

**FOREIGN BUSINESS ENTITIES AND
TRIBAL LAW**

2008 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Kevin T. VanTassell

House Sponsor: DeMar Bud Bowman

LONG TITLE

General Description:

This bill modifies provisions related to corporations, partnerships, and other business entities to address entities created by tribal law.

Highlighted Provisions:

This bill:

- ▶ defines "tribe" for purposes of certain business entity provisions;
- ▶ modifies provisions related to nonprofit and for profit corporations, partnerships, and limited liability companies to provide for an entity created by tribal law to be treated as a foreign business entity authorized to transact business in the state;
- ▶ omits an inadvertent reference to a country of creation for a limited liability partnership; and
- ▶ makes technical and conforming amendments.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

16-4-102, as enacted by Laws of Utah 2007, Chapter 367



- 28 **16-6a-102**, as last amended by Laws of Utah 2007, Chapter 315
- 29 **16-6a-1101**, as last amended by Laws of Utah 2006, Chapter 228
- 30 **16-6a-1105**, as last amended by Laws of Utah 2002, Chapter 197
- 31 **16-6a-1503**, as enacted by Laws of Utah 2000, Chapter 300
- 32 **16-6a-1504**, as enacted by Laws of Utah 2000, Chapter 300
- 33 **16-6a-1507**, as last amended by Laws of Utah 2002, Chapter 197
- 34 **16-6a-1512**, as enacted by Laws of Utah 2000, Chapter 300
- 35 **16-6a-1513**, as enacted by Laws of Utah 2000, Chapter 300
- 36 **16-6a-1515**, as enacted by Laws of Utah 2000, Chapter 300
- 37 **16-6a-1607**, as last amended by Laws of Utah 2001, Chapter 127
- 38 **16-10a-102**, as last amended by Laws of Utah 2007, Chapter 21
- 39 **16-10a-1107**, as enacted by Laws of Utah 1992, Chapter 277
- 40 **16-10a-1503**, as last amended by Laws of Utah 2005, Chapter 71
- 41 **16-10a-1504**, as enacted by Laws of Utah 1992, Chapter 277
- 42 **16-10a-1507**, as enacted by Laws of Utah 1992, Chapter 277
- 43 **16-10a-1520**, as enacted by Laws of Utah 1992, Chapter 277
- 44 **16-10a-1530**, as last amended by Laws of Utah 2005, Chapter 71
- 45 **16-10a-1607**, as enacted by Laws of Utah 1992, Chapter 277
- 46 **48-1-1**, as last amended by Laws of Utah 1994, Chapter 61
- 47 **48-1-44**, as last amended by Laws of Utah 1996, Chapter 41
- 48 **48-2a-101**, as last amended by Laws of Utah 2001, Chapter 260
- 49 **48-2a-210**, as last amended by Laws of Utah 2000, Chapter 131
- 50 **48-2a-902**, as last amended by Laws of Utah 1991, Chapters 5 and 189
- 51 **48-2a-904**, as enacted by Laws of Utah 1990, Chapter 233
- 52 **48-2c-102**, as last amended by Laws of Utah 2006, Chapter 21
- 53 **48-2c-203**, as last amended by Laws of Utah 2005, Chapter 141
- 54 **48-2c-411**, as enacted by Laws of Utah 2001, Chapter 260
- 55 **48-2c-1604**, as last amended by Laws of Utah 2005, Chapter 71
- 56 **48-2c-1605**, as enacted by Laws of Utah 2001, Chapter 260
- 57 **48-2c-1608**, as enacted by Laws of Utah 2001, Chapter 260
- 58 **48-2c-1610**, as enacted by Laws of Utah 2001, Chapter 260

59 48-2c-1611, as enacted by Laws of Utah 2001, Chapter 260

60 48-2c-1612, as last amended by Laws of Utah 2005, Chapter 71



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

63 Section 1. Section 16-4-102 is amended to read:

64 **16-4-102. Definitions.**

65 As used in this chapter:

66 (1) "Corporation" means a nonprofit corporation or a profit corporation.

67 (2) "Nonprofit corporation" means a nonprofit corporation as defined in Section
68 16-6a-102.

69 (3) "Profit corporation" means a corporation as defined in Section 16-10a-102.

70 (4) [~~Shares~~] "Share" means [~~shares~~] a share as defined in:

71 (a) Section 16-6a-102 for a nonprofit corporation; and

72 (b) Section 16-10a-102 for a profit corporation.

73 (5) "Water company" means a corporation in which a shareholder has the right, based
74 on the shareholders shares, to receive a proportionate share of water delivered by the
75 corporation.

76 Section 2. Section 16-6a-102 is amended to read:

77 **16-6a-102. Definitions.**

78 As used in this chapter:

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

81 (b) "Address" includes:

82 (i) a post office box number;

83 (ii) a rural free delivery route number; and

84 (iii) a street name and number.

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

88 (3) "Articles of incorporation" include:

89 (a) amended articles of incorporation;

90 (b) restated articles of incorporation;
91 (c) articles of merger; and
92 (d) a document of a similar import to the documents described in Subsections (3)(a)
93 through (c).

94 (4) "Assumed corporate name" means ~~[the]~~ a name assumed for use in this state:

95 (a) by a:

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

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

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

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

102 (b) Notwithstanding Subsection (5)(a), a person may not be considered a member of
103 the board of directors because of ~~[powers]~~ a power delegated to that person pursuant to
104 Subsection 16-6a-801(2).

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

109 (b) "Bylaws" includes:

110 (i) amended bylaws; and

111 (ii) restated bylaws.

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

113 (i) legal tender;

114 (ii) a negotiable instrument; or

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

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

117 (8) (a) "Class" ~~[refers to]~~ means a group of memberships that ~~[have]~~ has the same
118 ~~[rights]~~ right with respect to voting, dissolution, redemption, transfer, or other characteristics.

119 (b) For purposes of Subsection (8)(a), ~~[rights are]~~ a right is considered the same if ~~[they~~
120 ~~are]~~ it is determined by a formula applied uniformly to a group of memberships.

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

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

124 (i) italics;

125 (ii) boldface;

126 (iii) contrasting color;

127 (iv) capitals; or

128 (v) underlining.

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

131 (a) the ownership of voting shares;

132 (b) contract; or

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

134 (11) Subject to Section 16-6a-207, "cooperative nonprofit corporation" or "cooperative"
135 means a nonprofit corporation organized or existing under this chapter.

136 (12) "Corporate name" means:

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

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

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

142 (i) articles of incorporation; or

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

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

146 (i) articles of incorporation; or

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

148 (13) "Corporation" or "domestic corporation" means a corporation for profit~~[, which]~~

149 that:

150 (a) is not a foreign corporation~~[;]~~; and

151 (b) is incorporated under or subject to Chapter 10a, Utah Revised Business Corporation

152 Act.

153 (14) "Delegate" means ~~[any]~~ a person elected or appointed to vote in a representative
154 assembly:

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

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

157 (15) "Deliver" includes delivery by mail ~~[and any other]~~ or another means of
158 transmission authorized by Section 16-6a-103, except that delivery to the division means actual
159 receipt by the division.

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

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

163 (i) members;

164 (ii) directors; or

165 (iii) officers.

166 (b) "Distribution" does not include a fair-value ~~[payments]~~ payment for:

167 (i) ~~[goods]~~ a good sold; or

168 (ii) ~~[services]~~ a service received.

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

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

172 (20) "Effective date of notice" means the date notice is effective as provided in Section
173 16-6a-103.

174 (21) (a) "Employee" includes an officer of a nonprofit corporation.

175 (b) (i) Except as provided in Subsection (21)(b)(ii), "employee" does not include a
176 director of a nonprofit corporation.

177 (ii) Notwithstanding Subsection (21)(b)(i), a director may accept one or more duties
178 that make that director an employee of a nonprofit corporation.

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

181 (23) "Entity" includes:

182 (a) a domestic or foreign corporation;

- 183 (b) a domestic or foreign nonprofit corporation;
- 184 (c) a limited liability company;
- 185 (d) a profit or nonprofit unincorporated association;
- 186 (e) a business trust;
- 187 (f) an estate;
- 188 (g) a partnership;
- 189 (h) a trust;
- 190 (i) two or more persons having a joint or common economic interest;
- 191 (j) a state;
- 192 (k) the United States; or
- 193 (l) a foreign government.

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

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

- 197 (a) incorporated under a law other than the laws of this state; and
- 198 (b) that would be a nonprofit corporation if formed under the laws of this state.

199 (26) "Governmental subdivision" means:

- 200 (a) a county;
- 201 (b) a city;
- 202 (c) a town; or
- 203 (d) ~~any other~~ another type of governmental subdivision authorized by the laws of this
204 state.

205 (27) "Individual" means:

- 206 (a) a natural person;
- 207 (b) the estate of an incompetent individual; or
- 208 (c) the estate of a deceased individual.

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

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

214 (b) "Mail," "mailed," or "mailing" includes registered or certified mail for which the
215 proper fee ~~[has been]~~ is paid.

216 (30) (a) "Member" means one or more persons identified or otherwise appointed as a
217 member of a domestic or foreign nonprofit corporation as provided:

218 (i) in the articles of incorporation;

219 (ii) in the bylaws;

220 (iii) by a resolution of the board of directors; or

221 (iv) by a resolution of the members of the nonprofit corporation.

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

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

224 (32) "Mutual benefit corporation" means a nonprofit corporation:

225 (a) that issues shares of stock to its members evidencing a right to receive distribution
226 of water or otherwise representing property rights; or

227 (b) all of whose assets are contributed or acquired by or for the members of the
228 nonprofit corporation or their predecessors in interest to serve the mutual purposes of the
229 members.

230 (33) "Nonprofit corporation" or "domestic nonprofit corporation" means an entity~~[-~~
231 ~~which]~~ that:

232 (a) is not a foreign nonprofit corporation~~[-];~~ and

233 (b) is incorporated under or subject to ~~[the provisions of]~~ this chapter.

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

235 (35) "Party related to a director" means:

236 (a) the spouse of the director;

237 (b) a child of the director;

238 (c) a grandchild of the director;

239 (d) a sibling of the director;

240 (e) a parent of the director;

241 (f) the spouse of an individual described in Subsections (35)(b) through (e);

242 (g) an individual having the same home as the director;

243 (h) a trust or estate of which the director or ~~[any other]~~ another individual specified in
244 this Subsection (35) is a substantial beneficiary; or

- 245 (i) any of the following of which the director is a fiduciary:
- 246 (i) a trust;
- 247 (ii) an estate;
- 248 (iii) an incompetent;
- 249 (iv) a conservatee; or
- 250 (v) a minor.
- 251 (36) "Person" means an:
- 252 (a) individual; or
- 253 (b) entity.
- 254 (37) "Principal office" means:
- 255 (a) the office, in or out of this state, designated by a domestic or foreign nonprofit
- 256 corporation as its principal office in the most recent document on file with the division
- 257 providing that information, including:
- 258 (i) an annual report;
- 259 (ii) an application for a certificate of authority; or
- 260 (iii) a notice of change of principal office; or
- 261 (b) if no principal office can be determined, a domestic or foreign nonprofit
- 262 corporation's registered office.
- 263 (38) "Proceeding" includes:
- 264 (a) a civil suit;
- 265 (b) arbitration;
- 266 (c) mediation;
- 267 (d) a criminal action;
- 268 (e) an administrative action; or
- 269 (f) an investigatory action.
- 270 (39) "Receive," when used in reference to receipt of a writing or other document by a
- 271 domestic or foreign nonprofit corporation, means the writing or other document is actually
- 272 received:
- 273 (a) by the domestic or foreign nonprofit corporation at:
- 274 (i) its registered office in this state; or
- 275 (ii) its principal office;

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

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

280 (40) (a) "Record date" means the date established under Part 6, Members, or Part 7,
281 Member Meetings and Voting, on which a nonprofit corporation determines the identity of the
282 nonprofit corporation's members.

283 (b) The determination described in Subsection (40)(a) shall be made as of the close of
284 business on the record date unless another time for doing so is specified when the record date is
285 fixed.

286 (41) "Registered agent" means the registered agent of:

287 (a) a domestic nonprofit corporation required to be maintained pursuant to Subsection
288 16-6a-501(1)(b); or

289 (b) a foreign nonprofit corporation required to be maintained pursuant to Subsection
290 16-6a-1508(1)(b).

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

294 (a) articles of incorporation;

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

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

297 (43) "Secretary" means the corporate officer to whom the bylaws or the board of
298 directors [~~has delegated~~] delegates responsibility under Subsection 16-6a-818(3) for:

299 (a) the preparation and maintenance of:

300 (i) minutes of the meetings of:

301 (A) the board of directors; or

302 (B) the members; and

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

305 (b) authenticating records of the nonprofit corporation.

306 (44) "Shareholder" means [~~the~~] a person in whose name a share is registered in the

307 records of a nonprofit corporation.

308 (45) "Share" means a unit of interest in a nonprofit corporation.

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

310 (a) a state;

311 (b) a commonwealth;

312 (c) the District of Columbia;

313 (d) an agency or governmental and political subdivision of a state, commonwealth, or

314 District of Columbia;

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

316 (f) an agency or governmental and political subdivision of a territory or insular

317 possession of the United States.

318 (47) "Street address" means:

319 (a) (i) street name and number;

320 (ii) city or town; and

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

322 (b) if, by reason of rural location or otherwise, a street name, number, city, or town

323 does not exist, an appropriate description other than that described in Subsection (47)(a) fixing

324 as nearly as possible the actual physical location, but only if the information includes:

325 (i) the rural free delivery route;

326 (ii) the county; and

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

328 (48) "Tribe" means a tribe, band, nation, pueblo, or other organized group or

329 community of Indians, including an Alaska Native village, that is legally recognized as eligible

330 for and is consistent with a special program, service, or entitlement provided by the United

331 States to Indians because of their status as Indians.

332 [~~(48)~~] (49) "United States" includes [~~any~~] a district, authority, office, bureau,

333 commission, department, and [~~any other~~] another agency of the United States of America.

334 [~~(49)~~] (50) "Vote" includes authorization by:

335 (a) written ballot; and

336 (b) written consent.

337 [~~(50)~~] (51) (a) "Voting group" means all the members of one or more classes of

338 members or directors that, under this chapter, the articles of incorporation, or the bylaws, are
339 entitled to vote and be counted together collectively on a matter.

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

342 [~~51~~] (52) (a) "Voting member" means a person entitled to vote for all matters
343 required or permitted under this chapter to be submitted to a vote of the members, except as
344 otherwise provided in the articles of incorporation or bylaws.

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

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

349 (c) Except as the bylaws may otherwise provide, "voting member" includes a
350 "shareholder" if the nonprofit corporation has shareholders.

351 Section 3. Section **16-6a-1101** is amended to read:

352 **16-6a-1101. Merger.**

353 (1) One or more domestic corporations, foreign corporations, domestic nonprofit
354 corporations, or foreign nonprofit corporations may merge into a nonprofit corporation if:

355 (a) [~~if~~] the board of directors of each domestic corporation, foreign corporation,
356 domestic nonprofit corporation, or foreign nonprofit corporation party to the merger adopts a
357 plan of merger;

358 (b) [~~if~~] the members of each domestic nonprofit corporation entitled to vote on the plan
359 of merger, approve the plan of merger if required by Section 16-6a-1102;

360 (c) [~~if~~] the shareholders of each domestic corporation entitled to vote on the plan of
361 merger, approve the plan of merger, if required by Section 16-10a-1103;

362 (d) [~~if~~] the merger is permitted by and consistent with the laws of the state, tribe, or
363 country under whose law [~~each~~] a foreign corporation or foreign nonprofit corporation party to
364 the merger is incorporated;

365 (e) [~~if~~] the shareholders of each [~~such~~] foreign corporation party approve the plan of
366 merger and as required by applicable law of the states, tribes, or countries under whose law
367 each foreign corporation party to the merger is incorporated; and

368 (f) [~~if~~] the members of each [~~such~~] foreign nonprofit corporation party approve the plan

369 of merger and as required by applicable law of the states, tribes, or countries under whose law
370 each foreign nonprofit corporation party to the merger is incorporated.

371 (2) The plan of merger required by Subsection (1) shall set forth:

372 (a) the name of each party to the merger planning to merge;

373 (b) the name of the surviving domestic nonprofit corporation into which each party to
374 the merger plans to merge;

375 (c) the terms and conditions of the merger;

376 (d) the manner and basis of converting in whole or part the shares or memberships if
377 any, of each party to the merger into shares, memberships, obligations, or other interests of:

378 (i) the surviving domestic nonprofit corporation;

379 (ii) [~~any other~~] another entity; or

380 (iii) into money or other property; and

381 (e) any amendments to the articles of incorporation of the surviving domestic nonprofit
382 corporation to be effected by the merger.

383 (3) In addition to the provisions required by Subsection (2), the plan of merger may set
384 forth other provisions relating to the merger.

385 (4) One or more domestic corporations may merge into a domestic nonprofit
386 corporation if:

387 (a) the board of directors of each participating domestic corporation adopts the plan of
388 merger;

389 (b) the shareholders of each participating domestic corporation adopt the plan of
390 merger in accordance with Section 16-10a-1103; and

391 (c) the merger is effected in compliance with Chapter 6a, Part 11, Merger.

392 Section 4. Section **16-6a-1105** is amended to read:

393 **16-6a-1105. Merger with foreign nonprofit corporation.**

394 (1) One or more domestic nonprofit corporations may merge with one or more foreign
395 nonprofit corporations if:

396 (a) the merger is permitted by the law of the state, tribe, or country under whose law
397 each foreign nonprofit corporation is incorporated;

398 (b) each foreign nonprofit corporation complies with the provisions of the law
399 described in Subsection (1)(a) in effecting the merger;

400 (c) [if] the foreign nonprofit corporation is the surviving nonprofit corporation of the
401 merger, the foreign nonprofit corporation:

402 (i) complies with Section 16-6a-1103; and

403 (ii) in addition to the information required by Section 16-6a-1103, provides the address
404 of its principal office; and

405 (d) each domestic nonprofit corporation complies with:

406 (i) the applicable provisions of Sections 16-6a-1101 and 16-6a-1102; and

407 (ii) Section 16-6a-1103, if it is the surviving nonprofit corporation of the merger[~~,-with~~
408 ~~Section 16-6a-1103~~].

409 (2) Upon the merger taking effect, a surviving foreign nonprofit corporation of a
410 merger shall:

411 (a) (i) maintain a registered agent to accept service in [any] a proceeding based on a
412 cause of action arising with respect to [any] a domestic nonprofit corporation that is merged
413 into the foreign nonprofit corporation; or

414 (ii) be considered to have authorized service of process on it in connection with [any] a
415 proceeding described in Subsection (2)(a)(i) by registered or certified mail, return receipt
416 requested, to the address of its principal office as:

417 (A) set forth in the articles of merger; or

418 (B) as last changed in a notice delivered to the division; and

419 (b) [shall] comply with this chapter if it is to conduct affairs in this state.

420 (3) Service effected pursuant to Subsection (2)(a)(ii) is perfected at the earliest of:

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

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

424 (c) five days after mailing.

425 (4) Subsection (2) does not prescribe the only means, or necessarily the required
426 means, of serving a surviving foreign nonprofit corporation of a merger.

427 Section 5. Section **16-6a-1503** is amended to read:

428 **16-6a-1503. Application for authority to conduct affairs.**

429 (1) A foreign nonprofit corporation may apply for authority to conduct affairs in this
430 state by delivering to the division for filing an application for authority to conduct affairs

431 setting forth:

- 432 (a) its corporate name and its assumed corporate name, if any;
433 (b) the name of the state, tribe, or country under whose law it is incorporated;
434 (c) its date of incorporation;
435 (d) its period of duration;
436 (e) the street address of its principal office;
437 (f) the address of its registered office;
438 (g) the name of its registered agent at the office listed in Subsection (1)(f);
439 (h) the names and usual business addresses of its current directors and officers;
440 (i) the date it commenced or expects to commence conducting affairs in this state; and
441 (j) [~~such~~] the additional information [~~as~~] the division determines is necessary or
442 appropriate to determine whether the application for authority to conduct affairs should be
443 filed.

444 (2) With the completed application required by Subsection (1) the foreign nonprofit
445 corporation shall deliver to the division for a certificate of existence, or a document of similar
446 import that is:

- 447 (a) authenticated by the division or other official having custody of corporate records in
448 the state, tribe, or country under whose law it is incorporated; and
449 (b) dated within 90 days before the [~~filing of~~] day on which the application for
450 authority to conduct affairs is filed.

451 (3) The foreign nonprofit corporation shall include in the application for authority to
452 conduct affairs, or in an accompanying document, written consent to appointment by its
453 designated registered agent.

454 Section 6. Section **16-6a-1504** is amended to read:

455 **16-6a-1504. Amended application for authority to conduct affairs.**

456 (1) A foreign nonprofit corporation authorized to conduct affairs in this state shall
457 deliver an amended application for authority to conduct affairs to the division for filing if the
458 foreign nonprofit corporation changes:

- 459 (a) its corporate name;
460 (b) its assumed corporate name;
461 (c) the period of its duration; or

462 (d) the state, tribe, or country of its incorporation.

463 (2) The requirements of Section 16-6a-1503 for filing an original application for
464 authority to conduct affairs apply to filing an amended application for authority to conduct
465 affairs under this section.

466 Section 7. Section **16-6a-1507** is amended to read:

467 **16-6a-1507. Registered name of foreign nonprofit corporation.**

468 (1) (a) A foreign nonprofit corporation may register its corporate name as provided in
469 this section if the name would be available for use as a corporate name for a domestic nonprofit
470 corporation under Section 16-6a-401.

471 (b) If the foreign nonprofit corporation's corporate name would not be available for use
472 as a corporate name for a domestic nonprofit corporation, the foreign nonprofit corporation
473 may register its corporate name modified by the addition of any of the following words or
474 abbreviations, if the modified name would be available for use under Section 16-6a-401:

475 (i) "corporation";

476 (ii) "incorporated";

477 (iii) "company";

478 (iv) "corp.";

479 (v) "inc."; or

480 (vi) "co."

481 (2) A foreign nonprofit corporation registers its corporate name, or its corporate name
482 with any addition permitted by Subsection (1), by delivering to the division for filing an
483 application for registration:

484 (a) setting forth:

485 (i) its corporate name;

486 (ii) the name to be registered that [~~shall meet~~] meets the requirements of Section
487 16-6a-401 that apply to domestic nonprofit corporations;

488 (iii) the state, tribe, or country and date of incorporation; and

489 (iv) a brief description of the nature of the business in which it is engaged; and

490 (b) accompanied by a certificate of existence, or a document of similar import from the
491 state, tribe, or country of incorporation as evidence that the foreign nonprofit corporation is in
492 existence or has authority to conduct affairs under the laws of the state, tribe, or country in

493 which it is organized.

494 (3) (a) A name is registered for the applicant upon the effective date of the application.

495 (b) An initial registration is effective for one year.

496 (4) (a) A foreign nonprofit corporation that has in effect a registration of its corporate
497 name as permitted by Subsection (1) may renew the registration by delivering to the division
498 for filing a renewal application for registration, that complies with the requirements of
499 Subsection (2).

500 (b) When filed, the renewal application for registration renews the registration for the
501 year following filing.

502 (5) (a) A foreign nonprofit corporation that has in effect registration of its corporate
503 name may:

504 (i) apply for authority to conduct affairs in this state under the registered name in
505 accordance with the procedure set forth in this part; or

506 (ii) assign the registration to another foreign nonprofit corporation by delivering to the
507 division for filing an assignment of the registration that states:

508 (A) the registered name;

509 (B) the name of the assigning foreign nonprofit corporation;

510 (C) the name of the assignee; and

511 (D) the assignee's application for registration of the name.

512 (b) The assignee's application for registration of the name required by Subsection (5)(a)
513 shall meet the requirements of this part.

514 (6) (a) A foreign nonprofit corporation that has in effect registration of its corporate
515 name may terminate the registration at any time by delivering to the division for filing a
516 statement of termination:

517 (i) setting forth the corporate name; and

518 (ii) stating that the registration is terminated.

519 (b) A registration automatically terminates upon the filing of an application for
520 authority to conduct affairs in this state under the registered name.

521 (7) The registration of a corporate name under Subsection (1) constitutes authority by
522 the division to file an application meeting the requirements of this part for authority to conduct
523 affairs in this state under the registered name, but the authorization is subject to the limitations

524 applicable to corporate names as set forth in Section 16-6a-403.

525 Section 8. Section **16-6a-1512** is amended to read:

526 **16-6a-1512. Merger of foreign nonprofit corporations authorized to conduct**
527 **affairs in this state.**

528 (1) If two or more foreign nonprofit corporations authorized to conduct affairs in this
529 state are a party to a statutory merger permitted by the laws of the state, tribe, or country under
530 the laws of which they are incorporated within 30 days after the merger becomes effective, the
531 surviving nonprofit corporation shall file with the division a certificate of fact of merger
532 certified by the proper officer of the state, tribe, or country under the laws of which the
533 statutory merger was effected.

534 (2) [~~It is not necessary for a~~] A foreign nonprofit corporation authorized to conduct
535 affairs in this state that is a party to a statutory merger described in Subsection (1) is not
536 required to procure a new or amended certificate of authority to conduct affairs in this state
537 unless the name of the surviving nonprofit corporation is changed by the statutory merger.

538 Section 9. Section **16-6a-1513** is amended to read:

539 **16-6a-1513. Withdrawal of foreign nonprofit corporation.**

540 (1) A foreign nonprofit corporation authorized to conduct affairs in this state may not
541 withdraw from this state until its application for withdrawal [~~has been~~] is filed by the division.

542 (2) A foreign nonprofit corporation authorized to conduct affairs in this state may apply
543 for withdrawal by delivering to the division for filing an application for withdrawal setting
544 forth:

545 (a) its corporate name and its assumed name, if any;

546 (b) the name of the state, tribe, or country under whose law it is incorporated;

547 (c) (i) (A) the address of its principal office; or

548 (B) if a principal office is not to be maintained, a statement that the foreign nonprofit
549 corporation will not maintain a principal office; and

550 (ii) if different from the address of the principal office or if no principal office is to be
551 maintained, the address to which service of process may be mailed pursuant to Section
552 16-6a-1514;

553 (d) that the foreign nonprofit corporation is not conducting affairs in this state;

554 (e) that it surrenders its authority to conduct affairs in this state;

555 (f) whether its registered agent will continue to be authorized to accept service on its
556 behalf in ~~[any]~~ a proceeding based on a cause of action arising during the time it was
557 authorized to conduct affairs in this state; and

558 (g) any additional information that the division determines is necessary or appropriate
559 to:

560 (i) determine whether the foreign nonprofit corporation is entitled to withdraw; and

561 (ii) determine and assess any unpaid taxes, fees, and penalties payable by the foreign
562 nonprofit corporation as prescribed by this chapter.

563 (3) A foreign nonprofit corporation's application for withdrawal may not be filed by the
564 division until:

565 (a) all outstanding fees and state tax obligations ~~[have been]~~ are paid; and

566 (b) the division ~~[has received]~~ receives a certificate from the State Tax Commission
567 reciting that all taxes owed by the foreign nonprofit corporation ~~[have been]~~ are paid.

568 Section 10. Section **16-6a-1515** is amended to read:

569 **16-6a-1515. Grounds for revocation.**

570 The division may commence a proceeding under Section 16-6a-1516 to revoke the
571 authority of a foreign nonprofit corporation to conduct affairs in this state if:

572 (1) the foreign nonprofit corporation does not deliver its annual report to the division
573 when it is due;

574 (2) the foreign nonprofit corporation does not pay when ~~[they are]~~ it is due ~~[any taxes,~~
575 ~~fees, or penalties]~~ a tax, fee, or penalty imposed by this chapter or other applicable laws of this
576 state;

577 (3) the foreign nonprofit corporation is without a registered agent or registered office in
578 this state;

579 (4) the foreign nonprofit corporation does not inform the division under Section
580 16-6a-1509 or 16-6a-1510 that:

581 (a) its registered agent or registered office ~~[has]~~ changed;

582 (b) its registered agent ~~[has]~~ resigned; or

583 (c) its registered office ~~[has been]~~ is discontinued;

584 (5) an incorporator, director, officer, or agent of the foreign nonprofit corporation signs
585 a document knowing it is false in any material respect with intent that the document be

586 delivered to the division for filing; or

587 (6) the division receives a duly authenticated certificate from the division or other
588 official having custody of corporate records in the state, tribe, or country under whose law the
589 foreign nonprofit corporation is incorporated stating that the foreign nonprofit corporation
590 ~~has~~ is dissolved or disappeared as the result of a merger.

591 Section 11. Section **16-6a-1607** is amended to read:

592 **16-6a-1607. Annual report for division.**

593 (1) ~~Each~~ A domestic nonprofit corporation, and ~~each~~ a foreign nonprofit
594 corporation authorized to conduct affairs in this state, shall deliver to the division for filing an
595 annual report on a form provided by the division that sets forth:

596 (a) (i) the corporate name of the domestic or foreign nonprofit corporation; and

597 (ii) any assumed corporate name of the foreign nonprofit corporation;

598 (b) the state, tribe, or country under whose law it is incorporated;

599 (c) the street address of its registered office in this state;

600 (d) the name of its registered agent at the office listed in Subsection (1)(c);

601 (e) the street address of its principal office; and

602 (f) the names and addresses of its directors and principal officers.

603 (2) The division shall deliver a copy of the prescribed form of annual report to each
604 domestic nonprofit corporation and each foreign nonprofit corporation authorized to conduct
605 affairs in this state.

606 (3) Information in the annual report shall be current as of the date the annual report is
607 executed on behalf of the nonprofit corporation.

608 (4) (a) The annual report of a domestic or foreign nonprofit corporation shall be
609 delivered annually to the division no later than 60 days past the ~~date~~ day on which the report
610 ~~was~~ is mailed by the division.

611 (b) Proof to the satisfaction of the division that the nonprofit corporation ~~has~~ mailed
612 an annual report form is considered in compliance with this Subsection (4).

613 (5) (a) If an annual report contains the information required by this section, the division
614 shall file ~~it~~ the annual report.

615 (b) If an annual report does not contain the information required by this section, the
616 division shall:

617 (i) promptly notify the reporting domestic or foreign nonprofit corporation in writing;
618 and

619 (ii) return the annual report to ~~[it]~~ the domestic or foreign nonprofit corporation for
620 correction.

621 (c) If an annual report that is rejected under Subsection (5)(b) ~~[was]~~ is otherwise timely
622 filed and is corrected to contain the information required by this section and delivered to the
623 division within 30 days after the effective date of the notice of rejection, the annual report is
624 considered to be timely filed.

625 (6) The fact that an individual's name is signed on an annual report form is prima facie
626 evidence for division purposes that the individual is authorized to certify the report on behalf of
627 the nonprofit corporation.

628 (7) The annual report form provided by the division may be designed to provide a
629 simplified certification by the nonprofit corporation if no changes have been made in the
630 required information from the last preceding report filed.

631 (8) A domestic or foreign nonprofit corporation may, but may not be required to,
632 deliver to the division for filing an amendment to its annual report reflecting ~~[any]~~ a change in
633 the information contained in its annual report as last amended.

634 Section 12. Section **16-10a-102** is amended to read:

635 **16-10a-102. Definitions.**

636 As used in this chapter:

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

639 (b) "Address" includes:

640 (i) a post office box number;

641 (ii) a rural free delivery route number; and

642 (iii) a street name and number.

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

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

648 available for use in this state.

649 (4) "Articles of incorporation" include:

650 (a) amended and restated articles of incorporation;

651 (b) articles of merger; and

652 (c) [~~documents~~] a document of a similar import to those described in Subsections
653 (4)(a) and (b).

654 (5) "Authorized shares" means the shares of all classes a domestic or foreign
655 corporation is authorized to issue.

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

657 (7) "Cash" and "money" are used interchangeably in this chapter and mean:

658 (a) legal tender [~~and~~];

659 (b) a negotiable [~~instruments~~] instrument; and [~~other~~]

660 (c) a cash [~~equivalents~~] equivalent readily convertible into legal tender.

661 (8) "Conspicuous" means so written that a reasonable person against whom the writing
662 is to operate should have noticed it, including[~~:(a)~~] printing or typing in:

663 (a) italics;

664 (b) boldface;

665 (c) contrasting color;

666 (d) capitals; or

667 (e) underlining.

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

671 (10) "Corporate name" means:

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

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

676 (11) "Corporation" or "domestic corporation" means a corporation for profit[~~,which~~]
677 that:

678 (a) is not a foreign corporation[~~;~~]; and

679 (b) is incorporated under or subject to ~~[the provisions of]~~ this chapter.

680 (12) "Deliver" includes delivery by mail ~~[and any other]~~ or another means of
681 transmission authorized by Section 16-10a-103, except that delivery to the division means
682 actual receipt by the division.

683 (13) (a) "Distribution" means the following by a corporation to or for the benefit of its
684 shareholders in respect of any of the corporation's shares:

685 (i) a direct or indirect transfer of money or other property, other than a corporation's
686 own shares; or

687 (ii) incurrence of indebtedness by the corporation.

688 (b) A distribution may be in the form of:

689 (i) a declaration or payment of a dividend;

690 (ii) a purchase, redemption, or other acquisition of shares;

691 (iii) distribution of indebtedness; or

692 (iv) ~~[other]~~ another form.

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

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

696 (16) "Effective date of notice" means the date notice is effective as provided in Section
697 16-10a-103.

698 (17) "Electronic transmission" or "electronically transmitted" means ~~[any]~~ a process of
699 communication not directly involving the physical transfer of paper that is suitable for the
700 receipt, retention, retrieval, and reproduction of information by the recipient, whether by
701 e-mail, facsimile, or otherwise.

702 (18) "Employee" includes an officer but not a director, unless the director accepts
703 ~~[duties]~~ a duty that ~~[make]~~ makes that director also an employee.

704 (19) "Entity" includes:

705 (a) a domestic and foreign corporation;

706 (b) a nonprofit corporation;

707 (c) a limited liability company;

708 (d) a profit or nonprofit unincorporated association;

709 (e) a business trust;

- 710 (f) an estate;
- 711 (g) a partnership;
- 712 (h) a trust;
- 713 (i) two or more persons having a joint or common economic interest;
- 714 (j) a state;
- 715 (k) the United States; and
- 716 (l) a foreign government.
- 717 (20) "Foreign corporation" means a corporation for profit incorporated under a law
- 718 other than the law of this state.
- 719 (21) "Governmental subdivision" means:
- 720 (a) county;
- 721 (b) municipality; or
- 722 (c) [~~any other~~] another type of governmental subdivision authorized by the laws of this
- 723 state.
- 724 (22) "Individual" means:
- 725 (a) a natural person;
- 726 (b) the estate of an incompetent individual; or
- 727 (c) the estate of a deceased individual.
- 728 (23) "Mail," "mailed," or "mailing" means deposit, deposited, or depositing in the
- 729 United States mail, properly addressed, first class postage prepaid, and includes registered or
- 730 certified mail for which the proper fee [~~has been~~] is paid.
- 731 (24) "Notice" is as provided in Section 16-10a-103.
- 732 (25) "Principal office" means the office, in or out of this state, designated by a
- 733 domestic or foreign corporation as its principal office in the most recent document on file with
- 734 the division providing the information, including:
- 735 (a) an annual report;
- 736 (b) an application for a certificate of authority; or
- 737 (c) a notice of change of principal office.
- 738 (26) "Proceeding" includes:
- 739 (a) a civil suit;
- 740 (b) arbitration or mediation; and

- 741 (c) a criminal, administrative, or investigatory action.
- 742 (27) "Qualified shares" means, with respect to a director's conflicting interest
743 transaction pursuant to Section 16-10a-853, [~~any~~] one or more shares entitled to vote on the
744 transaction, except [~~shares~~] a share:
- 745 (a) that, to the knowledge, before the vote, of the secretary, other officer, or agent of
746 the corporation authorized to tabulate votes, [~~are~~] is beneficially owned; or
- 747 (b) the voting of which is controlled, by:
- 748 (i) a director who has a conflicting interest respecting the transaction;
- 749 (ii) a related person of that director; or
- 750 (iii) [~~persons~~] a person referred to in Subsections (27)(b)(i) and (ii).
- 751 (28) "Receive," when used in reference to receipt of a writing or other document by a
752 domestic or foreign corporation, means the writing or other document is actually received by:
- 753 (a) [~~by~~] the corporation at its:
- 754 (i) registered office in this state; or [~~at its~~]
- 755 (ii) principal office;
- 756 (b) [~~by~~] the secretary of the corporation, wherever the secretary is found; or
- 757 (c) [~~by any other~~] another person authorized by the bylaws or the board of directors to
758 receive the writing or other document, wherever that person is found.
- 759 (29) (a) "Record date" means the date established under Part 6, Shares and
760 Distributions, or Part 7, Shareholders, on which a corporation determines the identity of its
761 shareholders.
- 762 (b) The determination under Subsection (29)(a) shall be made as of the close of
763 business on the record date unless another time for doing so is specified when the record date is
764 fixed.
- 765 (30) "Registered office" means the office within this state designated by a domestic or
766 foreign corporation as its registered office in the most recent document on file with the division
767 providing that information, including:
- 768 (a) articles of incorporation;
- 769 (b) an application for a certificate of authority; or
- 770 (c) a notice of change of registered office.
- 771 (31) "Related person" of a director means:

772 (a) the spouse of the director~~[, or]~~;

773 (b) a child, grandchild, sibling, or parent of the director;

774 ~~(b)~~ (c) the spouse of a child, grandchild, sibling, or parent of the director;

775 ~~(c)~~ (d) an individual having the same home as the director;

776 ~~(d)~~ (e) a trust or estate of which the director or any other individual specified in this

777 Subsection (31) is a substantial beneficiary; or

778 ~~(e)~~ (f) a trust, estate, incompetent, conservatee, or minor of which the director is a

779 fiduciary.

780 (32) "Secretary" means the corporate officer to whom the bylaws or the board of

781 directors ~~[has delegated]~~ delegates responsibility under Subsection 16-10a-830(3) for:

782 (a) the preparation and maintenance of:

783 (i) minutes of the meetings of the board of directors and of the shareholders; and

784 (ii) the other records and information required to be kept by the corporation by Section

785 16-10a-830; and

786 (b) ~~[for]~~ authenticating records of the corporation.

787 (33) "~~[Shares]~~ Share" means the ~~[units]~~ unit into which the proprietary interests in a

788 corporation are divided.

789 (34) (a) "Shareholder" means:

790 (i) the person in whose name ~~[shares are]~~ a share is registered in the records of a

791 corporation; or

792 (ii) the beneficial owner of ~~[shares]~~ a share to the extent recognized pursuant to Section

793 16-10a-723.

794 (b) For purposes of this chapter:

795 ~~(a)~~ (i) the following, identified as a shareholder in a corporation's current record of

796 shareholders, constitute one shareholder:

797 ~~(i)~~ (A) (I) three or fewer coowners; or

798 ~~(B)~~ (II) in the case of more than three coowners, each coowner in excess of the first

799 three ~~[will be]~~ is counted as a separate shareholder;

800 ~~(ii)~~ (B) a corporation, limited liability company, partnership, trust, estate, or other

801 entity; and

802 ~~(iii)~~ (C) the trustees, guardians, custodians, or other fiduciaries of a single trust,

803 estate, or account;

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

806 ~~[(c) in any case where]~~ (iii) if the record of [shareholders has not been] a shareholder
807 is not maintained in accordance with accepted practice, [any] an additional person who would
808 be identified as an owner on that record if it had been maintained in accordance with accepted
809 practice shall be included as a holder of record.

810 (35) "Subscriber" means a person who subscribes for shares in a corporation, whether
811 before or after incorporation.

812 (36) "Tribe" means a tribe, band, nation, pueblo, or other organized group or
813 community of Indians, including an Alaska Native village, that is legally recognized as eligible
814 for and is consistent with a special program, service, or entitlement provided by the United
815 States to Indians because of their status as Indians.

816 ~~[(36)]~~ (37) (a) "Voting group" means all shares of one or more classes or series that
817 under the articles of incorporation or this chapter are entitled to vote and be counted together
818 collectively on a matter at a meeting of shareholders.

819 (b) All shares entitled by the articles of incorporation or this chapter to vote generally
820 on the matter are for that purpose a single voting group.

821 Section 13. Section **16-10a-1107** is amended to read:

822 **16-10a-1107. Merger or share exchange with foreign corporations.**

823 (1) One or more domestic corporations may merge or enter into a share exchange with
824 one or more foreign corporations if:

825 (a) in a merger, the merger is permitted by the law of the state, tribe, or country under
826 whose law each foreign corporation is incorporated and each foreign corporation complies with
827 that law in effecting the merger;

828 (b) in a share exchange, the corporation whose shares will be acquired is a domestic
829 corporation, whether or not a share exchange is permitted by the law of the state, tribe, or
830 country under whose law the acquiring corporation is incorporated;

831 (c) the foreign corporation;

832 (i) complies with Section 16-10a-1105 if it is the surviving corporation of the merger
833 or the acquiring corporation of the share exchange[;]; and

834 (ii) provides, in addition to the information required by Section 16-10a-1105, the
835 address of its principal office; and

836 (d) each domestic corporation complies with the applicable provisions of Sections
837 16-10a-1101 through 16-10a-1104 and, if it is the surviving corporation of the merger with
838 Section 16-10a-1105.

839 (2) Upon the merger or share exchange taking effect, the surviving foreign corporation
840 of a merger and the acquiring foreign corporation of a share exchange shall either:

841 (a) (i) maintain a registered agent in this state to accept service in ~~[any]~~ a proceeding:

842 (A) to enforce ~~[any]~~ an obligation or ~~[rights of]~~ right of a dissenting ~~[shareholders]~~
843 shareholder of each domestic corporation party to the merger or share exchange~~;~~; or ~~[in any~~
844 proceeding]

845 (B) based on a cause of action arising with respect to ~~[any]~~ a domestic corporation that
846 is merged into the foreign corporation; or

847 (ii) be considered to have authorized service of process on it, in connection with ~~[any~~
848 such] a proceeding described in Subsection (2)(a)(i), by registered or certified mail return
849 receipt requested, to the address of its principal office;

850 (A) as set forth in the articles of merger or share exchange; or

851 (B) as last changed by notice delivered to the division for filing;

852 (b) promptly pay to the dissenting shareholders of each domestic corporation party to
853 the merger or share exchange the amount, if any, to which they are entitled under Part 13,

854 Dissenters' Rights; and

855 (c) comply with Part 15, Authority of Foreign Corporation to Transact Business, if it is
856 to transact business in this state.

857 (3) Service effected pursuant to Subsection (2)(a)(ii) is perfected at the earliest of:

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

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

860 or

861 (c) five days after mailing.

862 (4) Subsection (2) does not prescribe the only means, or necessarily the required
863 means, of serving a surviving foreign corporation of a merger or an acquiring foreign
864 corporation in a share exchange.

865 (5) This section does not limit the power of a foreign corporation to acquire all or part
866 of the shares of one or more classes or series of a domestic corporation through a voluntary
867 exchange of shares or otherwise.

868 Section 14. Section **16-10a-1503** is amended to read:

869 **16-10a-1503. Application for authority to transact business.**

870 (1) A foreign corporation may apply for authority to transact business in this state by
871 delivering to the division for filing an application for authority to transact business setting
872 forth:

- 873 (a) its corporate name and its assumed name, if any;
- 874 (b) the name of the state, tribe, or country under whose law it is incorporated;
- 875 (c) its date of incorporation and period of its corporate duration;
- 876 (d) the street address of its principal office;
- 877 (e) the address of its registered office in this state and the name of its registered agent
878 at that office;

- 879 (f) the names and usual business addresses of its current directors and officers;
- 880 (g) the date it commenced or expects to commence transacting business in this state;

881 and

882 (h) any additional information the division may determine is necessary or appropriate
883 to determine whether the application for authority to transact business should be filed.

884 (2) The foreign corporation shall deliver with the completed application for authority to
885 transact business a certificate of existence, or a document of similar import, duly authorized by
886 the lieutenant governor or other official having custody of corporate records in the state, tribe,
887 or country under whose law it is incorporated. The certificate of existence shall be dated
888 within 90 days prior to the [~~filing of~~] day on which the application for authority to transact
889 business by the division is filed.

890 (3) The foreign corporation shall include in the application for authority to transact
891 business, or in an accompanying document, the written consent to appointment by the
892 designated registered agent.

893 Section 15. Section **16-10a-1504** is amended to read:

894 **16-10a-1504. Amended application for authority to transact business.**

895 (1) A foreign corporation authorized to transact business in this state shall deliver an

896 amended application for authority to transact business to the division for filing if the foreign
897 corporation changes:

898 (a) its corporate name or its assumed corporate name;

899 (b) the period of its duration; or

900 (c) the state, tribe, or country of its incorporation.

901 (2) The requirements of Section 16-10a-1503 for obtaining an original application for
902 authority to transact business apply to filing an amended application for authority to transact
903 business under this section.

904 Section 16. Section **16-10a-1507** is amended to read:

905 **16-10a-1507. Registered name of foreign corporation.**

906 (1) (a) A foreign corporation may register its corporate name as provided in this section
907 if the name [~~would be~~] is available for use as a corporate name for a domestic corporation
908 under Section 16-10a-401.

909 (b) If the foreign corporation's corporate name [~~would~~] is not [~~be~~] available for [~~such~~
910 ~~use, then~~] use for a domestic corporation, the foreign corporation may register its corporate
911 name modified by the addition of any of the following words or abbreviations, if the modified
912 name would be available for use under Section 16-10a-401:

913 (i) "corporation[;]";

914 (ii) "incorporated[;]";

915 (iii) "company[;]";

916 (iv) "corp.[;]";

917 (v) "inc.[;]"; or

918 (vi) "co."

919 (2) A foreign corporation registers its corporate name, or its corporate name with any
920 addition permitted by Subsection (1), by delivering to the division for filing an application for
921 registration:

922 (a) setting forth:

923 (i) its corporate name[;];

924 (ii) the name to be registered, which [~~must meet~~] meets the requirements of Section
925 16-10a-401 that apply to domestic corporations[;];

926 (iii) the state, tribe, or country and date of incorporation[;]; and

927 (iv) a brief description of the nature of the business in which it is engaged; and
928 (b) accompanied by a certificate of existence, or a document of similar import from the
929 state, tribe, or country of incorporation as evidence that the foreign corporation is in existence
930 or has authority to transact business under the laws of the state, tribe, or country in which it is
931 organized.

932 (3) (a) The name is registered for the applicant upon the effective date of the
933 application~~[-and the]~~.

934 (b) An initial registration is effective until the end of the calendar year in which it
935 [~~became~~] becomes effective.

936 (4) (a) A foreign corporation that has in effect a registration of its corporate name as
937 permitted by Subsection (1) may renew the registration for the following year by delivering to
938 the division for filing a renewal application for registration~~[-which]~~:

939 (i) that complies with the requirements of Subsection (2)~~[-]~~; and
940 (ii) between October 1 and December 31 of the preceding year.

941 (b) When filed, the renewal application for registration renews the registration for the
942 following calendar year.

943 (5) (a) A foreign corporation that has in effect registration of its corporate name may:

944 (i) apply for authority to transact business in this state under the registered name in
945 accordance with the procedure set forth in this part; ~~or~~ ~~[it may]~~

946 (ii) assign the registration to another foreign corporation by delivering concurrently to
947 the division for filing:

948 (A) an assignment of the registration that states:

949 (I) the registered name~~[-]~~;

950 (II) the name of the assigning foreign corporation~~[-]~~; and

951 (III) the name of the assignee~~[-concurrently with the delivery to the division for filing~~
952 ~~of]~~; and

953 (B) the assignee's application for registration of the name. ~~[The]~~

954 (b) An assignee's application must meet the requirements of this part.

955 (6) (a) A foreign corporation that has in effect registration of its corporate name may
956 terminate the registration at any time by delivering to the division for filing a statement of
957 termination;

958 (i) setting forth the corporate name; and
959 (ii) stating that the registration is terminated.

960 (b) A registration automatically terminates upon the filing of an application for
961 authority to transact business in this state under the registered name.

962 (7) The registration of a corporate name under Subsection (1) constitutes authority by
963 the division to file an application meeting the requirements of this part for authority to transact
964 business in this state under the registered name, but the authorization is subject to the
965 limitations applicable to corporate names as set forth in Section 16-10a-403.

966 Section 17. Section **16-10a-1520** is amended to read:

967 **16-10a-1520. Withdrawal of foreign corporation.**

968 (1) A foreign corporation authorized to transact business in this state may not withdraw
969 from this state until its application for withdrawal [~~has been~~] is filed by the division.

970 (2) A foreign corporation authorized to transact business in this state may apply for
971 withdrawal by delivering to the division for filing an application for withdrawal setting forth:

- 972 (a) its corporate name and its assumed name, if any;
- 973 (b) the name of the state, tribe, or country under whose law it is incorporated;
- 974 (c) ~~(i)~~ (A) the address of its principal office[;]; or [~~if none~~]
- 975 (B) if no principal office is to be maintained, a statement that the corporation will not
976 maintain a principal office[;]; and

977 (ii) if different from the address of the principal office or if no principal office is to be
978 maintained, the address to which service of process may be mailed pursuant to Section
979 16-10a-1521;

980 (d) that the corporation is not transacting business in this state [~~and~~];

981 (e) that [~~it~~] the corporation surrenders its authority to transact business in this state;

982 [~~(e)~~] (f) whether its registered agent will continue to be authorized to accept service on
983 its behalf in [~~any~~] a proceeding based on a cause of action arising during the time it was
984 authorized to transact business in this state; and

985 [~~(f)~~] (g) any additional information that the division determines is necessary or
986 appropriate to:

987 (i) determine whether the corporation is entitled to withdraw[;]; and [~~to~~]

988 (ii) determine and assess [~~any~~] an unpaid [~~taxes, fees, and penalties~~] tax, fee, or penalty

989 payable by ~~[it]~~ the corporation as prescribed by this chapter.

990 (3) A foreign corporation's application for withdrawal may not be filed by the division
991 until:

992 (a) all outstanding fees and state tax obligations ~~[have been]~~ are paid; and

993 (b) the division ~~[has received]~~ receives a tax clearance certificate from the State Tax
994 Commission.

995 Section 18. Section **16-10a-1530** is amended to read:

996 **16-10a-1530. Grounds for revocation.**

997 The division may commence a proceeding under Section 16-10a-1531 to revoke the
998 authority of a foreign corporation to transact business in this state if:

999 (1) the foreign corporation does not deliver its annual report to the division when it is
1000 due;

1001 (2) the foreign corporation does not pay when ~~[they are due any taxes, fees, or~~
1002 ~~penalties]~~ it is due a tax, fee, or penalty imposed by this chapter or other applicable laws of this
1003 state;

1004 (3) the foreign corporation is without a registered agent or registered office in this
1005 state;

1006 (4) the foreign corporation does not inform the division under Section 16-10a-1509 or
1007 16-10a-1510;

1008 (a) that its registered agent or registered office ~~[has]~~ changed[;];

1009 (b) that its registered agent ~~[has]~~ resigned[;]; or

1010 (c) that its registered office ~~[has been]~~ is discontinued;

1011 (5) an incorporator, director, officer, or agent of the foreign corporation signs a
1012 document knowing it is false in any material respect with intent that the document be delivered
1013 to the division for filing; or

1014 (6) the division receives a duly authenticated certificate from the lieutenant governor or
1015 other official having custody of corporate records in the state, tribe, or country under whose
1016 law the foreign corporation is incorporated stating that the corporation ~~[has]~~ is dissolved or
1017 disappeared as the result of a merger.

1018 Section 19. Section **16-10a-1607** is amended to read:

1019 **16-10a-1607. Annual report for division.**

1020 (1) ~~[Each]~~ A domestic corporation, and ~~[each]~~ a foreign corporation authorized to
1021 transact business in this state, shall deliver to the division for filing an annual report on a form
1022 provided by the division that sets forth:

1023 (a) the corporate name of the domestic or foreign corporation and any assumed
1024 corporate name of the foreign corporation;

1025 (b) the state, tribe, or country under whose law it is incorporated;

1026 (c) the street address of its registered office and the name of its registered agent at that
1027 office in this state;

1028 (d) the street address of its principal office;

1029 (e) the names and addresses of its directors and principal officers; and

1030 (f) a brief description of the nature of its business.

1031 (2) The division shall deliver a copy of the prescribed form of annual report to each
1032 domestic corporation and each foreign corporation authorized to transact business in this state.

1033 (3) Information in the annual report must be current as of the date the annual report is
1034 executed on behalf of the corporation.

1035 (4) The annual report of a domestic or foreign corporation shall be delivered annually
1036 to the division no later than the end of the second calendar month following the calendar month
1037 in which the report form is mailed by the division. Proof to the satisfaction of the division that
1038 the corporation ~~[has]~~ mailed an annual report form is considered in compliance with this
1039 Subsection (4).

1040 (5) (a) If an annual report contains the information required by this section, the division
1041 shall file it.

1042 (b) If a report does not contain the information required by this section, the division
1043 shall:

1044 (i) promptly notify the reporting domestic or foreign corporation in writing; and

1045 (ii) return the report to ~~[it]~~ the domestic or foreign corporation for correction.

1046 (c) If the report ~~[was]~~ is otherwise timely filed and is corrected to contain the
1047 information required by this section and delivered to the division within 30 days after the
1048 effective date of the notice of rejection, the annual report is considered to be timely filed.

1049 (6) The fact that an individual's name is signed on an annual report form is prima facie
1050 evidence for division purposes that the individual is authorized to certify the report on behalf of

1051 the corporation.

1052 (7) The annual report form provided by the division may be designed to provide a
1053 simplified certification by the corporation if no changes have been made in the required
1054 information from the last preceding report filed.

1055 (8) A domestic or foreign corporation may, but may not be required to, deliver to the
1056 division for filing an amendment to its annual report reflecting any change in the information
1057 contained in its annual report as last amended.

1058 Section 20. Section **48-1-1** is amended to read:

1059 **48-1-1. Definition of terms.**

1060 As used in this chapter:

1061 (1) "Bankrupt" includes "bankrupt" under the federal bankruptcy laws or "insolvent"
1062 under any state insolvency law.

1063 (2) "Business" includes every trade, occupation, or profession.

1064 (3) "Conveyance" includes every assignment, lease, mortgage, or encumbrance.

1065 (4) "Court" includes every court and judge having jurisdiction in the case.

1066 (5) "Limited liability partnership" means a general partnership:

1067 (a) registered under Section 48-1-42; and

1068 (b) complying with Section 48-1-43.

1069 (6) "Person" includes:

1070 (a) an individual[;];

1071 (b) a partnership[;];

1072 (c) a limited liability company[;];

1073 (d) a limited liability partnership[;];

1074 (e) a corporation[;]; or [other]

1075 (f) another association.

1076 (7) "Real property" includes land and any interest or estate in land.

1077 (8) "Tribe" means a tribe, band, nation, pueblo, or other organized group or community
1078 of Indians, including an Alaska Native village, that is legally recognized as eligible for and is
1079 consistent with a special program, service, or entitlement provided by the United States to
1080 Indians because of their status as Indians.

1081 Section 21. Section **48-1-44** is amended to read:

1082 **48-1-44. Foreign limited liability partnerships.**

1083 (1) Subject to any statute regulating a specific type of business, a limited liability
1084 partnership registered and existing under the laws of another state or a tribe, may do business in
1085 this state if it registers with the division in accordance with Section 48-1-42.

1086 (2) The internal affairs of a limited liability partnership registered and existing under
1087 the laws of another jurisdiction~~[-, including the provisions providing for the liability of partners~~
1088 ~~for debts, obligations of and liabilities chargeable to partnerships, shall be]~~ is subject to and
1089 governed by the laws of the state or tribe where the partnership is formed~~[-, including the~~
1090 ~~provisions providing for the liability of partners for debts, obligations of, and liabilities~~
1091 chargeable to a partnership.

1092 Section 22. Section **48-2a-101** is amended to read:

1093 **48-2a-101. Definitions.**

1094 As used in this chapter, unless the context otherwise requires:

1095 (1) "Certificate of limited partnership" means ~~[the]~~:

1096 (a) a certificate referred to in Section 48-2a-201[-]; and ~~[the]~~

1097 (b) a certificate as amended or restated.

1098 (2) "Contribution" means any of the following that a partner contributes to a limited
1099 partnership in the partner's capacity as a partner:

1100 (a) cash[-];

1101 (b) property[-, services];

1102 (c) a service rendered[-]; or

1103 (d) a promissory note or other binding obligation to:

1104 (i) contribute cash [or];

1105 (ii) contribute property; or ~~[to perform services, which a partner contributes to a limited~~
1106 ~~partnership in his capacity as a partner.]~~

1107 (iii) perform a service.

1108 (3) "Division" means the Division of Corporations and Commercial Code of the ~~[Utah]~~
1109 Department of Commerce.

1110 (4) "Event of withdrawal of a general partner" means an event that causes a person to
1111 cease to be a general partner as provided in Section 48-2a-402.

1112 (5) "Foreign limited partnership" means a partnership;

- 1113 (a) formed under the laws of [~~any~~];
- 1114 (i) a state other than this state [~~and~~]; or
- 1115 (ii) a tribe; and
- 1116 (b) having as partners;
- 1117 (i) one or more general partners; and
- 1118 (ii) one or more limited partners.
- 1119 (6) "General partner" means a person who [~~has been~~] is:
- 1120 (a) admitted to a limited partnership as a general partner in accordance with the
- 1121 partnership agreement; and
- 1122 (b) named in the certificate of limited partnership as a general partner.
- 1123 (7) "Limited partner" means a person who [~~has been~~] is admitted to a limited
- 1124 partnership as a limited partner in accordance with the partnership agreement.
- 1125 (8) "Limited partnership" and "domestic limited partnership" mean a partnership;
- 1126 (a) formed by two or more persons under the laws of this state; and
- 1127 (b) having;
- 1128 (i) one or more general partners; and
- 1129 (ii) one or more limited partners.
- 1130 (9) "Partner" means a limited or a general partner.
- 1131 (10) "Partnership agreement" means [~~any~~] a valid agreement, written or oral, of the
- 1132 partners as to the affairs of a limited partnership and the conduct of its business.
- 1133 (11) "Partnership interest" means;
- 1134 (a) a partner's share of the profits and losses of a limited partnership; and
- 1135 (b) the right to receive distributions of partnership assets.
- 1136 (12) "Person" means an individual, general partnership, limited partnership, limited
- 1137 association, domestic or foreign trust, estate, association, or corporation.
- 1138 (13) "State" means a state, territory, or possession of the United States, the District of
- 1139 Columbia, or the Commonwealth of Puerto Rico.
- 1140 (14) "Subject entity" means a corporation, business trust or association, a real estate
- 1141 investment trust, a common-law trust, or [~~any other~~] another unincorporated business,
- 1142 including a limited liability company, a general partnership, a registered limited liability
- 1143 partnership, or a foreign limited partnership.

1144 (15) "Tribe" means a tribe, band, nation, pueblo, or other organized group or
1145 community of Indians, including an Alaska Native village, that is legally recognized as eligible
1146 for and is consistent with a special program, service, or entitlement provided by the United
1147 States to Indians because of their status as Indians.

1148 Section 23. Section **48-2a-210** is amended to read:

1149 **48-2a-210. Annual report.**

1150 (1) (a) [~~Each~~] A domestic limited partnership, and [~~each~~] a foreign limited partnership
1151 authorized to transact business in this state, shall file an annual report with the division:

1152 (i) during the month of its anniversary date of formation, in the case of a domestic
1153 limited [~~partnerships~~] partnership; or

1154 (ii) during the month of the anniversary date of being granted authority to transact
1155 business in this state, in the case of a foreign limited [~~partnerships~~] partnership authorized to
1156 transact business in this state.

1157 (b) The annual report required by Subsection (1)(a) shall set forth:

1158 (i) the name of the limited partnership;

1159 (ii) the state or [~~country~~] tribe under the laws of which it is formed;

1160 (iii) the name and street address of the agent for service of process required to be
1161 maintained by Section 48-2a-104;

1162 (iv) [~~any~~] a change of address of a general partner; and

1163 (v) a change in the persons constituting the general partners.

1164 (2) (a) The annual report required by Subsection (1) shall:

1165 (i) be made on [~~forms~~] a form prescribed and furnished by the division; and

1166 (ii) contain information that is given as of the date of execution of the annual report.

1167 (b) [~~The~~] An annual report [~~forms~~] form shall include a statement of notice to the
1168 limited partnership that failure to file the annual report will result in the dissolution of:

1169 (i) the limited partnership, in the case of a domestic limited partnership; or

1170 (ii) its registration, in the case of a foreign limited partnership authorized to transact
1171 business in this state.

1172 (c) The annual report shall be signed by:

1173 (i) [~~any~~] a general partner under penalty of perjury; and

1174 (ii) if the registered agent has changed since the last annual report or other appointment

1175 of a registered agent, the new registered agent.

1176 (3) (a) If the division finds that the annual report required by Subsection (1) conforms
1177 to the requirements of this chapter, it shall file the annual report.

1178 (b) If the division finds that the annual report required by Subsection (1) does not
1179 conform to the requirements of this chapter, the division shall mail the report first-class postage
1180 prepaid to the limited partnership at the addresses set forth in the certificate for any necessary
1181 corrections.

1182 (c) If the division returns an annual report in accordance with Subsection (3)(b), the
1183 penalties for failure to file the annual report within the time prescribed in Section 48-2a-203.5
1184 do not apply, ~~as long as~~ if the report is corrected and returned to the division within 30 days
1185 from the date on which the nonconforming report ~~was~~ is mailed to the limited partnership.

1186 Section 24. Section **48-2a-902** is amended to read:

1187 **48-2a-902. Registration.**

1188 (1) (a) Before transacting business in this state, a foreign limited partnership shall
1189 register with the division. ~~In order to~~

1190 (b) To register, a foreign limited partnership shall submit to the division ~~on forms~~ in a
1191 form provided by the division:

1192 (i) a certificate of good standing or similar evidence of its organization and existence
1193 under the laws of the state or tribe in which ~~it was formed, together with one~~ the foreign
1194 limited partnership is formed; and

1195 (ii) an original and one copy of an application for registration as a foreign limited
1196 partnership, signed under penalty of perjury by a general partner and setting forth:

1197 ~~(a)~~ (A) the name of the foreign limited partnership and, if that name is not available
1198 in this state, the name under which it proposes to register and transact business in this state;

1199 ~~(b)~~ (B) the state or tribe and date of its formation;

1200 ~~(c)~~ (C) the name and street address of an agent for service of process on the foreign
1201 limited partnership whom the foreign limited partnership elects to appoint~~;~~, except that the
1202 agent must be:

1203 (I) an individual resident of this state~~;~~;

1204 (II) a domestic corporation~~;~~; or

1205 (III) a foreign corporation having a place of business in and authorized to do business

1206 in this state;

1207 ~~[(d)]~~ (D) a statement that the director of the division is appointed the agent of the
1208 foreign limited partnership for service of process if:

1209 (I) the agent ~~[has resigned;]~~ resigns;

1210 (II) the agent's authority ~~[has been]~~ is revoked[;]; or

1211 (III) the agent cannot be found or served with the exercise of reasonable diligence;

1212 ~~[(e)]~~ (E) (I) the street address of the office required to be maintained in the state or
1213 tribe of its organization by the laws of that state or[;] tribe; or

1214 (II) if not ~~[so]~~ required to maintain the office, of the principal office of the foreign
1215 limited partnership;

1216 ~~[(f)]~~ (F) the name and business address of each general partner; and

1217 ~~[(g)]~~ (G) the street address of the office at which is kept a list of the names and
1218 addresses of the limited partners and their capital contributions, together with an undertaking
1219 by the foreign limited partnership to keep those records until the foreign limited partnership's
1220 registration in this state is canceled or withdrawn.

1221 (2) Without excluding other activities ~~[which]~~ that may not constitute transacting
1222 business in this state, a foreign limited partnership ~~[shall not be]~~ is not considered to be
1223 transacting business in this state, for the purposes of this chapter, by reason of carrying on in
1224 this state any one or more of the following activities:

1225 (a) (i) maintaining or defending any action or suit or any administrative or arbitration
1226 proceeding ~~[or]~~;

1227 (ii) effecting the settlement ~~[thereof]~~ of an action or proceeding; or

1228 (iii) effecting the settlement of ~~[claims or disputes]~~ a claim or dispute;

1229 (b) holding ~~[meetings]~~ a meeting of its general partners or limited partners or carrying
1230 on ~~[other activities]~~ another activity concerning its internal affairs;

1231 (c) maintaining a bank ~~[accounts]~~ account;

1232 (d) (i) maintaining ~~[offices or agencies]~~ an office or agency for the transfer, exchange,
1233 and registration of its securities[;]; or

1234 (ii) appointing and maintaining ~~[trustees or depositories]~~ a trustee or depository with
1235 relation to its securities;

1236 (e) effecting sales through an independent ~~[contractors]~~ contractor;

- 1237 (f) soliciting or procuring [~~orders~~] an order, whether by mail or through [~~employees or~~
 1238 ~~agents~~] an employee, agent, or otherwise, [where such orders require] if the order requires
 1239 acceptance without this state before becoming a binding [contracts] contract;
- 1240 (g) creating evidences of debt, mortgages, or liens on real or personal property;
- 1241 (h) securing or collecting [~~debts~~] a debt or enforcing [~~any rights~~] a right in property
 1242 securing [the same] the property;
- 1243 (i) transacting [~~any~~] business in interstate commerce;
- 1244 (j) conducting an isolated transaction completed within a period of 30 days and not in
 1245 the course of a number of repeated transactions of like nature; or
- 1246 (k) (i) acquiring, in [transactions] a transaction outside this state or in interstate
 1247 commerce, of conditional sale contracts or of debts secured by mortgages or liens on real or
 1248 personal property in this state[;];
- 1249 (ii) collecting or adjusting of principal and interest payments [thereon,] on the
 1250 conditional sale contract or debt described in Subsection (2)(k)(i);
- 1251 (iii) enforcing or adjusting [any rights] a right in property provided for in the
 1252 conditional sale [~~contracts~~] contract or securing the [~~debts,] debt; or~~
- 1253 (iv) taking [any actions] an action necessary to preserve and protect the interest of the
 1254 conditional vendor in the property covered by the conditional sales [~~contracts~~] contract or the
 1255 interest of the mortgagee or holder of the lien in the security, or any combination of [~~such~~] the
 1256 one or more transactions.

1257 Section 25. Section **48-2a-904** is amended to read:

1258 **48-2a-904. Name.**

1259 [~~A~~] (1) Subject to Subsection (2), a foreign limited partnership shall register with the
 1260 division under the name under which it is registered in its state or tribe of organization[;
 1261 provided that the name includes the words].

1262 (2) The name registered under Subsection (1) must:

1263 (a) include the terms:

1264 (i) "limited partnership"[;];

1265 (ii) "limited"[;];

1266 (iii) "L.P."[;]; or

1267 (iv) "Ltd."; and [~~provided that the name could]~~

1268 (b) be able to be registered by a domestic limited partnership.

1269 Section 26. Section **48-2c-102** is amended to read:

1270 **48-2c-102. Definitions.**

1271 As used in this chapter:

1272 (1) "Bankruptcy" includes bankruptcy under federal bankruptcy law or under Utah
1273 insolvency law.

1274 (2) "Business" includes [~~any~~] a lawful trade, occupation, profession, business,
1275 investment, or other purpose or activity, whether or not that trade, occupation, profession,
1276 business, investment, purpose, or activity is carried on for profit.

1277 (3) "Capital account," unless otherwise provided in the operating agreement, means the
1278 account, as adjusted from time to time, maintained by the company for each member to reflect:

1279 (a) the value of all contributions by that member;

1280 (b) the amount of all distributions to that member or the member's assignee;

1281 (c) the member's share of profits, gains, and losses of the company; and

1282 (d) the member's share of the net assets of the company upon dissolution and winding
1283 up that are distributable to the member or the member's assignee.

1284 (4) "Company," "limited liability company," or "domestic company" means a limited
1285 liability company organized under or subject to this chapter.

1286 (5) "Designated office" means the street address in this state where the records required
1287 to be maintained by Section 48-2c-112 are kept.

1288 (6) (a) "Distribution" means a direct or indirect transfer by a company of money or
1289 other property, except:

1290 (i) an interest in the company; or

1291 (ii) incurrence of indebtedness by a company, to or for the benefit of members in the
1292 company in respect of any interest in the company.

1293 (b) "Distribution" does not include amounts constituting:

1294 (i) reasonable compensation for present or past services; or

1295 (ii) reasonable payments made in the ordinary course of business pursuant to a bona
1296 fide retirement plan or other benefits program.

1297 (7) "Division" means the Division of Corporations and Commercial Code of the Utah
1298 Department of Commerce.

- 1299 (8) "Entity" includes:
- 1300 (a) a domestic or foreign corporation;
- 1301 (b) a domestic or foreign nonprofit corporation;
- 1302 (c) a company or foreign company;
- 1303 (d) a profit or nonprofit unincorporated association;
- 1304 (e) a business trust;
- 1305 (f) an estate;
- 1306 (g) a general partnership or a domestic or foreign limited partnership;
- 1307 (h) a trust;
- 1308 (i) a state;
- 1309 (j) the United States; or
- 1310 (k) a foreign government.
- 1311 (9) (a) "Filed with the division" means that a statement, document, or report:
- 1312 (i) complies with the requirements of Section 48-2c-207; and
- 1313 (ii) ~~[has been]~~ is accepted for filing by the division.
- 1314 (b) "Filed with the division" includes filing by electronic means approved by the
- 1315 division.
- 1316 (10) "Foreign company" means a limited liability company organized under a law other
- 1317 than the laws of this state.
- 1318 (11) "Interest in the company" means a member's economic rights in the company
- 1319 including the right to receive:
- 1320 (a) ~~[the right to receive distributions]~~ a distribution from the company; and
- 1321 (b) ~~[the right to receive]~~ a portion of the net assets of the company upon dissolution
- 1322 and winding up of the company.
- 1323 (12) "Manager" means a person elected or otherwise designated by the members to
- 1324 manage a manager-managed company pursuant to Part 8, Management.
- 1325 (13) "Manager-managed company" means a company whose management is vested in
- 1326 managers pursuant to Part 8, Management.
- 1327 (14) "Member" means a person with:
- 1328 (a) an ownership interest in a company; and ~~[with]~~
- 1329 (b) the rights and obligations specified under this chapter.

1330 (15) "Member-managed company" means a company whose management is vested in
1331 its members pursuant to Part 8, Management.

1332 (16) (a) "Operating agreement" means [any] a written agreement of the members:

1333 (i) concerning the business or purpose of the company and the conduct of its affairs;

1334 and

1335 (ii) which complies with Part 5, Operating Agreements.

1336 (b) "Operating agreement" includes [any] a written [~~amendments~~] amendment agreed

1337 to by all members or other writing adopted in any other manner as may be provided in the

1338 operating agreement.

1339 (17) "Person" means an individual or entity.

1340 (18) "Proceeding" means [any] an administrative, judicial or other trial, hearing, or

1341 other action, whether civil, criminal, or investigative, the result of which may be that a court,

1342 arbitrator, or governmental agency may enter a judgment, order, decree, or other determination

1343 which, if not appealed or reversed, would be binding upon any person subject to the

1344 jurisdiction of that court, arbitrator, or governmental agency.

1345 (19) "Professional services" is as defined in Part 15, Professions.

1346 (20) "Profits interest" means that portion of the company's profits to be allocated to an

1347 individual member upon [any] an allocation of profits.

1348 (21) "Profits interests" or "interests in profits" with respect to a company means the

1349 total interests of all of the company's members in the company's profits.

1350 (22) "Signed," "signs," or "signature" means:

1351 (a) a manual signature or authorized facsimile of the signature; or

1352 (b) [any] an electronic signature approved by the division.

1353 (23) "State" means:

1354 (a) a state, territory, or possession of the United States;

1355 (b) the District of Columbia; or

1356 (c) the Commonwealth of Puerto Rico.

1357 (24) "Tribe" means a tribe, band, nation, pueblo, or other organized group or

1358 community of Indians, including an Alaska Native village, that is legally recognized as eligible

1359 for and is consistent with a special program, service, or entitlement provided by the United

1360 States to Indians because of their status as Indians.

1361 Section 27. Section **48-2c-203** is amended to read:

1362 **48-2c-203. Annual report.**

1363 (1) (a) [~~Each~~] A company and [~~each~~] a foreign company authorized to transact business
1364 in this state shall file an annual report with the division:

1365 (i) during the month of its anniversary date of formation, in the case of a domestic
1366 [~~companies~~] company; or

1367 (ii) during the month of the anniversary date of being granted authority to transact
1368 business in this state, in the case of a foreign [~~companies~~] company authorized to transact
1369 business in this state.

1370 (b) The annual report required by Subsection (1)(a) shall set forth:

1371 (i) the name of the company;

1372 (ii) the state, tribe, or country under the laws of which it is formed; and

1373 (iii) any change in:

1374 (A) for a domestic company only, the street address of its designated office;

1375 (B) for a foreign company only, the street address of its principal office;

1376 (C) the street address of its registered office in this state;

1377 (D) the name of the agent for service of process at the address listed in Subsection
1378 (1)(b)(iii)(C);

1379 (E) if the street address or legal name of any manager in a manager-managed company,
1380 any member in a member-managed company, or any person with management authority of a
1381 foreign company has changed, the new street address or legal name of the manager, member, or
1382 other person; and

1383 (F) the identity of the persons constituting the managers in a manager-managed
1384 company or members in a member-managed company or other person with management
1385 authority of a foreign company.

1386 (2) (a) The annual report required by Subsection (1) shall:

1387 (i) be made on forms prescribed and furnished by the division; and

1388 (ii) contain information that is given as of the date of signing the annual report.

1389 (b) The annual report forms shall include a statement notifying the company that
1390 failure to file the annual report will result in:

1391 (i) the dissolution of the company, in the case of a domestic company; or

1392 (ii) the revocation of authority to transact business in this state in the case of a foreign
1393 company.

1394 (3) The annual report shall be signed by:

1395 (a) (i) ~~any~~ a manager in a manager-managed company;

1396 (ii) ~~any~~ a member in a member-managed company; or

1397 (iii) ~~any other~~ another person with management authority; and

1398 (b) if the registered agent has changed since the filing of the articles of organization or
1399 last annual report, ~~by~~ the new registered agent.

1400 (4) (a) If the annual report conforms to the requirements of this chapter, the division
1401 shall file the report.

1402 (b) If the annual report does not conform to the requirements of this chapter, the
1403 division shall mail the report, first class postage prepaid, to the registered agent of the company
1404 for any necessary corrections at the street address for the registered agent most recently
1405 furnished to the division by notice, annual report, or other document.

1406 (c) If the division returns an annual report in accordance with Subsection (4)(b), the
1407 penalties for failure to file the report within the time prescribed in this section do not apply, ~~as~~
1408 ~~long as~~ if the annual report is corrected and returned to the division within 30 days from the
1409 date the nonconforming report was mailed to the registered agent of the company.

1410 Section 28. Section **48-2c-411** is amended to read:

1411 **48-2c-411. Domestication of foreign company.**

1412 (1) Where the laws of another state, tribe, country, or jurisdiction allow a foreign
1413 company subject to those laws to transfer or domesticate to this state, the foreign company may
1414 become a domestic company by delivering to the division for filing articles of domestication
1415 meeting the requirements of Subsection (2) if its members approve the domestication.

1416 (2) (a) The articles of domestication shall meet the requirements applicable to articles
1417 of organization set forth in Section 48-2c-403, except that:

1418 (i) the articles of domestication need not name, or be signed by, the organizers of the
1419 foreign company;

1420 (ii) any reference to the company's registered office, registered agent, or managers shall
1421 be to the registered office and agent in this state, and the managers then in office at the time of
1422 filing the articles of domestication; and

- 1423 (iii) any reference to the company's members shall be to the members at the time of
1424 filing the articles of domestication.
- 1425 (b) The articles of domestication shall set forth:
- 1426 (i) the date on which and jurisdiction where the foreign company was first formed,
1427 organized, or otherwise came into being;
- 1428 (ii) the name of the foreign company immediately prior to the filing of the articles of
1429 domestication;
- 1430 (iii) any jurisdiction that constituted the seat, location of formation, principal place of
1431 business, or central administration of the foreign company immediately prior to the filing of the
1432 articles of domestication; and
- 1433 (iv) a statement that the articles of domestication were approved by its members.
- 1434 (3) Upon the filing of articles of domestication with the division:
- 1435 (a) the foreign company shall:
- 1436 (i) be domesticated in this state~~[, shall thereafter be]~~;
- 1437 (ii) be subject to all of the provisions of this chapter as a domestic company~~[-];~~ and
1438 ~~[shall]~~
- 1439 (iii) continue as if it had been organized under this chapter; and
- 1440 (b) notwithstanding any other provisions of this chapter, the existence of the
1441 domesticated company ~~[shall be]~~ is considered to have commenced on the date the foreign
1442 company commenced its existence in the jurisdiction in which the foreign company ~~[was]~~ is
1443 first formed, organized, or otherwise ~~[came]~~ comes into being.
- 1444 (4) The articles of domestication, upon filing with the division~~[-, shall]~~;
- 1445 (a) become the articles of organization of the company~~[-];~~ and ~~[shall be]~~
- 1446 (b) are subject to amendments or restatement the same as any other articles of
1447 organization under this chapter.
- 1448 (5) The domestication of ~~[any]~~ a foreign company in this state ~~[shall]~~ may not be
1449 considered to affect ~~[any]~~ an obligation or liability of the foreign company incurred prior to its
1450 domestication.
- 1451 Section 29. Section **48-2c-1604** is amended to read:
- 1452 **48-2c-1604. Application for authority to transact business.**
- 1453 (1) A foreign company may apply for authority to transact business in this state by

1454 delivering to the division for filing an application for authority to transact business setting
1455 forth:

1456 (a) its name and its assumed name, if any;

1457 (b) the name of the state, tribe, or country under whose law it is formed or organized;

1458 (c) the nature of the business or purposes to be conducted or promoted in this state;

1459 (d) its date of formation or organization and period of its duration;

1460 (e) the street address of its principal office;

1461 (f) the address of its registered office in this state and the name of its registered agent at
1462 that office;

1463 (g) (i) the names and street addresses of its current managers, if it is a
1464 manager-managed company[-]; or

1465 (ii) the names and street addresses of its members, if it is a member-managed
1466 company;

1467 (h) the date it commenced or expects to commence transacting business in this state;

1468 and

1469 (i) any additional information the division may determine is necessary or appropriate to
1470 determine whether the application for authority to transact business should be filed.

1471 (2) The foreign company shall deliver with the completed application for authority to
1472 transact business a certificate of existence, or a document of similar import, duly authorized by
1473 the lieutenant governor or other official having custody of records in the state, tribe, or country
1474 under whose law it is formed or organized. The certificate of existence shall be dated within
1475 90 days prior to the filing of the application for authority to transact business by the division.

1476 (3) The foreign company shall include in the application for authority to transact
1477 business, or in an accompanying document, the written consent to appointment by the
1478 designated registered agent in this state.

1479 Section 30. Section **48-2c-1605** is amended to read:

1480 **48-2c-1605. Amended application for authority to transact business.**

1481 (1) A foreign company authorized to transact business in this state shall deliver an
1482 amended application for authority to transact business to the division for filing if the foreign
1483 company changes:

1484 (a) its name or its assumed name;

1485 (b) the period of its duration; or

1486 (c) the state, tribe, or country of its formation or organization.

1487 (2) The requirements of Section 48-2c-1604 for obtaining an original application for
1488 authority to transact business apply to filing an amended application for authority to transact
1489 business under this section.

1490 Section 31. Section **48-2c-1608** is amended to read:

1491 **48-2c-1608. Registered name of foreign company.**

1492 (1) (a) A foreign company may register its name as provided in this section if the name
1493 would be available for use as a name for a domestic company under Section 48-2c-106.

1494 (b) If the foreign company's name would not be available for [~~such use, then~~] use by a
1495 domestic company, the foreign company may register its name modified by the addition of any
1496 of the following words or abbreviations, if the modified name would be available for use under
1497 Section 48-2c-106:

1498 (i) "limited liability company"[;];

1499 (ii) "limited company"[;];

1500 (iii) "L.L.C."[;];

1501 (iv) "L.C."[;];

1502 (v) "LLC"[;]; or

1503 (vi) "LC".

1504 (2) A foreign company registers its name, or its name with any addition permitted by
1505 Subsection (1), by delivering to the division for filing an application for registration:

1506 (a) setting forth:

1507 (i) its name, except that the name to be registered [~~which~~] must meet the requirements
1508 of Section 48-2c-106 that apply to domestic companies[;];

1509 (ii) the state, tribe, or country and date of formation or organization[;]; and

1510 (iii) a brief description of the nature of the business in which it is engaged; and

1511 (b) accompanied by a certificate of existence, or a document of similar import from the
1512 state, tribe, or country of formation or organization as evidence that the foreign company is in
1513 existence or has authority to transact business under the laws of the state, tribe, or country in
1514 which it is formed or organized.

1515 (3) (a) The name is registered for the applicant upon the effective date of the

1516 application~~[-and the]~~.

1517 (b) An initial registration is effective until the end of the calendar year in which it
1518 [~~became~~] becomes effective.

1519 (4) (a) A foreign company that has in effect a registration of its name as permitted by
1520 Subsection (1) may renew the registration for the following year by delivering to the division
1521 for filing a renewal application for registration~~[-which]~~:

1522 (i) that complies with the requirements of Subsection (2); and

1523 (ii) between October 1 and December 31 of the preceding year.

1524 (b) When filed, the renewal application for registration renews the registration for the
1525 following calendar year.

1526 (5) (a) A foreign company that has in effect registration of its name may:

1527 (i) apply for authority to transact business in this state under the registered name in
1528 accordance with the procedure set forth in this part; or [~~it may~~]

1529 (ii) assign the registration to another foreign company by concurrently delivering to the
1530 division for filing:

1531 (A) an assignment of the registration that states:

1532 (I) the registered name~~[-]~~;

1533 (II) the name of the assigning foreign corporation~~[-]~~; and

1534 (III) the name of the assignee~~[-concurrently with the delivery to the division for filing~~
1535 ~~of]~~; and

1536 (B) the assignee's application for registration of the name. [~~The~~]

1537 (b) An assignee's application must meet the requirements of this part.

1538 (6) (a) A foreign company that has in effect registration of its name may terminate the
1539 registration at any time by delivering to the division for filing a statement of termination setting
1540 forth the name and stating that the registration is terminated.

1541 (b) A registration of name automatically terminates upon the filing of an application
1542 for authority to transact business in this state under the registered name.

1543 (7) The registration of a name under Subsection (1) constitutes authority by the
1544 division to file an application meeting the requirements of this part for authority to transact
1545 business in this state under the registered name, but the authorization is subject to the
1546 limitations applicable to company names as set forth in Section 48-2c-106.

1547 Section 32. Section **48-2c-1610** is amended to read:

1548 **48-2c-1610. Merger of foreign company authorized to transact business in this**
1549 **state.**

1550 [~~Whenever~~] (1) If a foreign company authorized to transact business in this state [~~shall~~
1551 ~~be~~] is a party to a merger permitted by the laws of the state or jurisdiction under the laws of
1552 which it is organized[;] and [~~such~~] the foreign company [~~shall be~~] is the surviving company,
1553 [~~it~~] the foreign company shall, within 30 days after the day on which merger becomes effective,
1554 file with the division a copy of the articles of merger duly authenticated by the proper officer of
1555 the state, tribe, or country under the laws of which the merger [~~was~~] is effected[; ~~and it shall~~
1556 ~~not be~~].

1557 (2) It is not necessary for the foreign company described in Subsection (1) to procure
1558 either a new or amended authority to transact business in this state unless;

1559 (a) the name of the foreign company [~~be changed thereby or unless~~] is changed by the
1560 merger; or

1561 (b) the foreign company desires to pursue in this state other or additional purposes than
1562 those which it is then authorized to pursue in this state.

1563 Section 33. Section **48-2c-1611** is amended to read:

1564 **48-2c-1611. Withdrawal of foreign company.**

1565 (1) A foreign company authorized to transact business in this state may not withdraw
1566 from this state until its application for withdrawal [~~has been~~] is filed with the division.

1567 (2) A foreign company authorized to transact business in this state may apply for
1568 withdrawal by delivering to the division for filing an application for withdrawal setting forth:

1569 (a) its company name and its assumed name, if any;

1570 (b) the name of the state, tribe, or country under whose law it is formed or organized;

1571 (c) (i) (A) the address of its principal office[;]; or [~~if none is to be~~]

1572 (B) if a principal office is not maintained, a statement that the foreign company will not
1573 maintain a principal office[;]; and

1574 (ii) if different from the address of the principal office or if no principal office is to be
1575 maintained, the address to which service of process may be mailed pursuant to Section
1576 48-2c-309;

1577 (d) that the foreign company is not transacting business in this state [~~and that it~~];

1578 (e) that the foreign company surrenders its authority to transact business in this state;
1579 ~~[(e)]~~ (f) whether its registered agent will continue to be authorized to accept service on
1580 its behalf in ~~[any]~~ a proceeding based on a cause of action arising during the time it ~~[was]~~ is
1581 authorized to transact business in this state; and

1582 ~~[(f)]~~ (g) any additional information that the division determines is necessary or
1583 appropriate to:

1584 (i) determine whether the foreign company is entitled to withdraw~~[-];~~ and ~~[to]~~

1585 (ii) determine and assess any unpaid taxes, fees, and penalties payable by ~~[it]~~ the
1586 foreign company as prescribed by this chapter.

1587 (3) A foreign company's application for withdrawal may not be filed by the division
1588 until:

1589 (a) all outstanding fees and state tax obligations of the foreign company ~~[have been]~~
1590 are paid; and

1591 (b) the division ~~[has received]~~ receives a tax clearance certificate from the State Tax
1592 Commission.

1593 Section 34. Section **48-2c-1612** is amended to read:

1594 **48-2c-1612. Grounds for revocation.**

1595 The division may commence a proceeding under Section 48-2c-1613 to revoke the
1596 authority of a foreign company to transact business in this state if:

1597 (1) the foreign company does not deliver its annual report to the division when it is
1598 due;

1599 (2) the foreign company does not pay when ~~[they are due any taxes, fees, or penalties]~~
1600 it is due a tax, fee, or penalty imposed by this chapter or other applicable laws of this state;

1601 (3) the foreign company is without a registered agent or registered office in this state;

1602 (4) the foreign company does not inform the division under Section 48-2c-303;

1603 (a) that its registered agent or registered office ~~[has]~~ changed~~[-];~~

1604 (b) that its registered agent ~~[has]~~ resigned~~[-];~~ or

1605 (c) that its registered office ~~[has been]~~ is discontinued;

1606 (5) an organizer, member, manager, or agent of the foreign company signs a document
1607 knowing it is false in any material respect with intent that the document be delivered to the
1608 division for filing; or

1609 (6) the division receives a duly authenticated certificate from the lieutenant governor or
1610 other official having custody of limited liability company records in the state, tribe, or country
1611 under whose law the foreign company is formed or organized stating that the foreign company
1612 [~~has~~] is dissolved or disappeared as the result of a merger.

Legislative Review Note
as of 12-27-07 1:31 PM

Office of Legislative Research and General Counsel

S.B. 110 - Foreign Business Entities and Tribal Law

Fiscal Note

2008 General Session

State of Utah

State Impact

Enactment of this bill will not require additional appropriations.

Individual, Business and/or Local Impact

Enactment of this bill likely will not result in direct, measurable costs and/or benefits for individuals, businesses, or local governments.
