

UTAH REVISED NONPROFIT CORPORATION**ACT AMENDMENTS**

2001 FIRST SPECIAL SESSION

STATE OF UTAH

Sponsor: Lyle W. Hillyard

This act modifies the Utah Revised Nonprofit Corporations Act to address issues related to a quorum of a nonprofit corporation and taking action by written ballot. The act addresses issues related to transition between the old and revised law. The act has an immediate effective date and portions of the act have retrospective operation to April 30, 2001.

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

AMENDS:

16-6a-709, as last amended by Chapter 127, Laws of Utah 2001

16-6a-714, as enacted by Chapter 300, Laws of Utah 2000

16-6a-1704, as enacted by Chapter 300, Laws of Utah 2000

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

Section 1. Section **16-6a-709** is amended to read:

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

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

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

(a) set forth each proposed action; and

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

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

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

(i) the time by which all ballots must be received by the nonprofit corporation has passed



28 so that a quorum can be determined; and

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

32 (b) Unless otherwise provided in this chapter or in accordance with Section 16-6a-716, for
33 purposes of taking action by written ballot the number of votes cast by written ballot pursuant to
34 this section constitute a quorum for action on the matter.

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

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

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

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

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

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

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

46 (7) Unless otherwise provided by the bylaws, a written ballot delivered to every member
47 entitled to vote on the matter or matters therein, as described in this section, may also be used in
48 connection with any annual, regular, or special meeting of members, thereby allowing members
49 the choice of either voting in person or by written ballot delivered by a member to the nonprofit
50 corporation in lieu of attendance at such meeting. Any written ballot shall comply with the
51 requirements of Subsection (2) and shall be counted equally with the votes of members in
52 attendance at any meeting for every purpose, including satisfaction of a quorum requirement.

53 Section 2. Section **16-6a-714** is amended to read:

54 **16-6a-714. Quorum and voting requirements for voting groups.**

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

57 (b) Unless otherwise provided in this chapter or ~~[the bylaws, a majority of the votes~~
58 ~~entitled to be cast on the matter by the voting group constitutes a quorum of that voting group for~~

59 ~~action on that matter]~~ in accordance with Section 16-6a-716, at a meeting of the voting group, the
60 members of the voting group that are represented for any purpose at the meeting constitute a
61 quorum of that voting group for action on a matter.

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

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

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

66 (i) otherwise provided in the bylaws; or

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

68 (3) Action on a matter other than the election of directors by a voting group is approved
69 if:

70 (a) a quorum exists;

71 (b) the votes cast within the voting group favoring the action exceed the votes cast within
72 the voting group opposing the action; and

73 (c) a greater number of affirmative votes is not required by this chapter or the bylaws.

74 (4) The election of directors is governed by Section 16-6a-717.

75 Section 3. Section **16-6a-1704** is amended to read:

76 **16-6a-1704. Saving provisions.**

77 (1) (a) Except as provided in Subsection (2), the repeal of any statute by this act does not
78 affect:

79 (i) the operation of the statute or any action taken under it before its repeal;

80 (ii) any ratification, right, remedy, privilege, obligation, or liability acquired, accrued, or
81 incurred under the statute before its repeal;

82 (iii) any violation of the statute, or any penalty, forfeiture, or punishment incurred because
83 of the violation of the statute before its repeal; or

84 (iv) any proceeding, reorganization, or dissolution commenced under the statute before its
85 repeal.

86 (b) A proceeding, reorganization, or dissolution described in Subsection (1)(a)(iv) may be
87 completed in accordance with the repealed statute as if the statute had not been repealed.

88 (2) If a penalty or punishment imposed for violation of a statute repealed by this act is
89 reduced by this act, the penalty or punishment if not already imposed shall be imposed in

90 accordance with this act.

91 (3) Section 16-6a-707 does not operate to permit a nonprofit corporation in existence prior
92 to April 30, 2001, to take action by the written consent of fewer than all of the members entitled
93 to vote with respect to the subject matter of the action, until the date a resolution providing
94 otherwise is approved either:

95 (a) by a consent in writing:

96 (i) setting forth the proposed resolution; and

97 (ii) signed by all of the members entitled to vote with respect to the subject matter of the
98 resolution; or

99 (b) at a duly convened meeting of members, by the vote of the same percentage of
100 members of each voting group as would be required to include the resolution in an amendment to
101 the nonprofit corporation's articles of incorporation.

102 (4) Indemnification for an act or omission of a director or officer of a nonprofit corporation
103 if the act or omission occurs prior to April 30, 2001, is governed by Title 16, Chapter 6, Utah
104 Nonprofit Corporation and Co-operative Association Act, in effect as of April 29, 2001.

105 (5) A nonprofit corporation is not required to amend the nonprofit corporation's articles
106 of incorporation to state whether its members are voting members if:

107 (a) the nonprofit corporation was:

108 (i) formed prior to April 30, 2001;

109 (ii) formed under the laws of this state; and

110 (iii) existing on April 30, 2001; and

111 (b) the articles of incorporation of the nonprofit corporation states on April 30, 2001, that
112 the nonprofit corporation has members.

113 Section 4. **Effective date.**

114 If approved by two-thirds of all the members elected to each house, this act takes effect
115 upon approval by the governor, or the day following the constitutional time limit of Utah
116 Constitution Article VII, Section 8, without the governor's signature, or in the case of a veto, the
117 date of veto override.

118 Section 5. **Retrospective operation.**

119 The amendments to Section 16-6a-1704 in this act have retrospective operation to April
120 30, 2001.

Legislative Review Note
as of 6-19-01 2:20 PM

A limited legal review of this legislation raises no obvious constitutional or statutory concerns.

Office of Legislative Research and General Counsel

Committee Note

The Business and Labor Interim Committee recommended this bill.