity as directors, officers, employees, and members for the acts,
1094 debts, liabilities, or obligations of a nonprofit corporation.

1095 Section 24. Section **16-6a-116** is enacted to read:

1096 **16-6a-116. Private foundations.**

1097 Except as otherwise specified in the articles of incorporation, a nonprofit corporation that
1098 is a private foundation as defined in Section 509(a), Internal Revenue Code:

1099 (1) shall make distributions for each taxable year at the time and in the manner as not to
1100 subject the nonprofit corporation to tax under Section 4942, Internal Revenue Code;

1101 (2) may not engage in any act of self-dealing as defined in Section 4941(d), Internal
1102 Revenue Code;

1103 (3) may not retain any excess business holdings as defined in Section 4943(c), Internal
1104 Revenue Code;

1105 (4) may not make any investments that would subject the nonprofit corporation to taxation
1106 under Section 4944, Internal Revenue Code; and

1107 (5) may not make any taxable expenditures as defined in Section 4945(d), Internal
1108 Revenue Code.

1109 Section 25. Section **16-6a-117** is enacted to read:

1110 **16-6a-117. Judicial relief.**

1111 (1) (a) A director, officer, delegate, or member may petition the applicable district court
1112 to take an action provided in Subsection (1)(b) if for any reason it is impractical or impossible for
1113 a nonprofit corporation in the manner prescribed by this chapter, its articles of incorporation, or
1114 bylaws to:

1115 (i) call or conduct a meeting of its members, delegates, or directors; or

1116 (ii) otherwise obtain the consent of its members, delegates, or directors.

1117 (b) If a petition is filed under Subsection (1)(a), the applicable district court, in the manner
1118 it finds fair and equitable under the circumstances, may order that:

1119 (i) a meeting be called; or

1120 (ii) a written consent or other form of obtaining the vote of members, delegates, or
1121 directors be authorized.

1122 (c) For purposes of this section, the applicable district court is:

1123 (i) the district court of the county in this state where the nonprofit corporation's principal
1124 office is located; or

1125 (ii) if the nonprofit corporation has no principal office in this state:

1126 (A) the district court of the county in which the registered office is located; or

1127 (B) if the nonprofit corporation has no registered office in this state, the district court in
1128 and for Salt Lake County.

1129 (2) (a) A court specified in Subsection (1) shall, in an order issued pursuant to this section,
1130 provide for a method of notice reasonably designed to give actual notice to all persons who would
1131 be entitled to notice of a meeting held pursuant to this chapter, the articles of incorporation, or
1132 bylaws.

1133 (b) The method of notice described in Subsection (1) complies with this section whether
1134 or not the method of notice:

1135 (i) results in actual notice to all persons described in Subsection (2)(a); or

1136 (ii) conforms to the notice requirements that would otherwise apply.

1137 (c) In a proceeding under this section, the court may determine who are the members or
1138 directors of a nonprofit corporation.

1139 (3) An order issued pursuant to this section may dispense with any requirement relating
1140 to the holding of or voting at meetings or obtaining votes that would otherwise be imposed by this
1141 chapter, the articles of incorporation, or bylaws, including any requirement as to:

1142 (a) quorums; or

1143 (b) the number or percentage of votes needed for approval.

1144 (4) (a) Whenever practical, any order issued pursuant to this section shall limit the subject
1145 matter of a meeting or other form of consent authorized to items the resolution of which will or
1146 may enable the nonprofit corporation to continue managing its affairs without further resort to this
1147 section, including amendments to the articles of incorporation or bylaws.

1148 (b) Notwithstanding Subsection (4)(a), an order under this section may authorize the
1149 obtaining of whatever votes and approvals are necessary for the dissolution, merger, or sale of
1150 assets of a nonprofit corporation.

1151 (5) A meeting or other method of obtaining the vote of members, delegates, or directors
1152 conducted pursuant to and that complies with an order issued under this section:

1153 (a) is for all purposes a valid meeting or vote, as the case may be; and

1154 (b) shall have the same force and effect as if it complied with every requirement imposed
1155 by this chapter, the articles of incorporation, or bylaws.

1156 (6) In addition to a meeting held under this section, a court-ordered meeting may be held
1157 pursuant to Section 16-6a-703.

1158 Section 26. Section **16-6a-118** is enacted to read:

1159 **16-6a-118. Electronic documents.**

1160 (1) Notwithstanding the other requirements of this chapter except subject to Section
1161 16-6a-106, the division may by rule permit a writing required or permitted to be filed with the
1162 division under this chapter:

1163 (a) to be delivered, mailed, or filed:

1164 (i) in an electronic medium; or

1165 (ii) by electronic transmission; or

1166 (b) to be signed by photographic, electronic, or other means prescribed by rule, except that
1167 a writing signed in an electronic medium shall be signed by digital signature in accordance with
1168 Title 46, Chapter 3, Utah Digital Signature Act.

1169 (2) The division may by rule provide for any writing required or permitted to be prepared,
1170 delivered, or mailed by the division under this chapter to be prepared, delivered, or mailed:

1171 (a) in an electronic medium; or

1172 (b) by electronic transmission.

1173 Section 27. Section **16-6a-201** is enacted to read:

1174 **Part 2. Incorporation**

1175 **16-6a-201. Incorporators.**

1176 (1) One or more persons may act as incorporators of a nonprofit corporation by delivering
1177 to the division for filing articles of incorporation meeting the requirements of Section 16-6a-202.

1178 (2) An incorporator who is a natural person shall be 18 years of age or older.

1179 Section 28. Section **16-6a-202** is enacted to read:

1180 **16-6a-202. Articles of incorporation.**

1181 (1) The articles of incorporation shall set forth:

1182 (a) one or more purposes for which the nonprofit corporation is organized;

1183 (b) a corporate name for the nonprofit corporation that satisfies the requirements of Section
1184 16-6a-401;

1185 (c) the street address of the nonprofit corporation's initial registered office;

1186 (d) the name and signature of its initial registered agent at the office listed in Subsection

1187 (1)(c), which registered agent shall meet the requirements of Section 16-6a-501;

1188 (e) the name and address of each incorporator;

1189 (f) whether or not the nonprofit corporation will have voting members;

1190 (g) if the nonprofit corporation is to issue shares of stock evidencing membership in the
1191 nonprofit corporation or interests in water or other property rights:

1192 (i) the aggregate number of shares that the nonprofit corporation has authority to issue; and

1193 (ii) if the shares are to be divided into classes:

1194 (A) the number of shares of each class;

1195 (B) the designation of each class; and

1196 (C) a statement of the preferences, limitations, and relative rights of the shares of each

1197 class; and

1198 (h) provisions not inconsistent with law regarding the distribution of assets on dissolution.

1199 (2) The articles of incorporation may but need not set forth:

1200 (a) the names and addresses of the one or more individuals who are to serve as the initial

1201 directors;

1202 (b) provisions not inconsistent with law regarding:

1203 (i) managing the business and regulating the affairs of the nonprofit corporation;

- 1204 (ii) defining, limiting, and regulating the powers of:
1205 (A) the nonprofit corporation;
1206 (B) the board of directors of the nonprofit corporation; and
1207 (C) the members of the nonprofit corporation or any class of members;
1208 (iii) whether cumulative voting will be permitted; and
1209 (iv) the characteristics, qualifications, rights, limitations, and obligations attaching to each
1210 or any class of members; and
1211 (c) any provision that under this chapter is permitted to be in the articles of incorporation
1212 or required or permitted to be set forth in the bylaws, including elective provisions that in
1213 accordance with this chapter shall be included in the articles of incorporation to be effective.
1214 (3) (a) It is sufficient under Subsection (1)(a) to state, either alone or with other purposes,
1215 that the purpose of the corporation is to engage in any lawful act for which a nonprofit corporation
1216 may be organized under this chapter.
1217 (b) If the articles of incorporation include the statement described in Subsection (3)(a), all
1218 lawful acts and activities shall be within the purposes of the nonprofit corporation, except for
1219 express limitations, if any.
1220 (4) The articles of incorporation need not set forth any corporate power enumerated in this
1221 chapter.
1222 (5) The articles of incorporation shall:
1223 (a) be signed by each incorporator; and
1224 (b) meet the filing requirements of Section 16-6a-105.
1225 (6) The appointment of the registered agent shall be signed by the registered agent on:
1226 (a) the articles of incorporation; or
1227 (b) an acknowledgment attached to the articles of incorporation.
1228 (7) (a) If this chapter conditions any matter upon the presence of a provision in the bylaws,
1229 the condition is satisfied if the provision is present either:
1230 (i) in the articles of incorporation; or
1231 (ii) the bylaws.
1232 (b) If this chapter conditions any matter upon the absence of a provision in the bylaws, the
1233 condition is satisfied only if the provision is absent from both:
1234 (i) the articles of incorporation; and

1235 (ii) the bylaws.

1236 Section 29. Section **16-6a-203** is enacted to read:

1237 **16-6a-203. Incorporation.**

1238 (1) A nonprofit corporation is incorporated, and its corporate existence begins:

1239 (a) when the articles of incorporation are filed by the division; or

1240 (b) if a delayed effective date is specified pursuant to Subsection 16-6a-108(2), on the
1241 delayed effective date, unless a certificate of withdrawal is filed prior to the delayed effective date.

1242 (2) The filing of the articles of incorporation by the division is conclusive proof that all
1243 conditions precedent to incorporation have been satisfied, except in a proceeding by the state to:

1244 (a) cancel or revoke the incorporation; or

1245 (b) involuntarily dissolve the nonprofit corporation.

1246 Section 30. Section **16-6a-204** is enacted to read:

1247 **16-6a-204. Liability for preincorporation transactions.**

1248 All persons purporting to act as or on behalf of a nonprofit corporation, knowing there is
1249 no incorporation under this chapter, are jointly and severally liable for all liabilities created while
1250 so acting.

1251 Section 31. Section **16-6a-205** is enacted to read:

1252 **16-6a-205. Organization of the corporation.**

1253 (1) After incorporation:

1254 (a) if initial directors are named in the articles of incorporation, the initial directors may
1255 hold an organizational meeting, at the call of a majority of the initial directors, to complete the
1256 organization of the nonprofit corporation by:

1257 (i) appointing officers;

1258 (ii) adopting bylaws, if desired; and

1259 (iii) carrying on any other business brought before the meeting; or

1260 (b) if initial directors are not named in the articles of incorporation, until directors are
1261 elected, the incorporators may hold an organizational meeting at the call of a majority of the
1262 incorporators to do whatever is necessary and proper to complete the organization of the nonprofit
1263 corporation, including:

1264 (i) the election of directors and officers;

1265 (ii) the appointment of members; and

1266 (iii) the adoption and amendment of bylaws.

1267 (2) Action required or permitted by this chapter to be taken by incorporators at an
1268 organizational meeting may be taken without a meeting if the action taken is evidenced by one or
1269 more written consents that:

1270 (a) describe the action taken; and

1271 (b) are signed by each incorporator.

1272 (3) An organizational meeting may be held in or out of this state.

1273 Section 32. Section **16-6a-206** is enacted to read:

1274 **16-6a-206. Bylaws.**

1275 (1) (a) The board of directors of a nonprofit corporation may adopt initial bylaws for the
1276 nonprofit corporation.

1277 (b) If no directors of the nonprofit corporation have been elected, the incorporators may
1278 adopt initial bylaws for the nonprofit corporation.

1279 (c) If neither the incorporators nor the board of directors have adopted initial bylaws, the
1280 members, if any, may adopt initial bylaws.

1281 (2) The bylaws of a nonprofit corporation may contain any provision for managing the
1282 business and regulating the affairs of the nonprofit corporation that is not inconsistent with law or
1283 the articles of incorporation, including management and regulation of the nonprofit corporation
1284 in the event of an emergency.

1285 Section 33. Section **16-6a-207** is enacted to read:

1286 **16-6a-207. Incorporation of cooperative association.**

1287 (1) (a) If a cooperative association meets the requirements of Subsection (1)(b), it may:

1288 (i) be incorporated under this chapter; and

1289 (ii) use the word "cooperative" as part of its corporate or business name.

1290 (b) A cooperative association described in Subsection (1)(a):

1291 (i) may not be:

1292 (A) an association subject to the insurance or credit union laws of this state;

1293 (B) a health insurance purchasing association as defined in Section 31A-34-103; or

1294 (C) a health insurance purchasing alliance licensed under Title 31A, Chapter 34, Voluntary
1295 Health Insurance Purchasing Alliance Act; and

1296 (ii) shall state in its articles of incorporation that:

1297 (A) a member may not have more than one vote regardless of the number or amount of
1298 stock or membership capital owned by the member unless voting is based in whole or in part on
1299 the volume of patronage of the member with the cooperative association; and

1300 (B) savings in excess of dividends and additions to reserves and surplus shall be
1301 distributed or allocated to members or patrons on the basis of patronage.

1302 (2) (a) Any cooperative association incorporated in accordance with Subsection (1):

1303 (i) shall have all the rights and be subject to the limitations provided in Section 3-1-11; and

1304 (ii) may pay dividends on its stock, if it has stock, subject to the limitations of Section
1305 3-1-11.

1306 (b) The articles of incorporation or the bylaws of a cooperative association incorporated
1307 in accordance with Subsection (1) may provide for:

1308 (i) the establishment and alteration of voting districts;

1309 (ii) the election of delegates to represent:

1310 (A) the districts described in Subsection (2)(b)(i); and

1311 (B) the members of the districts described in Subsection (2)(b)(i);

1312 (iii) the establishment and alteration of director districts; and

1313 (iv) the election of directors to represent the districts described in Subsection (2)(b)(ii)

1314 by:

1315 (A) the members of the districts; or

1316 (B) delegates elected by the members.

1317 (3) (a) A corporation organized under Title 3, Chapter 1, Uniform Agricultural
1318 Cooperative Association Act, may convert itself into a cooperative association subject to this
1319 chapter by adopting appropriate amendments to its articles of incorporation by which:

1320 (i) it elects to become subject to this chapter; and

1321 (ii) makes changes in its articles of incorporation that are:

1322 (A) required by this chapter; and

1323 (B) any other changes permitted by this chapter.

1324 (b) The amendments described in Subsection (3)(a) shall be adopted and filed in the
1325 manner provided by the law then applicable to the cooperative nonprofit corporation.

1326 (4) Notwithstanding Subsection (1), a health insurance purchasing association may not use
1327 the word "cooperative" or "alliance" but may use the word "association."

- 1359 (c) make and amend bylaws, not inconsistent with its articles of incorporation or with the
1360 laws of this state, for managing and regulating the affairs of the nonprofit corporation;
- 1361 (d) purchase, receive, lease, or otherwise acquire, and own, hold, improve, use, and
1362 otherwise deal with, real or personal property, or any legal or equitable interest in property,
1363 wherever located;
- 1364 (e) sell, convey, mortgage, pledge, lease, exchange, and otherwise dispose of all or any part
1365 of its property and assets;
- 1366 (f) purchase, receive, subscribe for, or otherwise acquire, own, hold, vote, use, sell,
1367 mortgage, lend, pledge, or otherwise dispose of, and deal in and with shares or other interests in,
1368 or obligations of, any other entity;
- 1369 (g) make contracts and guarantees, incur liabilities, borrow money, issue its notes, bonds,
1370 and other obligations and secure any of its obligations by mortgage or pledge of any of its property,
1371 assets, franchises, or income;
- 1372 (h) lend money, invest and reinvest its funds, and receive and hold real and personal
1373 property as security for repayment, except that a nonprofit corporation may not lend money to or
1374 guarantee the obligation of a director or officer of the nonprofit corporation;
- 1375 (i) be an agent, associate, fiduciary, manager, member, partner, promoter, or trustee of, or
1376 to hold any similar position with, any entity;
- 1377 (j) conduct its business, locate offices, and exercise the powers granted by this chapter
1378 within or without this state;
- 1379 (k) (i) elect directors and appoint officers, employees, and agents of the nonprofit
1380 corporation;
- 1381 (ii) define the duties of the directors, officers, employees, and agents; and
1382 (iii) fix the compensation of the directors, officers, employees, and agents;
- 1383 (l) pay compensation in a reasonable amount to its directors, officers, or members for
1384 services rendered, including:
- 1385 (i) payment of advances for expenses reasonably expected to be incurred; and
1386 (ii) expenses relating to relocation of directors, officers, or employees of a nonprofit
1387 corporation;
- 1388 (m) pay pensions and establish pension plans, pension trusts, profit sharing plans, share
1389 bonus plans, share option plans, and benefit or incentive plans for any or all of its current or former

- 1390 directors, officers, employees, and agents;
- 1391 (n) make contributions to or for any person for:
- 1392 (i) the public welfare;
- 1393 (ii) charitable, religious, scientific, or educational purposes; or
- 1394 (iii) for other purposes that further the corporate interest;
- 1395 (o) pursue any lawful activity that will aid governmental policy;
- 1396 (p) make payments or do any other act, not inconsistent with law, that furthers the business
- 1397 and affairs of the nonprofit corporation;
- 1398 (q) establish rules governing the conduct of the business and affairs of the nonprofit
- 1399 corporation in the event of an emergency;
- 1400 (r) impose dues, assessments, admission fees, and transfer fees upon its members;
- 1401 (s) (i) establish conditions for admission of members;
- 1402 (ii) admit members; and
- 1403 (iii) issue or transfer membership;
- 1404 (t) carry on a business;
- 1405 (u) indemnify current or former directors, officers, employees, fiduciaries, or agents as
- 1406 provided in this chapter;
- 1407 (v) limit the liability of its directors as provided in Subsection 16-6a-823(1);
- 1408 (w) cease its corporate activities and dissolve; and
- 1409 (x) issue certificates or stock evidencing:
- 1410 (i) membership in the nonprofit corporation; or
- 1411 (ii) interests in water or other property rights.
- 1412 Section 36. Section **16-6a-303** is enacted to read:
- 1413 **16-6a-303. Emergency powers.**
- 1414 (1) In anticipation of or during an emergency defined in Subsection (4), the board of
- 1415 directors may:
- 1416 (a) modify lines of succession to accommodate the incapacity of any director, officer,
- 1417 employee, or agent;
- 1418 (b) adopt bylaws to be effective only in an emergency; and
- 1419 (c) (i) relocate the principal office;
- 1420 (ii) designate an alternative principal office or regional office; or

1421 (iii) authorize officers to relocate or designate an alternative principal office or regional
1422 office.

1423 (2) During an emergency as defined in Subsection (4), unless emergency bylaws provide
1424 otherwise:

1425 (a) notice of a meeting of the board of directors:

1426 (i) need be given only to those directors whom it is practicable to reach; and

1427 (ii) may be given in any practicable manner, including by publication or radio; and

1428 (b) the officers of the nonprofit corporation present at a meeting of the board of directors
1429 may be considered to be directors for the meeting, in order of rank and within the same rank in
1430 order of seniority, as necessary to achieve a quorum.

1431 (3) Corporate action taken in good faith during an emergency under this section to further
1432 the ordinary business affairs of the nonprofit corporation:

1433 (a) binds the nonprofit corporation; and

1434 (b) may not be the basis for the imposition of liability on any director, officer, employee,
1435 or agent of the nonprofit corporation on the ground that the action was not an authorized corporate
1436 action.

1437 (4) An emergency exists for purposes of this section if a quorum of the directors cannot
1438 readily be obtained because of a catastrophic event.

1439 Section 37. Section **16-6a-304** is enacted to read:

1440 **16-6a-304. Ultra vires.**

1441 (1) Except as provided in Subsection (2), the validity of corporate action may not be
1442 challenged on the ground that the nonprofit corporation lacks or lacked power to act.

1443 (2) A nonprofit corporation's power to act may be challenged:

1444 (a) in a proceeding against the nonprofit corporation to enjoin the act brought by:

1445 (i) a director; or

1446 (ii) one or more voting members in a derivative proceeding;

1447 (b) in a proceeding by or in the right of the nonprofit corporation, whether directly,
1448 derivatively, or through a receiver, trustee, or other legal representative, against an incumbent or
1449 former director, officer, employee, or agent of the nonprofit corporation; or

1450 (c) in a proceeding by the attorney general under Section 16-6a-1414.

1451 (3) In a proceeding under Subsection (2)(a) to enjoin an unauthorized corporate act, the

1452 court may:

1453 (a) enjoin or set aside the act, if:

1454 (i) it would be equitable to do so; and

1455 (ii) all affected persons are parties to the proceeding; and

1456 (b) award damages for loss, including anticipated profits, suffered by the nonprofit
1457 corporation or another party because of an injunction issued under this section.

1458 Section 38. Section **16-6a-401** is enacted to read:

1459 **Part 4. Name**

1460 **16-6a-401. Corporate name.**

1461 (1) The corporate name of a nonprofit corporation:

1462 (a) may, but need not contain:

1463 (i) the word "corporation," "incorporated," or "company"; or

1464 (ii) an abbreviation of "corporation," "incorporated," or "company";

1465 (b) may not contain any word or phrase that indicates or implies that it is organized for any
1466 purpose other than one or more of the purposes contained in Section 16-6a-301 and its articles of
1467 incorporation;

1468 (c) except as authorized by the division under Subsection (2), shall be distinguishable, as
1469 defined in Section 16-10a-401, from:

1470 (i) the name of any domestic corporation incorporated in this state;

1471 (ii) the name of any foreign corporation authorized to conduct affairs in this state;

1472 (iii) the name of any domestic nonprofit corporation incorporated in this state;

1473 (iv) the name of any foreign nonprofit corporation authorized to conduct affairs in this
1474 state;

1475 (v) the name of any domestic limited liability company formed in this state;

1476 (vi) the name of any foreign limited liability company authorized to conduct affairs in this
1477 state;

1478 (vii) the name of any limited partnership formed or authorized to conduct affairs in this
1479 state;

1480 (viii) any name that is reserved under Section 16-6a-402 or 16-10a-402;

1481 (ix) the name of any entity that has registered its name under Section 42-2-5;

1482 (x) the name of any trademark or service mark registered by the division; or

1483 (xi) any assumed name filed under Section 42-2-5;

1484 (d) shall be, for purposes of recordation, either translated into English or transliterated into
1485 letters of the English alphabet if it is not in English;

1486 (e) without the written consent of the United States Olympic Committee, may not contain
1487 the words:

1488 (i) "Olympic";

1489 (ii) "Olympiad"; or

1490 (iii) "Citius Altius Fortius"; and

1491 (f) without the written consent of the State Board of Regents issued in accordance with
1492 Section 53B-5-114, may not contain the words:

1493 (i) "university";

1494 (ii) "college"; or

1495 (iii) "institute."

1496 (2) The division may authorize the use of the name applied for if:

1497 (a) the name is distinguishable from one or more of the names and trademarks described
1498 in Subsection (1)(c) that are on the division's records; or

1499 (b) if the applicant delivers to the division a certified copy of the final judgment of a court
1500 of competent jurisdiction establishing the applicant's right to use the name applied for in this state
1501 registered or reserved with the division pursuant to the laws of this state.

1502 (3) A corporation may use the name of another domestic or foreign corporation that is used
1503 in this state if:

1504 (a) the other corporation is incorporated or authorized to conduct affairs in this state; and

1505 (b) the proposed user corporation:

1506 (i) has merged with the other corporation;

1507 (ii) has been formed by reorganization of the other corporation; or

1508 (iii) has acquired all or substantially all of the assets, including the corporate name, of the
1509 other corporation.

1510 (4) (a) A nonprofit corporation may apply to the division for authorization to file its
1511 articles of incorporation under, or to register or reserve, a name that is not distinguishable upon
1512 the division's records from one or more of the names described in Subsection (1).

1513 (b) The division shall approve the application filed under Subsection (4)(a) if:

1514 (i) the other person whose name is not distinguishable from the name under which the
1515 applicant desires to file, or which the applicant desires to register or reserve:

1516 (A) consents to the filing, registration, or reservation in writing; and

1517 (B) submits an undertaking in a form satisfactory to the division to change its name to a
1518 name that is distinguishable from the name of the applicant; or

1519 (ii) the applicant delivers to the division a certified copy of the final judgment of a court
1520 of competent jurisdiction establishing the applicant's right to make the requested filing in this state
1521 under the name applied for.

1522 (5) Only names of corporations may contain the:

1523 (a) words "corporation," or "incorporated"; or

1524 (b) abbreviation "corp." or "inc."

1525 (6) The division may not issue a certificate of incorporation to any association violating
1526 the provisions of this section.

1527 Section 39. Section **16-6a-402** is enacted to read:

1528 **16-6a-402. Reserved name.**

1529 (1) (a) Any person may apply for the reservation of the exclusive use of a corporate name
1530 by delivering an application for reservation of name to the division for filing, setting forth:

1531 (i) the name and address of the applicant; and

1532 (ii) the name proposed to be reserved.

1533 (b) (i) If the division finds that the name applied for would be available for corporate use,
1534 the division shall reserve the name for the applicant's exclusive use for 120 days from the day the
1535 division receives the application under Subsection (1)(a).

1536 (ii) A reservation may be renewed.

1537 (2) The owner of a reserved corporate name may transfer the reservation to any other
1538 person by delivery to the division for filing of a notice of the transfer that has been executed by the
1539 owner and states:

1540 (a) the reserved name;

1541 (b) the name of the owner; and

1542 (c) the name and address of the transferee.

1543 (3) (a) The corporate name set forth in a document described in Subsection (3)(b) is
1544 reserved until the document:

- 1545 (i) becomes effective pursuant to Subsection 16-6a-108(2); or
1546 (ii) is withdrawn under Subsection 16-6a-108(3).
1547 (b) Subsection (3)(a) applies to a document that:
1548 (i) is one of the following:
1549 (A) articles of incorporation;
1550 (B) articles of amendment to articles of incorporation;
1551 (C) restated articles of incorporation; or
1552 (D) articles of merger;
1553 (ii) specifies a delayed effective date pursuant to Subsection 16-6a-108(2);
1554 (iii) sets forth a new corporate name; and
1555 (iv) is filed by the division.

1556 Section 40. Section **16-6a-403** is enacted to read:

1557 **16-6a-403. Corporate name -- Limited rights.**

1558 The authorization granted by the division to file articles of incorporation under a corporate
1559 name or to reserve a name does not:

- 1560 (1) abrogate or limit the law governing unfair competition or unfair trade practices;
1561 (2) derogate from the common law the principles of equity or the statutes of this state or
1562 of the United States with respect to the right to acquire and protect names and trademarks; or
1563 (3) create an exclusive right in geographic or generic terms contained within a name.

1564 Section 41. Section **16-6a-501** is enacted to read:

1565 **Part 5. Office and Agent**

1566 **16-6a-501. Registered office and registered agent.**

1567 (1) A nonprofit corporation shall continuously maintain in this state:

1568 (a) a registered office; and

1569 (b) a registered agent.

1570 (2) The registered agent required under Subsection (1) shall be:

1571 (a) an individual:

1572 (i) who resides in this state; and

1573 (ii) whose business office is identical with the registered office;

1574 (b) a domestic corporation or domestic nonprofit corporation whose business office is

1575 identical with the registered office;

1576 (c) a foreign corporation or foreign nonprofit corporation:

1577 (i) authorized to conduct affairs in this state; and

1578 (ii) whose business office is identical with the registered office; or

1579 (iii) a domestic limited liability company or foreign limited liability company:

1580 (A) authorized to conduct affairs in this state; and

1581 (B) whose business office is identical with the registered office.

1582 (3) A corporation may not serve as its own registered agent.

1583 Section 42. Section **16-6a-502** is enacted to read:

1584 **16-6a-502. Change of registered office or registered agent.**

1585 (1) (a) A nonprofit corporation may change its registered office or registered agent by

1586 delivering to the division for filing a statement of change that sets forth:

1587 (i) the name of the nonprofit corporation;

1588 (ii) the street address of its current registered office;

1589 (iii) if the registered office is to be changed, the street address of the new registered office;

1590 (iv) the name of its current registered agent;

1591 (v) if the registered agent is to be changed:

1592 (A) the name of the new registered agent; and

1593 (B) the new registered agent's signed written consent to the appointment; and

1594 (vi) that, after the change or changes are made, the street addresses of its registered office

1595 and the business office of its registered agent will be identical.

1596 (b) Notwithstanding Subsection (1)(a)(v), the new registered agent's signed written consent

1597 to the appointment may be:

1598 (i) on the statement of change; or

1599 (ii) in a document accompanying the statement of change.

1600 (2) If the street address of a registered agent's business office is changed, the street address

1601 of the registered office of any nonprofit corporation for which the person is the registered agent

1602 may be changed by:

1603 (a) giving written notice to the nonprofit corporation of the change; and

1604 (b) delivering to the division for filing a statement of change that:

1605 (i) complies with the requirements of Subsection (1);

1606 (ii) recites that the nonprofit corporation has been notified of the change, as provided in

1607 Section 16-6a-103; and

1608 (iii) is signed by the registered agent.

1609 Section 43. Section **16-6a-503** is enacted to read:

1610 **16-6a-503. Resignation of registered agent.**

1611 (1) (a) A registered agent of a nonprofit corporation may resign the agency appointment
1612 by delivering to the division for filing a statement of resignation pursuant to this section.

1613 (b) The statement of resignation required by Subsection (1)(a) shall be:

1614 (i) signed by the resigning registered agent; and

1615 (ii) accompanied by two exact or conformed copies of the statement of resignation.

1616 (c) The statement of resignation may include a statement that the registered office is also
1617 discontinued.

1618 (d) The statement of resignation shall include a declaration that notice of the resignation
1619 has been given to the nonprofit corporation at the principal office shown on the most recent annual
1620 report of the nonprofit corporation on file with the division.

1621 (2) After filing the statement of resignation required by Subsection (1), the division shall
1622 mail:

1623 (a) one copy of the statement of resignation to the registered office of the corporation; and

1624 (b) one copy of the statement of resignation to the nonprofit corporation at the principal
1625 office if known by the division.

1626 (3) Thirty-one days after the date on which the statement of resignation is filed:

1627 (a) the agency appointment is terminated; and

1628 (b) the registered office is discontinued, if so provided.

1629 Section 44. Section **16-6a-504** is enacted to read:

1630 **16-6a-504. Service on corporation.**

1631 (1) A nonprofit corporation's registered agent is the nonprofit corporation's agent for
1632 service of process, notice, or demand required or permitted by law to be served on the nonprofit
1633 corporation.

1634 (2) (a) If a nonprofit corporation has no registered agent, or the agent cannot with
1635 reasonable diligence be served, the nonprofit corporation may be served by registered or certified
1636 mail, return receipt requested, addressed to the nonprofit corporation at its principal office, if
1637 known by the division.

- 1638 (b) Service is perfected under this Subsection (2) at the earliest of:
1639 (a) the date the nonprofit corporation receives the process, notice, or demand;
1640 (b) the date shown on the return receipt, if signed on behalf of the nonprofit corporation;
1641 or
1642 (c) five days after mailing.
1643 (3) This section does not prescribe the only means, or necessarily the required means, of
1644 servicing a nonprofit corporation.

1645 Section 45. Section **16-6a-601** is enacted to read:

1646 **Part 6. Members**

1647 **16-6a-601. No requirement of members.**

1648 A nonprofit corporation is not required to have members.

1649 Section 46. Section **16-6a-602** is enacted to read:

1650 **16-6a-602. Number and classes.**

1651 (1) A nonprofit corporation may have:

1652 (a) one or more classes of voting or nonvoting members; and

1653 (b) one or more members in each class described in Subsection (1)(a).

1654 (2) The bylaws may designate:

1655 (a) the class or classes of members; and

1656 (b) the qualifications and rights of the members of each class of members including the
1657 matters or items for which voting members may vote.

1658 Section 47. Section **16-6a-603** is enacted to read:

1659 **16-6a-603. Admission.**

1660 (1) The bylaws may establish criteria or procedures for admission of members.

1661 (2) A person may not be admitted as a member without the person's consent.

1662 (3) A nonprofit corporation may issue certificates evidencing membership in the nonprofit
1663 corporation.

1664 Section 48. Section **16-6a-604** is enacted to read:

1665 **16-6a-604. Consideration.**

1666 Unless otherwise provided by the bylaws, a nonprofit corporation may admit members:

1667 (1) for no consideration; or

1668 (2) for such consideration as is determined by the board of directors.

1669 Section 49. Section **16-6a-605** is enacted to read:

1670 **16-6a-605. Differences in rights and obligations of members.**

1671 Unless otherwise provided by this chapter or the bylaws:

1672 (1) all voting members shall have the same rights and obligations with respect to voting

1673 and all other matters that this chapter specifically reserves to voting members; and

1674 (2) with respect to matters not reserved under Subsection (1), all members, including

1675 voting members, shall have the same rights and obligations.

1676 Section 50. Section **16-6a-606** is enacted to read:

1677 **16-6a-606. Transfers.**

1678 (1) Unless otherwise provided by the bylaws, a member of a nonprofit corporation may

1679 not transfer:

1680 (a) a membership; or

1681 (b) any right arising from a membership.

1682 (2) Where transfer rights have been provided, a restriction on transfer rights may not be

1683 binding with respect to a member holding a membership issued prior to the adoption of the

1684 restriction, unless the restriction is approved by the affected member.

1685 Section 51. Section **16-6a-607** is enacted to read:

1686 **16-6a-607. Creditor's action against member.**

1687 A proceeding may not be brought by a creditor to reach the liability, if any, of a member

1688 to the nonprofit corporation unless:

1689 (1) (a) final judgment has been rendered in favor of the creditor against the nonprofit

1690 corporation; and

1691 (b) execution has been returned unsatisfied in whole or in part; or

1692 (2) a proceeding described in Subsection (1) would be useless.

1693 Section 52. Section **16-6a-608** is enacted to read:

1694 **16-6a-608. Resignation.**

1695 (1) Unless otherwise provided by the bylaws, a member may resign at any time.

1696 (2) The resignation of a member does not relieve the member from any obligation or

1697 commitment the member may have to the nonprofit corporation incurred or made prior to

1698 resignation.

1699 Section 53. Section **16-6a-609** is enacted to read:

1700 **16-6a-609. Termination, expulsion, or suspension.**

1701 (1) Unless otherwise provided by the bylaws, except pursuant to a procedure that is fair
1702 and reasonable:

1703 (a) a member of a nonprofit corporation may not be expelled or suspended; and

1704 (b) membership in a nonprofit corporation may not be terminated or suspended.

1705 (2) For purposes of this section, a procedure is fair and reasonable when either:

1706 (a) the bylaws or a written policy of the board of directors set forth a procedure that
1707 provides:

1708 (i) not less than 15 days prior written notice of:

1709 (A) the expulsion, suspension, or termination; and

1710 (B) the reasons for the expulsion, suspension, or termination; and

1711 (ii) an opportunity for the member to be heard:

1712 (A) orally or in writing;

1713 (B) not less than five days before the effective date of the expulsion, suspension, or
1714 termination; and

1715 (C) by one or more persons authorized to decide that the proposed expulsion, termination,
1716 or suspension not take place; or

1717 (b) it is fair and reasonable taking into consideration all of the relevant facts and
1718 circumstances.

1719 (3) For purposes of this section, any written notice given by mail shall be given by
1720 first-class or certified mail sent to the last address of the member shown on the nonprofit
1721 corporation's records.

1722 (4) Unless otherwise provided by the bylaws, any proceeding challenging an expulsion,
1723 suspension, or termination, including a proceeding in which defective notice is alleged, shall be
1724 commenced within one year after the effective date of the expulsion, suspension, or termination.

1725 (5) Unless otherwise provided by the bylaws, a member who has been expelled or
1726 suspended may be liable to the nonprofit corporation for dues, assessments, or fees as a result of
1727 an obligation incurred or commitment made prior to the effective date of the expulsion or
1728 suspension.

1729 Section 54. Section **16-6a-610** is enacted to read:

1730 **16-6a-610. Purchase of memberships.**

1731 (1) Unless otherwise provided by the bylaws, a nonprofit corporation may not purchase
1732 the membership of a member:

1733 (a) who resigns; or

1734 (b) whose membership is terminated.

1735 (2) (a) If so authorized, a nonprofit corporation may purchase the membership of a member
1736 who resigns or whose membership is terminated for the amount and pursuant to the conditions set
1737 forth in or authorized by:

1738 (i) its bylaws; or

1739 (ii) agreement with the affected member.

1740 (b) A payment permitted under Subsection (2)(a) may not violate:

1741 (i) Section 16-6a-1301; or

1742 (ii) any other provision of this chapter.

1743 Section 55. Section **16-6a-611** is enacted to read:

1744 **16-6a-611. No property right.**

1745 A member does not have a vested property right resulting from any provision in the articles
1746 of incorporation or the bylaws, including any provision relating to management, control, purpose,
1747 or duration of the nonprofit corporation.

1748 Section 56. Section **16-6a-612** is enacted to read:

1749 **16-6a-612. Derivative suits.**

1750 (1) Without affecting the right of a member or director to bring a proceeding against a
1751 nonprofit corporation or its directors or officers, a proceeding may be brought in the right of a
1752 nonprofit corporation to procure a judgment in its favor by:

1753 (a) a voting member; or

1754 (b) a director.

1755 (2) In a proceeding described in Subsection (1), each complainant shall be a voting
1756 member or director at the time of bringing the proceeding.

1757 (3) (a) A complaint in a proceeding brought in the right of a nonprofit corporation shall
1758 be verified and allege with particularity:

1759 (i) the demand made, if any, to obtain action by the directors; and

1760 (ii) (A) why the complainant could not obtain the action; or

1761 (B) why the complainant did not make the demand.

1762 (b) If a demand for action was made and the nonprofit corporation's investigation of the
1763 demand is in progress when the proceeding is filed, the court may stay the suit until the
1764 investigation is completed.

1765 (4) (a) (i) In any action instituted in the right of a nonprofit corporation by one or more
1766 voting members, the court having jurisdiction over the matter may, at any time before final
1767 judgment, require the plaintiff to give security for the costs and reasonable expenses that may be:

1768 (A) directly attributable to and incurred by the nonprofit corporation in the defense of the
1769 action; or

1770 (B) incurred by other parties named as defendant for which the nonprofit corporation may
1771 become legally liable.

1772 (ii) Notwithstanding Subsection (4)(a)(i), the security for the costs and reasonable
1773 expenses may not include fees of attorneys.

1774 (b) The amount of the security permitted under this Subsection (4) may from time to time
1775 be increased or decreased, in the discretion of the court, upon showing that the security provided
1776 has or may become inadequate or excessive.

1777 (c) If the court finds that the action was commenced without reasonable cause, the
1778 nonprofit corporation shall have recourse to the security permitted under this Subsection (4) in the
1779 amount the court shall determine upon the termination of the action.

1780 (5) A procedure pursuant to this section shall comply with the applicable rules set forth
1781 in the Utah Rules of Civil Procedure, as amended from time to time.

1782 (6) An action may not be commenced in this state by a member of a foreign nonprofit
1783 corporation in the right of a foreign nonprofit corporation unless the action is permitted by the laws
1784 of the state under which the foreign nonprofit corporation is incorporated.

1785 Section 57. Section **16-6a-613** is enacted to read:

1786 **16-6a-613. Delegates.**

1787 (1) A nonprofit corporation may provide in its bylaws for delegates having some or all of
1788 the authority of members.

1789 (2) The bylaws may set forth provisions relating to:

1790 (a) the characteristics, qualifications, rights, limitations, and obligations of delegates,
1791 including their selection and removal;

1792 (b) calling, noticing, holding, and conducting meetings of delegates; and

1793 (c) carrying on corporate activities during and between meetings of delegates.

1794 Section 58. Section **16-6a-701** is enacted to read:

1795 **Part 7. Member Meetings and Voting**

1796 **16-6a-701. Annual and regular meetings.**

1797 (1) Unless the bylaws eliminate the requirement for holding an annual meeting, a nonprofit
1798 corporation that has voting members shall hold a meeting of the voting members annually:

1799 (a) at a time and date stated in or fixed in accordance with the bylaws; or

1800 (b) if a time and date is not stated in or fixed in accordance with the bylaws, at a time and
1801 date stated in or fixed in accordance with a resolution of the board of directors.

1802 (2) A nonprofit corporation with members may hold regular membership meetings at:

1803 (a) a time and date stated in or fixed in accordance with the bylaws; or

1804 (b) if a time and date is not stated in or fixed in accordance with the bylaws, at a time and
1805 date stated in or fixed in accordance with a resolution of the board of directors.

1806 (3) (a) Annual and regular membership meetings may be held in or out of this state:

1807 (i) at the place stated in or fixed in accordance with the bylaws; or

1808 (ii) if no place is stated in or fixed in accordance with the bylaws, at a place stated in or
1809 fixed in accordance with a resolution of the board of directors.

1810 (b) If no place is stated or fixed in accordance with Subsection (3)(a), annual and regular
1811 meetings shall be held at the nonprofit corporation's principal office.

1812 (4) The failure to hold an annual or regular meeting at the time and date determined
1813 pursuant to Subsection (1) does not:

1814 (a) affect the validity of any corporate action; or

1815 (b) work a forfeiture or dissolution of the nonprofit corporation.

1816 Section 59. Section **16-6a-702** is enacted to read:

1817 **16-6a-702. Special meetings.**

1818 (1) A nonprofit corporation shall hold a special meeting of its members:

1819 (a) on call of:

1820 (i) its board of directors; or

1821 (ii) the person or persons authorized by the bylaws or resolution of the board of directors
1822 to call a special meeting; or

1823 (b) unless otherwise provided by the bylaws, if the nonprofit corporation receives one or

1824 more written demands for the meeting, that:

1825 (i) state the purpose or purposes for which the meeting is to be held; and

1826 (ii) are signed and dated by members holding at least 10% of all the votes entitled pursuant
1827 to the bylaws to be cast on any issue proposed to be considered at the meeting.

1828 (2) If not otherwise fixed under Section 16-6a-703 or 16-6a-706, the record date for
1829 determining the members entitled to demand a special meeting pursuant to Subsection (1)(b) is the
1830 later of the date of:

1831 (a) the earliest of any of the demands pursuant to which the meeting is called; or

1832 (b) the date that is 60 days before the date the first of the demands is received by the
1833 nonprofit corporation.

1834 (3) If a notice for a special meeting demanded pursuant to Subsection (1)(b) is not given
1835 pursuant to Section 16-6a-704 within 30 days after the date the written demand is delivered to a
1836 corporate officer, regardless of the requirements of Subsection (4), a person signing the demand
1837 may:

1838 (a) set the time and place of the meeting; and

1839 (b) give notice pursuant to Section 16-6a-704.

1840 (4) (a) A special meeting of the members may be held in or out of this state:

1841 (i) at the place stated in or fixed in accordance with the bylaws; or

1842 (ii) if a place is not stated in or fixed in accordance with the bylaws, at a place stated in
1843 or fixed in accordance with a resolution of the board of directors.

1844 (b) If no place is stated or fixed in accordance with Subsection (3)(a) or (4)(a), a special
1845 meeting of the members shall be held at the nonprofit corporation's principal office.

1846 (5) Unless otherwise provided by the bylaws, only business within the purposes described
1847 in the notice of the meeting required by Subsection 16-6a-704(3) may be conducted at a special
1848 meeting of the members.

1849 Section 60. Section **16-6a-703** is enacted to read:

1850 **16-6a-703. Court-ordered meeting.**

1851 (1) (a) Upon an application described in Subsection (1)(b) the holding of a meeting of the
1852 members may be summarily ordered by:

1853 (i) the district court of the county in this state where the nonprofit corporation's principal
1854 office is located; or

- 1855 (ii) if the nonprofit corporation has no principal office in this state:
1856 (A) by the district court of the county in which its registered office is located; or
1857 (B) if the nonprofit corporation has no registered office, by the district court in and for Salt
1858 Lake County.
- 1859 (b) Subsection (1)(a) applies to an application by:
1860 (i) any voting member entitled to participate in an annual meeting if an annual meeting
1861 was required to be held and was not held within 15 months after:
1862 (A) the corporation's last annual meeting; or
1863 (B) if there has been no annual meeting, the date of incorporation; or
1864 (ii) any person who participated in a call of or demand for a special meeting effective
1865 under Subsection 16-6a-702(1), if:
1866 (A) notice of the special meeting was not given within 30 days after:
1867 (I) the date of the call; or
1868 (II) the date the last of the demands necessary to require the calling of the meeting was
1869 received by the nonprofit corporation pursuant to Subsection 16-6a-702(1)(b); or
1870 (B) the special meeting was not held in accordance with the notice.
- 1871 (2) A court that orders a meeting under Subsection (1) may:
1872 (a) fix the time and place of the meeting;
1873 (b) determine the members entitled to participate in the meeting;
1874 (c) specify a record date for determining members entitled to notice of and to vote at the
1875 meeting;
1876 (d) prescribe the form and content of the notice of the meeting;
1877 (e) (i) fix the quorum required for specific matters to be considered at the meeting; or
1878 (ii) direct that the votes represented at the meeting constitute a quorum for action on the
1879 specific matters to be considered at the meeting; and
1880 (f) enter other orders necessary or appropriate to accomplish the holding of the meeting.
- 1881 Section 61. Section **16-6a-704** is enacted to read:
1882 **16-6a-704. Notice of meeting.**
1883 (1) A nonprofit corporation shall give to each member entitled to vote at the meeting
1884 notice consistent with its bylaws of meetings of members in a fair and reasonable manner.
1885 (2) Any notice that conforms to the requirements of Subsection (3) is fair and reasonable.

1886 but other means of giving notice may also be fair and reasonable when all the circumstances are
1887 considered.

1888 (3) Notice is fair and reasonable if:

1889 (a) the nonprofit corporation notifies its members of the place, date, and time of each
1890 annual, regular, and special meeting of members:

1891 (i) no fewer than ten days before the meeting;

1892 (ii) if notice is mailed by other than first-class or registered mail, no fewer than 30 days,
1893 nor more than 60 days before the meeting date; and

1894 (iii) if notice is given by newspaper as provided in Subsection 16-6a-103(2), by publication
1895 three separate times with:

1896 (A) the first of the publications no more than 60 days before the meeting date; and

1897 (B) the last of the publications no fewer than ten days before the meeting date;

1898 (b) the notice of an annual or regular meeting includes a description of any matter or
1899 matters that:

1900 (i) must be approved by the members; or

1901 (ii) for which the members' approval is sought under Sections 16-6a-825, 16-6a-910,
1902 16-6a-1003, 16-6a-1010, 16-6a-1102, 16-6a-1202, and 16-6a-1402; and

1903 (c) unless otherwise provided by this chapter or the bylaws, the notice of a special meeting
1904 includes a description of the purpose or purposes for which the meeting is called.

1905 (4) (a) Unless otherwise provided by the bylaws, if an annual, regular, or special meeting
1906 of members is adjourned to a different date, time, or place, notice need not be given of the new
1907 date, time, or place, if the new date, time, or place is announced at the meeting before adjournment.

1908 (b) Notwithstanding Subsection (4)(a), if a new record date for the adjourned meeting is
1909 or shall be fixed under Section 16-6a-706, notice of the adjourned meeting shall be given under
1910 this section to the members of record as of the new record date.

1911 (5) When giving notice of an annual, regular, or special meeting of members, a nonprofit
1912 corporation shall give notice of a matter a member intends to raise at the meeting if:

1913 (a) requested in writing to do so by a person entitled to call a special meeting; and

1914 (b) the request is received by the secretary or president of the nonprofit corporation at least
1915 ten days before the nonprofit corporation gives notice of the meeting.

1916 Section 62. Section **16-6a-705** is enacted to read:

1917 **16-6a-705. Waiver of notice.**

1918 (1) (a) A member may waive any notice required by this chapter or by the bylaws, whether
1919 before or after the date or time stated in the notice as the date or time when any action will occur
1920 or has occurred.

1921 (b) A waiver described in Subsection (1) shall be:

1922 (i) in writing;

1923 (ii) signed by the member entitled to the notice; and

1924 (iii) delivered to the nonprofit corporation for:

1925 (A) inclusion in the minutes; or

1926 (B) filing with the corporate records.

1927 (c) The delivery and filing required under Subsection (1)(b) may not be conditions of the
1928 effectiveness of the waiver.

1929 (2) A member's attendance at a meeting:

1930 (a) waives objection to lack of notice or defective notice of the meeting, unless the
1931 member at the beginning of the meeting objects to holding the meeting or transacting business at
1932 the meeting because of lack of notice or defective notice; and

1933 (b) waives objection to consideration of a particular matter at the meeting that is not within
1934 the purpose or purposes described in the meeting notice, unless the member objects to considering
1935 the matter when it is presented.

1936 Section 63. Section **16-6a-706** is enacted to read:

1937 **16-6a-706. Record date -- Determining members entitled to notice and vote.**

1938 (1) (a) The bylaws may fix or provide the manner of fixing a date as the record date for
1939 determining the members entitled to notice of a members' meeting.

1940 (b) If the bylaws do not fix or provide for fixing a record date described in Subsection
1941 (1)(a), the board of directors may fix a future date as the record date.

1942 (c) If a record date is not fixed in accordance with Subsection (1)(a) or (b), members
1943 entitled to notice of the meeting are the members of the nonprofit corporation:

1944 (i) at the close of business on the business day preceding the day on which notice is given;
1945 or

1946 (ii) if notice is waived, at the close of business on the business day preceding the day on
1947 which the meeting is held.

1948 (2) (a) The bylaws may fix or provide the manner of fixing a date as the record date for
1949 determining the members entitled to vote at a members' meeting.

1950 (b) If the bylaws do not fix or provide for fixing a record date described in Subsection
1951 (2)(a), the board may fix a future date as the record date.

1952 (c) If a record date is not fixed in accordance with Subsection (2)(a) or (b), members
1953 entitled to vote at the meeting are the members of the nonprofit corporation:

1954 (i) on the date of the meeting; and

1955 (ii) who are otherwise eligible to vote.

1956 (3) (a) The bylaws may fix or provide the manner for determining a date as the record date
1957 for the purpose of determining the members entitled to exercise any rights in respect of any other
1958 lawful action.

1959 (b) If the bylaws do not fix or provide for fixing a record date described in Subsection
1960 (3)(a), the board of directors may fix a future date as the record date.

1961 (c) If a record date is not fixed in accordance with Subsection (3)(a) or (b), members
1962 entitled to exercise the right are members of the corporation at the later of:

1963 (i) the close of business on the day on which the board adopts the resolution relating to the
1964 exercise of the right; or

1965 (ii) the close of business on the 60th day before the date of the exercise of the right.

1966 (4) A record date fixed under this section may not be more than 70 days before the meeting
1967 or action requiring a determination of members occurs.

1968 (5) (a) A determination of members entitled to notice of or to vote at a meeting of
1969 members is effective for any adjournment of the meeting unless the board of directors fixes a new
1970 date for determining the right to notice or the right to vote.

1971 (b) The board of directors shall fix a new date for determining the right to notice or the
1972 right to vote if the meeting is adjourned to a date more than 120 days after the record date for
1973 determining members entitled to notice of the original meeting.

1974 (6) If a court orders a meeting adjourned to a date more than 120 days after the date fixed
1975 for the original meeting, the court may:

1976 (a) provide that the original record date for notice or voting continues in effect; or

1977 (b) fix a new record date for notice or voting.

1978 Section 64. Section **16-6a-707** is enacted to read:

1979 **16-6a-707. Action without meeting.**

1980 (1) Unless otherwise provided in the articles of incorporation and Subsection (5), and
1981 subject to the limitations of Subsection 16-6a-1704(3), any action that may be taken at any annual
1982 or special meeting of members may be taken without a meeting and without prior notice, if one
1983 or more consents in writing, setting forth the action taken, are signed by the members having not
1984 less than the minimum voting power that would be necessary to authorize or take the action at a
1985 meeting at which all members entitled to vote on the action were present and voted.

1986 (2) (a) Unless the written consents of all members entitled to vote have been obtained,
1987 notice of any member approval without a meeting shall be given at least ten days before the
1988 consummation of the transaction, action, or event authorized by the member action to:

1989 (i) those members entitled to vote who have not consented in writing; and

1990 (ii) those members:

1991 (A) not entitled to vote; and

1992 (B) to whom this chapter requires that notice of the proposed action be given.

1993 (b) The notice required pursuant to Subsection (2)(a) shall contain or be accompanied by
1994 the same material that under this chapter would have been required to be sent in a notice of
1995 meeting at which the proposed action would have been submitted to the members for action.

1996 (3) Any member giving a written consent, or the member's proxyholder or a personal
1997 representative of the member or their respective proxyholder, may revoke the consent by a signed
1998 writing:

1999 (a) describing the action;

2000 (b) stating that the member's prior consent is revoked; and

2001 (c) that is received by the nonprofit corporation prior to the effectiveness of the action.

2002 (4) (a) A member action taken pursuant to this section is not effective unless all written
2003 consents on which the nonprofit corporation relies for the taking of an action pursuant to
2004 Subsection (1) are:

2005 (i) received by the nonprofit corporation within a 60-day period; and

2006 (ii) not revoked pursuant to Subsection (3).

2007 (b) Action taken by the members pursuant to this section is effective:

2008 (i) as of the date the last written consent necessary to effect the action is received by the
2009 nonprofit corporation; or

2010 (ii) if all of the written consents necessary to effect the action specify a later date as the
2011 effective date of the action, the later date specified in the consents.

2012 (c) If the nonprofit corporation has received written consents in accordance with
2013 Subsection (1) signed by all members entitled to vote with respect to the action, the effective date
2014 of the member action may be any date that is specified in all the written consents as the effective
2015 date of the member action.

2016 (d) Unless otherwise provided by the bylaws, a written consent under this Subsection (4)
2017 may be received by the nonprofit corporation by electronically transmitted facsimile or other form
2018 of communication providing the corporation with a complete copy of the written consent,
2019 including a copy of the signature to the written consent.

2020 (5) Notwithstanding Subsection (1), directors may not be elected by written consent except
2021 by unanimous written consent of all shares entitled to vote for the election of directors.

2022 (6) If not otherwise determined under Section 16-6a-703 or 16-6a-706, the record date for
2023 determining the members entitled to take action without a meeting or entitled to be given notice
2024 under Subsection (2) of action taken without a meeting is the date the first member delivers to the
2025 nonprofit corporation a writing upon which the action is taken pursuant to Subsection (1).

2026 (7) Action taken under this section has the same effect as action taken at a meeting of
2027 members and may be so described in any document.

2028 Section 65. Section **16-6a-708** is enacted to read:

2029 **16-6a-708. Meetings by telecommunication.**

2030 (1) Unless otherwise provided in the bylaws, any or all of the members may participate in
2031 an annual, regular, or special meeting of the members by, or the meeting may be conducted
2032 through the use of, any means of communication by which all persons participating in the meeting
2033 may hear each other during the meeting.

2034 (2) A member participating in a meeting by a means permitted under Subsection (1) is
2035 considered to be present in person at the meeting.

2036 Section 66. Section **16-6a-709** is enacted to read:

2037 **16-6a-709. Action by written ballot.**

2038 (1) Unless otherwise provided by the bylaws, any action that may be taken at any annual,
2039 regular, or special meeting of members may be taken without a meeting if the nonprofit
2040 corporation delivers a written ballot to every member entitled to vote on the matter.

- 2041 (2) A written ballot described in Subsection (1) shall:
2042 (a) set forth each proposed action; and
2043 (b) provide an opportunity to vote for or against each proposed action.
2044 (3) Approval by written ballot pursuant to this section shall be valid only when:
2045 (a) the number of votes cast by ballot equals or exceeds the quorum required to be present
2046 at a meeting authorizing the action; and
2047 (b) the number of approvals equals or exceeds the number of votes that would be required
2048 to approve the matter at a meeting at which the total number of votes cast was the same as the
2049 number of votes cast by ballot.
2050 (4) All solicitations for votes by written ballot shall:
2051 (a) indicate the number of responses needed to meet the quorum requirements;
2052 (b) state the percentage of approvals necessary to approve each matter other than election
2053 of directors;
2054 (c) specify the time by which a ballot must be received by the nonprofit corporation in
2055 order to be counted; and
2056 (d) be accompanied by written information sufficient to permit each person casting the
2057 ballot to reach an informed decision on the matter.
2058 (5) Unless otherwise provided by the bylaws, a written ballot may not be revoked.
2059 (6) Action taken under this section has the same effect as action taken at a meeting of
2060 members and may be described as such in any document.
- 2061 Section 67. Section **16-6a-710** is enacted to read:
2062 **16-6a-710. Members' list for meeting and action by written ballot.**
2063 (1) (a) Unless otherwise provided by the bylaws, after fixing a record date for a notice of
2064 a meeting or for determining the members entitled to take action by written ballot, a nonprofit
2065 corporation shall prepare a list of the names of all its members who are:
2066 (i) (A) entitled to notice of the meeting; and
2067 (B) to vote at the meeting; or
2068 (ii) to take the action by written ballot.
2069 (b) The list required by Subsection (1) shall:
2070 (i) be arranged by voting group;
2071 (ii) be alphabetical within each voting group;

2072 (iii) show the address of each member entitled to notice of, and to vote at, the meeting or
2073 to take such action by written ballot; and

2074 (iv) show the number of votes each member is entitled to vote at the meeting or by written
2075 ballot.

2076 (2) (a) If prepared in connection with a meeting of the members, the members' list required
2077 by Subsection (1) shall be available for inspection by any member entitled to vote at the meeting:

2078 (i) (A) beginning the earlier of:

2079 (I) ten days before the meeting for which the list was prepared; or

2080 (II) two business days after notice of the meeting is given; and

2081 (B) continuing through the meeting, and any adjournment of the meeting; and

2082 (ii) (A) at the nonprofit corporation's principal office; or

2083 (B) at a place identified in the notice of the meeting in the city where the meeting will be
2084 held.

2085 (b) (i) The nonprofit corporation shall make the members' list required by Subsection (1)
2086 available at the meeting.

2087 (ii) Any member entitled to vote at the meeting or an agent or attorney of a member
2088 entitled to vote at the meeting is entitled to inspect the members' list at any time during the meeting
2089 or any adjournment.

2090 (c) A member entitled to vote at the meeting, or an agent or attorney of a member entitled
2091 to vote at the meeting, is entitled on written demand to inspect and, subject to Subsection
2092 16-6a-1602(3) and Subsections 16-6a-1603(2) and (3), to copy a members' list required by
2093 Subsection (1):

2094 (i) during:

2095 (A) regular business hours; and

2096 (B) the period it is available for inspection; and

2097 (ii) at the member's expense.

2098 (3) (a) On application of a member a nonprofit corporation, the applicable district court
2099 may take an action described in Subsection (3)(b) if the nonprofit corporation refuses to allow a
2100 member entitled to vote at the meeting or by the written ballot, or an agent or attorney of a member
2101 entitled to vote at the meeting or by the written ballot, to inspect or copy the members' list during
2102 the period it is required to be available for inspection under Subsection (2).

- 2103 (b) Under Subsection (3)(a), the applicable court may:
- 2104 (i) summarily order the inspection or copying of the members' list at the nonprofit
- 2105 corporation's expense; and
- 2106 (ii) until the inspection or copying is complete:
- 2107 (A) postpone or adjourn the meeting for which the members' list was prepared; or
- 2108 (B) postpone the time when the nonprofit corporation must receive written ballots in
- 2109 connection with which the members' list was prepared.
- 2110 (c) For purposes of this Subsection (3), the applicable court is:
- 2111 (i) the district court of the county in this state where the nonprofit corporation's principal
- 2112 office is located; or
- 2113 (ii) if the nonprofit corporation has no principal office in this state:
- 2114 (A) the district court of the county where its registered office is located; or
- 2115 (B) if the nonprofit corporation has no registered office in this state, the district court in
- 2116 and for Salt Lake County.
- 2117 (4) If a court orders inspection or copying of a members' list pursuant to Subsection (3),
- 2118 unless the nonprofit corporation proves that it refused inspection or copying of the list in good faith
- 2119 because it had a reasonable basis for doubt about the right of the member or the agent or attorney
- 2120 of the member to inspect or copy the members' list:
- 2121 (a) the court shall order the nonprofit corporation to pay the member's costs, including
- 2122 reasonable counsel fees, incurred in obtaining the order;
- 2123 (b) the court may order the nonprofit corporation to pay the member for any damages the
- 2124 member incurred; and
- 2125 (c) the court may grant the member any other remedy afforded the member by law.
- 2126 (5) If a court orders inspection or copying of a members' list pursuant to Subsection (3),
- 2127 the court may impose reasonable restrictions on the use or distribution of the list by the member.
- 2128 (6) Failure to prepare or make available the members' list does not affect the validity of
- 2129 action taken at the meeting or by means of the written ballot.
- 2130 Section 68. Section **16-6a-711** is enacted to read:
- 2131 **16-6a-711. Voting entitlement generally.**
- 2132 (1) Unless otherwise provided by the bylaws:
- 2133 (a) only voting members shall be entitled to vote with respect to any matter required or

2134 permitted under this chapter to be submitted to a vote of the members;

2135 (b) all references in this chapter to votes of or voting by the members shall be considered
2136 to permit voting only by the voting members; and

2137 (c) voting members shall be entitled to vote with respect to all matters required or
2138 permitted under this chapter to be submitted to a vote of the members.

2139 (2) Unless otherwise provided by the bylaws, each member entitled to vote shall be
2140 entitled to one vote on each matter submitted to a vote of members.

2141 (3) Unless otherwise provided by the bylaws, if a membership stands of record in the
2142 names of two or more persons, the membership's acts with respect to voting shall have the
2143 following effect:

2144 (a) if only one votes, the act binds all; and

2145 (b) if more than one votes, the vote shall be divided on a pro-rata basis.

2146 Section 69. Section **16-6a-712** is enacted to read:

2147 **16-6a-712. Proxies.**

2148 (1) Unless otherwise provided by the bylaws, a member entitled to vote may vote or
2149 otherwise act in person or by proxy.

2150 (2) Without limiting the manner in which a member may appoint a proxy to vote or
2151 otherwise act for the member, Subsections (2)(a) and (b) constitute valid means of appointing a
2152 proxy:

2153 (a) A member may appoint a proxy by signing an appointment form, either personally or
2154 by the member's attorney-in-fact.

2155 (b) (i) Subject to Subsection (2)(b)(ii) a member may appoint a proxy by transmitting or
2156 authorizing the transmission of a telegram, teletype, facsimile, or other electronic transmission
2157 providing a written statement of the appointment to:

2158 (A) the proxy;

2159 (B) a proxy solicitor;

2160 (C) a proxy support service organization;

2161 (D) another person duly authorized by the proxy to receive appointments as agent for the
2162 proxy; or

2163 (E) the nonprofit corporation.

2164 (ii) An appointment transmitted under Subsection (2)(b)(i) shall set forth or be transmitted

2165 with written evidence from which it can be determined that the member transmitted or authorized
2166 the transmission of the appointment.

2167 (3) (a) An appointment of a proxy is effective against the nonprofit corporation when
2168 received by the nonprofit corporation, including receipt by the nonprofit corporation of an
2169 appointment transmitted pursuant to Subsection (2)(b).

2170 (b) An appointment is valid for 11 months unless a different period is expressly provided
2171 in the appointment form.

2172 (4) Any complete copy, including an electronically transmitted facsimile, of an
2173 appointment of a proxy may be substituted for or used in lieu of the original appointment for any
2174 purpose for which the original appointment could be used.

2175 (5) An appointment of a proxy is revocable by the member.

2176 (6) An appointment of a proxy is revoked by the person appointing the proxy:

2177 (a) attending any meeting and voting in person; or

2178 (b) signing and delivering to the secretary or other officer or agent authorized to tabulate
2179 proxy votes:

2180 (i) a writing stating that the appointment of the proxy is revoked; or

2181 (ii) a subsequent appointment form.

2182 (7) The death or incapacity of the member appointing a proxy does not affect the right of
2183 the nonprofit corporation to accept the proxy's authority unless notice of the death or incapacity
2184 is received by the secretary or other officer or agent authorized to tabulate votes before the proxy
2185 exercises the proxy's authority under the appointment.

2186 (8) Subject to Section 16-6a-713 and to any express limitation on the proxy's authority
2187 appearing on the appointment form, a nonprofit corporation is entitled to accept the proxy's vote
2188 or other action as that of the member making the appointment.

2189 Section 70. Section **16-6a-713** is enacted to read:

2190 **16-6a-713. Nonprofit corporation's acceptance of votes.**

2191 (1) If the name signed on any of the following corresponds to the name of a member, the
2192 nonprofit corporation, if acting in good faith, may accept and give the following effect as the act
2193 of the member:

2194 (a) a vote;

2195 (b) a consent;

2196 (c) a written ballot;
2197 (d) a waiver;
2198 (e) a proxy appointment; or
2199 (f) a proxy appointment revocation.
2200 (2) If the name signed on any writing listed in Subsection (1) does not correspond to the
2201 name of a member, the nonprofit corporation, if acting in good faith, may accept the writing and
2202 give it effect as the act of the member if:
2203 (a) (i) the member is an entity; and
2204 (ii) the name signed purports to be that of an officer or agent of the entity;
2205 (b) (i) the name signed purports to be that of an administrator, executor, guardian, or
2206 conservator representing the member; and
2207 (ii) evidence of fiduciary status acceptable to the nonprofit corporation with respect to the
2208 writing listed in Subsection (1) that:
2209 (A) has been requested by the nonprofit corporation; and
2210 (B) is presented to the nonprofit corporation;
2211 (c) (i) the name signed purports to be that of a receiver or trustee in bankruptcy of the
2212 member; and
2213 (ii) evidence of this status acceptable to the nonprofit corporation with respect to the
2214 writing listed in Subsection (1) that:
2215 (A) has been requested by the nonprofit corporation; and
2216 (B) is presented to the nonprofit corporation;
2217 (d) (i) the name signed purports to be that of a pledgee, beneficial owner, or
2218 attorney-in-fact of the member; and
2219 (ii) evidence acceptable to the nonprofit corporation of the signatory's authority to sign for
2220 the member has been presented with respect to the writing listed in Subsection (1) that:
2221 (A) has been requested by the nonprofit corporation; and
2222 (B) is presented to the nonprofit corporation;
2223 (e) (i) two or more persons are the member as cotenants or fiduciaries;
2224 (ii) the name signed purports to be the name of at least one of the cotenants or fiduciaries;
2225 and
2226 (iii) the person signing appears to be acting on behalf of all the cotenants or fiduciaries;

2227 or

2228 (f) the acceptance of the writing listed in Subsection (1) is otherwise proper under rules
2229 established by the nonprofit corporation that are not inconsistent with this Subsection (2).

2230 (3) The nonprofit corporation is entitled to reject a writing listed in Subsection (1) if the
2231 secretary or other officer or agent authorized to tabulate votes, acting in good faith, has reasonable
2232 basis for doubt about:

2233 (a) the validity of the signature on it; or

2234 (b) the signatory's authority to sign for the member.

2235 (4) The nonprofit corporation and its officer or agent who accepts or rejects a writing listed
2236 in Subsection (1) in good faith and in accordance with the standards of this section are not liable
2237 in damages for the consequences of the acceptance or rejection.

2238 (5) Corporate action based on the acceptance or rejection of a writing listed in Subsection
2239 (1) under this section is valid unless a court of competent jurisdiction determines otherwise.

2240 Section 71. Section **16-6a-714** is enacted to read:

2241 **16-6a-714. Quorum and voting requirements for voting groups.**

2242 (1) (a) Members entitled to vote as a separate voting group may take action on a matter at
2243 a meeting only if a quorum of those members exists with respect to that matter.

2244 (b) Unless otherwise provided in this chapter or the bylaws, a majority of the votes entitled
2245 to be cast on the matter by the voting group constitutes a quorum of that voting group for action
2246 on that matter.

2247 (2) Once a member is represented for any purpose at a meeting, including the purpose of
2248 determining that a quorum exists, the member is considered present for quorum purposes:

2249 (a) for the remainder of the meeting; and

2250 (b) for any adjournment of that meeting, unless:

2251 (i) otherwise provided in the bylaws; or

2252 (ii) a new record date is or shall be set for that adjourned meeting.

2253 (3) Action on a matter other than the election of directors by a voting group is approved

2254 if:

2255 (a) a quorum exists;

2256 (b) the votes cast within the voting group favoring the action exceed the votes cast within
2257 the voting group opposing the action; and

2258 (c) a greater number of affirmative votes is not required by this chapter or the bylaws.

2259 (4) The election of directors is governed by Section 16-6a-717.

2260 Section 72. Section **16-6a-715** is enacted to read:

2261 **16-6a-715. Action by single and multiple voting groups.**

2262 (1) If this chapter or the bylaws provide for voting by a single voting group on a matter,
2263 action on that matter is taken when voted upon by that voting group as provided in Section
2264 16-6a-714.

2265 (2) (a) If this chapter or the bylaws provide for voting by two or more voting groups on
2266 a matter, action on that matter is taken only when voted upon by each of those voting groups
2267 counted separately as provided in Section 16-6a-714.

2268 (b) One voting group may vote on a matter even though no action is taken by another
2269 voting group entitled to vote on the matter.

2270 Section 73. Section **16-6a-716** is enacted to read:

2271 **16-6a-716. Greater quorum or voting requirements.**

2272 (1) The articles of incorporation or bylaws may provide for a greater:

2273 (a) quorum requirement for members or voting groups than is provided for by this chapter;

2274 or

2275 (b) voting requirement for members or voting groups than is provided by this chapter.

2276 (2) An amendment to the articles of incorporation or the bylaws that adds, changes, or
2277 deletes a greater quorum or voting requirement shall meet the same quorum requirement and be
2278 adopted by the same vote and voting groups required to take action under the greater of the quorum
2279 and voting requirements:

2280 (a) then in effect; or

2281 (b) proposed to be adopted.

2282 Section 74. Section **16-6a-717** is enacted to read:

2283 **16-6a-717. Voting for directors -- Cumulative voting.**

2284 (1) If the bylaws provide for cumulative voting for directors by the voting members, voting
2285 members may cumulatively vote, by:

2286 (a) multiplying the number of votes the voting members are entitled to cast by the number
2287 of directors for whom they are entitled to vote; and

2288 (b) (i) casting the product for a single candidate; or

2289 (ii) distributing the product among two or more candidates.

2290 (2) Cumulative voting is not authorized at a particular meeting unless:

2291 (a) the meeting notice or statement accompanying the notice states that cumulative voting
2292 will take place; or

2293 (b) (i) a voting member gives notice during the meeting and before the vote is taken of the
2294 voting member's intent to cumulate votes; and

2295 (ii) if one voting member gives this notice, all other voting members participating in the
2296 election are entitled to cumulate their votes without giving further notice.

2297 (3) (a) In an election of multiple directors, that number of candidates equaling the number
2298 of directors to be elected, having the highest number of votes cast in favor of their election, are
2299 elected to the board of directors.

2300 (b) When only one director is being voted upon, the affirmative vote of a majority of the
2301 members constituting a quorum at the meeting at which the election occurs shall be required for
2302 election to the board of directors.

2303 Section 75. Section **16-6a-718** is enacted to read:

2304 **16-6a-718. Voting agreements.**

2305 (1) Two or more members may provide for the manner in which they will vote by signing
2306 an agreement for that purpose.

2307 (2) A voting agreement created under this section is specifically enforceable.

2308 Section 76. Section **16-6a-801** is enacted to read:

2309 **Part 8. Directors and Officers**

2310 **16-6a-801. Requirement for board of directors.**

2311 (1) A nonprofit corporation shall have a board of directors.

2312 (2) (a) Except as provided in this chapter or Subsection (2)(b), all corporate powers shall
2313 be exercised by or under the authority of, and the business and affairs of the nonprofit corporation
2314 managed under the direction of, the board of directors.

2315 (b) (i) The articles of incorporation may authorize one or more persons to exercise some
2316 or all of the powers that would otherwise be exercised by the board of directors.

2317 (ii) To the extent the articles of incorporation authorize a person other than the board of
2318 directors to have the authority and perform a duty of the board of directors, the directors shall be
2319 relieved to that extent from such authority and duty.

2320 Section 77. Section **16-6a-802** is enacted to read:

2321 **16-6a-802. Qualifications of directors.**

2322 (1) A director shall be:

2323 (a) a natural person; and

2324 (b) 18 years of age or older.

2325 (2) The bylaws may prescribe other qualifications for directors in addition to the
2326 requirements under Subsection (1).

2327 (3) A director need not be a resident of this state or a member of the nonprofit corporation
2328 unless required by the bylaws.

2329 Section 78. Section **16-6a-803** is enacted to read:

2330 **16-6a-803. Number of directors.**

2331 (1) A board of directors shall consist of three or more directors, with the number specified
2332 in, or fixed in accordance with, the bylaws.

2333 (2) (a) The bylaws may establish, or permit the voting members or the board of directors
2334 to establish, a range for the size of the board of directors by fixing a minimum and maximum
2335 number of directors.

2336 (b) If a range for the size of the board of directors is established in accordance with
2337 Subsection (2)(a), the number of directors may be fixed or changed from time to time within the
2338 range by:

2339 (i) the voting members; or

2340 (ii) the board of directors.

2341 Section 79. Section **16-6a-804** is enacted to read:

2342 **16-6a-804. Election, appointment, and designation of directors.**

2343 (1) (a) All directors except the initial directors shall be elected, appointed, or designated
2344 as provided in the bylaws.

2345 (b) If no method of election, appointment, or designation is set forth in the bylaws, the
2346 directors other than the initial directors shall be elected as follows:

2347 (i) if the nonprofit corporation has voting members, all directors except the initial directors
2348 shall be elected by the voting members at each annual meeting of the voting members; and

2349 (ii) if the nonprofit corporation does not have voting members, all directors except the
2350 initial directors shall be elected by the board of directors.

2351 (2) (a) The bylaws may authorize the election of all or a specified number or portion of
2352 directors, except the initial directors, by:

2353 (i) the members of one or more voting groups of voting members; or

2354 (ii) the directors of one or more authorized classes of directors.

2355 (b) A class of voting members or directors entitled to elect one or more directors is a
2356 separate voting group for purposes of the election of directors.

2357 (3) The bylaws may authorize the appointment of one or more directors by one or more
2358 persons, or by the holder of the office or position, as the bylaws shall specify.

2359 (4) The bylaws may provide for election of directors by voting members or delegates:

2360 (a) on the basis of chapter or other organizational unit;

2361 (b) by region or other geographic unit;

2362 (c) by preferential voting; or

2363 (d) by any other reasonable method.

2364 (5) For purposes of this chapter, designation occurs when the bylaws:

2365 (a) name an individual as a director; or

2366 (b) designate the holder of some office or position as a director.

2367 Section 80. Section **16-6a-805** is enacted to read:

2368 **16-6a-805. Terms of directors generally.**

2369 (1) (a) The bylaws may specify the terms of directors.

2370 (b) In the absence of any term specified in the bylaws, the term of each director shall be
2371 one year.

2372 (c) Unless otherwise provided in the bylaws, directors may be elected for successive terms.

2373 (2) Unless otherwise provided in the bylaws, the terms of the initial directors of a nonprofit
2374 corporation expire at the first meeting at which directors are elected or appointed.

2375 (3) A decrease in the number of directors or in the term of office does not shorten an
2376 incumbent director's term.

2377 (4) Unless otherwise provided in the bylaws, the term of a director filling a vacancy
2378 expires at the end of the unexpired term that the director is filling, except that if a director is

2379 elected to fill a vacancy created by reason of an increase in the number of directors, the term of the
2380 director shall expire on the later of:

2381 (a) the next meeting at which directors are elected; or

2382 (b) the term, if any, designated for the director at the time of the creation of the position
2383 being filled.

2384 (5) Despite the expiration of a director's term, a director continues to serve until:

2385 (a) the director's successor is elected, appointed, or designated and qualifies; or

2386 (b) there is a decrease in the number of directors.

2387 (6) A director whose term has expired may deliver to the division for filing a statement to
2388 that effect pursuant to Section 16-6a-1608.

2389 Section 81. Section **16-6a-806** is enacted to read:

2390 **16-6a-806. Staggered terms for directors.**

2391 (1) The bylaws may provide for staggering the terms of directors by dividing the total
2392 number of directors into any number of groups.

2393 (2) The terms of office of the several groups permitted under Subsection (1) need not be
2394 uniform.

2395 Section 82. Section **16-6a-807** is enacted to read:

2396 **16-6a-807. Resignation of directors.**

2397 (1) A director may resign at any time by giving written notice of resignation to the
2398 nonprofit corporation.

2399 (2) A resignation of a director is effective when the notice is received by the nonprofit
2400 corporation unless the notice specifies a later effective date.

2401 (3) A director who resigns may deliver to the division for filing a statement that the
2402 director resigns pursuant to Section 16-6a-1608.

2403 (4) The failure to attend or meet obligations shall be effective as a resignation at the time
2404 of the board of director's vote to confirm the failure if:

2405 (a) at the beginning of a director's term on the board, the bylaws provide that a director
2406 may be considered to have resigned for failing to:

2407 (i) attend a specified number of board meetings; or

2408 (ii) meet other specified obligations of directors; and

2409 (b) the failure to attend or meet obligations is confirmed by an affirmative vote of the
2410 board of directors.

2411 Section 83. Section **16-6a-808** is enacted to read:

2412 **16-6a-808. Removal of directors.**

2413 (1) Directors elected by voting members or directors may be removed as provided in
2414 Subsections (1)(a) through (g).

2415 (a) The voting members may remove one or more directors elected by them with or
2416 without cause unless the bylaws provide that directors may be removed only for cause.

2417 (b) If a director is elected by a voting group, only that voting group may participate in the
2418 vote to remove that director.

2419 (c) A director may be removed only if the number of votes cast to remove the director
2420 would be sufficient to elect the director at a meeting to elect directors.

2421 (d) A director elected by voting members may be removed by the voting members only:

2422 (i) at a meeting called for the purpose of removing that director; and

2423 (ii) if the meeting notice states that the purpose, or one of the purposes, of the meeting is
2424 removal of the director.

2425 (e) An entire board of directors may be removed under Subsections (1)(a) through (d).

2426 (f) (i) Except as provided in Subsection (1)(f)(ii), a director elected by the board of
2427 directors may be removed with or without cause by the vote of a majority of the directors then in
2428 office or such greater number as is set forth in the bylaws.

2429 (ii) A director elected by the board of directors to fill the vacancy of a director elected by
2430 the voting members may be removed without cause by the voting members but not the board of
2431 directors.

2432 (g) A director who is removed pursuant to this section may deliver to the division for filing
2433 a statement to that effect pursuant to Section 16-6a-1608.

2434 (2) Unless otherwise provided in the bylaws:

2435 (a) an appointed director may be removed without cause by the person appointing the
2436 director;

2437 (b) the person described in Subsection (2)(a) shall remove the director by giving written
2438 notice of the removal to:

2439 (i) the director; and

2440 (ii) the nonprofit corporation; and

2441 (c) unless the written notice described in Subsection (2)(b) specifies a future effective date,
2442 a removal is effective when the notice is received by both:

2443 (i) the director to be removed; and

2444 (ii) the nonprofit corporation.

2445 (3) A designated director, as provided in Subsection 16-6a-804(5), may be removed by an
2446 amendment to the bylaws deleting or changing the designation.

2447 Section 84. Section **16-6a-809** is enacted to read:

2448 **16-6a-809. Removal of directors by judicial proceeding.**

2449 (1) (a) The applicable court may remove a director in a proceeding commenced either by
2450 the nonprofit corporation or by voting members holding at least 10% of the votes entitled to be cast
2451 in the election of the director's successor if the court finds that:

2452 (i) the director engaged in:

2453 (A) fraudulent or dishonest conduct; or

2454 (B) gross abuse of authority or discretion with respect to the nonprofit corporation; or

2455 (ii) (A) a final judgment has been entered finding that the director has violated a duty set
2456 forth in Part 4; and

2457 (B) removal is in the best interests of the nonprofit corporation.

2458 (b) For purposes of this Subsection (1), the applicable court is the:

2459 (i) district court of the county in this state where a nonprofit corporation's principal office
2460 is located; or

2461 (ii) if the nonprofit corporation has no principal office in this state:

2462 (A) the district court of the county in which its registered office is located; or

2463 (B) if the nonprofit corporation has no registered office, the district court for Salt Lake
2464 County.

2465 (2) The court that removes a director may bar the director for a period prescribed by the
2466 court from:

2467 (a) reelection;

2468 (b) reappointment; or

2469 (c) designation.

2470 (3) If voting members commence a proceeding under Subsection (1), the voting members
2471 shall make the nonprofit corporation a party defendant.

2472 (4) A director who is removed pursuant to this section may deliver to the division for filing
2473 a statement to that effect pursuant to Section 16-6a-1608.

2474 Section 85. Section **16-6a-810** is enacted to read:

2475 **16-6a-810. Vacancy on board.**

2476 (1) Unless otherwise provided in the bylaws, if a vacancy occurs on a board of directors,
2477 including a vacancy resulting from an increase in the number of directors:

2478 (a) the voting members, if any, may fill the vacancy;

2479 (b) the board of directors may fill the vacancy; or

2480 (c) if the directors remaining in office constitute fewer than a quorum of the board of
2481 directors, the remaining directors may fill the vacancy by the affirmative vote of a majority of all
2482 the directors remaining in office.

2483 (2) Notwithstanding Subsection (1), unless otherwise provided in the bylaws, if the vacant
2484 office was held by a director elected by a voting group of voting members:

2485 (a) if one or more of the remaining directors were elected by the same voting group of
2486 voting members:

2487 (i) only the directors elected by the same voting group of voting members are entitled to
2488 vote to fill the vacancy if it is filled by directors; and

2489 (ii) the directors elected by the same voting group of voting members may fill the vacancy
2490 by the affirmative vote of a majority of the directors remaining in office; and

2491 (b) only that voting group is entitled to vote to fill the vacancy if it is filled by the voting
2492 members.

2493 (3) Notwithstanding Subsection (1) and unless otherwise provided in the bylaws, only the
2494 directors elected by the same voting group of directors are entitled to vote to fill the vacancy if:

2495 (a) the vacant office was held by a director elected by a voting group of directors; and

2496 (b) any persons in that voting group remain as directors.

2497 (4) Unless otherwise provided in the bylaws, if a vacant office was held by an appointed
2498 director, only the person who appointed the director may fill the vacancy.

2499 (5) (a) If a vacant office was held by a designated director, as provided in Subsection
2500 16-6a-804(5), the vacancy shall be filled as provided in the bylaws.

2501 (b) In the absence of an applicable bylaw provision, the vacancy may not be filled by the
2502 board.

2503 (6) A vacancy that will occur at a specific later date by reason of a resignation effective
2504 at a later date under Subsection 16-6a-807(2) or otherwise, may be filled before the vacancy
2505 occurs, but the new director may not take office until the vacancy occurs.

2506 Section 86. Section **16-6a-811** is enacted to read:

2507 **16-6a-811. Compensation of directors.**

2508 Unless otherwise provided in the bylaws, the board of directors may authorize and fix the
2509 compensation of directors.

2510 Section 87. Section **16-6a-812** is enacted to read:

2511 **16-6a-812. Meetings.**

2512 (1) The board of directors may hold regular or special meetings in or out of this state.

2513 (2) (a) Unless otherwise provided in the bylaws, the board of directors may permit any
2514 director to participate in a regular or special meeting by, or conduct the meeting through the use
2515 of, any means of communication by which all directors participating may hear each other during
2516 the meeting.

2517 (b) A director participating in a meeting by a means permitted under Subsection (1) is
2518 considered to be present in person at the meeting.

2519 Section 88. Section **16-6a-813** is enacted to read:

2520 **16-6a-813. Action without meeting.**

2521 (1) Unless otherwise provided in the bylaws, any action required or permitted by this
2522 chapter to be taken at a board of directors' meeting may be taken without a meeting if each and
2523 every member of the board in writing either:

2524 (a) votes for the action; or

2525 (b) (i) (A) votes against the action; or

2526 (B) abstains from voting; and

2527 (ii) waives the right to demand that action not be taken without a meeting.

2528 (2) Action is taken under this section only if the affirmative vote for the action equals or
2529 exceeds the minimum number of votes that would be necessary to take the action at a meeting at
2530 which all of the directors then in office were present and voted.

2531 (3) (a) An action taken pursuant to this section may not be effective unless the nonprofit
2532 corporation receives writings:

2533 (i) describing the action taken;

2534 (ii) otherwise satisfying the requirements of Subsection (1);

2535 (iii) signed by all directors; and

2536 (iv) not revoked pursuant to Subsection (4).

2537 (b) Unless otherwise provided by the bylaws, a writing described in Subsection (3)(a) may
2538 be received by the nonprofit corporation by electronically transmitted facsimile or other form of
2539 wire or wireless communication providing the nonprofit corporation with a complete copy of the
2540 document, including a copy of the signature on the document.

2541 (c) A director's right to demand that action not be taken without a meeting shall be
2542 considered to have been waived if the nonprofit corporation receives a writing satisfying the
2543 requirements of Subsection (1) that has been signed by the director and not revoked pursuant to
2544 Subsection (4).

2545 (d) Action taken pursuant to this section shall be effective when the last writing necessary
2546 to effect the action is received by the nonprofit corporation, unless the writings describing the
2547 action taken set forth a different effective date.

2548 (4) If the writing is received by the nonprofit corporation before the last writing necessary
2549 to effect the action is received by the nonprofit corporation, any director who has signed a writing
2550 pursuant to this section may revoke the writing by a writing signed and dated by the director:

2551 (a) describing the action; and

2552 (b) stating that the director's prior vote with respect to the writing is revoked.

2553 (5) Action taken pursuant to this section:

2554 (a) has the same effect as action taken at a meeting of directors; and

2555 (b) may be described as an action taken at a meeting of directors in any document.

2556 Section 89. Section **16-6a-814** is enacted to read:

2557 **16-6a-814. Notice of meeting.**

2558 (1) Unless otherwise provided in this chapter or in the bylaws, regular meetings of the
2559 board of directors may be held without notice of the date, time, place, or purpose of the meeting.

2560 (2) (a) Unless the bylaws provide for a longer or shorter period, special meetings of the
2561 board of directors shall be preceded by at least two days notice of the date, time, and place of the
2562 meeting.

2563 (b) The notice required by Subsection (2)(a) need not describe the purpose of the special
2564 meeting unless otherwise required by this chapter or the bylaws.

2565 Section 90. Section **16-6a-815** is enacted to read:

2566 **16-6a-815. Waiver of notice.**

2567 (1) (a) A director may waive any notice of a meeting before or after the time and date of

2568 the meeting stated in the notice.

2569 (b) Except as provided by Subsection (2), the waiver shall:

2570 (i) be in writing;

2571 (ii) signed by the director entitled to the notice; and

2572 (iii) be delivered to the nonprofit corporation for filing with the corporate records.

2573 (c) The delivery and filing required by Subsection (1)(b) may not be conditions of the
2574 effectiveness of the waiver.

2575 (2) A director's attendance at or participation in a meeting waives any required notice to
2576 that director of the meeting unless:

2577 (a) (i) at the beginning of the meeting or promptly upon the director's later arrival, the
2578 director objects to holding the meeting or transacting business at the meeting because of lack of
2579 notice or defective notice; and

2580 (ii) after objecting, the director does not vote for or assent to action taken at the meeting;
2581 or

2582 (b) if special notice was required of a particular purpose pursuant to Subsection
2583 16-6a-814(2):

2584 (i) the director objects to transacting business with respect to the purpose for which the
2585 special notice was required; and

2586 (ii) after objecting, the director does not vote for or assent to action taken at the meeting
2587 with respect to the purpose.

2588 Section 91. Section **16-6a-816** is enacted to read:

2589 **16-6a-816. Quorum and voting.**

2590 (1) Unless a greater or lesser number is required by the bylaws, a quorum of a board of
2591 directors consists of a majority of the number of directors in office immediately before the meeting
2592 begins.

2593 (2) The bylaws may authorize a quorum of a board of directors to consist of:

2594 (a) no fewer than 1/3 of the number of directors fixed if the corporation has a fixed board
2595 size; or

2596 (b) if a range for the size of the board is established pursuant to Subsection 16-6a-803(2),
2597 no fewer than 1/3 of the number of directors:

2598 (i) fixed in accordance with Subsection 16-6a-803(2); or

2599 (ii) in office immediately before the meeting begins, if no number is fixed in accordance
2600 with Subsection 16-6a-803(2).

2601 (3) If a quorum is present when a vote is taken, the affirmative vote of a majority of
2602 directors present is the act of the board of directors unless the vote of a greater number of directors
2603 is required by this chapter or the bylaws.

2604 (4) (a) If provided in the bylaws, for purposes of determining a quorum with respect to a
2605 particular proposal, and for purposes of casting a vote for or against a particular proposal, a
2606 director may be considered to be present at a meeting and to vote if the director has granted a
2607 signed written proxy:

2608 (i) to another director who is present at the meeting; and

2609 (ii) authorizing the other director to cast the vote that is directed to be cast by the written
2610 proxy with respect to the particular proposal that is described with reasonable specificity in the
2611 proxy.

2612 (b) Except as provided in this Subsection (4) and as permitted by Section 16-6a-813,
2613 directors may not vote or otherwise act by proxy.

2614 (5) A director who is present at a meeting of the board of directors when corporate action
2615 is taken is considered to have assented to all action taken at the meeting unless:

2616 (a) (i) the director objects at the beginning of the meeting, or promptly upon the director's
2617 arrival, to holding the meeting or transacting business at the meeting; and

2618 (ii) after objecting, the director does not vote for or assent to any action taken at the
2619 meeting;

2620 (b) the director contemporaneously requests that the director's dissent or abstention as to
2621 any specific action taken be entered in the minutes of the meeting; or

2622 (c) the director causes written notice of the director's dissent or abstention as to any
2623 specific action to be received by:

2624 (i) the presiding officer of the meeting before adjournment of the meeting; or

2625 (ii) the nonprofit corporation promptly after adjournment of the meeting.

2626 (6) The right of dissent or abstention pursuant to Subsection (5) as to a specific action is
2627 not available to a director who votes in favor of the action taken.

2628 Section 92. Section **16-6a-817** is enacted to read:

2629 **16-6a-817. Committees of the board.**

2630 (1) Unless otherwise provided in the bylaws and subject to the provisions of Section
2631 16-6a-906, the board of directors may:

2632 (a) create one or more committees of the board; and
2633 (b) appoint one or more directors to serve on the committees created under Subsection
2634 (1)(a).

2635 (2) Unless otherwise provided in the bylaws, the creation of a committee of the board and
2636 appointment of directors to it shall be approved by the greater of:

2637 (a) a majority of all the directors in office when the action is taken; or
2638 (b) the number of directors required by the bylaws to take action under Section 16-6a-816.

2639 (3) Unless otherwise provided in the bylaws, a committee of the board and the members
2640 of the committee are subject to Sections 16-6a-812 through 16-6a-816, which govern:

2641 (a) meetings;
2642 (b) action without meeting;
2643 (c) notice;
2644 (d) waiver of notice; and
2645 (e) quorum and voting requirements.

2646 (4) To the extent specified in the bylaws or by the board of directors, each committee of
2647 the board shall have the authority of the board of directors under Section 16-6a-801.

2648 (5) The creation of, delegation of authority to, or action by a committee does not alone
2649 constitute compliance by a director with the standards of conduct described in Section 16-6a-822.

2650 (6) (a) Subject to Subsection (6)(b), nothing in this part shall prohibit or restrict a nonprofit
2651 corporation from establishing in its bylaws or by action of the board of directors or otherwise one
2652 or more committees, advisory boards, auxiliaries, or other bodies of any kind:

2653 (i) having the members and rules of procedure as the bylaws or board of directors may
2654 provide;

2655 (ii) established to provide the advice, service, and assistance to the nonprofit corporation
2656 as may be specified in the bylaws or by the board of directors; and

2657 (iii) established to carry out the duties and responsibilities for the nonprofit corporation,
2658 as may be specified in the bylaws or by the board of directors.

2659 (b) Notwithstanding Subsection (6)(a), if any committee or other body established under
2660 Subsection (6)(a) has one or more members who are entitled to vote on committee matters and who

2661 are not then also directors, the committee or other body may not exercise any power or authority
2662 reserved to the board of directors, in this chapter or in the bylaws.

2663 Section 93. Section **16-6a-818** is enacted to read:

2664 **16-6a-818. Officers.**

2665 (1) (a) A nonprofit corporation shall have the officers designated:

2666 (i) in its bylaws; or

2667 (ii) by the board of directors in a manner not inconsistent with the bylaws.

2668 (b) An officer shall be:

2669 (i) a natural person; and

2670 (ii) 18 years of age or older.

2671 (c) An officer need not be a director or a member of the nonprofit corporation, unless the
2672 bylaws so prescribe.

2673 (2) (a) An officer may be appointed by the board of directors or in such other manner as
2674 the board of directors or bylaws may provide.

2675 (b) An appointed officer may appoint one or more officers or assistant officers if
2676 authorized by:

2677 (i) the bylaws; or

2678 (ii) the board of directors.

2679 (3) The bylaws or the board of directors shall delegate to the secretary or to one or more
2680 other persons responsibility for:

2681 (a) the preparation and maintenance of:

2682 (i) minutes of the directors' and members' meetings; and

2683 (ii) other records and information required to be kept by the nonprofit corporation under
2684 Section 16-6a-1601; and

2685 (b) authenticating records of the nonprofit corporation.

2686 (4) The same individual may simultaneously hold more than one office in a nonprofit
2687 corporation.

2688 Section 94. Section **16-6a-819** is enacted to read:

2689 **16-6a-819. Duties of officers.**

2690 Each officer shall have the authority and shall perform the duties set forth with respect to
2691 the office:

- 2692 (1) in the bylaws; or
2693 (2) to the extent not inconsistent with the bylaws, prescribed with respect to the office by:
2694 (a) the board of directors; or
2695 (b) an officer authorized by the board of directors.

2696 Section 95. Section **16-6a-820** is enacted to read:

2697 **16-6a-820. Resignation and removal of officers.**

2698 (1) An officer may resign at any time by giving written notice of resignation to the
2699 nonprofit corporation.

2700 (2) A resignation of an officer is effective when the notice is received by the nonprofit
2701 corporation unless the notice specifies a later effective date.

2702 (3) If a resignation is made effective at a later date, the board of directors may:

2703 (a) (i) permit the officer to remain in office until the effective date; and

2704 (ii) fill the pending vacancy before the effective date if the successor does not take office
2705 until the effective date; or

2706 (b) (i) remove the officer at any time before the effective date; and

2707 (ii) fill the vacancy created by the removal.

2708 (4) (a) Unless otherwise provided in the bylaws, the board of directors may remove any
2709 officer at any time with or without cause.

2710 (b) The bylaws or the board of directors may make provisions for the removal of officers
2711 by:

2712 (i) other officers; or

2713 (ii) the voting members.

2714 (5) An officer who resigns, is removed, or whose appointment has expired may deliver to
2715 the division for filing a statement to that effect pursuant to Section 16-6a-1608.

2716 Section 96. Section **16-6a-821** is enacted to read:

2717 **16-6a-821. Contract rights with respect to officers.**

2718 (1) The appointment of an officer does not itself create contract rights.

2719 (2) (a) An officer's removal does not affect the officer's contract rights, if any, with the
2720 nonprofit corporation.

2721 (b) An officer's resignation does not affect the nonprofit corporation's contract rights, if
2722 any, with the officer.

2723 Section 97. Section **16-6a-822** is enacted to read:

2724 **16-6a-822. General standards of conduct for directors and officers.**

2725 (1) (a) A director shall discharge the director's duties as a director, including the director's
2726 duties as a member of a committee of the board, in accordance with Subsection (2).

2727 (b) An officer with discretionary authority shall discharge the officer's duties under that
2728 authority in accordance with Subsection (2).

2729 (2) A director or an officer described in Subsection (1) shall discharge the director or
2730 officer's duties:

2731 (a) in good faith;

2732 (b) with the care an ordinarily prudent person in a like position would exercise under
2733 similar circumstances; and

2734 (c) in a manner the director or officer reasonably believes to be in the best interests of the
2735 nonprofit corporation.

2736 (3) In discharging duties, a director or officer is entitled to rely on information, opinions,
2737 reports, or statements, including financial statements and other financial data, if prepared or
2738 presented by:

2739 (a) one or more officers or employees of the nonprofit corporation whom the director or
2740 officer reasonably believes to be reliable and competent in the matters presented;

2741 (b) legal counsel, a public accountant, or another person as to matters the director or
2742 officer reasonably believes are within the person's professional or expert competence;

2743 (c) religious authorities or ministers, priests, rabbis, or other persons:

2744 (i) whose position or duties in the nonprofit corporation, or in a religious organization with
2745 which the nonprofit corporation is affiliated, the director or officer believes justify reliance and
2746 confidence; and

2747 (ii) who the director or officer believes to be reliable and competent in the matters
2748 presented; or

2749 (d) in the case of a director, a committee of the board of directors of which the director is
2750 not a member if the director reasonably believes the committee merits confidence.

2751 (4) A director or officer is not acting in good faith if the director or officer has knowledge
2752 concerning the matter in question that makes reliance otherwise permitted by Subsection (3)
2753 unwarranted.

2754 (5) A director, regardless of title, may not be considered to be a trustee with respect to:
2755 (a) the nonprofit corporation; or
2756 (b) any property held or administered by the nonprofit corporation including property that
2757 may be subject to restrictions imposed by the donor or transferor of the property.
2758 (6) A director or officer is not liable to the nonprofit corporation, its members, or any
2759 conservator or receiver, or any assignee or successor-in-interest of the nonprofit corporation or
2760 member, for any action taken, or any failure to take any action, as an officer or director, as the case
2761 may be, unless:
2762 (a) the director or officer has breached or failed to perform the duties of the office as set
2763 forth in this section; and
2764 (b) the breach or failure to perform constitutes:
2765 (i) gross negligence;
2766 (ii) willful misconduct; or
2767 (iii) intentional infliction of harm on:
2768 (A) the nonprofit corporation; or
2769 (B) the members of the nonprofit corporation.
2770 Section 98. Section **16-6a-823** is enacted to read:
2771 **16-6a-823. Limitation of liability of directors.**
2772 (1) (a) Except as provided in Subsection (1)(b) and without limiting the generality of
2773 Subsection 16-6a-822(6), a nonprofit corporation may eliminate or limit the liability of a director
2774 to the nonprofit corporation or to its members for monetary damages for any action taken or any
2775 failure to take any action as a director, if:
2776 (i) so provided in:
2777 (A) the articles of incorporation;
2778 (B) the bylaws; or
2779 (C) a resolution; and
2780 (ii) to the extent permitted in Subsection (3).
2781 (b) Subsection (1)(a) does not permit a nonprofit corporation from eliminating or limiting
2782 the liability of a director for:
2783 (i) the amount of a financial benefit received by a director to which the director is not
2784 entitled;

2785 (ii) an intentional infliction of harm on:

2786 (A) the nonprofit corporation; or

2787 (B) the members of a nonprofit corporation;

2788 (iii) an intentional violation of criminal law; or

2789 (iv) a violation of Section 16-6a-824.

2790 (2) A provision authorized under this section may not eliminate or limit the liability of a
2791 director for any act or omission occurring prior to the date when the provision becomes effective.

2792 (3) Any provision authorized under this section to be included in the articles of
2793 incorporation may be adopted in the bylaws or by resolution, but only if the provision is approved
2794 by the same percentage of members of each voting group as would be required to approve an
2795 amendment to the articles of incorporation including the provision.

2796 (4) Any foreign nonprofit corporation authorized to transact business in this state, except
2797 as otherwise provided by law, may adopt any provision authorized under this section.

2798 Section 99. Section **16-6a-824** is enacted to read:

2799 **16-6a-824. Liability of directors for unlawful distributions.**

2800 (1) (a) A director who votes for or assents to a distribution made in violation of Section
2801 16-6a-1301 or the articles of incorporation is personally liable to the corporation for the amount
2802 of the distribution that exceeds what could have been distributed without violating Section
2803 16-6a-1301 or the articles of incorporation, if it is established that the director's duties were not
2804 performed in compliance with Section 16-6a-822.

2805 (b) In any proceeding commenced under this section, a director has all of the defenses
2806 ordinarily available to a director.

2807 (2) A director held liable under Subsection (1) for an unlawful distribution is entitled to
2808 contribution:

2809 (a) from every other director who could be held liable under Subsection (1) for the
2810 unlawful distribution; and

2811 (b) from each member who accepted the distribution knowing the distribution was made
2812 in violation of Section 16-6a-1301 or the articles of incorporation.

2813 (3) The amount of the contribution from each member under Subsection (2)(b) is the
2814 amount of the distribution to the member multiplied by the percentage of the amount of
2815 distribution to all members that exceeded what could have been distributed to members without

2816 violating Section 16-6a-1301 or the articles of incorporation.

2817 Section 100. Section **16-6a-825** is enacted to read:

2818 **16-6a-825. Conflicting interest transaction.**

2819 (1) As used in this section, "conflicting interest transaction" means a contract, transaction,
2820 or other financial relationship between a nonprofit corporation and:

2821 (a) a director of the nonprofit corporation;

2822 (b) a party related to a director; or

2823 (c) an entity in which a director of the nonprofit corporation:

2824 (i) is a director or officer; or

2825 (ii) has a financial interest.

2826 (2) Except as otherwise provided in this section, upon the finding of a conflicting interest
2827 transaction, in an action properly brought before it, a court may:

2828 (a) rule that the conflicting interest transaction is void or voidable;

2829 (b) enjoin or set aside the conflict of interest transaction; or

2830 (c) determine that the conflicting interest transaction gives rise to an award of damages or
2831 other sanctions.

2832 (3) (a) A loan may not be made by a corporation to its directors or officers.

2833 (b) A director or officer who assents to or participates in the making of a loan in violation
2834 of Subsection (3)(a) shall be liable to the corporation for the amount of the loan until the
2835 repayment of the loan.

2836 (4) (a) If the conditions of Subsection (4)(b) are met, a conflicting interest transaction may
2837 not be void or voidable or be enjoined, set aside, or give rise to an award of damages or other
2838 sanctions in a proceeding by a member or by or in the right of the nonprofit corporation, solely
2839 because:

2840 (i) the conflicting interest transaction involves:

2841 (A) a director of the nonprofit corporation;

2842 (B) a party related to a director; or

2843 (C) an entity in which a director of the nonprofit corporation is a director or officer or has
2844 a financial interest;

2845 (ii) the director is present at or participates in the meeting of the nonprofit corporation's

2846 board of directors or of the committee of the board of directors that authorizes, approves, or ratifies

2847 the conflicting interest transaction; or

2848 (iii) the director's vote is counted for the purpose described in Subsection (4)(a)(ii).

2849 (b) Subsection (4)(a) applies if:

2850 (i) (A) the material facts as to the director's relationship or interest and as to the conflicting
2851 interest transaction are disclosed or are known to the board of directors or the committee; and

2852 (B) the board of directors or committee in good faith authorizes, approves, or ratifies the
2853 conflicting interest transaction by the affirmative vote of a majority of the disinterested directors,
2854 even though the disinterested directors are less than a quorum;

2855 (ii) (A) the material facts as to the director's relationship or interest and as to the
2856 conflicting interest transaction are disclosed or are known to the members entitled to vote on the
2857 conflicting interest transaction; and

2858 (B) the conflicting interest transaction is specifically authorized, approved, or ratified in
2859 good faith by a vote of the members entitled to vote thereon; or

2860 (iii) the conflicting interest transaction is fair as to the nonprofit corporation.

2861 (5) Common or interested directors may be counted in determining the presence of a
2862 quorum at a meeting of the board of directors or of a committee that authorizes, approves, or
2863 ratifies the conflicting interest transaction.

2864 Section 101. Section **16-6a-826** is enacted to read:

2865 **16-6a-826. Common members, directors, or officers.**

2866 (1) Two or more nonprofit corporations may have members, directors, or officers that are
2867 common to each nonprofit corporation.

2868 (2) The fact of common members, directors, or officers in one or more nonprofit
2869 corporations may not, by itself, create an inference that the nonprofit corporations individually or
2870 collectively:

2871 (a) are agents or alter egos of one another; or

2872 (b) have been formed or availed of for an improper purpose.

2873 (3) The doctrine of "piercing the corporate veil" may not be applied to one or more
2874 nonprofit corporations solely because of the fact of common members, directors, or officers.

2875 Section 102. Section **16-6a-901** is enacted to read:

2876 **Part 9. Indemnification**

2877 **16-6a-901. Indemnification definitions.**

2878 As used in this part:

2879 (1) (a) "Director" means an individual who:

2880 (i) is or was a director of a nonprofit corporation; or

2881 (ii) while a director of a nonprofit corporation at the nonprofit corporation's request, is or
2882 was serving as a director, officer, partner, member, manager, trustee, employee, fiduciary, or agent
2883 of:

2884 (A) another domestic or foreign corporation;

2885 (B) another nonprofit corporation;

2886 (C) another person; or

2887 (D) an employee benefit plan.

2888 (b) A director is considered to be serving an employee benefit plan at the nonprofit
2889 corporation's request if the director's duties to the nonprofit corporation also impose duties on, or
2890 otherwise involve services by, the director to the employee benefit plan or to participants in or
2891 beneficiaries of the employee benefit plan.

2892 (c) "Director" includes, unless the context requires otherwise, the estate or personal
2893 representative of a director.

2894 (2) "Expenses" includes attorneys' fees.

2895 (3) "Liability" means the obligation incurred with respect to a proceeding to pay a
2896 judgment, settlement, penalty, or fine, including:

2897 (a) an excise tax assessed with respect to an employee benefit plan; or

2898 (b) reasonable expenses.

2899 (4) "Nonprofit corporation" includes any domestic or foreign entity that is a predecessor
2900 of a nonprofit corporation by reason of a merger or other transaction in which the predecessor's
2901 existence ceased upon consummation of the transaction.

2902 (5) (a) "Officer," "employee," "fiduciary," and "agent" include any person who, while
2903 serving the indicated relationship to the nonprofit corporation, at the nonprofit corporation's
2904 request, is or was serving as a director, officer, partner, trustee, employee, fiduciary, or agent of:

2905 (i) another domestic or foreign corporation;

2906 (ii) another person; or

2907 (iii) an employee benefit plan.

2908 (b) An officer, employee, fiduciary, or agent is considered to be serving an employee

2909 benefit plan at the nonprofit corporation's request if that person's duties to the nonprofit
2910 corporation also impose duties on, or otherwise involve services by, that person to the plan or
2911 participants in, or beneficiaries of the plan.

2912 (c) Unless the context requires otherwise, "officer," "employee," "fiduciary," and "agent"
2913 include the estates or personal representatives of the officer, employee, fiduciary, or agent.

2914 (6) (a) "Official capacity" means:

2915 (i) when used with respect to a director, the office of director in a corporation; and

2916 (ii) when used with respect to a person other than a director, as contemplated in Section
2917 16-6a-907, the office in a corporation held by the officer or the employment, fiduciary, or agency
2918 relationship undertaken by the person on behalf of the corporation.

2919 (b) "Official capacity" does not include service for any:

2920 (i) other foreign or domestic corporation;

2921 (ii) other person; or

2922 (iii) employee benefit plan.

2923 (7) "Party" includes an individual who was, is, or is threatened to be made a named
2924 defendant or respondent in a proceeding.

2925 (8) "Proceeding" means any threatened, pending, or completed action, suit, or proceeding,
2926 whether civil, criminal, administrative, or investigative and whether formal or informal.

2927 Section 103. Section **16-6a-902** is enacted to read:

2928 **16-6a-902. Authority to indemnify directors.**

2929 (1) Except as provided in Subsection (4), a nonprofit corporation may indemnify an
2930 individual made a party to a proceeding because the individual is or was a director, against liability
2931 incurred in the proceeding if:

2932 (a) the individual's conduct was in good faith;

2933 (b) the individual reasonably believed that the individual's conduct was in, or not opposed
2934 to, the corporation's best interests; and

2935 (c) in the case of any criminal proceeding, the individual had no reasonable cause to
2936 believe the individual's conduct was unlawful.

2937 (2) A director's conduct with respect to any employee benefit plan for a purpose the
2938 director reasonably believed to be in or not opposed to the interests of the participants in and
2939 beneficiaries of the plan is conduct that satisfies the requirement of Subsection (1)(b).

2940 (3) The termination of a proceeding by judgment, order, settlement, conviction, or upon
2941 a plea of nolo contendere or its equivalent is not, of itself, determinative that the director did not
2942 meet the standard of conduct described in this section.

2943 (4) A nonprofit corporation may not indemnify a director under this section:

2944 (a) in connection with a proceeding by or in the right of the nonprofit corporation in which
2945 the director was adjudged liable to the nonprofit corporation; or

2946 (b) in connection with any other proceeding charging that the director derived an improper
2947 personal benefit, whether or not involving action in the director's official capacity, in which
2948 proceeding the director was adjudged liable on the basis that the director derived an improper
2949 personal benefit.

2950 (5) Indemnification permitted under this section in connection with a proceeding by or in
2951 the right of the nonprofit corporation is limited to reasonable expenses incurred in connection with
2952 the proceeding.

2953 Section 104. Section **16-6a-903** is enacted to read:

2954 **16-6a-903. Mandatory indemnification of directors.**

2955 (1) Unless limited by its articles of incorporation, a nonprofit corporation shall indemnify
2956 a director described in Subsection (2) against reasonable expenses incurred by the director in
2957 connection with the proceeding or claim with respect to which the director has been successful.

2958 (2) Subsection (1) applies to a director who was successful, on the merits or otherwise, in
2959 the defense of:

2960 (a) any proceeding to which the director was a party because the director is or was a
2961 director of the nonprofit corporation; or

2962 (b) any claim, issue, or matter in the proceeding, to which the director was a party because
2963 the director is or was a director of the nonprofit corporation.

2964 Section 105. Section **16-6a-904** is enacted to read:

2965 **16-6a-904. Advance of expenses for directors.**

2966 (1) A nonprofit corporation may pay for or reimburse the reasonable expenses incurred by
2967 a director who is a party to a proceeding in advance of final disposition of the proceeding if:

2968 (a) the director furnishes the nonprofit corporation a written affirmation of the director's
2969 good faith belief that the director has met the applicable standard of conduct described in Section
2970 16-6a-902;

2971 (b) the director furnishes the nonprofit corporation a written undertaking, executed
2972 personally or on the director's behalf, to repay the advance if it is ultimately determined that the
2973 director did not meet the standard of conduct; and

2974 (c) a determination is made that the facts then known to those making the determination
2975 would not preclude indemnification under this part.

2976 (2) The undertaking required by Subsection (1)(b):

2977 (a) shall be an unlimited general obligation of the director;

2978 (b) need not be secured; and

2979 (c) may be accepted without reference to financial ability to make repayment.

2980 (3) Determinations and authorizations of payments under this section shall be made in the
2981 manner specified in Section 16-6a-906.

2982 Section 106. Section **16-6a-905** is enacted to read:

2983 **16-6a-905. Court-ordered indemnification of directors.**

2984 (1) Unless a nonprofit corporation's articles of incorporation provide otherwise, a director
2985 of the nonprofit corporation who is or was a party to a proceeding may apply for indemnification
2986 to:

2987 (a) the court conducting the proceeding; or

2988 (b) another court of competent jurisdiction.

2989 (2) On receipt of an application described in Subsection (1), the court, after giving any
2990 notice the court considers necessary, may order indemnification in the following manner:

2991 (a) if the court determines that the director is entitled to mandatory indemnification under
2992 Section 16-6a-903, the court shall:

2993 (i) order indemnification; and

2994 (ii) order the nonprofit corporation to pay the director's reasonable expenses incurred to
2995 obtain court-ordered indemnification; and

2996 (b) if the court determines that the director is fairly and reasonably entitled to
2997 indemnification in view of all the relevant circumstances, whether or not the director met the
2998 applicable standard of conduct set forth in Section 16-6a-902 or was adjudged liable as described
2999 in Subsection 16-6a-902(4), the court may order indemnification as the court determines to be
3000 proper, except that the indemnification with respect to any proceeding in which liability has been
3001 adjudged in the circumstances described in Subsection 16-6a-902(4) is limited to reasonable

3002 expenses incurred.

3003 Section 107. Section **16-6a-906** is enacted to read:

3004 **16-6a-906. Determination and authorization of indemnification of directors.**

3005 (1) (a) A nonprofit corporation may not indemnify a director under Section 16-6a-902
3006 unless authorized in the specific case after a determination has been made that indemnification of
3007 the director is permissible in the circumstances because the director has met the standard of
3008 conduct set forth in Section 16-6a-902.

3009 (b) A nonprofit corporation may not advance expenses to a director under Section
3010 16-6a-904 unless:

3011 (i) authorized in the specific case after the written affirmation and undertaking required
3012 by Subsections 16-6a-904(1)(a) and (1)(b) are received; and

3013 (ii) the determination required by Subsection 16-6a-904(1)(c) has been made.

3014 (2) (a) The determinations required by Subsection (1) shall be made:

3015 (i) by the board of directors by a majority vote of those present at a meeting at which a
3016 quorum is present if only those directors not parties to the proceeding are counted in satisfying the
3017 quorum;

3018 (ii) if a quorum cannot be obtained under Subsection (2)(a)(i), by a majority vote of a
3019 committee of the board of directors:

3020 (A) designated by the board of directors; and

3021 (B) consisting of two or more directors not parties to the proceeding; or

3022 (iii) by persons listed in Subsection (3).

3023 (b) The directors who are parties to the proceeding may participate in the designation of
3024 directors for the committee described in Subsection (2)(a)(ii).

3025 (3) (a) The determination required to be made by Subsection (1) shall be made by a person
3026 described in Subsection (3)(a) if:

3027 (i) (A) a quorum cannot be obtained in accordance with Subsection (2)(a)(i); and

3028 (B) a committee cannot be established under Subsection (2)(a)(ii); or

3029 (ii) even if a quorum is obtained or a committee is designated, a majority of the directors
3030 constituting the quorum or committee directs.

3031 (b) If a condition described in Subsection (3)(a) is met, the determination required to be
3032 made by Subsection (1) shall be made:

3033 (i) by independent legal counsel selected by:
3034 (A) a vote of the board of directors or the committee in the manner specified in Subsection
3035 (2)(a)(i) or (ii); or
3036 (B) if a quorum of the full board cannot be obtained and a committee cannot be
3037 established, by independent legal counsel selected by a majority vote of the full board of directors;
3038 or
3039 (ii) by the voting members, but a voting member may not vote on the determination if the
3040 voting member is:
3041 (A) a director; and
3042 (B) at the time seeking indemnification.
3043 (4) (a) Except as provided in Subsection (4)(b), an authorization of indemnification and
3044 advance of expenses shall be made in the same manner as the determination that indemnification
3045 or advance of expenses is permissible.
3046 (b) Notwithstanding Subsection (4)(a), if the determination that indemnification or
3047 advance of expenses is permissible is made by independent legal counsel, authorization of
3048 indemnification and advance of expenses shall be made by the body that selected the independent
3049 legal counsel.
3050 Section 108. Section **16-6a-907** is enacted to read:
3051 **16-6a-907. Indemnification of officers, employees, fiduciaries, and agents.**
3052 Unless a nonprofit corporation's articles of incorporation provide otherwise:
3053 (1) to the same extent as a director, an officer of the nonprofit corporation is entitled to:
3054 (a) mandatory indemnification under Section 16-6a-903; and
3055 (b) apply for court-ordered indemnification under Section 16-6a-905;
3056 (2) the nonprofit corporation may indemnify and advance expenses to an officer,
3057 employee, fiduciary, or agent of the corporation to the same extent as to a director; and
3058 (3) a nonprofit corporation may indemnify and advance expenses to an officer, employee,
3059 fiduciary, or agent who is not a director to a greater extent if:
3060 (a) not inconsistent with public policy; and
3061 (b) provided for by:
3062 (i) its articles of incorporation or bylaws;
3063 (ii) general or specific action of its board of directors; or

3064 (iii) contract.

3065 Section 109. Section **16-6a-908** is enacted to read:

3066 **16-6a-908. Insurance.**

3067 (1) A nonprofit corporation may purchase and maintain liability insurance:

3068 (a) on behalf of a person who:

3069 (i) is or was a director, officer, employee, fiduciary, or agent of the nonprofit corporation;

3070 or

3071 (ii) while serving as a director, officer, employee, fiduciary, or agent of the nonprofit
3072 corporation at the request of the nonprofit corporation, is or was serving as a director, officer,
3073 partner, trustee, employee, fiduciary, or agent of:

3074 (A) another foreign or domestic nonprofit corporation;

3075 (B) other person; or

3076 (C) an employee benefit plan; and

3077 (b) against liability asserted against or incurred by the person in that capacity or arising
3078 from the person's status as a director, officer, employee, fiduciary, or agent, whether or not the
3079 nonprofit corporation would have power to indemnify the person against the same liability under
3080 Section 16-6a-902, 16-6a-903, or 16-6a-907.

3081 (2) Insurance may be procured from any insurance company designated by the board of
3082 directors, whether the insurance company is formed under the laws of this state or any other
3083 jurisdiction of the United States or elsewhere, including any insurance company in which the
3084 nonprofit corporation has an equity or any other interest through stock ownership or otherwise.

3085 Section 110. Section **16-6a-909** is enacted to read:

3086 **16-6a-909. Limitations on indemnification of directors.**

3087 (1) (a) A provision treating a nonprofit corporation's indemnification of, or advance for
3088 expenses to, directors that is contained in the following is valid only if and to the extent the
3089 provision is not inconsistent with this part:

3090 (i) the articles of incorporation or bylaws of the nonprofit corporation;

3091 (ii) a resolution of the nonprofit corporation's members or board of directors;

3092 (iii) a contract, except an insurance policy; or

3093 (iv) other writing.

3094 (b) If the articles of incorporation limit indemnification or advance of expenses,

3095 indemnification and advance of expenses are valid only to the extent not inconsistent with the
3096 articles of incorporation.

3097 (2) This part does not limit a nonprofit corporation's power to pay or reimburse expenses
3098 incurred by a director in connection with the director's appearance as a witness in a proceeding at
3099 a time when the director has not been made a named defendant or respondent to the proceeding.

3100 Section 111. Section **16-6a-910** is enacted to read:

3101 **16-6a-910. Notice to voting members of indemnification of director.**

3102 (1) If a nonprofit corporation indemnifies or advances expenses to a director under this part
3103 in connection with a proceeding by or in the right of the nonprofit corporation, the nonprofit
3104 corporation shall give written notice of the indemnification or advance to the voting members with
3105 or before the notice of the next voting members' meeting.

3106 (2) If the next voting member action after the indemnification or advance is taken without
3107 a meeting at the instigation of the board of directors, the notice shall be given to the voting
3108 members at or before the time the first voting member signs a writing consenting to the action.

3109 Section 112. Section **16-6a-1001** is enacted to read:

3110 **Part 10. Amendment of Articles of Incorporation and Bylaws**

3111 **16-6a-1001. Authority to amend articles of incorporation.**

3112 (1) A nonprofit corporation may amend its articles of incorporation at any time to:

3113 (a) add or change a provision that is required or permitted in the articles of incorporation;

3114 or

3115 (b) delete a provision not required in the articles of incorporation.

3116 (2) Whether a provision is required or permitted in the articles of incorporation is
3117 determined as of the effective date of the amendment.

3118 Section 113. Section **16-6a-1002** is enacted to read:

3119 **16-6a-1002. Amendment of articles of incorporation by board of directors or**
3120 **incorporators.**

3121 (1) Unless otherwise provided in the articles of incorporation, the board of directors may
3122 adopt, without member approval, one or more amendments to the articles of incorporation to:

3123 (a) delete the names and addresses of the initial directors;

3124 (b) delete the name and address of the initial registered agent or registered office, if a
3125 statement of change is on file with the division;

3126 (c) change the corporate name by:
3127 (i) substituting the word "corporation," "incorporated," "company," "limited," or an
3128 abbreviation of any such word for a similar word or abbreviation in the name; or
3129 (ii) adding, deleting, or changing a geographical attribution; or
3130 (d) make any other change expressly permitted by this chapter to be made without member
3131 action.

3132 (2) The board of directors may adopt, without member action, one or more amendments
3133 to the articles of incorporation to change the corporate name, if necessary, in connection with the
3134 reinstatement of a nonprofit corporation pursuant to Section 16-6a-1412.

3135 (3) (a) Subject to any approval required pursuant to Section 16-6a-1012, if a nonprofit
3136 corporation has no members, no members entitled to vote on amendments, or no members yet
3137 admitted to membership, one or more amendments to the nonprofit corporation's articles of
3138 incorporation may be adopted by:

3139 (i) its incorporators until directors have been chosen; or
3140 (ii) its directors after the directors have been chosen.

3141 (b) A nonprofit corporation described in Subsection (3)(a) shall provide notice of any
3142 meeting at which an amendment is to be voted upon.

3143 (c) The notice required by Subsection (3)(b) shall:

3144 (i) be in accordance with Section 16-6a-814;

3145 (ii) state that the purpose, or one of the purposes, of the meeting is to consider a proposed
3146 amendment to the articles of incorporation; and

3147 (iii) (A) contain or be accompanied by a copy or summary of the amendment; or

3148 (B) state the general nature of the amendment.

3149 (d) An amendment described in Subsection (3)(a) shall be approved:

3150 (i) by a majority of the incorporators, until directors have been chosen; or

3151 (ii) after directors are chosen by a majority of the directors in office at the time the
3152 amendment is adopted.

3153 Section 114. Section **16-6a-1003** is enacted to read:

3154 **16-6a-1003. Amendment of articles of incorporation by board of directors and**
3155 **members.**

3156 (1) The board of directors or the members representing at least 10% of all of the votes

3157 entitled to be cast on the amendment may propose an amendment to the articles of incorporation
3158 for submission to the members unless a different vote or voting class is required by:

3159 (a) this chapter;

3160 (b) the articles of incorporation;

3161 (c) the bylaws; or

3162 (d) the members or the board of directors acting pursuant to Subsection (5).

3163 (2) For an amendment to the articles of incorporation to be adopted pursuant to Subsection

3164 (1):

3165 (a) the board of directors shall recommend the amendment to the members unless:

3166 (i) the amendment is proposed by members; or

3167 (ii) the board of directors:

3168 (A) determines that because of conflict of interest or other special circumstances it should

3169 make no recommendation; and

3170 (B) communicates the basis for its determination to the members with the amendment; and

3171 (b) the members entitled to vote on the amendment shall approve the amendment as

3172 provided in Subsection (5).

3173 (3) The proposing board of directors or the proposing members may condition the
3174 effectiveness of the amendment on any basis.

3175 (4) (a) The nonprofit corporation shall give notice, in accordance with Section 16-6a-704,

3176 to each member entitled to vote on the amendment of the members' meeting at which the

3177 amendment will be voted upon.

3178 (b) The notice required by Subsection (4)(a) shall:

3179 (i) state that the purpose, or one of the purposes, of the meeting is to consider the

3180 amendment; and

3181 (ii) (A) contain or be accompanied by a copy or a summary of the amendment; or

3182 (B) shall state the general nature of the amendment.

3183 (5) The amendment shall be approved by the votes required by Sections 16-6a-714 and

3184 16-6a-715 by every voting group entitled to vote on the amendment unless a greater vote is

3185 required by:

3186 (a) this chapter;

3187 (b) the articles of incorporation;

3188 (c) bylaws adopted by the members; or
3189 (d) the proposing board of directors or the proposing members acting pursuant to
3190 Subsection (3).

3191 (6) If the board of directors or the members seek to have the amendment approved by the
3192 members by written consent, the material soliciting the approval shall contain or be accompanied
3193 by a copy or summary of the amendment.

3194 Section 115. Section **16-6a-1004** is enacted to read:

3195 **16-6a-1004. Voting on amendments of articles of incorporation by voting groups.**

3196 (1) Unless otherwise provided by this chapter or the articles of incorporation, if
3197 membership voting is otherwise required by this chapter, the members of a class who are entitled
3198 to vote are entitled to vote as a separate voting group on an amendment to the articles of
3199 incorporation if the amendment would:

3200 (a) affect the rights, privileges, preferences, restrictions, or conditions of that class as to
3201 voting, dissolution, redemption, or transfer of memberships in a manner different than the
3202 amendment would affect another class;

3203 (b) change the rights, privileges, preferences, restrictions, or conditions of that class as to
3204 voting, dissolution, redemption, or transfer by changing the rights, privileges, preferences,
3205 restrictions, or conditions of another class;

3206 (c) increase or decrease the number of memberships authorized for that class;

3207 (d) increase the number of memberships authorized for another class;

3208 (e) effect an exchange, reclassification, or termination of the memberships of that class;

3209 or

3210 (f) authorize a new class of memberships.

3211 (2) If a class is to be divided into two or more classes as a result of an amendment to the
3212 articles of incorporation, the amendment shall be approved by the members of each class that
3213 would be created by the amendment.

3214 Section 116. Section **16-6a-1005** is enacted to read:

3215 **16-6a-1005. Articles of amendment to articles of incorporation.**

3216 A nonprofit corporation amending its articles of incorporation shall deliver to the division
3217 for filing articles of amendment setting forth:

3218 (1) the name of the nonprofit corporation;

- 3219 (2) the text of each amendment adopted;
3220 (3) the date of each amendment's adoption;
3221 (4) if the amendment was adopted by the board of directors or incorporators without
3222 member action, a statement to that effect and that:
3223 (a) the nonprofit corporation does not have members; or
3224 (b) member action was not required;
3225 (5) if the amendment was adopted by the members, a statement that the number of votes
3226 cast for the amendment by the members or by each voting group entitled to vote separately on the
3227 amendment was sufficient for approval by the members or voting group respectively; and
3228 (6) if approval of the amendment by some person or persons other than the members, the
3229 board of directors, or the incorporators is required pursuant to Section 16-6a-1013, a statement that
3230 the approval was obtained.
- 3231 Section 117. Section **16-6a-1006** is enacted to read:
3232 **16-6a-1006. Restated articles of incorporation.**
- 3233 (1) (a) The board of directors may restate the articles of incorporation at any time with or
3234 without member action.
3235 (b) The incorporators of a nonprofit corporation may restate the articles of incorporation
3236 at any time if the nonprofit corporation:
3237 (i) has no members; and
3238 (ii) no directors have been chosen.
- 3239 (2) (a) The restatement may include one or more amendments to the articles of
3240 incorporation.
3241 (b) Notwithstanding Subsection (1), if the restatement includes an amendment requiring
3242 member approval, it shall be adopted as provided in Section 16-6a-1003.
- 3243 (3) (a) If the board of directors submits a restatement for member action, the nonprofit
3244 corporation shall give notice, in accordance with Section 16-6a-704, to each member entitled to
3245 vote on the restatement of the members' meeting at which the restatement will be voted upon.
3246 (b) The notice required by Subsection (3)(a) shall:
3247 (i) state that the purpose, or one of the purposes, of the meeting is to consider the
3248 restatement; and
3249 (ii) contain or be accompanied by a copy of the restatement that identifies any amendment

3250 or other change it would make in the articles of incorporation.

3251 (4) A nonprofit corporation restating its articles of incorporation shall deliver to the
3252 division for filing articles of restatement setting forth:

3253 (a) the name of the nonprofit corporation;

3254 (b) the text of the restated articles of incorporation;

3255 (c) if the restatement contains an amendment to the articles of incorporation that was
3256 adopted by the members, the information required by Subsection 16-6a-1005(1)(e); and

3257 (d) if the restatement was adopted by the board of directors or incorporators without
3258 member action, a statement to that effect and that member action was not required.

3259 (5) Upon filing by the division or at any later effective date determined pursuant to Section
3260 16-6a-108, restated articles of incorporation supersede the original articles of incorporation and
3261 all prior amendments to the original articles of incorporation.

3262 Section 118. Section **16-6a-1007** is enacted to read:

3263 **16-6a-1007. Amendment of articles of incorporation pursuant to reorganization.**

3264 (1) Articles of incorporation may be amended, without action by the board of directors or
3265 members, to carry out a plan of reorganization ordered or decreed by a court of competent
3266 jurisdiction under a statute of this state or of the United States if the articles of incorporation after
3267 amendment contain only provisions required or permitted by Section 16-6a-202.

3268 (2) For an amendment to the articles of incorporation to be made pursuant to Subsection
3269 (1), one or more individuals designated by the court shall deliver to the division for filing articles
3270 of amendment setting forth:

3271 (a) the name of the nonprofit corporation;

3272 (b) the text of each amendment approved by the court;

3273 (c) the date of the court's order or decree approving the articles of amendment;

3274 (d) the title of the reorganization proceeding in which the order or decree was entered; and

3275 (e) a statement that the court had jurisdiction of the proceeding under a specified statute
3276 of this state or of the United States.

3277 (3) This section does not apply after entry of a final decree in the reorganization
3278 proceeding even though the court retains jurisdiction of the proceeding for limited purposes
3279 unrelated to consummation of the reorganization plan.

3280 Section 119. Section **16-6a-1008** is enacted to read:

3281 **16-6a-1008. Conversion to a corporation.**

3282 (1) (a) A domestic nonprofit corporation may convert to a corporation subject to Title 16,
3283 Chapter 10a, Utah Revised Business Corporation Act, by filing an amendment of its articles of
3284 incorporation with the division pursuant to this section.

3285 (b) The day on which a nonprofit domestic corporation files an amendment under this
3286 section, the domestic nonprofit corporation becomes a corporation subject to Title 16, Chapter 10a,
3287 Utah Revised Business Corporation Act.

3288 (2) The amendment of the articles of incorporation to convert to a corporation shall:

3289 (a) revise the statement of purpose;

3290 (b) delete:

3291 (i) the authorization for members; and

3292 (ii) any other provisions relating to memberships;

3293 (c) authorize shares:

3294 (i) stating the number of shares; and

3295 (ii) including the information required by Section 16-10a-601 with respect to each class
3296 of shares the corporation is to be authorized to issue;

3297 (d) make such other changes as may be necessary or desired; and

3298 (e) if the corporation has any members, provide for:

3299 (i) the cancellation of the memberships; or

3300 (ii) the conversion of the memberships to shares of the corporation.

3301 (3) If the nonprofit corporation has any voting members, an amendment to convert to a
3302 corporation shall be approved by all of the members regardless of limitations or restrictions on the
3303 voting rights of the members.

3304 (4) If an amendment to the articles of incorporation filed pursuant to this section is
3305 included in a merger agreement, this section applies, except that any provisions for cancellation
3306 or conversion of memberships:

3307 (a) shall be in the merger agreement; and

3308 (b) may not be in the amendment of the articles of incorporation.

3309 Section 120. Section **16-6a-1009** is enacted to read:

3310 **16-6a-1009. Effect of amendment of articles of incorporation.**

3311 (1) An amendment to the articles of incorporation does not affect:

- 3312 (a) any existing right of persons other than members;
- 3313 (b) any cause of action existing against or in favor of the nonprofit corporation; or
- 3314 (c) any proceeding to which the nonprofit corporation is a party.
- 3315 (2) An amendment changing a nonprofit corporation's corporate name does not abate a
- 3316 proceeding brought by or against a nonprofit corporation in its former corporate name.

3317 Section 121. Section **16-6a-1010** is enacted to read:

3318 **16-6a-1010. Amendment of bylaws by board of directors or members.**

3319 (1) The board of directors may amend the bylaws at any time to add, change, or delete a

3320 provision, unless:

3321 (a) this chapter or the articles of incorporation or bylaws:

3322 (i) reserve the power exclusively to the members in whole or part; or

3323 (ii) otherwise prohibit the board of directors from amending the bylaws to add, change,

3324 or delete a provision; or

3325 (b) it would result in a change of the rights, privileges, preferences, restrictions, or

3326 conditions of a membership class as to voting, dissolution, redemption, or transfer by changing the

3327 rights, privileges, preferences, restrictions, or conditions of another class.

3328 (2) (a) The members may amend the bylaws even though the bylaws may also be amended

3329 by the board of directors.

3330 (b) Amendments to the bylaws by members shall be made in accordance with Sections

3331 16-6a-1003 and 16-6a-1004 as if each reference in Sections 16-6a-1003 and 16-6a-1004 to the

3332 article of incorporation was a reference to the bylaws.

3333 Section 122. Section **16-6a-1011** is enacted to read:

3334 **16-6a-1011. Bylaw changing quorum or voting requirement for members.**

3335 (1) (a) If authorized by the articles of incorporation, the members may adopt, amend, or

3336 repeal bylaws that fix a greater quorum or voting requirement for members, or voting groups of

3337 members, than is required by this chapter.

3338 (b) An action by the members under Subsection (1)(a) is subject to Parts 6 and 7.

3339 (2) Bylaws that fix a greater quorum requirement or a greater voting requirement for

3340 members pursuant to Section 16-6a-716 may not be amended by the board of directors.

3341 Section 123. Section **16-6a-1012** is enacted to read:

3342 **16-6a-1012. Bylaw changing quorum or voting requirement for directors.**

3343 (1) Bylaws that fix a greater quorum or voting requirement for the board of directors may
3344 be amended:

3345 (a) if adopted by the members, only by the members; or

3346 (b) if adopted by the board of directors, by:

3347 (i) the members; or

3348 (ii) the board of directors.

3349 (2) Bylaws adopted or amended by the members that fix a greater quorum or voting
3350 requirement for the board of directors may provide that the bylaws may be amended only by a
3351 specified vote of:

3352 (a) the members; or

3353 (b) the board of directors.

3354 (3) Action by the board of directors under Subsection (1)(b) to adopt or amend bylaws that
3355 change the quorum or voting requirement for the board of directors shall meet the greater of the
3356 quorum and voting requirement for taking the action:

3357 (a) then in effect; or

3358 (b) proposed to be adopted.

3359 Section 124. Section **16-6a-1013** is enacted to read:

3360 **16-6a-1013. Approval by third persons.**

3361 (1) The articles of incorporation may require an amendment to the articles of incorporation
3362 or bylaws to be approved in writing by a specified person or persons other than the board of
3363 directors.

3364 (2) A provision permitted under Subsection (2) may only be amended with the approval
3365 in writing of the person or persons specified in the provision.

3366 Section 125. Section **16-6a-1014** is enacted to read:

3367 **16-6a-1014. Amendment terminating members or redeeming or canceling**
3368 **memberships.**

3369 (1) An amendment to the articles of incorporation or bylaws of a nonprofit corporation
3370 shall meet the requirements of this chapter and this section if the amendment would:

3371 (a) terminate all members or any class of members; or

3372 (b) redeem or cancel all memberships or any class of memberships.

3373 (2) Before adopting a resolution proposing an amendment as described in Subsection (1),

3374 the board of directors of a nonprofit corporation shall give notice of the general nature of the
3375 amendment to the members.

3376 Section 126. Section **16-6a-1101** is enacted to read:

3377 **Part 11. Merger**

3378 **16-6a-1101. Merger.**

3379 (1) One or more nonprofit corporations may merge into another nonprofit corporation if:

3380 (a) the board of directors of each nonprofit corporation adopts a plan of merger; and

3381 (b) required by Section 16-6a-1102, the members of the nonprofit corporation entitled to

3382 vote on the plan of merger, approve the plan of merger.

3383 (2) The plan of merger required by Subsection (1) shall set forth:

3384 (a) the name of each nonprofit corporation planning to merge;

3385 (b) the name of the surviving nonprofit corporation into which each nonprofit corporation

3386 plans to merge;

3387 (c) the terms and conditions of the merger;

3388 (d) the manner and basis of converting in whole or part the memberships of each nonprofit

3389 corporation, if any, into memberships, obligations, or other interests of:

3390 (i) the surviving nonprofit corporation;

3391 (ii) any other entity; or

3392 (iii) into money or other property; and

3393 (e) any amendments to the articles of incorporation of the surviving nonprofit corporation

3394 to be effected by the merger.

3395 (3) In addition to the provisions required by Subsection (2), the plan of merger may set

3396 forth other provisions relating to the merger.

3397 Section 127. Section **16-6a-1102** is enacted to read:

3398 **16-6a-1102. Action on plan of merger.**

3399 (1) After adopting the plan of merger, the board of directors of each nonprofit corporation

3400 that is a party to the merger shall submit the plan of merger to its members, if any are entitled to

3401 vote on the plan of merger, for approval.

3402 (2) If the nonprofit corporation has members entitled to vote with respect to the approval

3403 of a plan of merger, a plan of merger is approved by the members if:

3404 (a) (i) the board of directors recommends the plan of merger to the members entitled to

3405 vote on the plan of merger; or

3406 (ii) (A) the board of directors determines that, because of conflict of interest or other
3407 special circumstances, it should make no recommendation; and

3408 (B) communicates the basis for its determination to the members with the plan; and

3409 (b) the members entitled to vote on the plan of merger approve the plan as provided in
3410 Subsection (7).

3411 (3) After adopting the plan of merger, the board of directors of each nonprofit corporation
3412 party to the merger shall submit the plan of merger for written approval by any person or persons:

3413 (a) whose approval is required by the articles of incorporation of the nonprofit corporation;
3414 and

3415 (b) as required by Section 16-6a-1013 for an amendment to the articles of incorporation
3416 or bylaws.

3417 (4) (a) If the nonprofit corporation does not have members entitled to vote on a merger,
3418 the merger shall be approved and adopted by a majority of the directors elected and in office at the
3419 time the plan of merger is considered by the board of directors.

3420 (b) The nonprofit corporation shall provide notice of any meeting of the board of directors
3421 at which the approval described in Subsection (4)(a) is to be obtained in accordance with Section
3422 16-6a-814.

3423 (c) The notice required by Subsection (4)(b) shall state that the purpose, or one of the
3424 purposes, of the meeting is to consider the proposed merger.

3425 (5) The board of directors may condition the effectiveness of the plan of merger on any
3426 basis.

3427 (6) (a) The nonprofit corporation shall give notice, in accordance with Section 16-6a-704,
3428 to each member entitled to vote on the plan of merger of the members' meeting at which the plan
3429 will be voted on.

3430 (b) The notice required by Subsection (6)(a) shall:

3431 (i) state that the purpose, or one of the purposes, of the meeting is to consider the plan of
3432 merger; and

3433 (ii) contain or be accompanied by a copy of the plan of merger or a summary of the plan
3434 of merger.

3435 (7) The plan of merger shall be approved by the votes required by Sections 16-6a-714 and

3436 16-6a-715 by every voting group entitled to vote on the plan of merger unless a greater vote is
3437 required by:

3438 (a) this chapter;

3439 (b) the articles of incorporation;

3440 (c) bylaws adopted by the members; or

3441 (d) the board of directors acting pursuant to Subsection (5).

3442 (8) Separate voting by voting groups is required on a plan of merger if the plan contains
3443 a provision that, if contained in an amendment to the articles of incorporation, would require action
3444 by one or more separate voting groups on the amendment.

3445 Section 128. Section **16-6a-1103** is enacted to read:

3446 **16-6a-1103. Articles of merger.**

3447 (1) After a plan of merger is approved, pursuant to Section 16-6a-1102, the surviving
3448 nonprofit corporation shall deliver to the division for filing articles of merger setting forth:

3449 (a) the plan of merger;

3450 (b) if member approval was not required:

3451 (i) a statement to the effect that member approval was not required; and

3452 (ii) a statement that the plan of merger was approved by a sufficient vote of the board of
3453 directors of the nonprofit corporation;

3454 (c) if approval of the members of one or more nonprofit corporations party to the merger
3455 was required, a statement that the number of votes cast for the plan by each voting group entitled
3456 to vote separately on the merger was sufficient for approval by that voting group; and

3457 (d) if approval of the plan by some person or persons other than the members or the board
3458 of directors is required pursuant to Subsection 16-6a-1102(3), a statement that the approval was
3459 obtained.

3460 (2) A merger takes effect upon the effective date stated in the articles of merger, which
3461 may not be prior to the date the articles of merger are filed.

3462 (3) Articles of merger shall be executed by each party to the merger.

3463 Section 129. Section **16-6a-1104** is enacted to read:

3464 **16-6a-1104. Effect of merger.**

3465 (1) When a merger takes effect:

3466 (a) every other nonprofit corporation party to the merger merges into the surviving

3467 nonprofit corporation;

3468 (b) the separate existence of every nonprofit corporation party to the merger except the
3469 surviving nonprofit corporation ceases;

3470 (c) the title to all real estate and other property owned by every other nonprofit corporation
3471 party to the merger is transferred to and vested in the surviving nonprofit corporation without
3472 reversion or impairment;

3473 (d) the surviving nonprofit corporation has all liabilities of each nonprofit corporation
3474 party to the merger;

3475 (e) (i) a proceeding pending by or against any nonprofit corporation party to the merger
3476 may be continued as if the merger did not occur; or

3477 (ii) the surviving nonprofit corporation may be substituted in the proceeding for the
3478 nonprofit corporation whose existence ceased;

3479 (f) the articles of incorporation of the surviving nonprofit corporation are amended to the
3480 extent provided in the plan of merger; and

3481 (g) the memberships of each nonprofit corporation party to the merger that are to be
3482 converted into memberships, obligations, or other interests of the surviving nonprofit corporation
3483 or into money or other property are converted, and the former holders of the memberships are
3484 entitled only to the rights provided in the articles of merger.

3485 (2) (a) A transfer to and vesting in the surviving nonprofit corporation described in
3486 Subsection (1)(c) occurs by operation of law.

3487 (b) Consent or approval of any other person may not be required in connection with any
3488 transfer or vesting unless the consent or approval is specifically required in the event of merger by:

3489 (i) law; or

3490 (ii) express provision in any contract, agreement, decree, order, or other instrument to
3491 which any of the nonprofit corporations so merged is a party or by which it is bound.

3492 Section 130. Section **16-6a-1105** is enacted to read:

3493 **16-6a-1105. Merger with foreign nonprofit corporation.**

3494 (1) One or more domestic nonprofit corporations may merge with one or more foreign
3495 nonprofit corporations if:

3496 (a) the merger is permitted by the law of the state or country under whose law each foreign
3497 nonprofit corporation is incorporated;

3498 (b) each foreign nonprofit corporation complies with the provisions of the law described
3499 in Subsection (1)(a) in effecting the merger;

3500 (c) if the foreign corporation is the surviving nonprofit corporation of the merger, the
3501 foreign corporation:

3502 (i) complies with Section 16-6a-1103; and

3503 (ii) in addition to the information required by Section 16-6a-1103, provides the address
3504 of its principal office; and

3505 (d) each domestic nonprofit corporation complies with:

3506 (i) the applicable provisions of Sections 16-6a-1101 and 16-6a-1102; and

3507 (ii) if it is the surviving nonprofit corporation of the merger, with Section 16-6a-1103.

3508 (2) Upon the merger taking effect, a surviving foreign nonprofit corporation of a merger
3509 shall:

3510 (a) (i) maintain a registered agent to accept service in any proceeding based on a cause of
3511 action arising with respect to any domestic nonprofit corporation that is merged into the foreign
3512 nonprofit corporation; or

3513 (ii) be considered to have authorized service of process on it in connection with any
3514 proceeding described in Subsection (2)(a)(i) by registered or certified mail, return receipt
3515 requested, to the address of its principal office as:

3516 (A) set forth in the articles of merger; or

3517 (B) as last changed in a notice delivered to the division; and

3518 (b) shall comply with this chapter if it is to conduct affairs in this state.

3519 (3) Service effected pursuant to Subsection (2)(a)(ii) is perfected at the earliest of:

3520 (a) the date the foreign nonprofit corporation receives the process, notice, or demand;

3521 (b) the date shown on the return receipt, if signed on behalf of the foreign nonprofit
3522 corporation; or

3523 (c) five days after mailing.

3524 (4) Subsection (2) does not prescribe the only means, or necessarily the required means,
3525 of serving a surviving foreign nonprofit corporation of a merger.

3526 Section 131. Section **16-6a-1201** is enacted to read:

3527 **Part 12. Sale of Property**

3528 **16-6a-1201. Sale of property.**

3529 (1) Unless the bylaws otherwise provide, a nonprofit corporation may, as authorized by
3530 the board of directors:

3531 (a) sell, lease, exchange, or otherwise dispose of all or substantially all of its property in
3532 the usual and regular course of business; or

3533 (b) mortgage, pledge, dedicate to the repayment of indebtedness, whether with or without
3534 recourse, or otherwise encumber all or substantially all of its property whether or not in the usual
3535 and regular course of business.

3536 (2) Unless otherwise provided in the bylaws, approval of a transaction described in this
3537 section by the members is not required.

3538 Section 132. Section **16-6a-1202** is enacted to read:

3539 **16-6a-1202. Sale of property other than in regular course of activities.**

3540 (1) (a) A nonprofit corporation may sell, lease, exchange, or otherwise dispose of all, or
3541 substantially all, of its property, with or without its good will, other than in the usual and regular
3542 course of business on the terms and conditions and for the consideration determined by the board
3543 of directors, if:

3544 (i) the board of directors proposes the transaction; and

3545 (ii) the members entitled to vote on the transaction approve the transaction.

3546 (b) A sale, lease, exchange, or other disposition of all, or substantially all, of the property
3547 of a nonprofit corporation, with or without its good will, in connection with its dissolution, other
3548 than in the usual and regular course of business, and other than pursuant to a court order, shall be
3549 subject to this section.

3550 (c) A sale, lease, exchange, or other disposition of all, or substantially all, of the property
3551 of a nonprofit corporation, with or without its good will, pursuant to a court order is not subject
3552 to this section.

3553 (2) (a) A nonprofit corporation shall comply with Subsection (2)(b) to vote or otherwise
3554 consent with respect to the sale, lease, exchange, or other disposition of all, or substantially all, of
3555 the property with or without the good will of another entity that the nonprofit corporation controls
3556 if:

3557 (i) the nonprofit corporation is entitled to vote or otherwise consent; and

3558 (ii) the property interests held by the nonprofit corporation in the other entity constitute
3559 all, or substantially all, of the property of the nonprofit corporation.

3560 (b) A nonprofit corporation may vote or otherwise consent to a transaction described in
3561 Subsection (2)(a) only if:

3562 (i) the board of the directors of the nonprofit corporation proposes the vote or consent; and

3563 (ii) the members, if any are entitled to vote on the vote or consent, approve giving the vote
3564 or consent.

3565 (3) For a transaction described in Subsection (1) or a consent described in Subsection (2)
3566 to be approved by the members:

3567 (a) (i) the board of directors shall recommend the transaction or the consent to the
3568 members; or

3569 (ii) the board of directors shall:

3570 (A) determine that because of a conflict of interest or other special circumstance it should
3571 make no recommendation; and

3572 (B) communicate the basis for its determination to the members at a membership meeting
3573 with the submission of the transaction or consent; and

3574 (b) the members entitled to vote on the transaction or the consent shall approve the
3575 transaction or the consent as provided in Subsection (6).

3576 (4) The board of directors may condition the effectiveness of the transaction or the consent
3577 on any basis.

3578 (5) (a) The nonprofit corporation shall give notice, in accordance with Section 16-6a-704
3579 to each member entitled to vote on the transaction described in Subsection (1) or the consent
3580 described in Subsection (2), of the members' meeting at which the transaction or the consent will
3581 be voted upon.

3582 (b) The notice required by Subsection (1) shall:

3583 (i) state that the purpose, or one of the purposes, of the meeting is to consider:

3584 (A) in the case of action pursuant to Subsection (1), the sale, lease, exchange, or other
3585 disposition of all, or substantially all, of the property of the nonprofit corporation; or

3586 (B) in the case of action pursuant to Subsection (2), the nonprofit corporation's consent to
3587 the sale, lease, exchange, or other disposition of all, or substantially all, of the property of another
3588 entity, the property interests of which:

3589 (I) are held by the nonprofit corporation; and

3590 (II) constitute all, or substantially all, of the property of the nonprofit corporation;

3591 (ii) contain or be accompanied by a description of:
3592 (A) the transaction, in the case of action pursuant to Subsection (1); or
3593 (B) the transaction underlying the consent, in the case of action pursuant to Subsection (2);
3594 and
3595 (iii) in the case of action pursuant to Subsection (2), identify the entity whose property is
3596 the subject of the transaction.
3597 (6) The transaction described in Subsection (1) or the consent described in Subsection (2)
3598 shall be approved by the votes required by Sections 16-6a-714 and 16-6a-715 by every voting
3599 group entitled to vote on the transaction or the consent unless a greater vote is required by:
3600 (a) this chapter;
3601 (b) the articles of incorporation;
3602 (c) bylaws adopted by the members; or
3603 (d) the board of directors acting pursuant to Subsection (4).
3604 (7) After a transaction described in Subsection (1) or a consent described in Subsection
3605 (2) is authorized, the transaction may be abandoned or the consent withheld or revoked, subject
3606 to any contractual rights or other limitations on such abandonment, withholding, or revocation,
3607 without further action by the members.
3608 (8) A transaction that constitutes a distribution is governed by Part 13 and not by this
3609 section.

3610 Section 133. Section **16-6a-1301** is enacted to read:

3611 **Part 13. Distributions**

3612 **16-6a-1301. Distributions prohibited.**

3613 Except as authorized by Section 16-6a-1302, a nonprofit corporation may not make a
3614 distribution.

3615 Section 134. Section **16-6a-1302** is enacted to read:

3616 **16-6a-1302. Authorized distributions.**

3617 (1) A nonprofit corporation may:

3618 (a) make distributions of its income or assets to a member that is a domestic or foreign
3619 nonprofit corporation;
3620 (b) pay compensation in a reasonable amount to its members, directors, or officers for
3621 services rendered;

3622 (c) if a cooperative nonprofit corporation, make distributions consistent with its purposes;
3623 and

3624 (d) confer benefits upon its members in conformity with its purposes.

3625 (2) A nonprofit corporation may make distributions upon dissolution in conformity with
3626 this chapter.

3627 Section 135. Section **16-6a-1401** is enacted to read:

3628 **Part 14. Dissolution**

3629 **16-6a-1401. Dissolution by incorporators or directors if no members.**

3630 (1) If a nonprofit corporation has no members, the following may authorize the dissolution
3631 of the nonprofit corporation:

3632 (a) a majority of its directors; or

3633 (b) if it has no directors, a majority of its incorporators.

3634 (2) The directors or incorporators in approving dissolution shall adopt a plan of dissolution
3635 indicating to whom the assets owned or held by the nonprofit corporation will be distributed after
3636 all creditors have been paid.

3637 Section 136. Section **16-6a-1402** is enacted to read:

3638 **16-6a-1402. Dissolution by directors and members.**

3639 (1) If a nonprofit corporation has members, dissolution of a nonprofit corporation may be
3640 authorized in the manner provided in Subsection (2).

3641 (2) For a proposal to dissolve the nonprofit corporation to be authorized:

3642 (a) the board of directors shall adopt the proposal to dissolve;

3643 (b) the board of directors shall:

3644 (i) recommend the proposal to dissolve to the members; or

3645 (ii) (A) determine that because of a conflict of interest or other special circumstance, it
3646 should make no recommendation; and

3647 (B) communicate the basis for its determination to the members; and

3648 (c) the members entitled to vote on the proposal to dissolve shall approve the proposal to
3649 dissolve as provided in Subsection (5).

3650 (3) The board of directors may condition the effectiveness of the dissolution, and the
3651 members may condition their approval of the dissolution, on any basis.

3652 (4) (a) The nonprofit corporation shall give notice, in accordance with Section 16-6a-704,

3653 to each member entitled to vote on the proposal of the members' meeting at which the proposal to
3654 dissolve will be voted on.

3655 (b) The notice required by Subsection (4)(a) shall:

3656 (i) state that the purpose, or one of the purposes, of the meeting is to consider the proposal
3657 to dissolve the nonprofit corporation; and

3658 (ii) contain or be accompanied by a copy of the proposal or a summary of the proposal.

3659 (5) The proposal to dissolve shall be approved by the votes required by Sections 16-6a-714
3660 and 16-6a-715 by every voting group entitled to vote on the proposal to dissolve unless a greater
3661 vote is required by:

3662 (a) this chapter;

3663 (b) the articles of incorporation;

3664 (c) bylaws adopted by the members; or

3665 (d) the board of directors acting pursuant to Subsection (3).

3666 (6) The plan of dissolution shall indicate to whom the assets owned or held by the
3667 nonprofit corporation will be distributed after all creditors have been paid.

3668 Section 137. Section **16-6a-1403** is enacted to read:

3669 **16-6a-1403. Articles of dissolution.**

3670 (1) At any time after dissolution is authorized, the nonprofit corporation may dissolve by
3671 delivering to the division for filing articles of dissolution setting forth:

3672 (a) the name of the nonprofit corporation;

3673 (b) (i) (A) the address of the nonprofit corporation's principal office; or

3674 (B) if a principal office is not to be maintained, a statement that the nonprofit corporation
3675 will not maintain a principal office; and

3676 (ii) if different from the address of the principal office or if no principal office is to be
3677 maintained, the address to which service of process may be mailed pursuant to Section 16-6a-1409;

3678 (c) the date dissolution was authorized;

3679 (d) if dissolution was authorized by the directors or the incorporators pursuant to Section
3680 16-6a-1401, a statement to that effect;

3681 (e) if dissolution was approved by the members pursuant to Section 16-6a-1402, a
3682 statement that the number of votes cast for the proposal to dissolve by each voting group entitled
3683 to vote separately on the proposal was sufficient for approval by that voting group; and

3684 (f) any additional information as the division determines is necessary or appropriate.

3685 (2) A nonprofit corporation is dissolved upon the effective date of its articles of
3686 dissolution.

3687 (3) Articles of dissolution need not be filed by a nonprofit corporation that is dissolved
3688 pursuant to Section 16-6a-1418.

3689 Section 138. Section **16-6a-1404** is enacted to read:

3690 **16-6a-1404. Revocation of dissolution.**

3691 (1) A nonprofit corporation may revoke its dissolution within 120 days after the effective
3692 date of the dissolution.

3693 (2) (a) Except as provided in Subsection (2)(b) revocation of dissolution shall be
3694 authorized in the same manner as the dissolution was authorized.

3695 (b) The board of directors may revoke the dissolution without member action if:

3696 (i) the dissolution is authorized pursuant to Section 16-6a-1402; and

3697 (ii) the authorization permitted revocation by action of the board of directors alone.

3698 (3) (a) After the revocation of dissolution is authorized, the nonprofit corporation may
3699 revoke the dissolution by delivering to the division for filing, within 120 days after the effective
3700 date of dissolution:

3701 (i) articles of revocation of dissolution; and

3702 (ii) a copy of its articles of dissolution.

3703 (b) The articles of revocation of dissolution shall set forth:

3704 (i) the name of the nonprofit corporation;

3705 (ii) the effective date of the dissolution that was revoked;

3706 (iii) the date that the revocation of dissolution was authorized;

3707 (iv) if, pursuant to Subsection (2), the directors or the incorporators revoked a dissolution
3708 authorized under Section 16-6a-1401, a statement that the revocation of dissolution was authorized
3709 by the directors or the incorporators, as the case may be;

3710 (v) if, pursuant to Subsection (2), the directors revoked a dissolution approved by the
3711 members, a statement that the revocation was permitted by action of the directors pursuant to that
3712 approval; and

3713 (vi) if the revocation of dissolution was approved pursuant to Subsection (2) by the
3714 members, a statement that the number of votes cast for revocation of dissolution by each voting

3715 group entitled to vote separately on the proposal to dissolve was sufficient for approval by that
3716 voting group.

3717 (4) (a) Revocation of dissolution is effective as provided in Subsection 16-6a-108(1).

3718 (b) A delayed effective date may not be specified pursuant to Subsection 16-6a-108(2).

3719 (5) When the revocation of dissolution is effective:

3720 (a) the revocation relates back to and takes effect as of the effective date of the dissolution;

3721 and

3722 (b) the nonprofit corporation may carry on its activities and use its corporate name as if

3723 dissolution had never occurred.

3724 Section 139. Section **16-6a-1405** is enacted to read:

3725 **16-6a-1405. Effect of dissolution.**

3726 (1) A dissolved nonprofit corporation continues its corporate existence but may not carry
3727 on any activities except as is appropriate to wind up and liquidate its affairs, including:

3728 (a) collecting its assets;

3729 (b) returning, transferring, or conveying assets held by the nonprofit corporation upon a

3730 condition requiring return, transfer, or conveyance, which condition occurs by reason of the

3731 dissolution, in accordance with the condition;

3732 (c) transferring, subject to any contractual or legal requirements, its assets as provided in

3733 or authorized by its articles of incorporation or bylaws;

3734 (d) discharging or making provision for discharging its liabilities; and

3735 (e) doing every other act necessary to wind up and liquidate its assets and affairs.

3736 (2) (a) Unless otherwise provided in the articles of incorporation or bylaws, upon

3737 dissolution of a nonprofit corporation described under Section 501(c)(3), Internal Revenue Code,

3738 and exempt from tax under Section 501(a), Internal Revenue Code, or corresponding section of

3739 any future federal tax code, the assets of the nonprofit corporation shall be distributed:

3740 (i) for one or more exempt purposes under Section 501, Internal Revenue Code;

3741 (ii) to the federal government for a public purpose; or

3742 (iii) to a state or local government, for a public purpose.

3743 (b) Any assets not disposed of under Subsection (2)(a) shall be disposed of by the district

3744 court for the county in which the principal office of the nonprofit corporation is then located,

3745 exclusively as determined by the court:

3746 (i) for one or more exempt purposes under Section 501, Internal Revenue Code; or
3747 (ii) to organizations that are organized and operated exclusively for exempt or public
3748 purposes.

3749 (3) Dissolution of a nonprofit corporation does not:

3750 (a) transfer title to the nonprofit corporation's property;

3751 (b) subject its directors or officers to standards of conduct different from those prescribed
3752 in this chapter;

3753 (c) change quorum or voting requirements for its board of directors or members;

3754 (d) change provisions for selection, resignation, or removal of its directors or officers, or
3755 both;

3756 (e) change provisions for amending its bylaws or its articles of incorporation;

3757 (f) prevent commencement of a proceeding by or against the nonprofit corporation in its
3758 corporate name; or

3759 (g) abate or suspend a proceeding pending by or against the nonprofit corporation on the
3760 effective date of dissolution.

3761 Section 140. Section **16-6a-1406** is enacted to read:

3762 **16-6a-1406. Disposition of known claims by notification.**

3763 (1) A dissolved nonprofit corporation may dispose of the known claims against it by
3764 following the procedures described in this section.

3765 (2) A dissolved nonprofit corporation electing to dispose of known claims pursuant to this
3766 section may give written notice of the dissolution to known claimants at any time after the effective
3767 date of the dissolution. The written notice shall:

3768 (a) describe the information that shall be included in a claim;

3769 (b) provide an address to which written notice of any claim shall be given to the nonprofit
3770 corporation;

3771 (c) state the deadline by which the dissolved nonprofit corporation shall receive a claim,
3772 which may not be fewer than 120 days after the effective date of the notice; and

3773 (d) state that unless sooner barred by any other state statute limiting actions, a claim will
3774 be barred if not received by the deadline stated in Subsection (2)(d).

3775 (3) Unless sooner barred by any other statute limiting actions, a claim against the dissolved
3776 nonprofit corporation is barred if:

- 3777 (a) (i) a claimant was given notice under Subsection (2); and
3778 (ii) the claim is not received by the dissolved nonprofit corporation by the deadline stated
3779 in the notice; or
- 3780 (b) (i) the dissolved nonprofit corporation delivers to the claimant written notice of
3781 rejection of the claim within 90 days after receipt of the claim; and
3782 (ii) the claimant whose claim was rejected by the dissolved nonprofit corporation does not
3783 commence a proceeding to enforce the claim within 90 days after the effective date of the rejection
3784 notice.
- 3785 (4) Claims that are not rejected by the dissolved nonprofit corporation in writing within
3786 90 days after receipt of the claim by the dissolved nonprofit corporation shall be considered
3787 accepted.
- 3788 (5) The failure of the dissolved nonprofit corporation to give notice to any known claimant
3789 pursuant to Subsection (2) does not affect the disposition under this section of any claim held by
3790 any other known claimant.
- 3791 (6) For purposes of this section:
- 3792 (a) "claim" does not include:
- 3793 (i) a contingent liability; or
3794 (ii) a claim based on an event occurring after the effective date of dissolution; and
- 3795 (b) an action to enforce a claim includes:
- 3796 (i) any civil action; and
3797 (ii) any arbitration under any agreement for binding arbitration between the dissolved
3798 nonprofit corporation and the claimant.
- 3799 Section 141. Section **16-6a-1407** is enacted to read:
- 3800 **16-6a-1407. Disposition of claims by publication.**
- 3801 (1) A dissolved nonprofit corporation may publish notice of its dissolution and request that
3802 persons with claims against the nonprofit corporation present them in accordance with the notice.
- 3803 (2) The notice described in Subsection (1) shall:
- 3804 (a) be published one time in a newspaper of general circulation in the county where:
- 3805 (i) the dissolved nonprofit corporation's principal office is located; or
3806 (ii) if the dissolved nonprofit corporation has no principal office in this state, its registered
3807 office is or was last located;

3808 (b) describe the information that shall be included in a claim;
3809 (c) provide an address at which any claim shall be given to the nonprofit corporation; and
3810 (d) state that unless sooner barred by any other statute limiting actions, a claim will be
3811 barred if an action to enforce the claim is not commenced within three years after publication of
3812 the notice.

3813 (3) If the dissolved nonprofit corporation publishes a newspaper notice in accordance with
3814 Subsection (2), then unless sooner barred under Section 16-6a-1406 or under any other statute
3815 limiting actions, the claim of any claimant against the dissolved nonprofit corporation is barred
3816 unless the claimant commences an action to enforce the claim against the dissolved nonprofit
3817 corporation within three years after the publication date of the notice.

3818 (4) For purposes of this section:

3819 (a) "claim" means any claim, including claims of this state, whether:

3820 (i) known;

3821 (ii) due or to become due;

3822 (iii) absolute or contingent;

3823 (iv) liquidated or unliquidated;

3824 (v) founded on contract, tort, or other legal basis; or

3825 (vi) otherwise; and

3826 (b) an action to enforce a claim includes:

3827 (i) any civil action; and

3828 (ii) any arbitration under any agreement for binding arbitration between the dissolved
3829 nonprofit corporation and the claimant.

3830 Section 142. Section **16-6a-1408** is enacted to read:

3831 **16-6a-1408. Enforcement of claims against dissolved nonprofit corporation.**

3832 (1) Subject to Subsection (2), a claim may be enforced under Section 16-6a-1406 or
3833 16-6a-1407:

3834 (a) against the dissolved nonprofit corporation to the extent of its undistributed assets; and

3835 (b) if assets have been distributed in liquidation, against any person, other than a creditor
3836 of the nonprofit corporation, to whom the nonprofit corporation distributed its property.

3837 (2) Notwithstanding Subsection (1), a distributee's total liability for all claims under this
3838 section may not exceed the total value of assets distributed to the distributee, as the value is

3839 determined at the time of distribution.

3840 (3) (a) A distributee required to return any portion of the value of assets received by the
3841 distributee in liquidation shall be entitled to contribution from all other distributees.

3842 (b) Each contribution under Subsection (3)(a):

3843 (i) shall be in accordance with the contributing distributee's rights and interests; and

3844 (ii) may not exceed the value of the assets received by the contributing distributee in
3845 liquidation.

3846 Section 143. Section **16-6a-1409** is enacted to read:

3847 **16-6a-1409. Service on dissolved nonprofit corporation.**

3848 (1) A dissolved nonprofit corporation shall:

3849 (a) maintain a registered agent to accept service of process on its behalf; or

3850 (b) be considered to have authorized service of process on it by registered or certified mail,

3851 return receipt requested, to:

3852 (i) the address of its principal office, if any:

3853 (A) as set forth in its articles of dissolution; or

3854 (B) as last changed by notice delivered to the division for filing; or

3855 (ii) the address for service of process that:

3856 (A) is stated in its articles of dissolution; or

3857 (B) as last changed by notice delivered to the division for filing.

3858 (2) Service effected pursuant to Subsection (1)(b) is perfected at the earliest of:

3859 (a) the date the dissolved nonprofit corporation receives the process, notice, or demand;

3860 (b) the date shown on the return receipt, if signed on behalf of the dissolved nonprofit

3861 corporation; or

3862 (c) five days after mailing.

3863 (3) Subsection (1) does not prescribe the only means, or necessarily the required means,
3864 of serving a dissolved nonprofit corporation.

3865 Section 144. Section **16-6a-1410** is enacted to read:

3866 **16-6a-1410. Grounds for administrative dissolution.**

3867 The division may commence a proceeding under Section 16-6a-1411 for administrative
3868 dissolution of a nonprofit corporation if:

3869 (1) the nonprofit corporation does not pay when they are due any taxes, fees, or penalties

3870 imposed by this chapter or other applicable laws of this state;

3871 (2) the nonprofit corporation does not deliver its annual report to the division when it is
3872 due;

3873 (3) the nonprofit corporation is without:

3874 (a) a registered agent; or

3875 (b) a registered office;

3876 (4) the nonprofit corporation does not give notice to the division that:

3877 (a) its registered agent or registered office has been changed;

3878 (b) its registered agent has resigned;

3879 (c) its registered office has been discontinued; or

3880 (d) the nonprofit corporation's period of duration stated in its articles of incorporation
3881 expires.

3882 Section 145. Section **16-6a-1411** is enacted to read:

3883 **16-6a-1411. Procedure for and effect of administrative dissolution.**

3884 (1) If the division determines that one or more grounds exist under Section 16-6a-1410 for
3885 dissolving a nonprofit corporation, the division shall mail to the nonprofit corporation written
3886 notice of the determination, stating the one or more grounds for administrative dissolution.

3887 (2) (a) If the nonprofit corporation does not correct each ground for dissolution, or
3888 demonstrate to the reasonable satisfaction of the division that each ground determined by the
3889 division does not exist, within 60 days after mailing of the notice contemplated in Subsection (1),
3890 the division shall administratively dissolve the nonprofit corporation.

3891 (b) If a nonprofit corporation is dissolved under Subsection (2)(a), the division shall mail
3892 written notice of the administrative dissolution to the dissolved nonprofit corporation stating the
3893 date of dissolution specified in Subsection (2)(d).

3894 (c) The division shall mail written notice of the administrative dissolution to:

3895 (i) the last registered agent of the dissolved nonprofit corporation; or

3896 (ii) if there is no registered agent of record, at least one officer of the nonprofit corporation.

3897 (d) A nonprofit corporation's date of dissolution is five days after the date the division
3898 mails written notice of dissolution under Subsection (2)(b).

3899 (3) (a) Except as provided in Subsection (3)(b), a nonprofit corporation administratively
3900 dissolved continues its corporate existence but may not carry on any activities except as is

3901 appropriate to:

3902 (i) wind up and liquidate its affairs under Section 16-6a-1405; and

3903 (ii) to give notice to claimants in the manner provided in Sections 16-6a-1406 and
3904 16-6a-1407.

3905 (b) If the corporation is reinstated in accordance with Section 16-6a-1412, business
3906 conducted by the corporation during a period of administrative dissolution is unaffected by the
3907 dissolution.

3908 (4) The administrative dissolution of a nonprofit corporation does not terminate the
3909 authority of its registered agent.

3910 (5) (a) Upon the administrative dissolution of a nonprofit corporation, the division shall
3911 be the dissolved nonprofit corporation's agent for service of process.

3912 (b) Service of process on the division under this Subsection (5) is service on the dissolved
3913 nonprofit corporation.

3914 (c) Upon receipt of process, the division shall deliver a copy of the process to the dissolved
3915 nonprofit corporation at its principal office.

3916 (6) A notice mailed under this section shall be:

3917 (a) mailed first class, postage prepaid; and

3918 (b) addressed to the most current mailing address appearing on the records of the division
3919 for:

3920 (i) the registered agent of the nonprofit corporation, if the notice is required to be mailed
3921 to the registered agent; or

3922 (ii) the officer of the nonprofit corporation that is mailed the notice if the notice is required
3923 to be mailed to an officer of the nonprofit corporation.

3924 Section 146. Section **16-6a-1412** is enacted to read:

3925 **16-6a-1412. Reinstatement following administrative dissolution -- Reinstatement after**
3926 **voluntary dissolution.**

3927 (1) A nonprofit corporation administratively dissolved under Section 16-6a-1411 may
3928 apply to the division for reinstatement within two years after the effective date of dissolution by
3929 delivering to the division for filing an application for reinstatement that states:

3930 (a) the effective date of its administrative dissolution and its corporate name on the
3931 effective date of dissolution;

- 3932 (b) that the ground or grounds for dissolution:
3933 (i) did not exist; or
3934 (ii) have been eliminated;
3935 (c) (i) the corporate name under which the nonprofit corporation is being reinstated; and
3936 (ii) the corporate name that satisfies the requirements of Section 16-6a-401;
3937 (d) that all taxes, fees, or penalties imposed pursuant to this chapter, otherwise owed by
3938 the nonprofit corporation to the State Tax Commission, or otherwise imposed by the applicable
3939 laws of this state have been paid;
3940 (e) the address of its registered office;
3941 (f) the name of its registered agent at the office stated in Subsection (1)(e); and
3942 (g) the additional information as the division determines is necessary or appropriate.
3943 (2) The nonprofit corporation shall include in or with the application for reinstatement:
3944 (a) the written consent to appointment by the designated registered agent; and
3945 (b) a certificate from the State Tax Commission reciting that all taxes owed by the
3946 nonprofit corporation have been paid.
3947 (3) (a) The division shall revoke the administrative dissolution if:
3948 (i) the division determines that the application for reinstatement contains the information
3949 required by Subsections (1) and (2); and
3950 (ii) that the information is correct.
3951 (b) The division shall mail written notice of the revocation to the nonprofit corporation in
3952 the manner provided in Subsection 16-6a-1411(6) stating the effective date of the dissolution.
3953 (4) When the reinstatement is effective:
3954 (a) the reinstatement relates back to and takes effect as of the effective date of the
3955 administrative dissolution;
3956 (b) the nonprofit corporation may carry on its activities, under the name stated pursuant
3957 to Subsection (1)(c), as if the administrative dissolution had never occurred; and
3958 (c) an act of the corporation during the period of dissolution is effective and enforceable
3959 as if the administrative dissolution had never occurred.
3960 (5) (a) The division may make rules for the reinstatement of a nonprofit corporation
3961 voluntarily dissolved.
3962 (b) The rules made under Subsection (5)(a) shall be substantially similar to the

3963 requirements of this section for reinstatement of a nonprofit corporation that is administratively
3964 dissolved.

3965 Section 147. Section **16-6a-1413** is enacted to read:

3966 **16-6a-1413. Appeal from denial of reinstatement.**

3967 (1) If the division denies a nonprofit corporation's application for reinstatement following
3968 administrative dissolution under Section 16-6a-1411, the division shall mail to the nonprofit
3969 corporation in the manner provided in Subsection 16-6a-1411(6) written notice:

3970 (a) setting forth the reasons for denying the application; and

3971 (b) stating that the nonprofit corporation has the right to appeal the division's
3972 determination to the executive director as provided in Subsection (2).

3973 (2) If the division denies a nonprofit corporation's application for reinstatement following
3974 administrative dissolution, in accordance with Title 63, Chapter 46b, Administrative Procedures
3975 Act, the following may appeal the denial to the executive director:

3976 (a) the nonprofit corporation for which the reinstatement was requested; or

3977 (b) the representative of the nonprofit corporation for which reinstatement was requested.

3978 Section 148. Section **16-6a-1414** is enacted to read:

3979 **16-6a-1414. Grounds for judicial dissolution.**

3980 (1) A nonprofit corporation may be dissolved in a proceeding by the attorney general or
3981 the division director if it is established that:

3982 (a) the nonprofit corporation obtained its articles of incorporation through fraud; or

3983 (b) the nonprofit corporation has continued to exceed or abuse the authority conferred
3984 upon it by law.

3985 (2) A nonprofit corporation may be dissolved in a proceeding by a member or director if
3986 it is established that:

3987 (a) (i) the directors are deadlocked in the management of the corporate affairs;

3988 (ii) the members, if any, are unable to break the deadlock; and

3989 (iii) irreparable injury to the nonprofit corporation is threatened or being suffered;

3990 (b) the directors or those in control of the nonprofit corporation have acted, are acting, or
3991 will act in a manner that is illegal, oppressive, or fraudulent;

3992 (c) the members are deadlocked in voting power and have failed, for a period that includes
3993 at least two consecutive annual meeting dates, to elect successors to directors whose terms have

3994 expired or would have expired upon the election of their successors; or

3995 (d) the corporate assets are being misapplied or wasted.

3996 (3) A nonprofit corporation may be dissolved in a proceeding by a creditor if it is
3997 established that:

3998 (a) (i) the creditor's claim has been reduced to judgment;

3999 (ii) the execution on the judgment has been returned unsatisfied; and

4000 (iii) the nonprofit corporation is insolvent; or

4001 (b) (i) the nonprofit corporation is insolvent; and

4002 (ii) the nonprofit corporation has admitted in writing that the creditor's claim is due and
4003 owing.

4004 (4) (a) If a nonprofit corporation has been dissolved by voluntary or administrative action
4005 taken under this part:

4006 (i) the nonprofit corporation may bring a proceeding to wind up and liquidate its business
4007 and affairs under judicial supervision in accordance with Section 16-6a-1405; and

4008 (ii) the attorney general, a director, a member, or a creditor may bring a proceeding to wind
4009 up and liquidate the affairs of the nonprofit corporation under judicial supervision in accordance
4010 with Section 16-6a-1405, upon establishing the grounds set forth in Subsections (1) through (3).

4011 (b) As used in Sections 16-6a-1415 through 16-6a-1417:

4012 (i) a "judicial proceeding to dissolve the nonprofit corporation" includes a proceeding
4013 brought under this Subsection (4); and

4014 (ii) a "decree of dissolution" includes an order of court entered in a proceeding under this
4015 Subsection (4) that directs that the affairs of a nonprofit corporation shall be wound up and
4016 liquidated under judicial supervision.

4017 Section 149. Section **16-6a-1415** is enacted to read:

4018 **16-6a-1415. Procedure for judicial dissolution.**

4019 (1) (a) A proceeding by the attorney general or director of the division to dissolve a
4020 nonprofit corporation shall be brought in:

4021 (i) the district court of the county in this state where the nonprofit corporation's principal
4022 office or registered office is located; or

4023 (ii) if the nonprofit corporation has no principal or registered office in this state, in the
4024 district court in and for Salt Lake County.

4025 (b) A proceeding brought by a party that is not listed in Subsection (1)(a) but is named in
4026 Section 16-6a-1414 shall be brought in:

4027 (i) the district court of the county in this state where the nonprofit corporation's principal
4028 office is located; or

4029 (ii) if it has no principal office in this state, in the district court of the county where its
4030 registered office is or was last located.

4031 (2) It is not necessary to make directors or members parties to a proceeding to dissolve a
4032 nonprofit corporation unless relief is sought against the directors or members individually.

4033 (3) A court in a proceeding brought to dissolve a nonprofit corporation may:

4034 (a) issue injunctions;

4035 (b) appoint a receiver or custodian pendente lite with all powers and duties the court
4036 directs; or

4037 (c) take other action required to preserve the corporate assets wherever located, and carry
4038 on the activities of the nonprofit corporation until a full hearing can be held.

4039 Section 150. Section **16-6a-1416** is enacted to read:

4040 **16-6a-1416. Receivership or custodianship.**

4041 (1) (a) A court in a judicial proceeding brought to dissolve a nonprofit corporation may
4042 appoint:

4043 (i) one or more receivers to wind up and liquidate the affairs of the nonprofit corporation;
4044 or

4045 (ii) one or more custodians to manage the affairs of the nonprofit corporation.

4046 (b) Before appointing a receiver or custodian, the court shall hold a hearing, after giving
4047 notice to:

4048 (i) all parties to the proceeding; and

4049 (ii) any interested persons designated by the court.

4050 (c) The court appointing a receiver or custodian has exclusive jurisdiction over the
4051 nonprofit corporation and all of its property, wherever located.

4052 (d) The court may appoint as a receiver or custodian:

4053 (i) an individual;

4054 (ii) a domestic or foreign corporation authorized to conduct affairs in this state; or

4055 (iii) a domestic or foreign nonprofit corporation authorized to conduct affairs in this state.

4056 (e) The court may require the receiver or custodian to post bond, with or without sureties,
4057 in an amount specified by the court.

4058 (2) The court shall describe the powers and duties of the receiver or custodian in its
4059 appointing order that may be amended from time to time. Among other powers the receiver shall
4060 have the power to:

4061 (a) dispose of all or any part of the property of the nonprofit corporation, wherever located:

4062 (i) at a public or private sale; and

4063 (ii) if authorized by the court; and

4064 (b) sue and defend in the receiver's own name as receiver of the nonprofit corporation in
4065 all courts.

4066 (4) The custodian may exercise all of the powers of the nonprofit corporation, through or
4067 in place of its board of directors or officers, to the extent necessary to manage the affairs of the
4068 nonprofit corporation in the best interests of its members and creditors.

4069 (5) If doing so is in the best interests of the nonprofit corporation and its members and
4070 creditors, the court may:

4071 (a) during a receivership, redesignate the receiver as a custodian; and

4072 (b) during a custodianship, redesignate the custodian as a receiver.

4073 (6) The court from time to time during the receivership or custodianship may order
4074 compensation paid and expense disbursements or reimbursements made from the assets of the
4075 nonprofit corporation or proceeds from the sale of the assets to:

4076 (a) the receiver;

4077 (b) the custodian; or

4078 (c) the receiver's or custodian's attorney.

4079 Section 151. Section **16-6a-1417** is enacted to read:

4080 **16-6a-1417. Decree of dissolution.**

4081 (1) If after a hearing the court determines that one or more grounds for judicial dissolution
4082 described in Section 16-6a-1414 exist:

4083 (a) the court may enter a decree:

4084 (i) dissolving the nonprofit corporation; and

4085 (ii) specifying the effective date of the dissolution; and

4086 (b) the clerk of the court shall deliver a certified copy of the decree to the division which

4087 shall file it accordingly.

4088 (2) After entering the decree of dissolution, the court shall direct:

4089 (a) the winding up and liquidation of the nonprofit corporation's affairs in accordance with
4090 Section 16-6a-1405; and

4091 (b) the giving of notice to:

4092 (i) (A) the nonprofit corporation's registered agent; or

4093 (B) the division if it has no registered agent; and

4094 (ii) to claimants in accordance with Sections 16-6a-1406 and 16-6a-1407.

4095 (3) The court's order or decision may be appealed as in other civil proceedings.

4096 Section 152. Section **16-6a-1418** is enacted to read:

4097 **16-6a-1418. Dissolution upon expiration of period of duration.**

4098 (1) A nonprofit corporation shall be dissolved upon and by reason of the expiration of its
4099 period of duration, if any, stated in its articles of incorporation.

4100 (2) For purposes of this section:

4101 (a) a provision in the articles of incorporation is considered a provision for a period of
4102 duration if it is to the effect that the nonprofit corporation or its existence shall be terminated:

4103 (i) at a specified date;

4104 (ii) after a stated period of time;

4105 (iii) upon a contingency; or

4106 (iv) any event similar to those described in Subsections (2)(a)(i) through (iii); and

4107 (b) the following shall be considered to be the expiration of the nonprofit corporation's
4108 period of duration:

4109 (i) the occurrence of the specified date;

4110 (ii) the expiration of the stated period of time;

4111 (iii) the occurrence of the contingency; or

4112 (iv) the satisfaction of the provision described in Subsection (2)(a)(iv).

4113 Section 153. Section **16-6a-1419** is enacted to read:

4114 **16-6a-1419. Deposit with state treasurer.**

4115 Assets of a dissolved nonprofit corporation that should be transferred to a creditor,

4116 claimant, or member of the nonprofit corporation shall be reduced to cash and deposited with the

4117 state treasurer in accordance with Title 67, Chapter 4a, Unclaimed Property Act, if the creditor,

4118 claimant, or member:

4119 (1) cannot be found; or

4120 (2) is not legally competent to receive the assets.

4121 Section 154. Section **16-6a-1501** is enacted to read:

4122 **Part 15. Foreign Nonprofit Corporations**

4123 **16-6a-1501. Authority to conduct affairs required.**

4124 (1) (a) A foreign nonprofit corporation may not conduct affairs in this state until its
4125 application for authority to conduct affairs is filed by the division.

4126 (b) This part shall be applicable to foreign nonprofit corporations that conduct affairs
4127 governed by other statutes of this state only to the extent this part is not inconsistent with such
4128 other statutes.

4129 (2) A foreign nonprofit corporation may not be considered to be conducting affairs in this
4130 state within the meaning of Subsection (1) by reason of carrying on in this state any one or more
4131 of the following activities:

4132 (a) maintaining, defending, or settling in its own behalf any proceeding or dispute;

4133 (b) holding meetings of its board of directors or members or carrying on other activities
4134 concerning internal corporate affairs;

4135 (c) maintaining bank accounts;

4136 (d) maintaining offices or agencies for the transfer, exchange, and registration of
4137 memberships or securities;

4138 (e) maintaining trustees or depositaries with respect to the memberships or securities
4139 described in Subsection (2)(d);

4140 (f) selling through independent contractors;

4141 (g) soliciting or obtaining orders, if the orders require acceptance outside this state before
4142 they become contracts, whether by mail or through employees or agents or otherwise;

4143 (h) creating, as borrower or lender, or acquiring indebtedness, mortgages, or other security
4144 interests in real or personal property;

4145 (i) securing or collecting debts in its own behalf or enforcing mortgages or security
4146 interests in property securing the debts;

4147 (j) owning, without more, real or personal property;

4148 (k) conducting an isolated transaction that is:

4149 (i) completed within 30 days; and
4150 (ii) not one in the course of repeated transactions of a like nature;
4151 (l) conducting affairs in interstate commerce;
4152 (m) granting funds;
4153 (n) distributing information to its members; or
4154 (o) any other activity not considered to constitute conducting affairs in this state in the
4155 discretion of the division.

4156 (3) The list of activities in Subsection (2) is not exhaustive.

4157 (4) Nothing in this section shall limit or affect the right to subject a foreign nonprofit
4158 corporation that does not, or is not required to, have authority to conduct affairs in this state:

4159 (a) to the jurisdiction of the courts of this state; or

4160 (b) to serve upon any foreign nonprofit corporation any process, notice, or demand
4161 required or permitted by law to be served upon a nonprofit corporation pursuant to:

4162 (i) any applicable provision of law; or

4163 (ii) any applicable rules of civil procedure.

4164 Section 155. Section **16-6a-1502** is enacted to read:

4165 **16-6a-1502. Consequences of conducting affairs without authority.**

4166 (1) A foreign nonprofit corporation, its successor, or anyone acting on its behalf,
4167 conducting affairs in this state without authority may not be permitted to maintain a proceeding
4168 in any court in this state until an application for authority to conduct affairs is filed.

4169 (2) (a) A foreign nonprofit corporation or successor that conducts affairs in this state
4170 without authority shall be liable to this state in an amount equal to the sum of:

4171 (i) all fees imposed by this chapter or prior law that would have been paid for all years or
4172 portions of years during which it conducted affairs in this state without authority; and

4173 (ii) all penalties imposed by the division for failure to pay the fees described in Subsection
4174 (2)(a)(i).

4175 (b) An application for authority to conduct affairs may not be filed until payment of the
4176 amounts due under this Subsection (2) is made.

4177 (3) (a) A court may stay a proceeding commenced by a foreign nonprofit corporation, its
4178 successor, or assignee until it determines whether the foreign corporation, its successor, or assignee
4179 is required to file an application for authority to conduct affairs.

4180 (b) If the court determines that a foreign nonprofit corporation, its successor, or assignee
4181 is required to file an application for authority to conduct affairs, the court may further stay the
4182 proceeding until the required application for authority to conduct affairs has been filed with the
4183 division.

4184 (4) (a) A foreign nonprofit corporation that conducts affairs in this state without authority
4185 is subject to a civil penalty, payable to this state, of \$100 for each day in which it transacts business
4186 in this state without authority.

4187 (b) Notwithstanding Subsection (4)(a), the civil penalty imposed under Subsection (4)(a)
4188 may not exceed a total of \$5,000 for each year.

4189 (c) The following are subject to a civil penalty payable to the state not exceeding \$1,000:

4190 (i) each officer of a foreign nonprofit corporation who authorizes, directs, or participates
4191 in the conducting of affairs in this state without authority; and

4192 (ii) each agent of a foreign nonprofit corporation who transacts business in this state on
4193 behalf of a foreign nonprofit corporation that is not authorized.

4194 (d) The division may make rules to carry out the provisions of this Subsection (4),
4195 including procedures to request the division to abate a penalty imposed.

4196 (e) If the division imposes a civil penalty under this Subsection (4) on a foreign nonprofit
4197 corporation, in accordance with Title 63, Chapter 46b, Administrative Procedures Act, the
4198 following may appeal the civil penalty to the executive director:

4199 (i) the foreign nonprofit corporation; or

4200 (ii) the representative of the foreign nonprofit corporation.

4201 (5) (a) The civil penalties set forth in Subsection (4) may be recovered in an action
4202 brought:

4203 (i) in an appropriate court in Salt Lake County; or

4204 (ii) in any other county in this state in which the foreign nonprofit corporation:

4205 (A) has a registered, principal, or business office; or

4206 (B) has conducted affairs.

4207 (b) Upon a finding by the court that a foreign nonprofit corporation or any of its officers
4208 or agents have conducted affairs in this state in violation of this part, in addition to or instead of
4209 a civil penalty, the court shall issue an injunction restraining:

4210 (i) the further conducting of affairs of the foreign nonprofit corporation; and

- 4211 (ii) the further exercise of any corporate rights and privileges in this state.
- 4212 (c) Upon issuance of the injunction described in Subsection (5)(b), the foreign nonprofit
- 4213 corporation shall be enjoined from conducting affairs in this state until:
- 4214 (i) all civil penalties have been paid, plus any interest and court costs assessed by the court;
- 4215 and
- 4216 (ii) the foreign nonprofit corporation has otherwise complied with the provisions of this
- 4217 part.
- 4218 (6) Notwithstanding Subsections (1) and (2), the failure of a foreign corporation to have
- 4219 authority to conduct affairs in this state does not:
- 4220 (a) impair the validity of its corporate acts; or
- 4221 (b) prevent the foreign nonprofit corporation from defending any proceeding in this state.
- 4222 Section 156. Section **16-6a-1503** is enacted to read:
- 4223 **16-6a-1503. Application for authority to conduct affairs.**
- 4224 (1) A foreign nonprofit corporation may apply for authority to conduct affairs in this state
- 4225 by delivering to the division for filing an application for authority to conduct affairs setting forth:
- 4226 (a) its corporate name and its assumed corporate name, if any;
- 4227 (b) the name of the state or country under whose law it is incorporated;
- 4228 (c) its date of incorporation;
- 4229 (d) its period of duration;
- 4230 (e) the street address of its principal office;
- 4231 (f) the address of its registered office;
- 4232 (g) the name of its registered agent at the office listed in Subsection (1)(f);
- 4233 (h) the names and usual business addresses of its current directors and officers;
- 4234 (i) the date it commenced or expects to commence conducting affairs in this state; and
- 4235 (j) such additional information as the division determines is necessary or appropriate to
- 4236 determine whether the application for authority to conduct affairs should be filed.
- 4237 (2) With the completed application required by Subsection (1) the foreign nonprofit
- 4238 corporation shall deliver to the division for a certificate of existence, or a document of similar
- 4239 import that is:
- 4240 (a) authenticated by the division or other official having custody of corporate records in
- 4241 the state or country under whose law it is incorporated; and

4242 (b) dated within 90 days before the filing of the application for authority to conduct affairs.
4243 (3) The foreign nonprofit corporation shall include in the application for authority to
4244 conduct affairs, or in an accompanying document, written consent to appointment by its designated
4245 registered agent.

4246 Section 157. Section **16-6a-1504** is enacted to read:

4247 **16-6a-1504. Amended application for authority to conduct affairs.**

4248 (1) A foreign nonprofit corporation authorized to conduct affairs in this state shall deliver
4249 an amended application for authority to conduct affairs to the division for filing if the foreign
4250 nonprofit corporation changes:

4251 (a) its corporate name;

4252 (b) its assumed corporate name;

4253 (c) the period of its duration; or

4254 (d) the state or country of its incorporation.

4255 (2) The requirements of Section 16-6a-1503 for filing an original application for authority
4256 to conduct affairs apply to filing an amended application for authority to conduct affairs under this
4257 section.

4258 Section 158. Section **16-6a-1505** is enacted to read:

4259 **16-6a-1505. Effect of filing an application for authority to conduct affairs.**

4260 (1) Filing an application for authority to conduct affairs authorizes the foreign nonprofit
4261 corporation to conduct affairs in this state, subject to the right of the state to revoke the authority
4262 as provided in this part.

4263 (2) A foreign nonprofit corporation that has authority to conduct affairs in this state:

4264 (a) has the same rights and privileges as, but no greater rights or privileges than, a
4265 domestic nonprofit corporation of like character; and

4266 (b) except as otherwise provided by this chapter, is subject to the same duties, restrictions,
4267 penalties, and liabilities imposed on or later to be imposed on, a domestic nonprofit corporation
4268 of like character.

4269 (3) This chapter does not authorize this state to regulate the organization or internal affairs
4270 of a foreign nonprofit corporation authorized to conduct affairs in this state.

4271 Section 159. Section **16-6a-1506** is enacted to read:

4272 **16-6a-1506. Corporate name and assumed corporate name of foreign nonprofit**

4273 **corporation.**

4274 (1) (a) Except as provided in Subsection (2), if the corporate name of a foreign nonprofit
4275 corporation does not satisfy the requirements of Section 16-6a-401, to obtain authority to conduct
4276 affairs in this state, the corporation shall assume for use in this state a name that satisfies the
4277 requirements of Section 16-6a-401.

4278 (b) Section 16-6a-401 applies to domestic corporations.

4279 (2) A foreign nonprofit corporation may obtain authority to conduct affairs in this state
4280 with a name that does not meet the requirements of Subsection (1) because it is not distinguishable
4281 as required under Subsection 16-6a-401(2), if the foreign nonprofit corporation delivers to the
4282 division for filing either:

4283 (a) (i) a written consent to the foreign nonprofit corporation's use of the name, given and
4284 signed by the other person entitled to the use of the name; and

4285 (ii) a written undertaking by the other person, in a form satisfactory to the division, to
4286 change its name to a name that is distinguishable from the name of the applicant; or

4287 (b) a certified copy of a final judgment of a court of competent jurisdiction establishing
4288 the prior right of the foreign nonprofit corporation to use the requested name in this state.

4289 (3) A foreign nonprofit corporation may use in this state the name, including the fictitious
4290 name, of another domestic or foreign nonprofit corporation that is used or registered in this state
4291 if:

4292 (a) the other corporation is incorporated or authorized to conduct affairs in this state; and

4293 (b) the foreign nonprofit corporation:

4294 (i) has merged with the other corporation; or

4295 (ii) has been formed by reorganization of the other corporation.

4296 (4) If a foreign nonprofit corporation authorized to conduct affairs in this state, whether
4297 under its corporate name or an assumed corporate name, changes its corporate name to one that
4298 does not satisfy the requirements of Subsections (1) through (3), or the requirements of Section
4299 16-6a-401, the foreign nonprofit corporation:

4300 (a) may not conduct affairs in this state under the changed name;

4301 (b) shall use an assumed corporate name that does meet the requirements of this section;

4302 and

4303 (c) shall deliver to the division for filing an amended application for authority to conduct

4304 affairs pursuant to Section 16-6a-1504.

4305 Section 160. Section **16-6a-1507** is enacted to read:

4306 **16-6a-1507. Registered name of foreign nonprofit corporation.**

4307 (1) (a) A foreign nonprofit corporation may register its corporate name as provided in this
4308 section if the name would be available for use as a corporate name for a domestic nonprofit
4309 corporation under Section 16-6a-401.

4310 (b) If the foreign nonprofit corporation's corporate name would not be available for use
4311 as a corporate name for a domestic nonprofit corporation, the foreign nonprofit corporation may
4312 register its corporate name modified by the addition of any of the following words or
4313 abbreviations, if the modified name would be available for use under Section 16-6a-401:

4314 (i) "corporation";

4315 (ii) "incorporated";

4316 (iii) "company";

4317 (iv) "corp.";

4318 (v) "inc."; or

4319 (vi) "co."

4320 (2) A foreign nonprofit corporation registers its corporate name, or its corporate name with
4321 any addition permitted by Subsection (1), by delivering to the division for filing an application for
4322 registration:

4323 (a) setting forth:

4324 (i) its corporate name;

4325 (ii) the name to be registered that shall meet the requirements of Section 16-6a-401 that
4326 apply to domestic nonprofit corporations;

4327 (iii) the state or country and date of incorporation; and

4328 (iv) a brief description of the nature of the business in which it is engaged; and

4329 (b) accompanied by a certificate of existence, or a document of similar import from the
4330 state or country of incorporation as evidence that the foreign corporation is in existence or has
4331 authority to conduct affairs under the laws of the state or country in which it is organized.

4332 (3) (a) A name is registered for the applicant upon the effective date of the application.

4333 (b) An initial registration is effective for one year.

4334 (4) (a) A foreign nonprofit corporation that has in effect a registration of its corporate

4335 name as permitted by Subsection (1) may renew the registration by delivering to the division for
4336 filing a renewal application for registration, that complies with the requirements of Subsection (2).

4337 (b) When filed, the renewal application for registration renews the registration for the year
4338 following filing.

4339 (5) (a) A foreign nonprofit corporation that has in effect registration of its corporate name
4340 may:

4341 (i) apply for authority to conduct affairs in this state under the registered name in
4342 accordance with the procedure set forth in this part; or

4343 (ii) assign the registration to another foreign nonprofit corporation by delivering to the
4344 division for filing an assignment of the registration that states:

4345 (A) the registered name;

4346 (B) the name of the assigning foreign nonprofit corporation;

4347 (C) the name of the assignee; and

4348 (D) the assignee's application for registration of the name.

4349 (b) The assignee's application for registration of the name required by Subsection (5)(a)
4350 shall meet the requirements of this part.

4351 (6) (a) A foreign nonprofit corporation that has in effect registration of its corporate name
4352 may terminate the registration at any time by delivering to the division for filing a statement of
4353 termination:

4354 (i) setting forth the corporate name; and

4355 (ii) stating that the registration is terminated.

4356 (b) A registration automatically terminates upon the filing of an application for authority
4357 to conduct affairs in this state under the registered name.

4358 (7) The registration of a corporate name under Subsection (1) constitutes authority by the
4359 division to file an application meeting the requirements of this part for authority to conduct affairs
4360 in this state under the registered name, but the authorization is subject to the limitations applicable
4361 to corporate names as set forth in Section 16-6a-403.

4362 Section 161. Section **16-6a-1508** is enacted to read:

4363 **16-6a-1508. Registered office and registered agent of foreign nonprofit corporation.**

4364 (1) Each foreign nonprofit corporation authorized to conduct affairs in this state shall
4365 continuously maintain in this state:

- 4366 (a) a registered office; and
4367 (b) a registered agent, who shall be:
4368 (i) an individual:
4369 (A) who resides in this state; and
4370 (B) whose business office is identical with the registered office;
4371 (ii) a domestic corporation or domestic nonprofit corporation whose business office is
4372 identical with the registered office;
4373 (iii) a foreign corporation or foreign nonprofit corporation:
4374 (A) authorized to conduct affairs in this state; and
4375 (B) whose business office is identical with the registered office; or
4376 (iv) a domestic limited liability company or foreign limited liability company:
4377 (A) authorized to conduct affairs in this state; and
4378 (B) whose business office is identical with the registered office.
4379 (2) A foreign nonprofit corporation may not serve as its own registered agent.

4380 Section 162. Section **16-6a-1509** is enacted to read:

4381 **16-6a-1509. Change of registered office or registered agent of foreign nonprofit**
4382 **corporation.**

4383 (1) A foreign nonprofit corporation authorized to conduct affairs in this state may change
4384 its registered office or its registered agent by delivering to the division for filing a statement of
4385 change that sets forth:

- 4386 (a) its corporate name and its assumed corporate name, if any;
4387 (b) the street address of its current registered office;
4388 (c) the street address of the new registered office if the registered office is to be changed;
4389 (d) the name of its current registered agent;
4390 (e) if the registered agent is to be changed:
4391 (i) the name of the new registered agent; and
4392 (ii) the new registered agent's written consent to the appointment, either on the statement
4393 of change or in an accompanying document; and
4394 (f) that the street addresses of its registered office and the business office of its registered
4395 agent will be identical after the change or changes reflected in the statement are made.
4396 (2) If the street address of a registered agent's business office is changed, the registered

4397 agent may change the street address of the registered office of any foreign nonprofit corporation
4398 for which the registered agent is the registered agent by:

4399 (a) giving written notice to the foreign nonprofit corporation of the change; and

4400 (b) signing and delivering to the division for filing a statement of change that:

4401 (i) complies with the requirements of Subsection (1); and

4402 (ii) recites that the foreign nonprofit corporation has been given notice of the change.

4403 Section 163. Section **16-6a-1510** is enacted to read:

4404 **16-6a-1510. Resignation of registered agent of foreign nonprofit corporation.**

4405 (1) (a) The registered agent of a foreign nonprofit corporation authorized to conduct affairs
4406 in this state may resign the agency appointment by delivering to the division for filing a statement
4407 of resignation, that shall:

4408 (i) be signed by the resigning registered agent; and

4409 (ii) be accompanied by two exact or conformed copies of the statement of resignation; and

4410 (iii) include a declaration that notice of the resignation has been given to the foreign

4411 nonprofit corporation.

4412 (b) The statement of resignation may include a statement that the registered office is also
4413 discontinued.

4414 (2) After filing the statement of resignation, the division shall deliver:

4415 (a) one copy of the statement of resignation to the registered office of the foreign nonprofit
4416 corporation; and

4417 (b) one copy of the statement of resignation to its principal office, if known.

4418 (3) The agency appointment terminates, and the registered office discontinues if so
4419 provided, 31 days after the filing date of the statement of resignation.

4420 Section 164. Section **16-6a-1511** is enacted to read:

4421 **16-6a-1511. Service on foreign nonprofit corporation.**

4422 (1) The registered agent of a foreign nonprofit corporation authorized to conduct affairs
4423 in this state is the foreign corporation's agent for service of process, notice, or demand required or
4424 permitted by law to be served on the foreign nonprofit corporation.

4425 (2) (a) If a foreign nonprofit corporation authorized to conduct affairs in this state has no
4426 registered agent or if the registered agent cannot with reasonable diligence be served, the foreign
4427 nonprofit corporation may be served by registered or certified mail, return receipt requested,

4428 addressed to the foreign nonprofit corporation at its principal office.

4429 (b) Service is perfected under this Subsection (2) at the earliest of:

4430 (i) the date the foreign nonprofit corporation receives the process, notice, or demand;

4431 (ii) the date shown on the return receipt, if signed on behalf of the foreign nonprofit

4432 corporation; or

4433 (iii) five days after mailing.

4434 (3) This section does not prescribe the only means, or necessarily the required means, of
4435 serving a foreign nonprofit corporation authorized to conduct affairs in this state.

4436 Section 165. Section **16-6a-1512** is enacted to read:

4437 **16-6a-1512. Merger of foreign nonprofit corporations authorized to conduct affairs**
4438 **in this state.**

4439 (1) If two or more foreign nonprofit corporations authorized to conduct affairs in this state
4440 are a party to a statutory merger permitted by the laws of the state or country under the laws of
4441 which they are incorporated within 30 days after the merger becomes effective, the surviving
4442 nonprofit corporation shall file with the division a certificate of fact of merger certified by the
4443 proper officer of the state or country under the laws of which the statutory merger was effected.

4444 (2) It is not necessary for a foreign nonprofit corporation authorized to conduct affairs in
4445 this state that is a party to a statutory merger described in Subsection (1) to procure a new or
4446 amended certificate of authority to conduct affairs in this state unless the name of the surviving
4447 nonprofit corporation is changed by the statutory merger.

4448 Section 166. Section **16-6a-1513** is enacted to read:

4449 **16-6a-1513. Withdrawal of foreign nonprofit corporation.**

4450 (1) A foreign nonprofit corporation authorized to conduct affairs in this state may not
4451 withdraw from this state until its application for withdrawal has been filed by the division.

4452 (2) A foreign nonprofit corporation authorized to conduct affairs in this state may apply
4453 for withdrawal by delivering to the division for filing an application for withdrawal setting forth:

4454 (a) its corporate name and its assumed name, if any;

4455 (b) the name of the state or country under whose law it is incorporated;

4456 (c) (i) (A) the address of its principal office; or

4457 (B) if a principal office is not to be maintained, a statement that the foreign nonprofit
4458 corporation will not maintain a principal office; and

4459 (ii) if different from the address of the principal office or if no principal office is to be
4460 maintained, the address to which service of process may be mailed pursuant to Section 16-6a-1514;

4461 (d) that the foreign nonprofit corporation is not conducting affairs in this state;

4462 (e) that it surrenders its authority to conduct affairs in this state;

4463 (f) whether its registered agent will continue to be authorized to accept service on its
4464 behalf in any proceeding based on a cause of action arising during the time it was authorized to
4465 conduct affairs in this state; and

4466 (g) any additional information that the division determines is necessary or appropriate to:

4467 (i) determine whether the foreign nonprofit corporation is entitled to withdraw; and

4468 (ii) determine and assess any unpaid taxes, fees, and penalties payable by the foreign
4469 nonprofit corporation as prescribed by this chapter.

4470 (3) A foreign nonprofit corporation's application for withdrawal may not be filed by the
4471 division until:

4472 (a) all outstanding fees and state tax obligations have been paid; and

4473 (b) the division has received a certificate from the State Tax Commission reciting that all
4474 taxes owed by the foreign nonprofit corporation have been paid.

4475 Section 167. Section **16-6a-1514** is enacted to read:

4476 **16-6a-1514. Service on withdrawn foreign nonprofit corporation.**

4477 (1) A foreign nonprofit corporation that has withdrawn from this state pursuant to Section
4478 16-6a-1513 shall:

4479 (a) maintain a registered agent in this state to accept service on its behalf in any proceeding
4480 based on a cause of action arising during the time it was authorized to conduct affairs in this state,
4481 in which case:

4482 (i) the continued authority of the registered agent shall be specified in the application for
4483 withdrawal; and

4484 (ii) any change shall be governed by the procedure set forth in Section 16-6a-1509 which
4485 applies to foreign nonprofit corporations authorized to conduct affairs in this state; or

4486 (b) be considered to have authorized service of process on it in connection with any cause
4487 of action by registered or certified mail, return receipt requested, to:

4488 (i) the address of its principal office, if any:

4489 (A) set forth in its application for withdrawal; or

4490 (B) as last changed by notice delivered to the division for filing; or
4491 (ii) the address for service of process:
4492 (A) that is stated in its application for withdrawal; or
4493 (B) as last changed by notice delivered to the division for filing.
4494 (2) Service effected pursuant to Subsection (1)(b) is perfected at the earliest of:

4495 (a) the date the withdrawn foreign nonprofit corporation receives the process, notice, or
4496 demand;
4497 (b) the date shown on the return receipt, if signed on behalf of the withdrawn foreign
4498 nonprofit corporation; or
4499 (c) five days after mailing.

4500 (3) Subsection (1) does not prescribe the only means, or necessarily the required means,
4501 of serving a withdrawn foreign nonprofit corporation.

4502 Section 168. Section **16-6a-1515** is enacted to read:

4503 **16-6a-1515. Grounds for revocation.**

4504 The division may commence a proceeding under Section 16-6a-1516 to revoke the
4505 authority of a foreign nonprofit corporation to conduct affairs in this state if:

4506 (1) the foreign nonprofit corporation does not deliver its annual report to the division when
4507 it is due;

4508 (2) the foreign nonprofit corporation does not pay when they are due any taxes, fees, or
4509 penalties imposed by this chapter or other applicable laws of this state;

4510 (3) the foreign nonprofit corporation is without a registered agent or registered office in
4511 this state;

4512 (4) the foreign nonprofit corporation does not inform the division under Section
4513 16-6a-1509 or 16-6a-1510 that:

4514 (a) its registered agent or registered office has changed;

4515 (b) its registered agent has resigned; or

4516 (c) its registered office has been discontinued;

4517 (5) an incorporator, director, officer, or agent of the foreign nonprofit corporation signs
4518 a document knowing it is false in any material respect with intent that the document be delivered
4519 to the division for filing; or

4520 (6) the division receives a duly authenticated certificate from the division or other official

4521 having custody of corporate records in the state or country under whose law the foreign nonprofit
4522 corporation is incorporated stating that the foreign nonprofit corporation has dissolved or
4523 disappeared as the result of a merger.

4524 Section 169. Section **16-6a-1516** is enacted to read:

4525 **16-6a-1516. Procedure for and effect of revocation.**

4526 (1) If the division determines that one or more grounds exist under Section 16-6a-1515 for
4527 revoking the authority of a foreign nonprofit corporation to conduct affairs in this state, the
4528 division shall mail to the foreign nonprofit corporation with written notice of the division's
4529 determination stating the grounds.

4530 (2) (a) If the foreign nonprofit corporation does not correct each ground for revocation or
4531 demonstrate to the reasonable satisfaction of the division that each ground determined by the
4532 division does not exist, within 60 days after mailing of the notice under Subsection (1), the
4533 division shall revoke the foreign nonprofit corporation's authority to conduct affairs in this state.

4534 (b) If a foreign nonprofit corporation's authority to conduct affairs in this state is revoked
4535 under Subsection (2)(a), the division shall:

4536 (i) mail a written notice of the revocation to the foreign nonprofit corporation stating the
4537 effective date of the revocation; and

4538 (ii) mail a copy of the notice to:

4539 (A) the last registered agent of the foreign nonprofit corporation; or

4540 (B) if there is no registered agent of record, at least one officer of the corporation.

4541 (3) The authority of a foreign nonprofit corporation to conduct affairs in this state ceases
4542 on the date shown on the division's certificate revoking the foreign nonprofit corporation's
4543 certificate of authority.

4544 (4) Revocation of a foreign nonprofit corporation's authority to conduct affairs in this state
4545 does not terminate the authority of the registered agent of the foreign nonprofit corporation.

4546 (5) (a) Upon the revocation of a foreign nonprofit corporation's authority to conduct affairs
4547 in this state, the division becomes an agent for the foreign nonprofit corporation for service of
4548 process in any proceeding based on a cause of action which arose during the time the foreign
4549 nonprofit corporation conducted affairs in this state or was authorized to conduct affairs in this
4550 state.

4551 (b) Service of process on the division under this Subsection (5) is service on the foreign

4552 nonprofit corporation.

4553 (c) Upon receipt of process, the division shall mail a copy of the process to the foreign
4554 nonprofit corporation at its principal office, if known.

4555 (6) A notice mailed under this section shall be:

4556 (a) mailed first class, postage prepaid; and

4557 (b) addressed to the most current mailing address appearing on the records of the division
4558 for:

4559 (i) the registered agent of the nonprofit corporation, if the notice is required to be mailed
4560 to the registered agent; or

4561 (ii) the officer of the nonprofit corporation that is mailed the notice if the notice is required
4562 to be mailed to an officer of the nonprofit corporation.

4563 Section 170. Section **16-6a-1517** is enacted to read:

4564 **16-6a-1517. Appeal from revocation.**

4565 If the division revokes the authority of a foreign nonprofit corporation to conduct affairs
4566 in this state, in accordance with Title 63, Chapter 46b, Administrative Procedures Act, the
4567 following may appeal the refusal to the executive director:

4568 (1) the foreign nonprofit corporation; or

4569 (2) the representative of the foreign nonprofit corporation.

4570 Section 171. Section **16-6a-1518** is enacted to read:

4571 **16-6a-1518. Domestication of foreign nonprofit corporations.**

4572 (1) (a) Any foreign nonprofit corporation may become a domestic nonprofit corporation:

4573 (i) by delivering to the division for filing articles of domestication meeting the
4574 requirements of Subsection (2);

4575 (ii) if the board of directors of the foreign nonprofit corporation adopts the articles of
4576 domestication; and

4577 (iii) its members, if any, approve the domestication.

4578 (b) The adoption and approval of the domestication shall be in accordance with the consent
4579 requirements of Section 16-6a-1003 for amending articles of incorporation.

4580 (2) (a) The articles of domestication shall meet the requirements applicable to articles of
4581 incorporation set forth in Sections 16-6a-105 and 16-6a-202, except that:

4582 (i) the articles of domestication need not name, or be signed by, the incorporators of the

4583 foreign nonprofit corporation; and

4584 (ii) any reference to the foreign nonprofit corporation's registered office, registered agent,
4585 or directors shall be to:

4586 (A) the registered office and agent in Utah; and

4587 (B) the directors in office at the time of filing the articles of domestication.

4588 (b) The articles of domestication shall set forth:

4589 (i) the date on which and jurisdiction where the foreign nonprofit corporation was first
4590 formed, incorporated, or otherwise came into being;

4591 (ii) the name of the foreign nonprofit corporation immediately prior to the filing of the
4592 articles of domestication;

4593 (iii) any jurisdiction that constituted the seat, location of incorporation, principal place of
4594 business, or central administration of the foreign nonprofit corporation immediately prior to the
4595 filing of the articles of domestication; and

4596 (iv) a statement that the articles of domestication were:

4597 (A) adopted by the foreign nonprofit corporation's board of directors; and

4598 (B) approved by its members, if any.

4599 (3) (a) Upon the filing of articles of domestication with the division, the foreign nonprofit
4600 corporation shall:

4601 (i) be domesticated in this state;

4602 (ii) be subject to all of the provisions of this chapter after the date of filing the articles of
4603 domestication; and

4604 (iii) continue as if it had been incorporated under this chapter.

4605 (b) Notwithstanding any other provisions of this chapter, the existence of the foreign
4606 nonprofit corporation shall be considered to have commenced on the date the foreign nonprofit
4607 corporation commenced its existence in the jurisdiction in which the foreign nonprofit corporation
4608 was first formed, incorporated, or otherwise came into being.

4609 (4) The articles of domestication, upon filing with the division, shall:

4610 (a) become the articles of incorporation of the foreign nonprofit corporation; and

4611 (b) be subject to amendments or restatement the same as any other articles of incorporation
4612 under this chapter.

4613 (5) The domestication of any foreign nonprofit corporation in this state may not be

4614 considered to affect any obligation or liability of the foreign nonprofit corporation incurred prior
4615 to its domestication.

4616 (6) The filing of the articles of domestication may not affect the choice of law applicable
4617 to the foreign nonprofit corporation, except that from the date the articles of domestication are
4618 filed, the law of Utah, including the provisions of this chapter, shall apply to the foreign nonprofit
4619 corporation to the same extent as if the foreign nonprofit corporation had been incorporated as a
4620 domestic nonprofit corporation of this state on that date.

4621 Section 172. Section **16-6a-1601** is enacted to read:

4622 **Part 16. Records, Information, and Reports**

4623 **16-6a-1601. Corporate records.**

4624 (1) A nonprofit corporation shall keep as permanent records:

4625 (a) minutes of all meetings of its members and board of directors;

4626 (b) a record of all actions taken by the members or board of directors without a meeting;

4627 (c) a record of all actions taken by a committee of the board of directors in place of the
4628 board of directors on behalf of the nonprofit corporation; and

4629 (d) a record of all waivers of notices of meetings of members and of the board of directors
4630 or any committee of the board of directors.

4631 (2) A nonprofit corporation shall maintain appropriate accounting records.

4632 (3) A nonprofit corporation or its agent shall maintain a record of its members in a form
4633 that permits preparation of a list of the name and address of all members:

4634 (a) in alphabetical order, by class; and

4635 (b) showing the number of votes each member is entitled to vote.

4636 (4) A nonprofit corporation shall maintain its records in written form or in another form
4637 capable of conversion into written form within a reasonable time.

4638 (5) A nonprofit corporation shall keep a copy of each of the following records at its
4639 principal office:

4640 (a) its articles of incorporation;

4641 (b) its bylaws;

4642 (c) resolutions adopted by its board of directors relating to the characteristics,
4643 qualifications, rights, limitations, and obligations of members or any class or category of members;

4644 (d) the minutes of all members' meetings for a period of three years;

4645 (e) records of all action taken by members without a meeting, for a period of three years;

4646 (f) all written communications to members generally as members for a period of three

4647 years;

4648 (g) a list of the names and business or home addresses of its current directors and officers;

4649 (h) a copy of its most recent annual report delivered to the division under Section

4650 16-6a-1607; and

4651 (i) all financial statements prepared for periods ending during the last three years that a

4652 member could have requested under Section 16-6a-1606.

4653 Section 173. Section **16-6a-1602** is enacted to read:

4654 **16-6a-1602. Inspection of records by directors and members.**

4655 (1) A director or member is entitled to inspect and copy, any of the records of the nonprofit

4656 corporation described in Subsection 16-6a-1601(5):

4657 (a) during regular business hours;

4658 (b) at the nonprofit corporation's principal office; and

4659 (c) if the director or member gives the nonprofit corporation written demand, at least five

4660 business days before the date on which the member wishes to inspect and copy the records.

4661 (2) In addition to the rights set forth in Subsection (1), a director or member is entitled to

4662 inspect and copy any of the other records of the nonprofit corporation:

4663 (a) during regular business hours;

4664 (b) at a reasonable location specified by the nonprofit corporation; and

4665 (c) at least five business days before the date on which the member wishes to inspect and

4666 copy the records, if the director or member:

4667 (i) meets the requirements of Subsection (3); and

4668 (ii) gives the nonprofit corporation written demand.

4669 (3) A director or member may inspect and copy the records described in Subsection (2)

4670 only if:

4671 (a) the demand is made:

4672 (i) in good faith; and

4673 (ii) for a proper purpose;

4674 (b) the director or member describes with reasonable particularity the purpose and the

4675 records the director or member desires to inspect; and

- 4676 (c) the records are directly connected with the described purpose.
- 4677 (4) Notwithstanding Section 16-6a-102, for purposes of this section:
- 4678 (a) "member" includes:
- 4679 (i) a beneficial owner whose membership interest is held in a voting trust; and
- 4680 (ii) any other beneficial owner of a membership interest who establishes beneficial
- 4681 ownership; and
- 4682 (b) "proper purpose" means a purpose reasonably related to the demanding member's
- 4683 interest as a member.
- 4684 (5) The right of inspection granted by this section may not be abolished or limited by the
- 4685 articles of incorporation or bylaws.
- 4686 (6) This section does not affect:
- 4687 (a) the right of a director or member to inspect records under Section 16-6a-1602;
- 4688 (b) the right of a member to inspect records to the same extent as any other litigant if the
- 4689 member is in litigation with the nonprofit corporation; or
- 4690 (c) the power of a court, independent of this chapter, to compel the production of corporate
- 4691 records for examination.
- 4692 (7) A director or member may not use any information obtained through the inspection or
- 4693 copying of records permitted by Subsection (2) for any purposes other than those set forth in a
- 4694 demand made under Subsection (3).
- 4695 Section 174. Section **16-6a-1603** is enacted to read:
- 4696 **16-6a-1603. Scope of member's inspection right.**
- 4697 (1) A director or member's agent or attorney has the same inspection and copying rights
- 4698 as the director or member.
- 4699 (2) The right to copy records under Section 16-6a-1602 includes, if reasonable, the right
- 4700 to receive copies made by photographic, xerographic, electronic, or other means.
- 4701 (3) Except as provided in Section 16-6a-1606, the nonprofit corporation may impose a
- 4702 reasonable charge, covering the costs of labor and material, for copies of any documents provided
- 4703 to the director or member. The charge may not exceed the estimated cost of production and
- 4704 reproduction of the records.
- 4705 (4) The nonprofit corporation may comply with a director's or member's demand to inspect
- 4706 the record of members under Subsection 16-6a-1601(3) by furnishing to the director or member

4707 a list of directors or members that:

4708 (a) complies with Subsection 16-6a-1601(3); and

4709 (b) is compiled no earlier than the date of the director's or member's demand.

4710 Section 175. Section **16-6a-1604** is enacted to read:

4711 **16-6a-1604. Court-ordered inspection of corporate records.**

4712 (1) (a) A director or member may petition the applicable court if:

4713 (i) a nonprofit corporation refuses to allow a director or member, or the director's or

4714 member's agent or attorney, to inspect or copy any records that the director or member is entitled

4715 to inspect or copy under Subsection 16-6a-1602(1); and

4716 (ii) the director or member complies with Subsection 16-6a-1602(1).

4717 (b) If petitioned under Subsection (1)(a), the court may summarily order the inspection or

4718 copying of the records demanded at the nonprofit corporation's expense on an expedited basis.

4719 (2) (a) A director or member may petition the applicable court if:

4720 (i) a nonprofit corporation refuses to allow a director or member, or the director's or

4721 member's agent or attorney, to inspect or copy any records that the director or member is entitled

4722 to inspect or copy pursuant to Subsections 16-6a-1602(2) and (3) within a reasonable time

4723 following the director's or member's demand; and

4724 (ii) the director or member complies with Subsections 16-6a-1602(2) and (3).

4725 (b) If the court is petitioned under Subsection (2)(a), the court may summarily order the

4726 inspection or copying of the records demanded.

4727 (3) If a court orders inspection or copying of the records demanded under Subsection (1)

4728 or (2), unless the nonprofit corporation proves that it refused inspection or copying in good faith

4729 because it had a reasonable basis for doubt about the right of the director or member, or the

4730 director's or member's agent or attorney, to inspect or copy the records demanded:

4731 (a) the court shall also order the nonprofit corporation to pay the director's or member's

4732 costs, including reasonable counsel fees, incurred to obtain the order;

4733 (b) the court may order the nonprofit corporation to pay the director or member for any

4734 damages the member incurred;

4735 (c) if inspection or copying is ordered pursuant to Subsection (2), the court may order the

4736 nonprofit corporation to pay the director's or member's inspection and copying expenses; and

4737 (d) the court may grant the director or member any other remedy provided by law.

4738 (4) If a court orders inspection or copying of records demanded, it may impose reasonable
4739 restrictions on the use or distribution of the records by the demanding director or member.

4740 (5) For purposes of this section, the applicable court is:

4741 (a) the district court of the county in this state where the nonprofit corporation's principal
4742 office is located; or

4743 (b) if the nonprofit corporation has no principal office in this state:

4744 (i) the district court of the county in which its registered office is located; or

4745 (ii) if the nonprofit corporation has no registered office, the district court in and for Salt
4746 Lake County.

4747 Section 176. Section **16-6a-1605** is enacted to read:

4748 **16-6a-1605. Limitations on use of membership list.**

4749 (1) Without consent of the board of directors, a membership list or any part of a
4750 membership list may not be obtained or used by any person for any purpose unrelated to a
4751 member's interest as a member.

4752 (2) Without limiting the generality of Subsection (1), without the consent of the board of
4753 directors, a membership list or any part of a membership list may not be:

4754 (a) used to solicit money or property unless the money or property will be used solely to
4755 solicit the votes of the members in an election to be held by the nonprofit corporation;

4756 (b) used for any commercial purpose; or

4757 (c) sold to or purchased by any person.

4758 Section 177. Section **16-6a-1606** is enacted to read:

4759 **16-6a-1606. Financial statements.**

4760 Upon the written request of any member, a nonprofit corporation shall mail to the member
4761 the following that show in reasonable detail the assets and liabilities and results of the operations
4762 of the nonprofit corporation:

4763 (1) its most recent annual financial statements, if any; and

4764 (2) its most recently published financial statements, if any.

4765 Section 178. Section **16-6a-1607** is enacted to read:

4766 **16-6a-1607. Annual report for division.**

4767 (1) Each domestic nonprofit corporation, and each foreign nonprofit corporation
4768 authorized to conduct affairs in this state, shall deliver to the division for filing an annual report

4769 on a form provided by the division that sets forth:

4770 (a) (i) the corporate name of the domestic or foreign nonprofit corporation; and

4771 (ii) any assumed corporate name of the foreign nonprofit corporation;

4772 (b) the state or country under whose law it is incorporated;

4773 (c) the street address of its registered office in this state;

4774 (d) the name of its registered agent at the office listed in Subsection (1)(c);

4775 (e) the street address of its principal office;

4776 (f) the names and addresses of its directors and principal officers; and

4777 (g) a brief description of the nature of its business.

4778 (2) The division shall deliver a copy of the prescribed form of annual report to each

4779 domestic nonprofit corporation and each foreign nonprofit corporation authorized to conduct
4780 affairs in this state.

4781 (3) Information in the annual report shall be current as of the date the annual report is
4782 executed on behalf of the nonprofit corporation.

4783 (4) (a) The annual report of a domestic or foreign nonprofit corporation shall be delivered
4784 annually to the division no later than the end of the second calendar month following the calendar
4785 month in which the report form is mailed by the division.

4786 (b) Proof to the satisfaction of the division that the nonprofit corporation has mailed an
4787 annual report form is considered in compliance with this Subsection (4).

4788 (5) (a) If an annual report contains the information required by this section, the division
4789 shall file it.

4790 (b) If an annual report does not contain the information required by this section, the
4791 division shall promptly notify the reporting domestic or foreign nonprofit corporation in writing
4792 and return the annual report to it for correction.

4793 (c) If an annual report that is rejected under Subsection (5)(b) was otherwise timely filed
4794 and is corrected to contain the information required by this section and delivered to the division
4795 within 30 days after the effective date of the notice of rejection, the annual report is considered to
4796 be timely filed.

4797 (6) The fact that an individual's name is signed on an annual report form is prima facie
4798 evidence for division purposes that the individual is authorized to certify the report on behalf of
4799 the nonprofit corporation.

4800 (7) The annual report form provided by the division may be designed to provide a
4801 simplified certification by the nonprofit corporation if no changes have been made in the required
4802 information from the last preceding report filed.

4803 (8) A domestic or foreign nonprofit corporation may, but may not be required to, deliver
4804 to the division for filing an amendment to its annual report reflecting any change in the information
4805 contained in its annual report as last amended.

4806 Section 179. Section **16-6a-1608** is enacted to read:

4807 **16-6a-1608. Statement of person named as director or officer.**

4808 Any person named as a director or officer of a domestic or foreign nonprofit corporation
4809 in an annual report or other document on file with the division may, if that person does not hold
4810 the named position, deliver to the division for filing a statement setting forth:

4811 (1) that person's name;

4812 (2) the domestic or foreign nonprofit corporation's name;

4813 (3) information sufficient to identify the report or other document in which the person is
4814 named as a director or officer; and

4815 (4) (a) the date on which the person ceased to be a director or officer of the domestic or
4816 foreign nonprofit corporation; or

4817 (b) a statement that the person did not hold the position for which the person was named
4818 in the corporate report or other document.

4819 Section 180. Section **16-6a-1609** is enacted to read:

4820 **16-6a-1609. Interrogatories by division.**

4821 (1) (a) The division may give interrogatories reasonably necessary to ascertain whether the
4822 nonprofit corporation has complied with the provisions of this chapter applicable to the nonprofit
4823 corporation to:

4824 (i) any domestic or foreign nonprofit corporation subject to the provisions of this chapter;
4825 and

4826 (ii) to any officer or director of a corporation described in Subsection (1)(a)(i).

4827 (b) The interrogatories described in Subsection (1) shall be answered within:

4828 (i) 30 days after the mailing of the interrogatories; or

4829 (ii) additional time as fixed by the division.

4830 (c) The answers to the interrogatories shall be:

4831 (i) full and complete; and

4832 (ii) made in writing.

4833 (d) (i) If the interrogatories are directed to an individual, the interrogatories shall be
4834 answered by the individual.

4835 (ii) If directed to a nonprofit corporation, the interrogatories shall be answered by:

4836 (A) the chair of the board of directors of the nonprofit corporation;

4837 (B) all of its directors;

4838 (C) one of its officers; or

4839 (D) any other person authorized to answer the interrogatories as the nonprofit corporation's
4840 agent.

4841 (e) (i) The division need not file any document to which the interrogatories relate until the
4842 interrogatories are answered as provided in this section.

4843 (ii) Notwithstanding Subsection (1)(e)(i), the division need not file a document to which
4844 the interrogator relates if the answers to the interrogatory disclose that the document is not in
4845 conformity with the provisions of this chapter.

4846 (f) The division shall certify to the attorney general, for such action as the attorney general
4847 considers appropriate, all interrogatories and answers to interrogatories that disclose a violation
4848 of this chapter.

4849 (2) (a) Interrogatories given by the division under Subsection (1), and the answers to
4850 interrogatories, may not be open to public inspection.

4851 (b) The division may not disclose any facts or information obtained from the
4852 interrogatories or answers to the interrogatories, except:

4853 (i) as the official duties of the division may require the facts or information to be made
4854 public; or

4855 (ii) in the event the interrogatories or the answers to the interrogatories are required for
4856 evidence in any criminal proceedings or in any other action by this state.

4857 (3) Each domestic or foreign nonprofit corporation that fails or refuses to answer truthfully
4858 and fully, within the time prescribed by Subsection (1), interrogatories given to the domestic or
4859 foreign nonprofit corporation by the division in accordance with Subsection (1) is guilty of a class
4860 C misdemeanor and, upon conviction, shall be punished by a fine of not more than \$500.

4861 (4) Each officer and director of a domestic or foreign nonprofit corporation who fails or

4862 refuses to answer truthfully and fully, within the time prescribed by Subsection (1), interrogatories
4863 given to the officer or director by the division in accordance with Subsection (1) is guilty of a class
4864 B misdemeanor and, upon conviction, shall be punished by a fine of not more than \$1,000.

4865 (5) The attorney general may enforce this section in an action brought in:

4866 (a) the district court of the county in this state where the nonprofit corporation's principal
4867 office or registered office is located; or

4868 (b) if the nonprofit corporation has no principal or registered office in this state, in the
4869 district court in and for Salt Lake County.

4870 Section 181. Section **16-6a-1701** is enacted to read:

4871 **Part 17. Transitional Provisions and Scope of Chapter**

4872 **16-6a-1701. Application to existing domestic nonprofit corporations -- Reports**
4873 **domestic and foreign nonprofit corporation.**

4874 (1) Except as otherwise provided in Section 16-6a-1704, this chapter applies to domestic
4875 nonprofit corporations as follows:

4876 (a) domestic nonprofit corporations in existence on July 1, 2000, that were incorporated
4877 under any general statute of this state providing for incorporation of nonprofit corporations,
4878 including all nonprofit corporations organized under any former provisions of Title 16, Chapter
4879 6;

4880 (b) mutual irrigation, canal, ditch, reservoir, and water companies and water users'
4881 associations organized and existing under the laws of this state on July 1, 2000;

4882 (c) corporations organized under the provisions of Title 16, Chapter 7, Corporations Sole,
4883 for purposes of applying all provisions relating to merger or consolidation; and

4884 (d) to actions taken by the directors, officers, and members of the entities described in
4885 Subsections (1)(a), (b), and (c) after July 1, 2000.

4886 (2) Domestic nonprofit corporations to which this chapter applies, that are organized and
4887 existing under the laws of this state on July 1, 2000:

4888 (a) shall continue in existence with all the rights and privileges applicable to nonprofit
4889 corporations organized under this chapter; and

4890 (b) from July 1, 2000 shall have all the rights and privileges and shall be subject to all the
4891 remedies, restrictions, liabilities, and duties prescribed in this chapter except as otherwise
4892 specifically provided in this chapter.

4893 (3) Every existing domestic nonprofit corporation and foreign nonprofit corporation
4894 qualified to conduct affairs in this state on July 1, 2000 shall file an annual report with the division
4895 setting forth the information prescribed by Section 16-6a-1607. The annual report shall be filed
4896 at such time as would have been required had this chapter not taken effect and shall be filed
4897 annually thereafter as required in Section 16-6a-1607.

4898 Section 182. Section **16-6a-1702** is enacted to read:

4899 **16-6a-1702. Application to foreign nonprofit corporations.**

4900 (1) A foreign nonprofit corporation authorized to conduct affairs in this state on July 1,
4901 2000, is subject to this chapter, but is not required to obtain a new certificate of authority to
4902 conduct affairs under this chapter.

4903 (2) A foreign nonprofit corporation that is qualified to do business in this state under the
4904 provisions of Title 16, Chapter 8, which provisions were repealed by Chapter 28, Laws of Utah
4905 1961, shall be authorized to transact business in this state subject to all of the limitations,
4906 restrictions, liabilities, and duties prescribed in this chapter.

4907 (3) This chapter shall apply to all foreign nonprofit corporations sole qualified to do
4908 business in this state with respect to mergers and consolidations.

4909 Section 183. Section **16-6a-1703** is enacted to read:

4910 **16-6a-1703. Nonapplicability of chapter.**

4911 This chapter does not apply to:

4912 (1) corporations sole, except with respect to mergers and consolidations; or

4913 (2) domestic or foreign nonprofit corporations governed by Title 3, Chapter 1, Uniform
4914 Agricultural Cooperative Association Act.

4915 Section 184. Section **16-6a-1704** is enacted to read:

4916 **16-6a-1704. Saving provisions.**

4917 (1) (a) Except as provided in Subsection (2), the repeal of any statute by this act does not
4918 affect:

4919 (i) the operation of the statute or any action taken under it before its repeal;

4920 (ii) any ratification, right, remedy, privilege, obligation, or liability acquired, accrued, or
4921 incurred under the statute before its repeal;

4922 (iii) any violation of the statute, or any penalty, forfeiture, or punishment incurred because
4923 of the violation of the statute before its repeal; or

4924 (iv) any proceeding, reorganization, or dissolution commenced under the statute before its
4925 repeal.

4926 (b) A proceeding, reorganization, or dissolution described in Subsection (1)(a)(iv) may be
4927 completed in accordance with the repealed statute as if the statute had not been repealed.

4928 (2) If a penalty or punishment imposed for violation of a statute repealed by this act is
4929 reduced by this act, the penalty or punishment if not already imposed shall be imposed in
4930 accordance with this act.

4931 (3) Section 16-6a-707 does not operate to permit a corporation in existence prior to July
4932 1, 2000, to take action by the written consent of fewer than all of the members entitled to vote with
4933 respect to the subject matter of the action, until the date a resolution providing otherwise is
4934 approved either:

4935 (a) by a consent in writing:

4936 (i) setting forth the proposed resolution; and

4937 (ii) signed by all of the members entitled to vote with respect to the subject matter of the
4938 resolution; or

4939 (b) at a duly convened meeting of members, by the vote of the same percentage of
4940 members of each voting group as would be required to include the resolution in an amendment to
4941 the corporation's articles of incorporation.

4942 Section 185. Section **16-10a-1008.5** is enacted to read:

4943 **16-10a-1008.5. Conversion to a nonprofit corporation.**

4944 (1) (a) A corporation may convert to a nonprofit corporation subject to Title 16, Chapter
4945 6a, Utah Revised Nonprofit Corporation Act, by filing an amendment of its articles of
4946 incorporation pursuant to this section.

4947 (b) The day on which a corporation files an amendment under this section, the corporation
4948 becomes a nonprofit corporation subject to Title 16, Chapter 6a, Utah Revised Nonprofit
4949 Corporation Act.

4950 (2) The amendment of the articles of incorporation to convert to a nonprofit corporation
4951 shall:

4952 (a) revise the statement of purposes of the corporation;

4953 (b) delete:

4954 (i) the authorization for shares; and

- 4955 (ii) any provision relating to authorized or issued shares;
4956 (c) if any shares have been issued, provide for:
4957 (i) the cancellation of issued shares; or
4958 (ii) the conversion of the shares to membership interests in the nonprofit corporation; and
4959 (d) make such other changes as may be necessary or desired.

4960 (3) If the corporation has issued shares, an amendment to convert to a nonprofit
4961 corporation shall be approved by all of the outstanding shares of all classes of shares regardless
4962 of limitations or restrictions on the voting rights of the shares.

4963 (4) If an amendment pursuant to this section is included in a merger agreement, this section
4964 applies, except that any provision for the cancellation or conversion of shares shall be set forth in
4965 the merger agreement and not in the amendment of the articles of incorporation.

4966 Section 186. Section **16-7-13** is amended to read:

4967 **16-7-13. Merger and consolidation.**

4968 (1) As long as the surviving corporation qualifies for tax exempt status under Internal
4969 Revenue Code Section 501(c)(3), any corporation organized under this chapter may merge with
4970 one or more domestic or foreign corporations organized or authorized to do business in this state
4971 under this title, or with one or more nonprofit domestic or foreign corporations organized or
4972 authorized to do business in this state under this title.

4973 (2) (a) Articles of merger or consolidation shall be adopted by the appropriate incorporator
4974 or the successor to an incorporator as described in Section 16-7-2. If there is no such incorporator
4975 or successor, the articles shall be signed by the officer or official authorized to administer the
4976 affairs and property of the corporation according to the practices and procedures of the church,
4977 denomination, or religious society.

4978 (b) The articles of merger or consolidation shall be adopted by any merging or
4979 consolidating corporation organized under Title 16, Chapter [6] 6a, Utah Revised Nonprofit
4980 Corporation [and Cooperative Association] Act, as provided in [~~Section 16-6-56~~] Sections
4981 16-6a-1101 and 16-6a-1102.

4982 (3) The effect of a merger or consolidation under this section is the same as provided in
4983 Section [~~16-6-59~~] 16-6a-1104.

4984 Section 187. Section **16-7-14** is amended to read:

4985 **16-7-14. Restatement of articles of incorporation.**

4986 (1) A corporation sole organized under this chapter may restate its articles of incorporation
4987 in the same manner allowed nonprofit corporations under Section [16-6-53.5] 16-6a-1006.

4988 (2) The restated articles shall be adopted on behalf of the corporation by the appropriate
4989 incorporator or the successor to an incorporator as described in Section 16-7-2. If there is no such
4990 incorporator or successor, the articles shall be signed by the officer or official authorized to
4991 administer the affairs and property of the corporation according to the practices and procedures of
4992 the church, denomination, or religious society.

4993 Section 188. Section **17A-3-903** is amended to read:

4994 **17A-3-903. Organization of nonprofit corporation as building authority -- Powers**
4995 **and duties.**

4996 (1) The governing body of a public body may organize a nonprofit corporation as the
4997 building authority for the public body under this part, following the procedures set out in [the] Title
4998 16, Chapter 6a, Utah Revised Nonprofit Corporation [and Cooperative Association] Act [(Title
4999 16, Chapter 6, Article 2)], solely for the purpose of accomplishing the public purposes for which
5000 the public body exists by acquiring, improving, or extending one or more projects and financing
5001 their costs on behalf of the public body. The authority shall be known as the "Municipal Building
5002 Authority of (name of public body)." The governing body shall approve the articles of
5003 incorporation and bylaws of the authority and shall act as the members of the board of trustees of
5004 the authority. The articles of incorporation and bylaws shall provide that members of the board
5005 of trustees of the authority may be removed and replaced by the governing authority at any time
5006 in its discretion. The governing body may, at its sole discretion and at any time, alter or change
5007 the structure, organization, programs, or activities of the building authority, subject to the rights
5008 of holders of the authority's bonds and parties to its other obligations.

5009 (2) Each building authority is authorized to acquire, improve, or extend one or more
5010 projects and to finance their costs on behalf of the public body that created it, in accordance with
5011 the procedures and subject to the limitations of this part, in order to accomplish the public purposes
5012 for which the public body exists.

5013 (3) Except as limited by Subsection (4), a building authority may contract for or employ
5014 all staff and other personnel necessary for the purpose of performing its functions and activities,
5015 including contracting with the public body that created it to utilize the personnel, property, or
5016 facilities of the public body for that purpose, and may include the costs of the contracted services

5017 and employed staff and personnel in the rentals and charges payable to it under leases or
5018 agreements between it and the public body.

5019 (4) (a) With respect to any public body that creates a building authority and which has an
5020 elected attorney or auditor, or both, the elected attorney shall be the legal advisor to and provide
5021 all legal services for the authority, and the elected auditor shall provide all accounting and auditing
5022 services for the authority. The authority shall reimburse the public body for legal, accounting, and
5023 auditing services so furnished by the public body, based upon the actual cost of the services
5024 including reasonable amounts allocated by the public body for overhead, employee fringe benefits,
5025 and general and administrative expenses.

5026 (b) The provisions of this Subsection (4) shall not prevent the building authority from
5027 obtaining accounting or auditing services from outside accountants or auditors with the consent
5028 of the elected auditor and the governing body or from obtaining legal services from outside
5029 attorneys with the consent of the elected attorney and the governing body, nor shall the provisions
5030 of this Subsection (4) prevent the authority from obtaining the opinions of outside attorneys or
5031 accountants which are necessary for the issuance of the bonds of the authority.

5032 (c) Except those services that are paid for from bond proceeds, the building authority may
5033 include the cost of legal, accounting, and auditing services in the rentals and charges payable to
5034 it under leases or agreements between it and the public body.

5035 Section 189. Section **21-1-2** is amended to read:

5036 **21-1-2. Fees of lieutenant governor.**

5037 In addition to the fees prescribed by Title 16, Chapter 6a, Utah Revised Nonprofit
5038 Corporation Act, and Title 16, Chapter 10a, Utah Revised Business Corporation Act, [and Title
5039 16, Chapter 6, Utah Nonprofit Corporation and Cooperative Association Act,] the lieutenant
5040 governor shall receive and determine fees pursuant to Section 63-38-3.2 for the following:

5041 (1) for a copy of any law, resolution, record, or other document or paper on file in [his] the
5042 lieutenant governor's office, other than documents or papers filed under Title 16, Chapter 6a, Utah
5043 Revised Nonprofit Corporation Act, and Title 16, Chapter 10a, Utah Revised Business Corporation
5044 Act[, and Title 16, Chapter 6, Utah Nonprofit Corporation and Cooperative Association Act];

5045 (2) for affixing certificate and the Great Seal of the state, except on documents filed under
5046 Title 16, Chapter 6a, Utah Revised Nonprofit Corporation Act, and Title 16, Chapter 10a, Utah
5047 Revised Business Corporation Act[, and Title 16, Chapter 6, Utah Nonprofit Corporation and

5048 Cooperative Association Act];

5049 (3) for each commission signed by the governor, except that no charge may be made for
5050 commissions to public officers serving without compensation;

5051 (4) for each warrant of arrest issued by the governor and attested by the lieutenant governor
5052 upon the requisition of any other state or territory;

5053 (5) for recording miscellaneous papers or documents;

5054 (6) for filing any paper or document not otherwise provided for; and

5055 (7) for searching records and archives of the state, except that no member of the
5056 Legislature or other state or county officer may be charged for any search relative to matters
5057 appertaining to the duties of his office or for a certified copy of any law or resolution relative to
5058 his official duties passed by the Legislature.

5059 Section 190. Section **21-1-2.5** is amended to read:

5060 **21-1-2.5. Fees of Division of Corporations and Commercial Code.**

5061 In addition to the fees prescribed by Title 16, Chapter 6a, Utah Revised Nonprofit
5062 Corporation Act, and Title 16, Chapter 10a, Utah Revised Business Corporation Act, [~~and Title~~
5063 ~~16, Chapter 6, Utah Nonprofit Corporation and Cooperative Association Act,~~] the Division of
5064 Corporations and Commercial Code shall receive and determine fees pursuant to Section 63-38-3.2
5065 for filing articles of incorporation or amendments of insurance corporations, of canal or irrigation
5066 corporations organized for furnishing water to lands owned by the members thereof exclusively,
5067 or of water users' associations organized in conformity with the requirements of the United States
5068 under the Reclamation Act of June 17, 1902, and which are authorized to furnish water only to
5069 their stockholders. No license fee may be imposed on insurance corporations, canal or irrigation
5070 corporations organized for furnishing water to lands owned by the members thereof exclusively,
5071 or water users' associations organized in conformity with the requirements of the United States
5072 under the Reclamation Act of June 17, 1902, and which are authorized to furnish water only to the
5073 stockholders at the time any such corporation files its articles of incorporation, articles of
5074 amendment increasing the number of authorized shares, or articles of merger or consolidation, any
5075 provision of Title 16, Chapter 10a, Utah Revised Business Corporation Act, to the contrary
5076 notwithstanding.

5077 Section 191. Section **31A-5-101** is amended to read:

5078 **31A-5-101. Definitions.**

5079 In this chapter, unless the context requires otherwise:

5080 (1) The definitions applicable to the Utah Revised Business Corporation Act in
5081 Subsections 16-10a-102 (2), (22), and (23) apply to stock corporations.

5082 (2) The definitions applicable to nonprofit corporations in Subsections [~~16-6-19(1), (2),~~
5083 ~~(8), (10), and (12)~~] 16-6a-102(4), (6), and (30) apply to mutuals.

5084 (3) "Promoter securities" are securities issued by a stock insurer to the incorporators,
5085 directors, officers, or their families or nominees at any time prior to, and up to one year following,
5086 the issuance of a certificate of authority to the stock insurer.

5087 Section 192. Section **31A-5-102** is amended to read:

5088 **31A-5-102. Scope and purposes.**

5089 (1) (a) Except as expressly provided otherwise in this title, this chapter applies to all
5090 corporations organized under Utah law and doing an insurance business as defined under Section
5091 31A-1-301, except those expressly governed by other chapters of this title. This chapter applies
5092 to corporations doing a reinsurance business, whether or not they do other insurance business.

5093 (b) Except as expressly provided otherwise, this chapter does not apply to nondomestic
5094 insurers.

5095 (c) Except as provided otherwise in this title, Title 16, Chapter [6] 6a, Utah Revised
5096 Nonprofit Corporation [~~and Co-operative Association~~] Act, and Title 16, Chapter 10a, Utah
5097 Revised Business Corporation Act, apply to corporations under this chapter.

5098 (d) If Title 16, Chapter [6] 6a, or Title 16, Chapter 10a, conflict with this title, this title
5099 governs.

5100 (2) The purposes of this chapter include:

5101 (a) to provide a procedure for the formation of insurance corporations;

5102 (b) to assure the solidity of insurance corporations by providing an organizational
5103 framework to facilitate sound management, sound operation, and sound regulation;

5104 (c) to provide fair means of corporate transformation; and

5105 (d) where feasible, to strengthen internal corporate democracy through enhancing
5106 shareholder and policyholder participation.

5107 Section 193. Section **31A-5-104** is amended to read:

5108 **31A-5-104. General corporate powers and procedures.**

5109 (1) (a) Subject to other provisions of this code, Section 16-10a-302 applies to stock and

5110 mutual insurance corporations.

5111 (b) Subject to other specific provisions of this title, a domestic insurance corporation may
5112 participate in any activity permitted as a promoter, partner, member, associate, or manager of any
5113 partnership, joint venture, trust, or other enterprise.

5114 (2) Subsections 16-10a-303 (2)(a) and (b) apply to stock corporations, and Section
5115 16-10a-622 applies to mutuals.

5116 (3) Whenever a seal is required on a corporate document, writing or printing the word
5117 "Seal" constitutes a valid seal.

5118 (4) In waiving notice and in informal actions by shareholders, members, or directors,
5119 Sections 16-10a-704, 16-10a-706, and 16-10a-823 apply to stock corporations, and Sections
5120 [~~16-6-32~~] 16-6a-705 and [~~16-6-33~~] 16-6a-707 apply to mutuals.

5121 (5) A life insurance corporation may hold assets under Section 31A-22-410 as general
5122 corporate assets or as trustee.

5123 Section 194. Section **31A-5-203** is amended to read:

5124 **31A-5-203. Articles and bylaws.**

5125 (1) The articles of incorporation requirements in Section 16-10a-202 apply to the articles
5126 of a stock corporation, except that:

5127 (a) the name of the corporation shall comply with Sections 16-10a-401 and 31A-1-109 and
5128 the name of any new or renamed corporation shall include the word "insurance" or a term of
5129 equivalent meaning;

5130 (b) authorized shares shall conform to Subsection 31A-5-305(1) and the capital provided
5131 for shall conform to Section 31A-5-211; and

5132 (c) beginning on July 1, 1988, the purposes of the corporation are limited to those
5133 permitted by Section 31A-4-107.

5134 (2) The articles of incorporation requirements in Section [~~16-6-46~~] 16-6a-202, except
5135 Subsections [~~16-6-46 (1)(e) and (f)~~] 16-6a-202(1)(g) and (h), apply to the articles of a mutual
5136 except that:

5137 (a) The name of the corporation shall comply with Sections [~~16-6-24~~] 16-6a-401 and
5138 31A-1-109 and the name of any new or renamed corporation shall include the words "mutual" and
5139 "insurance" or terms of equivalent meaning.

5140 (b) If any mutual bonds are authorized, they shall comply with Subsection

5141 31A-5-305(2)(a).

5142 (c) The purposes of the corporation may not include doing a title insurance business, and
5143 shall be limited to those purposes permitted by Section 31A-4-107.

5144 (d) If assessable policies are permitted, the articles shall contain provisions giving
5145 assessment liabilities and procedures, including a provision specifying the classes of business on
5146 which assessment may be separately levied.

5147 (e) The articles may specify those classes of persons who may be policyholders, or
5148 prescribe the procedure for establishing or removing restrictions on the classes of persons who may
5149 be policyholders. The articles shall also state that each policyholder is a member of the
5150 corporation.

5151 (3) Sections 16-10a-830 and 16-10a-831 apply to stock corporations and Section [~~16-6-40~~]
5152 16-6a-818 applies to mutuals. The articles or bylaws shall designate three or more principal
5153 offices the principal officers of the corporation shall hold. The principal offices shall be held by
5154 at least three separate natural persons.

5155 (4) The bylaws of a domestic corporation shall comply with this chapter. A copy of the
5156 bylaws, and any amendments to them, shall be filed with the commissioner within 60 days after
5157 their adoption. Subject to Subsection (4), Subsections 31A-5-204(2)(c) and (5), Subsection
5158 31A-5-213(4), and Section 16-10a-206 apply to stock corporations and Section [~~16-6-44~~]
5159 16-6a-206 applies to mutuals.

5160 Section 195. Section **31A-5-219** is amended to read:

5161 **31A-5-219. Amendment of articles.**

5162 (1) Subject to Subsection (3) and to the requirements of the Insurance Code, a stock
5163 corporation may amend its articles under Sections 16-10a-1001 through 16-10a-1009 and a mutual
5164 may amend its articles under Sections [~~16-6-49~~] 16-6a-1001 through [~~16-6-51~~] 16-6a-1005 in any
5165 manner, including substantial changes of its original purposes. No amendment may be made
5166 contrary to Subsections 31A-5-203(1) through (3).

5167 (2) An amendment becomes effective when the properly adopted and filed articles of
5168 amendment are approved by the commissioner.

5169 (3) Section 16-10a-1009 applies to stock corporations and the second paragraph of Section
5170 [~~16-6-53~~] 16-6a-1009 applies to mutuals.

5171 Section 196. Section **31A-5-404** is amended to read:

5172 **31A-5-404. Communications to shareholders, policyholders, and voting members --**
5173 **Commissioner's attendance at meetings.**

5174 (1) (a) Sections 16-10a-1601 through 16-10a-1604 apply to the books and records and their
5175 inspection by shareholders of stock corporations. Section [~~16-6-41~~] 16-6a-1602 applies to the
5176 books and records and inspection rights of policyholders or voting members of mutuals. However,
5177 the inspection of the records of the names and addresses of policyholders or voting members of
5178 mutuals is permitted only to communicate with other policyholders or voting members regarding
5179 the nomination and election of candidates for the board, or for other corporate matters which may
5180 be submitted to a vote of the policyholders or voting members. No person may, directly or
5181 indirectly, use any information obtained in an inspection for any other purpose.

5182 (b) Any books, records, or minutes may be in written form or in any other form capable
5183 of being converted into written form within a reasonable time.

5184 (c) Any provision of this chapter or of any articles or bylaws of a mutual, which requires
5185 keeping a record of the names and addresses of policyholders entitled to vote or voting members,
5186 is complied with by keeping a record of the names of policyholders or voting members and the
5187 names and addresses of insureds or persons paying premiums. This provision requires mailing or
5188 sending of notices, reports, proposals, ballots, or other materials to policyholders or voting
5189 members of record.

5190 (2) Subject to Subsection (4), the commissioner may by rule prescribe that copies of
5191 specified classes of communications circulated generally by a corporation to shareholders,
5192 policyholders, or voting members be communicated to the commissioner at the same time.

5193 (3) Subject to Subsection (4), the commissioner may attend any shareholders',
5194 policyholders', or voting members' meeting as an observer.

5195 (4) Subsection (3) and, so far as it relates to communications to shareholders, Subsection
5196 (2) do not apply to stock corporations whose voting shares are owned by a single person, or whose
5197 shareholders are either members of the board or are explicitly represented on it.

5198 Section 197. Section **31A-5-405** is amended to read:

5199 **31A-5-405. Meetings of mutuals and mutual policyholders' and members' voting**
5200 **rights.**

5201 (1) Subject to this section, Sections [~~16-6-27~~] 16-6a-701, [~~16-6-28~~] 16-6a-702, 16-6a-704,
5202 and [~~16-6-29~~] 16-6a-714 apply to the meetings of members, the notice, and the voting in mutuals.

5203 Subject to this section and Section 31A-5-409, Section [~~16-6-30~~] 16-6a-711 applies to the voting
5204 of members of mutuals.

5205 (2) (a) Policyholders or voting members in all mutuals have the right to vote on
5206 conversion, voluntary dissolution, amendment of the articles, and the election of directors except
5207 public directors appointed under Subsection 31A-5-409(1). The mutual may adopt reasonable
5208 provisions in its bylaws to determine which individual among joint policyholders may exercise a
5209 voting right and how to deal with cases where the same individual is one of several joint
5210 policyholders in various policies.

5211 (b) The articles of any mutual may give the policyholders or voting members additional
5212 voting rights. These articles may require a greater percentage of affirmative votes to approve an
5213 action than the statutes require.

5214 (3) The articles or bylaws shall contain rules governing voting procedures and voting
5215 eligibility consistent with Subsection (1). No amendment to these rules is effective until at least
5216 30 days after it has been filed with the commissioner.

5217 (4) (a) The articles or bylaws may provide for regular or special meetings of the
5218 policyholders or voting members, and, if meetings are not provided for, then mail elections shall
5219 be provided for in lieu of elections at meetings.

5220 (b) Notice of the time and place of regular meetings or elections shall be given to each
5221 policyholder or voting member in a reasonable manner as the commissioner approves or requires.
5222 Changes may be made by written notice mailed, properly addressed, and stamped, to the
5223 last-known address of all policyholders or voting members.

5224 (5) The articles may provide that representatives or delegates selected by the policyholders
5225 or voting members shall be from specific geographical districts or defined classes of policyholders
5226 or voting members, as determined on a reasonable basis. After the representative assembly has
5227 been selected by the policyholder or voting members, the assembly or the respective classes of
5228 policyholders or voting members may choose replacements for members unable to complete their
5229 terms, if the articles provide for their replacement. The vote of a person holding a valid proxy is
5230 treated as the vote of the policyholders or voting members who gave the proxy.

5231 Section 198. Section **31A-5-407** is amended to read:

5232 **31A-5-407. Board of directors.**

5233 (1) Subject to this section, Sections 16-10a-801 through 16-10a-803, 16-10a-805, and

5234 16-10a-811 apply to the board of directors of a stock corporation and Sections [~~16-6-34~~] 16-6a-802
5235 and [~~16-6-35~~] 16-6a-805 apply to the governing board and trustees of mutuals.

5236 (2) A majority of the directors shall be residents of this state unless the commissioner is
5237 satisfied that the corporation's financial condition, management, and other circumstances give
5238 assurance that the interests of insureds and the public will not be endangered by the majority being
5239 nonresidents.

5240 (3) Employees and agents of a corporation that receive more than 10% of their income
5241 from the corporation, and persons related to any of them within the second degree by blood or
5242 marriage, if directors, are considered "inside directors." Inside directors may not constitute a
5243 majority of the corporation's board.

5244 (4) Subsections (2) and (3) and the required number of directors for committees under
5245 Subsection 31A-5-412 (1) do not apply to an insurance subsidiary authorized under Subsection
5246 31A-5-218 (1), nor to a stock insurance corporation, more than 50% of whose outstanding shares
5247 entitled to vote are owned or controlled by a single person or all of whose voting shareholders are
5248 either members of or are individually represented on the board.

5249 (5) If the directors of a corporation are divided into classes by the articles or the bylaws,
5250 no class may contain fewer than one-third of the total number of directors. Subject to this
5251 requirement, Section 16-10a-804 applies to the classification of directors of stock corporations.
5252 When classes of trustees or directors are provided in a mutual corporation, the terms of office of
5253 the several classes need not be uniform.

5254 (6) The board shall manage the business and affairs of the corporation and may not
5255 delegate its power or responsibility, except as authorized by Section 31A-5-412.

5256 (7) Section 16-10a-824 applies to the determination of a quorum of directors of a stock
5257 corporation and Section [~~16-6-37~~] 16-6a-816 applies to the determination of a quorum of trustees
5258 for a mutual, except as specifically provided otherwise in this title.

5259 (8) (a) Sections 16-10a-820 and 16-10a-821 apply to the meetings and action without a
5260 meeting of the board of directors of stock corporations [~~and Section 16-6-39 applies~~].

5261 (b) Sections 16-6a-812 through 16-6a-819 apply to the meetings and notice of mutuals.

5262 (9) Sections 16-10a-1601 through 16-10a-1604 apply to stock corporations and Section
5263 [~~16-6-41~~] 16-6a-1602 applies to mutuals regarding the examination of books and records of these
5264 entities.

5265 Section 199. Section **31A-5-409** is amended to read:

5266 **31A-5-409. Selection and removal of directors and officers of mutuals.**

5267 (1) The articles of a mutual may provide that any number of the directors are public
5268 directors chosen under a plan proposed by the corporation and approved by the commissioner. The
5269 plan shall assure true public representation on the board. The persons nominated as directors shall
5270 have insurance business or general experience that qualifies them to serve responsibly and
5271 impartially.

5272 (2) Directors not chosen under Subsection (1) are elected by the policyholders or voting
5273 members. If directors are divided into classes, one class shall be elected at least every four years,
5274 for a term not exceeding six years.

5275 (3) A director may be removed from office for cause by an affirmative vote of a majority
5276 of the full board at a meeting of the board called for that purpose.

5277 (4) Subject to Subsections (1), (2), and (3), Section [~~16-6-36~~] 16-6a-810 applies to
5278 vacancies on the governing board.

5279 Section 200. Section **31A-5-410** is amended to read:

5280 **31A-5-410. Supervision of management changes.**

5281 (1) (a) The name of a person selected as a director or principal officer of a corporation,
5282 together with pertinent biographical and other data the commissioner requires by rule, shall be
5283 reported to the commissioner immediately after the selection.

5284 (b) For five years after the initial issuance of a certificate of authority to a corporation, the
5285 commissioner may, within 30 days after receipt of a report under Subsection (1)(a), disapprove any
5286 person selected who fails to satisfy the commissioner that he is trustworthy and has the competence
5287 and experience necessary to discharge his responsibilities.

5288 (2) Whenever a director or principal officer of a corporation is removed under Section
5289 16-10a-808 or 16-10a-832, [~~the third paragraph of Section 16-6-40, or Subsection~~] Subsections
5290 16-6a-820(4) and 31A-5-409(3), the removal shall be reported to the commissioner immediately,
5291 together with a statement of the reasons for the removal.

5292 (3) If the commissioner finds, after a hearing, that a director or officer is incompetent or
5293 untrustworthy, or has wilfully violated this code, a rule adopted under Subsection 31A-2-201(3),
5294 or an order issued under Subsection 31A-2-201(4), and that the incompetence, untrustworthiness,
5295 or the violation endangers the interests of insureds or the public, he may order the removal of the

5296 director or officer.

5297 Section 201. Section **31A-5-415** is amended to read:

5298 **31A-5-415. Officers', directors', and employees' liability and indemnification.**

5299 (1) Section 16-10a-841 applies to the liabilities of directors of a stock corporation.

5300 [~~Section 16-6-43~~] Subsection 16-6a-825(3) applies to loans to trustees and officers of a mutual.

5301 A director who votes for or assents to a violation of Subsection 16-6a-825(3) or Section

5302 16-10a-842 [~~or Section 16-6-43~~] is jointly and severally liable to the corporation for any loss on
5303 the distribution.

5304 (2) Part 9, Indemnification, of Title 16, Chapter 10a, Utah Revised Business Corporation
5305 Act, applies to stock and mutual corporations, but no indemnification may be paid until 30 or more

5306 days after sending a notice to the commissioner of the full details of the proposed indemnification.

5307 The commissioner may bring an action in Third Judicial District Court for Salt Lake County to

5308 have such indemnification enjoined. The court may enjoin the indemnification to the extent it

5309 would render the insurer in a hazardous condition, or exacerbate an existing financially hazardous

5310 condition.

5311 Section 202. Section **31A-5-503** is amended to read:

5312 **31A-5-503. Merger and consolidation of mutuals.**

5313 Any two or more mutuals may merge or consolidate, under the procedures set forth under

5314 Title 16, Chapter [6] 6a, Utah Revised Nonprofit Corporation Act. All mergers of mutuals are

5315 subject to [~~the provisions of~~] Chapter 16.

5316 Section 203. Section **31A-5-504** is amended to read:

5317 **31A-5-504. Voluntary dissolution of domestic insurance corporations.**

5318 (1) Under this section, a domestic stock insurance corporation may dissolve under the

5319 provisions of Sections 16-10a-1401 through 16-10a-1405. Under this section, a domestic mutual

5320 insurance corporation may dissolve under [~~the provisions of Sections 16-6-62 through 16-6-67,~~

5321 ~~except that Subsections 16-6-63(4), 16-6-64(2), 16-6-65(2), and 16-6-66(3) do not apply~~] Section

5322 16-6a-1405.

5323 (2) At least 60 days prior to the submission to shareholders or policyholders of any

5324 proposed voluntary dissolution of an insurance corporation, the plan of dissolution shall be filed

5325 with the commissioner. The commissioner may require the submission of any additional

5326 information that will establish the financial condition of the corporation or other facts relevant to

5327 the proposed dissolution. If the shareholders or policyholders adopt the resolution to dissolve, the
5328 commissioner shall, within 30 days after the adoption of the resolution, begin an examination of
5329 the corporation. He shall approve the dissolution unless he finds, after a hearing, that the
5330 corporation is insolvent or may become insolvent in the process of dissolution. Upon approval,
5331 the corporation may transfer all its obligations under insurance policies to other insurers approved
5332 by the commissioner and then may dissolve under Subsection (1). If the commissioner
5333 disapproves, the commissioner shall petition the court for a liquidation under Section 31A-27-307.

5334 (3) During the liquidation under Subsection (1), the corporation may apply to the
5335 commissioner to have the liquidation continued under his supervision. After receiving this
5336 application, the commissioner shall apply to the court for a liquidation under Section 31A-27-307.

5337 (4) If the corporation revokes the voluntary dissolution proceedings under Section
5338 16-6a-1404 or 16-10a-1404 [~~or 16-6-65~~], it shall file a copy of the revocation of voluntary
5339 dissolution proceedings with the commissioner.

5340 (5) In distributing the assets in the dissolution of a nonlife mutual, Subsection
5341 31A-27-337(4) applies.

5342 (6) No remedy available to or against the corporation, its directors, officers, or
5343 shareholders is taken away or impaired if an action or other proceeding is brought within two years
5344 after dissolution for any right or claim existing, or any liability incurred, prior to the voluntary
5345 dissolution under this section. This action or proceeding may be prosecuted or defended by the
5346 corporation in its corporate name. The shareholders, directors, and officers may take appropriate
5347 corporate or other action to protect the remedy, right, or claim. A corporation which is dissolved
5348 by the expiration of its period of duration may amend its articles of incorporation during the two
5349 years to provide for perpetual existence.

5350 (7) During the voluntary dissolution of a domestic insurance corporation under this
5351 section, its corporate existence continues to allow the winding up of the corporation's affairs
5352 regarding any property and assets not distributed or otherwise disposed of prior to dissolution. To
5353 effect that purpose, the corporation may sell or otherwise dispose of the property and assets, sue
5354 and be sued, contract, and exercise all other necessary powers.

5355 Section 204. Section **31A-5-508** is amended to read:

5356 **31A-5-508. Transfer of business or assets.**

5357 (1) In the sale, lease, exchange, or mortgage of assets with or without shareholder action,

5358 and concerning the rights of dissenting shareholders in those transactions, Sections 16-10a-1201,
5359 16-10a-1202, 16-10a-1320 through 16-10a-1328, 16-10a-1330, and 16-10a-1331 apply to stock
5360 corporations. In the sale, lease, exchange, or mortgage of assets, Section [~~16-6-61~~] 16-6a-1201
5361 applies to mutuals.

5362 (2) Chapter 16 applies to:

5363 (a) the sale of a domestic insurer's assets or book of business, other than in the ordinary
5364 course of business; or

5365 (b) the insurer entering into contracts of reinsurance which have substantially the same
5366 effect as a merger.

5367 Section 205. Section **31A-7-103** is amended to read:

5368 **31A-7-103. Applicability of other provisions.**

5369 (1) Except for exemptions specifically granted under this title, nonprofit health service
5370 insurance corporations organized or operating under this chapter are subject to all of the provisions
5371 of this title.

5372 (2) Nonprofit health service corporations are exempt from the provisions of Chapter 5
5373 except where sections or parts are specifically referenced and made applicable in this chapter, in
5374 which case the referenced provisions under Chapter 5 that apply to mutual corporations apply to
5375 nonprofit health service insurance corporations.

5376 (3) Title 16, Chapter [~~6~~] 6a, Utah Revised Nonprofit Corporation Act, and Title 16,
5377 Chapter 10a, Utah Revised Business Corporation Act, do not apply to nonprofit health service
5378 insurance corporations except as specifically made applicable by:

5379 (a) this chapter;

5380 (b) a provision adopted by reference under this chapter; or

5381 (c) a rule adopted by the commissioner to deal with corporate law issues of nonprofit
5382 health service insurance corporations which are not settled under this chapter.

5383 (4) Any insurer authorized under this chapter that is not in compliance with the applicable
5384 capital and surplus requirements, yet has assets in excess of its liabilities, has until July 1, 1988,
5385 to comply with the applicable capital and surplus requirements. One-half of any shortage in capital
5386 and surplus on July 1, 1986, shall be remedied by July 1, 1987.

5387 Section 206. Section **31A-7-201** is amended to read:

5388 **31A-7-201. Organization, incorporation, and licensing.**

5389 Part II of Chapter 5 governs the organization, incorporation, and licensing of nonprofit
5390 health service corporations with the following exceptions:

5391 (1) Section [~~16-6-45~~] 16-6a-201 applies in place of Section 31A-5-202.

5392 (2) Sections [~~16-6-24~~] 16-6a-401 and 31A-1-109 apply in place of Subsection 31A-5-203

5393 (2) (a).

5394 (3) The last sentence of Subsection 31A-5-203 (2) (e) does not apply.

5395 (4) Sections 31A-5-214 and 31A-5-215 do not apply to nonprofit health service insurance
5396 corporations.

5397 Section 207. Section **31A-7-202** is amended to read:

5398 **31A-7-202. Members.**

5399 [~~Section 16-6-26 applies~~] Sections 16-6a-601 and 16-6a-602 apply to members of
5400 corporations organized or operating under this chapter. Sections [~~16-6-27 through 16-6-30~~]
5401 16-6a-701, 16-6a-702, 16-6a-704, 16-6a-711, and 16-6a-712 apply to corporations organized or
5402 operating under this chapter which have members.

5403 Section 208. Section **31A-7-303** is amended to read:

5404 **31A-7-303. Board of directors.**

5405 (1) Subject to other provisions under this section, Sections [~~16-6-34~~] 16-6a-801 through
5406 [~~16-6-37 and Section 16-6-39~~] 16-6a-805, and Sections 16-6a-810, 16-6a-812, 16-6a-814,
5407 16-6a-815, and 16-6a-816 apply to the board of directors of insurers organized or operating under
5408 this chapter.

5409 (2) The property and lawful business of every corporation subject to this chapter shall be
5410 held and managed by a governing board of trustees or directors with the powers and authority as
5411 is necessary or incidental to the complete execution of the purposes of each corporation as limited
5412 by its articles of incorporation and bylaws. [~~No~~] A board may not consist of less than five
5413 members. A majority of the directors shall be residents of Utah.

5414 (3) Any person employed by or receiving more than 10% of his income from a corporation
5415 licensed under this chapter, and any person related to that person within the second degree by
5416 blood or marriage, is an "insider." Insiders may not constitute a majority of the board of a
5417 corporation organized and operating under this chapter.

5418 (4) The board shall manage the business and affairs of the corporation and may not
5419 delegate its power or responsibility to do so, except to the extent authorized by Section 31A-7-307.

5420 (5) Section [~~16-6-39~~] 16-6a-814 applies to the place and notice of directors' meetings.

5421 (6) Any director may be removed from office for cause by an affirmative vote of a majority
5422 of the full board at a meeting of the board called for that purpose.

5423 Section 209. Section **31A-7-304** is amended to read:

5424 **31A-7-304. Waiver and consent.**

5425 Sections [~~16-6-32~~] 16-6a-813 and [~~16-6-33~~] 16-6a-815 apply to waiver and consent in
5426 corporations organized or operating under this chapter.

5427 Section 210. Section **31A-7-313** is amended to read:

5428 **31A-7-313. Books and records.**

5429 Section [~~16-6-41~~] 16-6a-1602 applies to the books and records of corporations organized
5430 and operating under this chapter.

5431 Section 211. Section **31A-8-103** is amended to read:

5432 **31A-8-103. Applicability to other provisions of law.**

5433 (1) Except for exemptions specifically granted under this title, organizations are subject
5434 to regulation under all of the provisions of this title. Notwithstanding any provision of this title,
5435 organizations licensed under this chapter are wholly exempt from the provisions of Chapters 7, 9,
5436 10, 11, 12, 13, 19, and 28. In addition, organizations are not subject to:

5437 (a) Chapter 3, except for Part I;

5438 (b) Section 31A-4-107;

5439 (c) Chapter 5, except for provisions specifically made applicable by this chapter;

5440 (d) Chapter 14, except for provisions specifically made applicable by this chapter;

5441 (e) Chapters 17 and 18, except as made applicable by the commissioner by rule consistent
5442 with this chapter; and

5443 (f) Chapter 22, except for Parts VI, VII, and XII.

5444 (2) The commissioner may by rule waive other specific provisions of this title that he
5445 considers inapplicable to health maintenance organizations or limited health plans, upon a finding
5446 that such a waiver will not endanger the interests of enrollees, investors, or the public.

5447 (3) Title 16, Chapter [6] 6a, Utah Revised Nonprofit Corporation [~~and Co-operative~~
5448 Association] Act, and Title 16, Chapter 10a, Utah Revised Business Corporation Act, do not apply
5449 to organizations except as specifically made applicable by:

5450 (a) this chapter;

5451 (b) a provision referenced under this chapter; or

5452 (c) a rule adopted by the commissioner to deal with corporate law issues of health
5453 maintenance organizations that are not settled under this chapter.

5454 (4) Whenever in this chapter a section, subsection, or paragraph of Chapter 5 or 14 is made
5455 applicable to organizations, the application is of those provisions that apply to mutual corporations
5456 if the organization is nonprofit and of those that apply to stock corporations if the organization is
5457 for profit. Whenever a provision under Chapter 5 or 14 is made applicable to organizations under
5458 this chapter, "mutual" means nonprofit organization.

5459 (5) Solicitation of enrollees by an organization is not a violation of any provision of law
5460 relating to solicitation or advertising by health professionals if that solicitation is made in
5461 accordance with the provisions of this chapter and Chapter 23.

5462 (6) Nothing in this title prohibits any health maintenance organization from meeting the
5463 requirements of any federal law that enables the health maintenance organization to receive federal
5464 funds or to obtain or maintain federal qualification status.

5465 (7) Except as provided in Section 31A-8-501, organizations are exempt from statutes in
5466 this title or department rules that restrict or limit their freedom of choice in contracting with or
5467 selecting health care providers, including Section 31A-22-618.

5468 (8) Organizations are exempt from the assessment or payment of premium taxes imposed
5469 by Sections 59-9-101 through 59-9-104.

5470 Section 212. Section **31A-8-204** is amended to read:

5471 **31A-8-204. Articles and bylaws.**

5472 (1) The articles of a nonprofit organization shall conform to Subsections [~~16-6-46~~
5473 16-6a-202](1)(a) through [~~(d) and (1)(g) through (i)~~] (f). The articles of other organizations shall
5474 conform to Section 16-10a-202. In addition:

5475 (a) the powers of the corporation shall be limited to those permitted under Section
5476 31A-8-105;

5477 (b) the articles shall state whether the organization is a health maintenance organization
5478 or a limited health plan;

5479 (c) the articles shall state the services to be provided or for which indemnity is to be paid,
5480 which services provided and indemnity guaranteed shall be consistent with the organization's
5481 designation under Subsection (1)(b);

5482 (d) the articles shall state that as to health care services for which individual providers are
5483 required to be licensed, the services provided by the organization shall be provided by persons
5484 properly licensed to perform the services;

5485 (e) the articles shall state whether providers of services are subject to assessment or
5486 withholding to pay operating costs or financial deficits;

5487 (f) the articles shall state, for organizations having members, how persons become
5488 members and that only members vote; and

5489 (g) the articles of an organization not having members shall state how the directors of the
5490 organization shall be selected and removed.

5491 (2) The articles or bylaws shall designate three or more officers as the principal officers
5492 of the corporation. The principal offices shall be held by at least three separate natural persons.

5493 (3) Section 31A-5-219 applies to amendments to articles of organizations.

5494 (4) Organizations shall adopt and maintain bylaws. Section [~~16-6-44~~] 16-6a-206 applies
5495 to organizations, except for the statement that bylaws need not be adopted.

5496 Section 213. Section **31A-8-406** is amended to read:

5497 **31A-8-406. Distribution by nonprofit organizations.**

5498 A nonprofit organization may pay compensation in a reasonable amount to its members,
5499 trustees, or officers for services rendered, may make reasonable incentive payments to its
5500 providers, may confer benefits upon its members in conformity with its purposes, may pay interest
5501 on certificates of indebtedness issued by it evidencing capital contributions, and upon dissolution
5502 or final liquidation may make distributions to its members as permitted by [~~the~~] Title 16, Chapter
5503 6a, Utah Revised Nonprofit Corporation [and Co-operative Association] Act, [Section 16-6-18,
5504 et seq.,] and no such payment, benefit, or distribution shall be considered to be a dividend or
5505 distribution of income. Notwithstanding Section 31A-8-105, and in addition to the powers granted
5506 in that section, a nonprofit organization has all powers conferred upon it by Section [~~16-6-22~~]
5507 16-6a-302.

5508 Section 214. Section **31A-9-101** is amended to read:

5509 **31A-9-101. Definitions.**

5510 (1) As used in this chapter:

5511 (a) "Fraternal" or "fraternal benefit society" means a corporation organized or operating
5512 under this chapter that:

- 5513 (i) has no capital stock;
- 5514 (ii) exists solely for:
- 5515 (A) the benefit of its members and their beneficiaries; and
- 5516 (B) any lawful social, intellectual, educational, charitable, benevolent, moral, fraternal,
- 5517 patriotic, or religious purpose for the benefit of its members or the public, carried on through
- 5518 voluntary activity of its members in their local lodges or through institutional programs of the
- 5519 fraternal or its local lodges;
- 5520 (iii) has a lodge system;
- 5521 (iv) has a representative form of government; and
- 5522 (v) provides insurance benefits authorized under this chapter.
- 5523 (b) "Laws of a fraternal" include its articles of incorporation and bylaws, however
- 5524 designated.
- 5525 (c) "Lodge system" means one in which:
- 5526 (i) there is a supreme governing body;
- 5527 (ii) subordinate to the supreme governing body are local lodges, however designated, into
- 5528 which natural persons are admitted as members in accordance with the laws of the fraternal;
- 5529 (iii) the local lodges are required by the laws of the fraternal to hold regular meetings at
- 5530 least monthly; and
- 5531 (iv) the local lodges regularly engage in programs involving member participation to
- 5532 implement the purposes of Subsection (1)(a)(ii).
- 5533 (d) "Representative form of government" means the fraternal complies with Section
- 5534 31A-9-403.
- 5535 (2) In any provisions of law made applicable to fraternal by this chapter, the technical
- 5536 terms used in those provisions are applicable to fraternal despite the use of other parallel terms
- 5537 by fraternal.
- 5538 (3) The definitions provided in Subsections [~~16-6-19 (1), (2), (8), (10), and (12)]~~
- 5539 16-6a-102(4), (6), and (30), and Section 31A-1-301 apply to fraternal.
- 5540 Section 215. Section **31A-9-105** is amended to read:
- 5541 **31A-9-105. General corporate powers and procedures.**
- 5542 (1) Section 16-10a-302 applies to the general powers of fraternal.
- 5543 (2) [~~Subsections 16-6-23(1) and (2) apply~~] Section 16-6a-304 applies to ultra vires issues

5544 in fraternal.

5545 (3) Subsection 31A-5-104(3) applies to the omission of a seal in a fraternal.

5546 (4) Sections [~~16-6-32~~] 16-6a-705 and [~~16-6-33~~] 16-6a-707 apply to waiver of notice and
5547 consent to action without a meeting in a fraternal.

5548 (5) Subsection 31A-5-104(5) applies to the power to hold assets as a trustee in a fraternal.
5549 Section 216. Section **31A-9-204** is amended to read:

5550 **31A-9-204. Articles of incorporation and bylaws.**

5551 (1) The articles of incorporation shall set forth:

5552 (a) the name of the corporation, which shall include the word "fraternal" or words of
5553 equivalent meaning;

5554 (b) the location of the principal office of the fraternal, which shall be in this state;

5555 (c) the purposes of the corporation, which shall include one or more of the purposes
5556 specified in Subsection 31A-9-101(1)(a)(ii)(B), but shall otherwise be restricted to those permitted
5557 under Section 31A-4-107;

5558 (d) the classes of members, and the qualifications and rights of the members of each class;

5559 (e) a description of the fraternal's representative form of government, conforming to
5560 Section 31A-9-403;

5561 (f) the manner in which local lodges or branches may be formed and the powers they shall
5562 have, or a statement that the formation and powers of local lodges or branches is provided for in
5563 the bylaws;

5564 (g) a provision for fraternal bonds, if any are to be authorized, which shall conform to
5565 Section 31A-9-303; and

5566 (h) a provision for amendment of the articles, which shall conform to Section 31A-9-213.

5567 (2) The articles of incorporation are not required to recite the corporate powers enumerated
5568 in this chapter, as these powers are authorized by law.

5569 (3) Section [~~16-6-40~~] 16-6a-818 applies to the officers of fraternal. The articles or bylaws
5570 shall specifically designate three or more offices, which shall be held by the principal officers of
5571 the fraternal. The principal offices shall be held by at least three separate natural persons.

5572 (4) The bylaws shall comply with the provisions of this chapter. A copy of the bylaws and
5573 any amendments to them shall be filed with the commissioner promptly after their adoption.

5574 Notice of amendments to the bylaws shall be given promptly to members. Subject to this chapter,

5575 Section [~~16-6-44~~] 16-6a-206 applies to the bylaws and resolutions of fraternal.

5576 Section 217. Section **31A-9-212** is amended to read:

5577 **31A-9-212. Separate accounts and subsidiaries.**

5578 (1) Except as provided in Subsections (2) and (3), Sections 31A-5-217 and 31A-5-218
5579 apply to separate accounts and subsidiaries of fraternal. If a fraternal issues contracts on a variable
5580 basis, Subsections 31A-22-902 (2) and (6) and 31A-9-209 (2) do not apply, except that Subsection
5581 31A-9-209 (2) applies to any benefits contained in the variable contracts which are fixed or
5582 guaranteed dollar amounts.

5583 (2) If a fraternal engages in any insurance business other than life, disability, annuities,
5584 property, or liability insurance, it shall do so through a subsidiary under Section 31A-5-218.

5585 (3) (a) A local lodge may incorporate under Title 16, Chapter [6] 6a, Utah Revised
5586 Nonprofit Corporation Act, or the corresponding law of the state where it is located, to carry out
5587 the noninsurance activities of the local lodge.

5588 (b) Corporations may be formed under Title 16, Chapter [6] 6a, Utah Revised Nonprofit
5589 Corporation Act, to implement Subsection 31A-9-602(2).

5590 Section 218. Section **31A-9-405** is amended to read:

5591 **31A-9-405. Board of directors.**

5592 (1) [~~Section 16-6-34 applies~~] Sections 16-6a-801 and 16-6a-802 apply to fraternal, except
5593 that the supreme governing body may act as the board of directors if it meets at least quarterly.
5594 Subsections 31A-5-407(2) through (9) apply to fraternal, except that the word "mutual" shall be
5595 read "fraternal" and the references to other sections of Chapter 5 shall be to the corresponding
5596 sections of Chapter 9.

5597 (2) The terms of directors and officers may not exceed four years.

5598 Section 219. Section **31A-9-406** is amended to read:

5599 **31A-9-406. Removal of directors and filling of vacancies.**

5600 (1) A director may be removed from office for cause by an affirmative vote of a majority
5601 of the full board of directors at a meeting of the board called for that purpose or may be removed
5602 under [~~Paragraph 3 of Section 16-6-40~~] Subsection 16-6a-820(4).

5603 (2) Any vacancy occurring in the board, including a vacancy created by an increase in the
5604 number of directors, may be filled by the affirmative vote of a majority of the directors then in
5605 office, although less than a quorum.

5606 (3) If the laws of the fraternal provide that at least [~~two-thirds~~] 2/3 of the directors are
5607 elected by the members, elected director vacancies may be filled by the board for the remainder
5608 of the terms for which there are vacancies.

5609 (4) If the vacancy is to be filled other than by a regular election, the election by the board
5610 is effective only until a reasonable time has elapsed for choosing the director in that other manner.

5611 (5) If less than [~~two-thirds~~] 2/3 of the directors are elected by the members, elected director
5612 vacancies may be filled by the directors only until the next succeeding regular election. At that
5613 time, the elected director vacancy may be filled for the remainder of the term for which there is a
5614 vacancy. A director elected under this section to fill the unexpired term of an elected director is
5615 an elected director within the meaning of Subsection 31A-9-403(1)(a).

5616 (6) If the board ceases to exist, the commissioner shall arrange the necessary procedures
5617 for holding elections to create a new board.

5618 Section 220. Section **31A-9-502** is amended to read:

5619 **31A-9-502. Voluntary dissolution of solvent domestic fraternals.**

5620 (1) Subject to this section, a domestic fraternal may voluntarily dissolve under Sections
5621 [~~16-6-62~~] 16-6a-1401 through [~~16-6-67~~, except that Subsections 16-6-63 (4), 16-6-64 (2), 16-6-65
5622 (2) and 16-6-66 (3) do not apply] 16-6a-1405.

5623 (2) The proposal for voluntary dissolution shall be filed with the commissioner at least 60
5624 days prior to the submission of that proposal to the supreme governing body or the members. The
5625 commissioner may require the submission of additional information necessary to establish the
5626 financial condition of the fraternal or other facts relevant to the proposed dissolution. If the
5627 supreme governing body or the members adopt the resolution to dissolve, by a majority of those
5628 voting or a larger number as required by the laws of the fraternal, the commissioner shall, within
5629 30 days after the adoption of the resolution, begin to examine the fraternal. The commissioner shall
5630 approve the dissolution unless he finds, after the examination and a hearing, that it is insolvent or
5631 may become insolvent in the process of dissolution. Upon approval, the fraternal may provide for
5632 a transfer to other fraternals approved by the commissioner of all its obligations under insurance
5633 policies and then may dissolve under Subsection (1). If the commissioner disapproves, he shall
5634 petition the court for liquidation under Section 31A-27-307.

5635 (3) During the liquidation under Sections [~~16-6-63~~] 16-6a-1401 through [~~16-6-66~~]
5636 16-6a-1408, the fraternal may apply to the commissioner to have the liquidation continued under

5637 the commissioner's supervision. Upon receiving this request, the commissioner shall apply to the
5638 court for liquidation under Section 31A-27-307.

5639 (4) If the fraternal revokes the voluntary dissolution proceedings under Section [~~16-6-65~~]
5640 16-6a-1404, a copy of the revocation of voluntary dissolution proceedings shall be filed with the
5641 commissioner.

5642 (5) Subsections 31A-5-504(6) and (7) apply to the survival of remedies and continuance
5643 of corporate existence of a voluntarily dissolved fraternal.

5644 Section 221. Section **31A-11-105** is amended to read:

5645 **31A-11-105. Application of Title 16 -- Incorporation of domestic motor clubs.**

5646 Domestic corporations acting or applying to act as a motor club under this chapter are
5647 subject to Title 16, Chapter 10a, Utah Revised Business Corporation Act, if for profit, or Title 16,
5648 Chapter [~~6~~] 6a, Utah Revised Nonprofit Corporation Act, if not for profit. The Division of
5649 Corporations and Commercial Code in the Department of Commerce issues certificates of
5650 incorporation for domestic corporations acting as motor clubs under this chapter, unless they are
5651 Chapter 5 corporations. This section does not negate the requirement of a motor club obtaining
5652 a certificate of authority from the commissioner. Section [~~16-6-21~~] 16-6a-301 does not apply to
5653 bar a not-for-profit motor club from organizing under Title 16, Chapter [~~6~~] 6a, Utah Revised
5654 Nonprofit Corporation Act.

5655 Section 222. Section **31A-14-205** is amended to read:

5656 **31A-14-205. Requirements from other applicable chapters.**

5657 (1) A foreign insurer may not be authorized to do business in this state, unless it strictly
5658 complies with the following requirements:

5659 (a) Foreign insurers shall comply with the solvency standard set forth in Chapter 17, Part
5660 6, Risk-Based Capital, including maintenance of minimum capital or permanent surplus under
5661 Section 31A-5-211.

5662 (b) A foreign insurer proposing to market securities in this state shall comply with Sections
5663 31A-5-301, 31A-5-302, and 31A-5-305, unless this marketing is subject to United States Securities
5664 and Exchange Commission regulation.

5665 (c) Section 16-10a-1506 applies to the corporate name and the change of name of foreign
5666 stock insurers. Section [~~16-6-82~~] 16-6a-1507 applies to the change of name of foreign mutual
5667 insurers.

5668 (d) Subsection 31A-5-203(2)(c) applies to other business of foreign mutual insurers.

5669 (e) Subsection 31A-5-404(2), as modified by Subsection 31A-5-404(4), applies to
5670 communications to shareholders, policyholders, or voting members of mutuals by foreign insurers.

5671 (f) Section 31A-5-413 applies to interlocking directorates of foreign insurers.

5672 (g) Subsection 31A-5-203(2)(d) applies to assessment liability in foreign insurers issuing
5673 assessable policies in any state.

5674 (2) The commissioner may issue orders imposing and eliminating restrictions to foreign
5675 insurers under Section 31A-5-103.

5676 (3) After a hearing, the commissioner may by order apply any of the provisions of Sections
5677 31A-5-307, 31A-5-414, 31A-5-418 to a foreign corporation after finding that it is necessary for
5678 the protection of the interests of its insureds, creditors, or the public in this state. This Subsection
5679 (3) may be applied to a foreign insurer without a hearing if done under a reciprocal agreement with
5680 the domiciliary regulatory authority.

5681 (4) If any provision made applicable to a foreign insurer under this section conflicts with
5682 the law of the insurer's domicile so that it is impossible for the corporation to comply with both
5683 laws, the law of the domicile governs.

5684 (5) This section does not excuse or exempt any foreign insurer from complying with the
5685 provisions of this title which are otherwise applicable to a foreign insurer.

5686 (6) This section does not apply to foreign fraternal insurers.

5687 (7) If a licensed foreign insurer is in rehabilitation or liquidation proceedings or is found
5688 to be insolvent in its state of domicile, the commissioner may, without hearing, suspend the
5689 insurer's certificate of authority to do business in this state.

5690 Section 223. Section **31A-14-210** is amended to read:

5691 **31A-14-210. Requirements for foreign fraternal.**

5692 (1) A foreign fraternal may not be authorized to do business in this state under Section
5693 31A-14-203, unless it strictly complies with:

5694 (a) the financial requirements of Section 31A-9-209 and Chapter 17, Part 6, Risk-Based
5695 Capital;

5696 (b) the requirements of Section [~~16-6-24~~] 16-6a-1506 and Subsection 31A-5-410(1)(a),
5697 the reporting requirements of Subsection 31A-5-410(2), Section 31A-5-413 whenever removal is
5698 made involuntarily under the laws of the domicile, Section 31A-9-202, and Subsections

5699 31A-9-204(1) (c), 31A-9-402(2), and 31A-9-602(1); and

5700 (c) for five years after the initial issuance of a certificate of authority in its domiciliary
5701 jurisdiction, the requirements of Subsection 31A-9-213(2).

5702 (2) (a) No foreign fraternal may be authorized to do business in this state unless it
5703 substantially complies with Sections 31A-5-217 and 31A-5-218, except that the approval
5704 requirement of Subsection 31A-5-217(2) does not apply.

5705 (b) When any corporate reorganization, transformation, or liquidation of a foreign
5706 fraternal, or any levy to cover a deficiency under a law comparable to Subsection 31A-9-209(2),
5707 is formally initiated by the fraternal, by the official act of the domiciliary commissioner, or by any
5708 other official, the fraternal shall promptly give written notice to the commissioner.

5709 (3) The commissioner may issue orders imposing and eliminating restrictions under
5710 Section 31A-9-103 that are applicable to foreign fraternal.

5711 (4) (a) After a hearing, the commissioner may, by order, apply any of the provisions of
5712 Sections 31A-9-213, 31A-9-404, 31A-9-411, 31A-9-413, or Subsection 31A-5-415(2) to a foreign
5713 fraternal after finding that it is necessary for the protection of the interests of its members,
5714 creditors, or the public in this state.

5715 (b) If any provision made applicable to the foreign fraternal under Subsection (4)(a)
5716 conflicts with a provision of the law of the domicile, so that it is impossible for the fraternal to
5717 comply with both, the law of the domicile governs.

5718 Section 224. Section **31A-22-1305** is amended to read:

5719 **31A-22-1305. Persons authorized to issue annuities.**

5720 No person may issue an annuity to another person unless the issuer is:

5721 (1) an insurer authorized to issue annuities under Chapter 5, 9, or 14;

5722 (2) a domestic corporation created under Title 16, Chapter [6] 6a, Utah Revised Nonprofit
5723 Corporation Act, or other applicable law, or a foreign corporation conducted without profit, which
5724 is engaged solely in bona fide charitable, religious, missionary, educational, medical, or
5725 philanthropic activities; or

5726 (3) a natural person who issues an annuity to his spouse, children, grandchildren,
5727 great-grandchildren, parents, grandparents, uncles, aunts, brothers, sisters, nieces, or nephews,
5728 whether those relationships are by birth, marriage, or legal adoption.

5729 Section 225. Section **31A-27-335** is amended to read:

5730 **31A-27-335. Priority of distribution.**

5731 (1) (a) Every claim in each class of claims from the insurer's estate shall be paid in full or
5732 adequate funds retained for the payment before the members of the next class receive any payment.

5733 (b) Once the funds are retained by the liquidator and approved by the court, the insurer's
5734 estate shall have no further liability to members of that class except to the extent of the retained
5735 funds and any other undistributed funds.

5736 (c) Subclasses may not be established within any class.

5737 (d) A claim by a shareholder, policyholder, or other creditor may not be permitted to
5738 circumvent the priority classes through the use of equitable remedies.

5739 (2) The classes and order of distribution are as described in Subsections (2)(a) through (i).

5740 (a) Class one is the costs and expenses of administration expressly approved by the
5741 liquidator, including:

5742 (i) the actual and necessary costs of preserving or recovering the assets of the insurer;

5743 (ii) compensation for all authorized services rendered in the supervision, rehabilitation,
5744 or liquidation;

5745 (iii) any necessary filing fees;

5746 (iv) the fees and mileage payable to witnesses; and

5747 (v) reasonable attorney's fees and other professional services rendered in the supervision,
5748 rehabilitation, or liquidation.

5749 (b) (i) Class two is the administrative expenses of guaranty associations.

5750 (ii) For purposes of this section, "administrative expenses of a guaranty association" means
5751 the reasonable expenses incurred by a guaranty association:

5752 (A) when the expenses are not payments or expenses that are required to be incurred as
5753 direct policy benefits in fulfillment of the terms of the insurance contract or policy; and

5754 (B) that are of the type and nature that, but for the activities of the guaranty association,
5755 otherwise would have been incurred by the liquidator, including:

5756 (I) evaluations of policy coverage;

5757 (II) activities involved in the adjustment and settlement of claims under policies, including
5758 those of in-house or outside adjusters; and

5759 (III) the reasonable expenses incurred in connection with the arrangements for ongoing
5760 coverage through transfer to other insurers, policy exchanges, or maintaining policies in force.

5761 (iii) The liquidator may in the liquidator's sole discretion approve as an administrative
5762 expense of a guaranty association any other reasonable expenses of the guaranty association if the
5763 liquidator finds:

5764 (A) the expenses are not expenses required to be paid or incurred as direct policy benefits
5765 by the terms of the policy; and

5766 (B) the expenses were incurred in furtherance of activities that provided material economic
5767 benefit to the estate as a whole, irrespective of whether the activities resulted in additional benefits
5768 to covered claimants.

5769 (iv) The court shall approve the expenses approved by the liquidator under Subsection
5770 (2)(b)(iii) unless the court finds the liquidator abused the liquidator's discretion in approving the
5771 expenses.

5772 (c) (i) Class three is all claims under policies for losses incurred including:

5773 (A) claims of the federal, state, or local government;

5774 (B) third party claims;

5775 (C) claims for unearned premiums; and

5776 (D) claims of a guaranty association, other than those included in class two, including
5777 claims for payment of covered claims or covered obligations of the insurer.

5778 (ii) All claims under life and health insurance and annuity policies shall be treated as loss
5779 claims.

5780 (iii) That portion of any loss for which indemnification is provided by other benefits or
5781 advantages recovered or recoverable by the claimant are not included in this class, other than
5782 benefits or advantages recovered or recoverable in discharge of familial obligations of support, by
5783 way of succession at death, as proceeds of life insurance, or as gratuities. A payment made by an
5784 employer to the employer's employee may not be treated as a gratuity.

5785 (iv) Notwithstanding Subsections (2)(c)(i), (ii), and (iii), the following claims shall be
5786 excluded from class three priority:

5787 (A) obligations of the insolvent insurer arising out of reinsurance contracts;

5788 (B) obligations incurred after:

5789 (I) the expiration date of the insurance policy;

5790 (II) the policy has been replaced by the insured;

5791 (III) the policy has been canceled at the insured's request; or

- 5792 (IV) the policy has been canceled as provided in the chapter;
- 5793 (C) obligations to insurers, insurance pools, or underwriting associations and their claims
5794 for contribution, indemnity, or subrogation, equitable or otherwise;
- 5795 (D) any claim that is in excess of any applicable limits provided in the insurance policy
5796 issued by the insolvent insurer;
- 5797 (E) any amount accrued as punitive or exemplary damages unless expressly covered under
5798 the terms of the policy; and
- 5799 (F) tort claims of any kind against the insurer, and claims against the insurer for bad faith
5800 or wrongful settlement practices.
- 5801 (v) Notwithstanding Subsection (2)(c)(iv)(B), unearned premium claims on policies, other
5802 than reinsurance agreements, may not be excluded.
- 5803 (d) Class four is claims of the federal government other than those claims included under
5804 class three.
- 5805 (e) (i) Class five is debts due employees for services, benefits, contractual or otherwise
5806 due, arising out of reasonable compensation to employees for services performed:
- 5807 (A) to the extent that they:
- 5808 (I) do not exceed two months of monetary compensation; and
- 5809 (II) represent payment for services performed within six months before the filing of the
5810 petition for liquidation; or
- 5811 (B) if rehabilitation preceded liquidation, within one year before the filing of the petition
5812 for rehabilitation.
- 5813 (ii) Principal officers and directors are not entitled to the benefit of class five priority
5814 except as otherwise approved by the liquidator and the court.
- 5815 (iii) Class five priority shall be in lieu of any other similar priority that may be authorized
5816 by law as to wages or compensation of employees.
- 5817 (f) (i) Class six is claims of:
- 5818 (A) any person, including claims of state or local governments, except those specifically
5819 classified elsewhere in this section; or
- 5820 (B) attorneys for fees and expenses owed them by a person for services rendered in
5821 opposing a formal delinquency proceeding.
- 5822 (ii) To prove the claim for attorneys' fees and expenses, the claimant shall show that:

5823 (A) the insurer that is the subject of the delinquency proceeding incurred the fees and
5824 expenses based on its best knowledge, information, and belief, formed after reasonable inquiry
5825 indicating opposition was:

5826 (I) in the best interests of the person;

5827 (II) well grounded in fact; and

5828 (III) warranted by existing law or a good faith argument for the extension, modification,
5829 or reversal of existing law; and

5830 (B) opposition was not pursued for any improper purpose, such as to:

5831 (I) harass;

5832 (II) cause unnecessary delay; or

5833 (III) cause needless increase in the cost of litigation.

5834 (g) (i) Class seven is claims of any state or local government for a penalty or forfeiture,
5835 but only to the extent of the pecuniary loss sustained from the act, transaction, or proceeding out
5836 of which the penalty or forfeiture arose, including the reasonable and actual costs incurred from
5837 the act, transaction, or proceeding.

5838 (ii) The remainder of the claims shall be postponed to class eight claims.

5839 (h) Class eight is:

5840 (i) surplus or contribution notes or similar obligations;

5841 (ii) premium refunds on assessable policies;

5842 (iii) interest on claims of classes one through seven; and

5843 (iv) any other claims specifically subordinated to this class.

5844 (i) Class nine is claims of shareholders or other owners, including policyholders of a
5845 mutual insurance corporation within the limits of Subsection 31A-27-337(4)(b) except as they may
5846 be qualified in class three or four.

5847 (3) (a) If the liquidator determines that the assets of the estate will be sufficient to pay all
5848 class one claims in full, class two claims shall be paid currently, only after the liquidator secures
5849 from each of the guaranty associations receiving disbursements under this section an agreement
5850 to return to the liquidator the disbursements, together with investment income actually earned on
5851 the disbursements, as may be required to pay class one claims.

5852 (b) A guaranty association entering into an agreement under Subsection (3)(a) may not be
5853 required to post a bond.

5854 (4) As to a nonprofit corporation organized and operating under Chapter 7 with assets not
5855 fully liquidated under Subsections (1) and (2), the remaining assets shall be distributed under
5856 Subsections [~~16-6-70(2), (3), (4), and (5)~~] 16-6a-1405(1)(b) and (c) and Subsection 16-6a-1405(2).

5857 (5) (a) If any claimant of this state, another state, or foreign country is entitled to or
5858 receives a distribution upon the claimant's claim out of a statutory deposit or the proceeds of any
5859 bond or other asset located in another state or foreign country, unless the deposit or proceeds shall
5860 have been delivered to the domiciliary liquidator, the claimant is not entitled to any further
5861 distribution from the liquidator until and unless all other claimants of the same class, irrespective
5862 of residence or place of the acts or contracts upon which their claims are based, shall have received
5863 an equal distribution upon their claims.

5864 (b) After the equalization under Subsection (5)(a), the claimants of the same class are
5865 entitled to share in the further distributions by the liquidator, along with and like all other creditors
5866 of the same class, wherever the claimants reside.

5867 (6) Upon the declaration of a distribution, the liquidator shall apply the amount of the
5868 distribution against any indebtedness owed to the insurer by the person entitled to the distribution.
5869 There shall be no claim allowed for and deductible charged by a guaranty association or entity
5870 performing a similar function.

5871 (7) This section applies retrospectively to any proceeding under this chapter initiated after
5872 January 1, 1992.

5873 Section 226. Section **31A-34-105** is amended to read:

5874 **31A-34-105. Association requirements.**

5875 (1) A nonprofit corporation organized under Title 16, Chapter [6] 6a, Utah Revised
5876 Nonprofit Corporation Act, may only hold itself out as a voluntary health insurance purchasing
5877 association if it:

5878 (a) is organized by participating employers;

5879 (b) is governed and controlled by participating employers;

5880 (c) does not bear risk; and

5881 (d) has filed with the commissioner:

5882 (i) its articles of incorporation and bylaws; and

5883 (ii) a completed form provided by the department.

5884 (2) A voluntary health insurance purchasing association is not an alliance under this

5885 chapter, is not exempt from state or federal antitrust laws, and is therefore not subject to the
5886 regulation of this chapter, except as provided in this section.

5887 Section 227. Section **31A-34-108** is amended to read:

5888 **31A-34-108. Powers of and restrictions on alliances.**

5889 (1) An alliance may only exercise the powers necessary to:

5890 (a) make health insurance available to its members and enrollees from multiple unaffiliated
5891 insurers through the use of coordinated actuarial models, coordinated underwriting, or coordinated
5892 marketing methodologies; and

5893 (b) subject to Subsection (3)(d), make available to its members other related insurance
5894 products and services, including dental, vision, and life insurance.

5895 (2) In addition to the powers granted to a nonprofit corporation in Title 16, Chapter [6] 6a,
5896 Utah Revised Nonprofit Corporation Act, or to the powers of a trust under common law, the
5897 powers of an alliance include:

5898 (a) setting reasonable fees and conditions for membership, which may vary by group size,
5899 to reflect reasonable and necessary costs incurred in administering the alliance;

5900 (b) providing or contracting for premium collection services consistent with the
5901 requirements of Title 31A, Chapter 25; or

5902 (c) contracting with qualified independent third parties for any service necessary to carry
5903 out the powers and duties authorized or required by this chapter.

5904 (3) Notwithstanding Subsection (1), an alliance may not:

5905 (a) purchase health care services;

5906 (b) assume risk for the cost or provision of health services;

5907 (c) contract with health care providers for the provision of health care services to enrollees;

5908 or

5909 (d) condition alliance membership on the purchase or subscription of a product or service
5910 other than health insurance.

5911 Section 228. Section **41-22-2** is amended to read:

5912 **41-22-2. Definitions.**

5913 As used in this chapter:

5914 (1) "Advisory council" means the Off-highway Vehicle Advisory Council appointed by
5915 the Board of Parks and Recreation.

5916 (2) "All-terrain type I vehicle" means any motor vehicle 50 inches or less in width, having
5917 an unladen dry weight of 800 pounds or less, traveling on three or more low pressure tires, having
5918 a seat designed to be straddled by the operator, and designed for or capable of travel over
5919 unimproved terrain.

5920 (3) "All-terrain type II vehicle" means any other motor vehicle, not defined in Subsection
5921 (2), (9), or (19), designed for or capable of travel over unimproved terrain. This term does not
5922 include golf carts, any vehicle designed to carry a disabled person, any vehicle not specifically
5923 designed for recreational use, or farm tractors as defined under Section 41-1a-102.

5924 (4) "Board" means the Board of Parks and Recreation.

5925 (5) "Dealer" means a person engaged in the business of selling off-highway vehicles at
5926 wholesale or retail.

5927 (6) "Division" means the Division of Parks and Recreation.

5928 (7) "Low pressure tire" means any pneumatic tire six inches or more in width designed for
5929 use on wheels with rim diameter of 12 inches or less and utilizing an operating pressure of ten
5930 pounds per square inch or less as recommended by the vehicle manufacturer.

5931 (8) "Manufacturer" means a person engaged in the business of manufacturing off-highway
5932 vehicles.

5933 (9) "Motorcycle" means every motor vehicle having a saddle for the use of the operator
5934 and designed to travel on not more than two tires.

5935 (10) "Motor vehicle" means every vehicle which is self-propelled.

5936 (11) "Off-highway vehicle" means any snowmobile, all-terrain type I vehicle, all-terrain
5937 type II vehicle, or motorcycle.

5938 (12) "Off-highway implement of husbandry" means every all-terrain type I vehicle,
5939 motorcycle, or snowmobile which is used by the owner or his agent for agricultural operations.

5940 (13) "Operate" means to control the movement of or otherwise use an off-highway vehicle.

5941 (14) "Operator" means the person who is in actual physical control of an off-highway
5942 vehicle.

5943 (15) "Organized user group" means an off-highway vehicle organization incorporated as
5944 a nonprofit corporation in the state under Title 16, Chapter [6] 6a, Utah Revised Nonprofit
5945 Corporation [~~and Co-operative Association~~] Act, for the purpose of promoting the interests of
5946 off-highway vehicle recreation.

5947 (16) "Owner" means a person, other than a person with a security interest, having a
5948 property interest or title to an off-highway vehicle and entitled to the use and possession of that
5949 vehicle.

5950 (17) "Public land" means land owned or administered by any federal or state agency or any
5951 political subdivision of the state.

5952 (18) "Register" means the act of assigning a registration number to an off-highway vehicle.

5953 (19) "Roadway" is used as defined in Section 41-6-1.

5954 (20) "Snowmobile" means any motor vehicle designed for travel on snow or ice and
5955 steered and supported in whole or in part by skis, belts, cleats, runners, or low pressure tires.

5956 (21) "Street or highway" means the entire width between boundary lines of every way or
5957 place of whatever nature, when any part of it is open to the use of the public for vehicular travel.

5958 Section 229. Section **48-2b-106** is amended to read:

5959 **48-2b-106. Name -- Exclusive right.**

5960 (1) The name of each limited liability company as set forth in the articles of organization:

5961 (a) shall contain the terms:

5962 (i) "limited company";

5963 (ii) "limited liability company";

5964 (iii) "L.C."; or

5965 (iv) "L.L.C.";

5966 (b) may not contain:

5967 (i) the terms:

5968 (A) "association";

5969 (B) "corporation";

5970 (C) "incorporated";

5971 (D) "limited partnership";

5972 (E) "limited";

5973 (F) "L.P."; or

5974 (G) "Ltd."; or

5975 (ii) words or any abbreviation with a similar meaning to those described in Subsection

5976 (1)(b)(i) in any other language;

5977 (c) without the written consent of the United States Olympic Committee, may not contain

5978 the words:

5979 (i) "Olympic";

5980 (ii) "Olympiad"; or

5981 (iii) "Citius Altius Fortius"; and

5982 (d) without the written consent of the State Board of Regents in accordance with Section
5983 53B-5-114, may not contain the words:

5984 (i) "university";

5985 (ii) "college"; or

5986 (iii) "institute."

5987 (2) (a) A person or entity, other than a limited liability company formed or registered under
5988 this chapter, may not use in its name in this state any of the terms:

5989 (i) "limited liability company";

5990 (ii) "limited company";

5991 (iii) "L.L.C.";

5992 (iv) "L.C.";

5993 (v) "LLC"; or

5994 (vi) "LC".

5995 (b) Notwithstanding Subsection (2)(a):

5996 (i) a foreign corporation whose actual name includes the word "limited" or "Ltd." may use
5997 its actual name in this state if it also uses:

5998 (A) "corporation";

5999 (B) "incorporated"; or

6000 (C) an abbreviation of the words listed in this Subsection (2)(b)(i); or

6001 (ii) a limited liability partnership may use in its name the terms:

6002 (A) "limited liability partnership";

6003 (B) "L.L.P."; or

6004 (C) "LLP".

6005 (3) Except as authorized by Subsection (4), the name of a limited liability company must
6006 be distinguishable as defined in Subsection (5) upon the records of the division from:

6007 (a) the name of any limited partnership formed or authorized to transact business in this
6008 state;

6009 (b) the name of any limited liability company formed or authorized to transact business
6010 in this state;

6011 (c) the corporate name of any corporation incorporated or authorized to transact business
6012 in the state;

6013 (d) any limited partnership name reserved under this chapter;

6014 (e) any limited liability company name reserved under this chapter;

6015 (f) any corporate name reserved under:

6016 [(ii)] (i) Title 16, Chapter [6] 6a, Utah Revised Nonprofit Corporation [~~and Cooperative~~
6017 Association] Act, as amended;

6018 [(i)] (ii) Title 16, Chapter 10a, Utah Revised Business Corporation Act, as amended; or

6019 (g) any fictitious name adopted by a foreign corporation, limited partnership, or limited
6020 liability company authorized to transact business in this state because its real name is unavailable;

6021 (h) any corporate name of a not-for-profit corporation incorporated or authorized to
6022 transact business in this state; and

6023 (i) any assumed name, trademark, or service mark registered by the division.

6024 (4) (a) A limited liability company may apply to the division for approval to file its articles
6025 of organization under or to reserve a name that is not distinguishable upon the division's records
6026 from one or more of the names described in Subsection (3).

6027 (b) The division shall approve the name for which the company applies under Subsection
6028 (4)(a) if:

6029 (i) the other person whose name is not distinguishable from the name under which the
6030 applicant desires to file:

6031 (A) consents to the filing in writing; and

6032 (B) submits an undertaking in a form satisfactory to the division to change its name to a
6033 name that is distinguishable from the name of the applicant; or

6034 (ii) the applicant delivers to the division a certified copy of the final judgment of a court
6035 of competent jurisdiction establishing the applicant's right to use the name in this state.

6036 (5) A name is distinguishable from other names, trademarks, and service marks registered
6037 with the division if it contains one or more different letters or numerals from other names upon the
6038 division's records.

6039 (6) The following differences are not distinguishing:

- 6040 (a) the terms:
- 6041 (i) "corporation";
- 6042 (ii) "incorporated";
- 6043 (iii) "company";
- 6044 (iv) "limited partnership";
- 6045 (v) "limited";
- 6046 (vi) "L.P.";
- 6047 (vii) "Ltd.";
- 6048 (viii) "limited liability company";
- 6049 (ix) "limited company";
- 6050 (x) "L.C."; or
- 6051 (xi) "L.L.C.";
- 6052 (b) an abbreviation of a word listed in Subsection (6)(a);
- 6053 (c) the presence or absence of the words or symbols of the words "the," "and," "a," or
- 6054 "plus";
- 6055 (d) differences in punctuation and special characters;
- 6056 (e) differences in capitalization;
- 6057 (f) for a limited liability company that is formed in or registered as a foreign limited
- 6058 liability company in this state on or after May 4, 1998, differences between singular and plural
- 6059 forms of words; or
- 6060 (g) differences in whether the letters or numbers immediately follow each other or are
- 6061 separated by one or more spaces if:
- 6062 (i) the sequence of letters or numbers is identical; and
- 6063 (ii) the limited liability company is formed in or registered as a foreign limited liability
- 6064 company in this state on or after May 3, 1999.
- 6065 (7) The director of the division shall have the power and authority reasonably necessary
- 6066 to interpret and efficiently administer this section and to perform the duties imposed on the
- 6067 division by this section.
- 6068 (8) A name that implies that a limited liability company is an agency of this state or any
- 6069 of its political subdivisions, if it is not actually such a legally established agency or subdivision,
- 6070 may not be approved for filing by the division.

- 6071 (9) The exclusive right to a name may be reserved by:
6072 (a) any person intending to:
6073 (i) organize a limited liability company under this chapter; and
6074 (ii) adopt that name;
6075 (b) any limited liability company or any foreign limited liability company registered in this
6076 state intending to adopt that name;
6077 (c) any foreign limited liability company intending to:
6078 (i) register in this state; and
6079 (ii) adopt that name; and
6080 (d) any person intending to:
6081 (i) organize a foreign limited liability company;
6082 (ii) have the company register in this state; and
6083 (iii) adopt that name.
6084 (10) (a) The reservation described in Subsection (9)(a) shall be made by filing with the
6085 division an application executed under penalty of perjury by the applicant to reserve a specified
6086 name.
6087 (b) If the division finds that the name is available for use by a limited liability company
6088 or a foreign limited liability company, it shall reserve the name exclusively for the applicant for
6089 a period of 120 days. The name reservation may be renewed for any number of subsequent periods
6090 of 120 days.
6091 (c) The exclusive right to a reserved name may be transferred to any other person by filing
6092 with the division a notice of the transfer executed under penalty of perjury by the applicant for
6093 whom the name was reserved and specifying the name and address of the transferee.
6094 (11) (a) The requirements of Subsection (1)(d) do not apply to a limited liability company
6095 that is formed in or registered as a foreign limited liability company in this state on or before May
6096 4, 1998, until December 31, 1998.
6097 (b) On or after January 1, 1999, any limited liability company formed in or registered as
6098 a foreign limited liability company in this state shall comply with the requirements of Subsection
6099 (1)(d).
6100 Section 230. Section **53B-5-114** is amended to read:
6101 **53B-5-114. Consent to use of educational terms in business names.**

6102 (1) For purposes of this section:

6103 (a) "Business name" means a name filed with the Division of Corporations and

6104 Commercial Code under:

6105 (i) Section [~~16-6-24~~] 16-6a-401;

6106 (ii) Section 16-10a-401;

6107 (iii) Section 42-2-6.6;

6108 (iv) Section 48-2a-102; or

6109 (v) Section 48-2b-106.

6110 (b) "Educational term" means the term:

6111 (i) "university";

6112 (ii) "college"; or

6113 (iii) "institution."

6114 (2) If a statute listed in Subsection (1)(a) requires the written consent of the board to file
6115 a business name with the Division of Corporations and Commercial Code that includes an
6116 educational term, the board may consent to the use of an educational term in accordance with this
6117 statute.

6118 (3) The board shall consent to the use of an educational term in a business name if the
6119 person seeking to file the name:

6120 (a) is registered under this chapter;

6121 (b) is exempt from the chapter under Section 53B-5-105; or

6122 (c) (i) is not engaged in educational activities; and

6123 (ii) does not represent that it is engaged in educational activities.

6124 (4) The board may withhold consent to use of an educational term in a business name if
6125 the person seeking to file the name:

6126 (a) offers, sells, or awards a degree or any other type of educational credential; and

6127 (b) fails to provide bona fide instruction through student-faculty interaction according to
6128 the standards and criteria established by the board under Subsection 53B-5-104(5).

6129 Section 231. Section **59-8-103** is amended to read:

6130 **59-8-103. Definitions.**

6131 As used in this chapter:

6132 (1) "Corporation" means:

6133 (a) any domestic corporation organized under Title 16, Chapter [6, or] 6a, Utah Revised
6134 Nonprofit Corporation Act;

6135 (b) any foreign corporation engaged in business in this state under Sections [~~16-6-79~~]
6136 16-6a-1501 through [~~16-6-96;~~] 16-6a-1518; or

6137 (c) any legal or administrative entity created under Section 11-13-5.5.

6138 (2) "Engaging in business" means carrying on or causing to be carried on any activity
6139 through which goods or services are made or rendered by the taxpayer, except as provided in
6140 Section 59-7-102.

6141 (3) "Gross receipts" means the totality of the consideration that the taxpayer receives for
6142 any good or service produced or rendered in the state without any deduction or expense paid or
6143 accrued in respect to it.

6144 (4) "Taxpayer" means any corporation, other than an eleemosynary, religious, or charitable
6145 institution, any insurance company, credit union, or Subchapter S organization, any nonprofit
6146 hospital, educational, welfare, or employee representation organization, or any mutual benefit
6147 association engaged in business in the state that is not otherwise required to pay income or
6148 franchise tax to the state under Title 59, Chapter 7.

6149 Section 232. Section **63-11-3.1** is amended to read:

6150 **63-11-3.1. Definitions.**

6151 As used in Sections 63-11-3.1 through 63-11-3.3:

6152 (1) "Board" means the board of trustees of This is the Place Foundation.

6153 (2) "Division" means the Division of Parks and Recreation.

6154 (3) "Foundation" means This is the Place Foundation, a private nonprofit corporation
6155 formed pursuant to Title 16, Chapter [6] 6a, Utah Revised Nonprofit Corporation [~~and~~
6156 ~~Co-operative Association~~] Act.

6157 (4) "Monument" means This is the Place Monument at This is the Place State Park.

6158 (5) "Park" means This is the Place State Park, property owned by the state of Utah located
6159 at 2601 East Sunnyside Avenue, Salt Lake City.

6160 Section 233. **Repealer.**

6161 This act repeals:

6162 Section **16-6-18, Short title.**

6163 Section **16-6-19, Definitions.**

- 6164 Section 16-6-20, Applicability.
- 6165 Section 16-6-21, Purposes.
- 6166 Section 16-6-22, General powers.
- 6167 Section 16-6-23, Defense of ultra vires.
- 6168 Section 16-6-24, Corporate name -- Contents.
- 6169 Section 16-6-25, Corporate name -- Reservation.
- 6170 Section 16-6-25.1, Registered office -- Appointment of registered agent Disclosure.
- 6171 Section 16-6-25.2, Change of registered office or registered agent -- Resignation of
- 6172 **registered agent.**
- 6173 Section 16-6-25.3, Service of process on registered agent or director of division.
- 6174 Section 16-6-26, Members -- Classes -- Provisions of articles of incorporation or
- 6175 **bylaws -- Liability.**
- 6176 Section 16-6-27, Meetings of members -- Annual and special meetings.
- 6177 Section 16-6-28, Meetings of members -- Notice.
- 6178 Section 16-6-29, Voting -- Quorum.
- 6179 Section 16-6-30, Voting -- Rights of members.
- 6180 Section 16-6-31, Voting -- Provisions of articles control.
- 6181 Section 16-6-32, Waiver of notice.
- 6182 Section 16-6-33, Consent to action without meeting.
- 6183 Section 16-6-34, Governing board -- Qualifications for trustees.
- 6184 Section 16-6-35, Trustees -- Number -- Election or appointment -- Terms.
- 6185 Section 16-6-36, Vacancies in governing board.
- 6186 Section 16-6-37, Voting rights -- Proxy -- Quorum of trustees.
- 6187 Section 16-6-38, Committees.
- 6188 Section 16-6-39, Meetings of governing board -- Notice and waiver of notice.
- 6189 Section 16-6-40, Officers.
- 6190 Section 16-6-41, Inspection of books and records -- Report to members.
- 6191 Section 16-6-42, Issuance of certificates or stock -- Compensation to members,
- 6192 **trustees, or officers -- Effect of distributions on dissolution or liquidation.**
- 6193 Section 16-6-43, Loans to trustees or officers prohibited.
- 6194 Section 16-6-44, Bylaws -- Resolutions.

- 6195 Section **16-6-45, Incorporators.**
- 6196 Section **16-6-46, Articles of incorporation.**
- 6197 Section **16-6-47, Filing articles of incorporation.**
- 6198 Section **16-6-48, Effect of issuance of certificate of incorporation.**
- 6199 Section **16-6-49, Right to amend articles of incorporation -- Conversion to business**
- 6200 **corporation.**
- 6201 Section **16-6-50, Procedure to amend articles of incorporation.**
- 6202 Section **16-6-51, Articles of amendment.**
- 6203 Section **16-6-52, Filing articles of amendment.**
- 6204 Section **16-6-53, Effect of certificate of amendment.**
- 6205 Section **16-6-53.5, Restated articles of incorporation -- Filing -- Issuance and effect of**
- 6206 **issuance of certificate of restatement.**
- 6207 Section **16-6-54, Procedure for merger.**
- 6208 Section **16-6-55, Procedure for consolidation.**
- 6209 Section **16-6-56, Approval of merger or consolidation.**
- 6210 Section **16-6-57, Articles of merger or consolidation.**
- 6211 Section **16-6-58, Effective date of merger or consolidation.**
- 6212 Section **16-6-59, Effect of merger or consolidation.**
- 6213 Section **16-6-60, Merger or consolidation of foreign or domestic corporations.**
- 6214 Section **16-6-61, Sale, lease, exchange or mortgage of assets.**
- 6215 Section **16-6-62, Voluntary dissolution.**
- 6216 Section **16-6-63, Distribution of assets.**
- 6217 Section **16-6-64, Plan of distribution.**
- 6218 Section **16-6-65, Revocation of voluntary dissolution proceedings.**
- 6219 Section **16-6-66, Articles of dissolution.**
- 6220 Section **16-6-67, Filing articles of dissolution.**
- 6221 Section **16-6-68, Involuntary dissolution.**
- 6222 Section **16-6-69, Jurisdiction of court to liquidate assets and affairs of nonprofit**
- 6223 **corporation.**
- 6224 Section **16-6-70, Procedure in liquidation of nonprofit corporation.**
- 6225 Section **16-6-71, Qualification of receivers.**

- 6226 Section 16-6-72, Filing of claims in liquidation proceedings.
- 6227 Section 16-6-73, Discontinuance of liquidation proceedings.
- 6228 Section 16-6-74, Decree dissolving corporation.
- 6229 Section 16-6-75, Filing decree dissolving corporation.
- 6230 Section 16-6-76, Deposits with state treasurer.
- 6231 Section 16-6-77, Survival of remedy after dissolution.
- 6232 Section 16-6-78, Continuance of corporate existence after dissolution.
- 6233 Section 16-6-79, Admission of foreign corporation.
- 6234 Section 16-6-80, Powers of foreign corporation.
- 6235 Section 16-6-82, Change of name by foreign corporation.
- 6236 Section 16-6-83, Application for certificate of authority by foreign corporation.
- 6237 Section 16-6-84, Filing application for certificate of authority by foreign corporation.
- 6238 Section 16-6-85, Effect of certificate of authority of foreign corporation.
- 6239 Section 16-6-86, Registered office and registered agent of foreign corporation -
- 6240 **Appointment of registered agent.**
- 6241 Section 16-6-87, Change of registered office or registered agent of foreign corporation.
- 6242 Section 16-6-88, Service of process on foreign corporation.
- 6243 Section 16-6-89, Amendment of articles of incorporation of foreign corporation.
- 6244 Section 16-6-90, Merger of foreign corporation authorized to conduct affairs in this
- 6245 **state.**
- 6246 Section 16-6-91, Amended certificate of authority of foreign corporation.
- 6247 Section 16-6-92, Withdrawal of foreign corporation.
- 6248 Section 16-6-93, Filing application for withdrawal by foreign corporation.
- 6249 Section 16-6-94, Revocation of certificate of authority of foreign corporation.
- 6250 Section 16-6-95, Issuance of certificate of revocation of foreign corporation.
- 6251 Section 16-6-96, Conducting affairs without certificate of authority by foreign
- 6252 **corporation.**
- 6253 Section 16-6-97, Annual report of domestic and foreign nonprofit corporations --
- 6254 **Contents.**
- 6255 Section 16-6-98, Annual report of domestic and foreign nonprofit corporations --
- 6256 **Filing -- Certification.**

- 6257 Section **16-6-99, Delinquency -- Notice.**
- 6258 Section **16-6-99.1, Suspension -- Notice -- Failure to remove suspension.**
- 6259 Section **16-6-100, Fees.**
- 6260 Section **16-6-100.5, Expedited document processing for items under Section 16-6-100.**
- 6261 Section **16-6-101, Fees for certified copies and for accepting service of process as**
- 6262 **resident agent.**
- 6263 Section **16-6-102, Powers of division.**
- 6264 Section **16-6-103, Procedure upon disapproval of document or revocation of certificate**
- 6265 **of authority -- Venue for judicial review.**
- 6266 Section **16-6-104, Certificates and certified copies to be received in evidence.**
- 6267 Section **16-6-105, Use of particular forms not mandatory.**
- 6268 Section **16-6-106, Liability for unauthorized assumption of corporate powers.**
- 6269 Section **16-6-107, Personal liability of a trustee or officer limited -- Trustee or officer**
- 6270 **signing false document as misdemeanor.**
- 6271 Section **16-6-108, Incorporation of co-operative association.**
- 6272 Section **16-6-109, Continuation of existing domestic and foreign nonprofit**
- 6273 **corporations.**
- 6274 Section **16-6-110, Effect of repeal of prior law.**
- 6275 Section **16-6-112, Correction of technical errors in instruments.**
- 6276 Section 234. **Effective date.**
- 6277 This act takes effect on July 1, 2000.
- 6278 Section 235. **Coordination clause.**
- 6279 (1) If this bill and S.B. 22, Water Companies and Associations -- Assessment and Voting
- 6280 Rights, both pass, it is the intent of the Legislature that:
- 6281 (a) the citations to Section 16-6-19 in Section 16-4-1.5 as amended by S.B. 22 be changed
- 6282 to Section 16-6a-102;
- 6283 (b) (i) Sections 16-6-19 and 16-6-30 as amended in S.B. 22 be repealed; and
- 6284 (ii) the following Subsection (4) be added to Section 16-6a-711:
- 6285 "(4)(a) For purposes of this Subsection (4):
- 6286 (i) "state agency" means a department, commission, board, council, agency, institution,
- 6287 officer, corporation, fund, division, office, committee, authority, laboratory, library, unit, bureau,

6288 panel, or administrative unit of the state; and

6289 (ii) "state agency" does not include the School and Institutional Trust Lands

6290 Administration created in Section 53C-1-201.

6291 (b) Notwithstanding the other provisions of this section, if a state agency is a member of
6292 a nonprofit corporation that has as one of its primary purposes the delivery of water to its members,
6293 the state agency shall have not voting rights unless the articles of incorporation or the bylaws of
6294 the nonprofit corporation specifically provide that the state agency has voting rights.";

6295 (c) the amendments in Section 31A-5-101 supersede the amendments to Section
6296 31A-5-101 in S.B. 22.

6297 (2) If this bill and H.B. 114, Business Entity Amendments, both pass, it is the intent of
6298 the Legislature that the following citations in Subsection 42-2-6(2) as amended by H.B. 114 be
6299 changed as follows:

6300 (a) Subsection 16-6-19(4) shall be changed to Subsection 16-6a-102(34); and

6301 (b) Subsection 16-6-19(7) shall be changed to Subsection 16-6a-102(25)