

**ELECTRONIC PROXY VOTING FOR CORPORATIONS**

2001 GENERAL SESSION

STATE OF UTAH

**Sponsor: Stephen H. Urquhart**

**This act modifies provisions relating to corporations. The act defines electronic transmission. The act allows proxy voting for corporations to be conducted by electronic transmission. The act makes technical changes.**

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

AMENDS:

**16-10a-102**, as last amended by Chapter 41, Laws of Utah 1996

**16-10a-722**, as enacted by Chapter 277, Laws of Utah 1992

**31A-5-101 (Effective 04/30/01)**, as last amended by Chapter 300, Laws of Utah 2000

**42-2-6.6 (Effective 04/30/01)**, as last amended by Chapters 131 and 300, Laws of Utah 2000

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

Section 1. Section **16-10a-102** is amended to read:

**16-10a-102. Definitions.**

As used in this chapter:

(1) "Address" means a location where mail can be delivered by the United States Postal Service. "Address" includes post office box numbers, rural free delivery route numbers, and street names and numbers.

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

(3) "Assumed corporate name" means the name assumed for use in this state by a foreign corporation pursuant to Section 16-10a-1506 because its corporate name is not available for use in this state.

(4) "Articles of incorporation" include amended and restated articles of incorporation, articles of merger, and documents of a similar import.

(5) "Authorized shares" means the shares of all classes a domestic or foreign corporation

is authorized to issue.

(6) "Bylaws" includes amended bylaws and restated bylaws.

(7) "Cash" and "money" are used interchangeably in this chapter and mean legal tender and negotiable instruments and other cash equivalents readily convertible into legal tender.

(8) "Conspicuous" means so written that a reasonable person against whom the writing is to operate should have noticed it. For example, printing or typing in italics, boldface, contrasting color, capitals, or underlining is conspicuous.

(9) "Control" or a "controlling interest" means the direct or indirect possession of the power to direct or cause the direction of the management and policies of an entity, whether through the ownership of voting shares, by contract, or otherwise.

(10) "Corporate name" means:

(a) the name of a domestic corporation or a domestic nonprofit corporation as stated in its articles of incorporation; or

(b) the name of a foreign corporation or a foreign nonprofit corporation as stated in its articles of incorporation or document of similar import.

(11) "Corporation" or "domestic corporation" means a corporation for profit, which is not a foreign corporation, incorporated under or subject to the provisions of this chapter.

(12) "Deliver" includes delivery by mail and any other means of transmission authorized by Section 16-10a-103, except that delivery to the division means actual receipt by the division.

(13) "Distribution" means a direct or indirect transfer of money or other property, except a corporation's own shares, or incurrence of indebtedness by a corporation to or for the benefit of its shareholders in respect of any of its shares. A distribution may be in the form of a declaration or payment of a dividend, a purchase, redemption, or other acquisition of shares, distribution of indebtedness, or otherwise.

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

(15) "Effective date," when referring to a document filed by the division, means the time and date determined in accordance with Section 16-10a-123.

(16) "Effective date of notice" means the date notice is effective as provided in Section

16-10a-103.

(17) "Electronic transmission" or "electronically transmitted" means any process of communication not directly involving the physical transfer of paper that is suitable for the retention, retrieval, and reproduction of information by the recipient.

~~[(17)]~~ (18) "Employee" includes an officer but not a director. A director may accept duties that make that director also an employee.

~~[(18)]~~ (19) "Entity" includes a domestic and foreign corporation, a nonprofit corporation, a limited liability company, a profit or nonprofit unincorporated association, a business trust, an estate, a partnership, a trust, two or more persons having a joint or common economic interest, state, the United States, and a foreign government.

~~[(19)]~~ (20) "Foreign corporation" means a corporation for profit incorporated under a law other than the law of this state.

~~[(20)]~~ (21) "Governmental subdivision" means county, municipality, and any other types of governmental subdivision authorized by the laws of this state.

~~[(21)]~~ (22) "Individual" means a natural person, the estate of an incompetent individual, or the estate of a deceased individual.

~~[(22)]~~ (23) "Mail," "mailed," or "mailing" means deposit, deposited, or depositing in the United States mail, properly addressed, first class postage prepaid, and includes registered or certified mail for which the proper fee has been paid.

~~[(23)]~~ (24) "Notice" is as provided in Section 16-10a-103.

~~[(24)]~~ (25) "Principal office" means the office, in or out of this state, designated by a domestic or foreign corporation as its principal office in the most recent document on file with the division providing ~~[such]~~ the information, including an annual report, an application for a certificate of authority, or a notice of change of principal office.

~~[(25)]~~ (26) "Proceeding" includes a civil suit, arbitration or mediation, and a criminal, administrative, or investigatory action.

~~[(26)]~~ (27) "Qualified shares" means, with respect to a director's conflicting interest transaction pursuant to Section 16-10a-853, any shares entitled to vote on the transaction, except

shares that, to the knowledge, before the vote, of the secretary, other officer, or agent of the corporation authorized to tabulate votes, are beneficially owned, or the voting of which is controlled, by a director who has a conflicting interest respecting the transaction, or by a related person of that director, or both.

~~[(27)]~~ (28) "Receive," when used in reference to receipt of a writing or other document by a domestic or foreign corporation, means the writing or other document is actually received:

- (a) by the corporation at its registered office in this state or at its principal office;
- (b) by the secretary of the corporation, wherever the secretary is found; or
- (c) by any other person authorized by the bylaws or the board of directors to receive the writing or other document, wherever that person is found.

~~[(28)]~~ (29) "Record date" means the date established under Part 6 or 7 of this chapter on which a corporation determines the identity of its shareholders. The determination shall be made as of the close of business on the record date unless another time for doing so is specified when the record date is fixed.

~~[(29)]~~ (30) "Registered office" means the office within this state designated by a domestic or foreign corporation as its registered office in the most recent document on file with the division providing that information, including articles of incorporation, an application for a certificate of authority, or a notice of change of registered office.

~~[(30)]~~ (31) "Related person" of a director means:

- (a) the spouse of the director, or a child, grandchild, sibling, or parent of the director;
- (b) the spouse of a child, grandchild, sibling, or parent of the director;
- (c) an individual having the same home as the director;
- (d) a trust or estate of which the director or any other individual specified in this Subsection ~~[(30)]~~ (31) is a substantial beneficiary; or
- (e) a trust, estate, incompetent, conservatee, or minor of which the director is a fiduciary.

~~[(31)]~~ (32) "Secretary" means the corporate officer to whom the bylaws or the board of directors has delegated responsibility under Subsection 16-10a-830(3) for the preparation and maintenance of minutes of the meetings of the board of directors and of the shareholders and of the

other records and information required to be kept by the corporation by Section 16-10a-830, and for authenticating records of the corporation.

~~[(32)]~~ (33) "Shares" means the units into which the proprietary interests in a corporation are divided.

~~[(33)]~~ (34) "Shareholder" means the person in whose name shares are registered in the records of a corporation or the beneficial owner of shares to the extent recognized pursuant to Section 16-10a-723. For purposes of this chapter:

(a) the following, which are identified as a shareholder in a corporation's current record of shareholders, constitute one shareholder:

(i) (A) three or fewer coowners;

(B) in the case of more than three coowners each coowner in excess of the first three will be counted as a separate shareholder;

(ii) a corporation, limited liability company, partnership, trust, estate, or other entity; and

(iii) the trustees, guardians, custodians, or other fiduciaries of a single trust, estate, or account;

(b) shareholdings registered in substantially similar names constitute one shareholder if it is reasonable to believe that the names represent the same person; and

(c) in any case where the record of shareholders has not been maintained in accordance with accepted practice, any additional person who would be identified as an owner on that record if it had been maintained in accordance with accepted practice shall be included as a holder of record.

~~[(34)]~~ (35) "Subscriber" means a person who subscribes for shares in a corporation, whether before or after incorporation.

~~[(35)]~~ (36) "Voting group" means all shares of one or more classes or series that under the articles of incorporation or this chapter are entitled to vote and be counted together collectively on a matter at a meeting of shareholders. All shares entitled by the articles of incorporation or this chapter to vote generally on the matter are for that purpose a single voting group.

Section 2. Section **16-10a-722** is amended to read:

**16-10a-722. Proxies.**

(1) A shareholder may vote his shares in person or by proxy.

~~[(2) Without limiting the manner in which a shareholder may appoint a proxy to vote or otherwise act for that shareholder, the following constitute valid means of appointment:]~~

~~[(a)]~~ (2) A shareholder, his agent, or attorney-in-fact, may appoint a proxy to vote or otherwise act for the shareholder by signing an appointment form ~~[, either personally or by the shareholder's attorney-in-fact]~~ or by an electronic transmission. An electronic transmission must contain or be accompanied by information that indicates that the shareholder, the shareholder's agent, or the shareholder's attorney-in-fact authorized the transmission.

~~[(b) A shareholder may appoint a proxy by transmitting or authorizing the transmission of a telegram, teletype, or other electronic transmission providing a written statement of the appointment to the proxy, to a proxy solicitor, proxy support service organization, or other person duly authorized by the proxy to receive appointments as agent for the proxy, or to the corporation, provided that the transmitted appointment shall set forth or be transmitted with written evidence from which it can be determined that the shareholder transmitted or authorized the transmission of the appointment.]~~

(3) An appointment of a proxy is effective when a signed appointment form or an electronic transmission of the appointment is received by the ~~[corporation, including receipt by the corporation of an appointment transmitted pursuant to Subsection (2)(b)]~~ inspector of election or the officer or agent of the corporation authorized to tabulate votes. An appointment is valid for 11 months unless a longer period is expressly provided in the appointment form.

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

~~[(5)]~~ (4) An appointment of a proxy is revocable ~~[by the shareholder, and is revoked upon the death or incapacity of the shareholder upon receipt of notice of either event as provided in Subsection (6);]~~ unless the appointment form ~~[conspicuously]~~ or electronic transmission states that it is irrevocable and the appointment is coupled with an interest. Appointments coupled with an interest include the appointment of any of the following persons or their designees:

- (a) a pledgee;
- (b) a person who purchased or agreed to purchase the shares;
- (c) a creditor of the corporation who extended its credit under terms requiring the appointment;
- (d) an employee of the corporation whose employment contract requires the appointment;

or

- (e) a party to a voting agreement created under Section 16-10a-731.

~~[(6)]~~ (5) The death or incapacity of the shareholder appointing a proxy does not affect the right of the corporation to accept the proxy's authority unless the appointment is not irrevocable and coupled with an interest, and notice of the death or incapacity is received by the secretary or other officer or agent authorized to tabulate votes before the proxy exercises the authority under the appointment.

~~[(7)]~~ (6) An appointment made irrevocable under Subsection ~~[(5)]~~ (4) is revoked when the interest with which it is coupled is extinguished but the revocation does not affect the right of the corporation to accept the proxy's authority unless:

(a) the corporation had notice that the appointment was coupled with that interest and notice that the interest is extinguished is received by the secretary or other officer or agent authorized to tabulate votes before the proxy exercises the authority under the appointment; or

(b) other notice of the revocation of the appointment is received by the secretary or other officer or agent authorized to tabulate votes before the proxy exercises the authority under the appointment.

~~[(8)]~~ (7) The corporation is not required to recognize an appointment made irrevocable under Subsection ~~[(5)]~~ (4) if it has received a writing revoking the appointment signed by the shareholder either personally or by ~~[such]~~ the shareholder's attorney-in-fact, notwithstanding that the revocation may be a breach of an obligation of the shareholder to another person not to revoke the appointment. This provision shall not affect any claim ~~[such]~~ the other person may have against the shareholder with respect to the revocation.

- ~~[(9)]~~ (8) A transferee for value of shares subject to an irrevocable appointment may revoke

the appointment if [~~such~~] the transferee did not know of its existence when acquiring the shares and the existence of the irrevocable appointment was not noted conspicuously on the certificate representing the shares or on the information statement for shares without certificates.

~~[(10)]~~ (9) Subject to Section 16-10a-724 and to any express limitation on the proxy's authority [~~appearing on the face of~~] stated in the appointment form or electronic transmission, a corporation is entitled to accept the proxy's vote or other action as that of the shareholder making the appointment.

Section 3. Section **31A-5-101 (Effective 04/30/01)** is amended to read:

**31A-5-101 (Effective 04/30/01). Definitions.**

In this chapter, unless the context requires otherwise:

(1) The definitions applicable to the Utah Revised Business Corporation Act in Subsections 16-10a-102(2), [~~(22)~~, and] (23), and (24) apply to stock corporations.

(2) The definitions applicable to nonprofit corporations in Subsections 16-6a-102(4), (6), and [~~(30)~~] (31) apply to mutuals.

(3) "Promoter securities" are securities issued by a stock insurer to the incorporators, directors, officers, or their families or nominees at any time prior to, and up to one year following, the issuance of a certificate of authority to the stock insurer.

Section 4. Section **42-2-6.6 (Effective 04/30/01)** is amended to read:

**42-2-6.6 (Effective 04/30/01). Assumed name.**

(1) The assumed name:

(a) may not contain any word or phrase that indicates or implies that the business is organized for any purpose other than one or more of the purposes contained in its application;

(b) shall be distinguishable from any registered name or trademark of record in the offices of the Division of Corporations and Commercial Code, as defined in Subsection 16-10a-401(5), except as authorized by the Division of Corporations and Commercial Code pursuant to Subsection (2);

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



- (i) "Olympic";
- (ii) "Olympiad"; or
- (iii) "Citius Altius Fortius";

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

- (i) "university";
- (ii) "college"; or
- (iii) "institute"; and

(e) an assumed name authorized for use in this state on or after May 1, 2000, may not contain

the words:

- (i) "incorporated";
- (ii) "inc."; or
- (iii) a variation of "incorporated" or "inc."

(2) Notwithstanding Subsection (1)(e), an assumed name may contain a word listed in Subsection (1)(e) if the Division of Corporations and Commercial Code authorizes the use of the name by a corporation as defined in:

- (a) Subsection 16-6a-102[~~(25)~~](26);
- (b) Subsection 16-6a-102[~~(32)~~](33);
- (c) Subsection 16-10a-102(11); or
- (d) Subsection 16-10a-102[~~(19)~~](20).

(3) The Division of Corporations and Commercial Code shall authorize the use of the name applied for if:

(a) the name is distinguishable from one or more of the names and trademarks that are on the division's records; or

(b) the applicant delivers to the division a certified copy of the final judgment of a court of competent jurisdiction establishing the applicant's right to use the name applied for in this state.

(4) The assumed name, for purposes of recordation, shall be either translated into English or transliterated into letters of the English alphabet if it is not in English.

(5) The Division of Corporations and Commercial Code may not approve an application for an assumed name to any person violating this section.

(6) The director of the Division of Corporations and Commercial Code shall have the power and authority reasonably necessary to interpret and efficiently administer this section and to perform the duties imposed on the division by this section.

(7) A name that implies by any word in the name that it is an agency of the state or of any of its political subdivisions, if it is not actually such a legally established agency, may not be approved for filing by the Division of Corporations and Commercial Code.

(8) Section 16-10a-403 applies to this chapter.

(9) (a) The requirements of Subsection (1)(d) do not apply to a person who filed a certificate of assumed and of true name with the Division of Corporations and Commercial Code on or before May 4, 1998, until December 31, 1998.

(b) On or after January 1, 1999, any person who carries on, conducts, or transacts business in this state under an assumed name shall comply with the requirements of Subsection (1)(d).