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CORPORATION RELATED AMENDMENTS

2009 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Lyle W. Hillyard

House Sponsor: _____

LONG TITLE

General Description:

This bill modifies provisions related to business entities to address corporations and nonprofit corporations.

Highlighted Provisions:

This bill:

- ▶ modifies definitions;
- ▶ addresses voting by boards of directors of nonprofit corporations;
- ▶ addresses liability of directors of nonprofit corporations;
- ▶ establishes the effect of conversions between corporations and nonprofit corporations;
- ▶ addresses authorized distributions;
- ▶ addresses conversions between limited liability companies and nonprofit corporations; and
- ▶ makes technical changes.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:



- 28 **16-6a-102**, as last amended by Laws of Utah 2008, Chapters 249 and 364
- 29 **16-6a-816**, as last amended by Laws of Utah 2002, Chapter 197
- 30 **16-6a-823**, as enacted by Laws of Utah 2000, Chapter 300
- 31 **16-6a-1008**, as last amended by Laws of Utah 2006, Chapter 228
- 32 **16-6a-1302**, as last amended by Laws of Utah 2007, Chapter 315
- 33 **16-6a-1411**, as last amended by Laws of Utah 2002, Chapter 197
- 34 **16-6a-1412**, as last amended by Laws of Utah 2002, Chapter 197
- 35 **16-6a-1413**, as last amended by Laws of Utah 2008, Chapter 382
- 36 **16-6a-1516**, as enacted by Laws of Utah 2000, Chapter 300
- 37 **16-10a-1008.5**, as enacted by Laws of Utah 2000, Chapter 300
- 38 **16-10a-1421**, as last amended by Laws of Utah 2000, Chapter 131
- 39 **16-10a-1422**, as last amended by Laws of Utah 2000, Chapter 131
- 40 **16-10a-1423**, as last amended by Laws of Utah 2008, Chapter 382
- 41 **16-10a-1531**, as last amended by Laws of Utah 2000, Chapter 131
- 42 **31A-5-101**, as last amended by Laws of Utah 2003, Chapter 131
- 43 **31A-9-101**, as last amended by Laws of Utah 2003, Chapter 131
- 44 **42-2-6.6**, as last amended by Laws of Utah 2006, Chapter 228
- 45 **48-2c-1401**, as enacted by Laws of Utah 2001, Chapter 260

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

48 Section 1. Section **16-6a-102** is amended to read:

49 **16-6a-102. Definitions.**

50 As used in this chapter:

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

53 (b) "Address" includes:

- 54 (i) a post office box number;
- 55 (ii) a rural free delivery route number; and
- 56 (iii) a street name and number.

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

59 specified.

60 (3) "Articles of incorporation" include:

61 (a) amended articles of incorporation;

62 (b) restated articles of incorporation;

63 (c) articles of merger; and

64 (d) a document of a similar import to the documents described in Subsections (3)(a)

65 through (c).

66 (4) "Assumed corporate name" means a name assumed for use in this state:

67 (a) by a:

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

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

70 (b) because the corporate name of the foreign corporation described in Subsection

71 (4)(a) is not available for use in this state.

72 (5) (a) Except as provided in Subsection (5)(b), "board of directors" means the body

73 authorized to manage the affairs of a domestic or foreign nonprofit corporation.

74 (b) Notwithstanding Subsection (5)(a), a person may not be considered a member of

75 the board of directors because of a power delegated to that person pursuant to Subsection

76 16-6a-801(2).

77 (6) (a) "Bylaws" means the one or more codes of rules, other than the articles of

78 incorporation, adopted pursuant to this chapter for the regulation or management of the affairs

79 of a domestic or foreign nonprofit corporation irrespective of the one or more names by which

80 the codes of rules are designated.

81 (b) "Bylaws" includes:

82 (i) amended bylaws; and

83 (ii) restated bylaws.

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

85 (i) legal tender;

86 (ii) a negotiable instrument; or

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

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

89 (8) (a) "Class" means a group of memberships that has the same right with respect to

90 voting, dissolution, redemption, transfer, or other characteristics.

91 (b) For purposes of Subsection (8)(a), a right is considered the same if it is determined
92 by a formula applied uniformly to a group of memberships.

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

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

96 (i) italics;

97 (ii) boldface;

98 (iii) contrasting color;

99 (iv) capitals; or

100 (v) underlining.

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

103 (a) the ownership of voting shares;

104 (b) contract; or

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

106 (11) Subject to Section 16-6a-207, "cooperative nonprofit corporation" or

107 "cooperative" means a nonprofit corporation organized or existing under this chapter.

108 (12) "Corporate name" means:

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

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

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

114 (i) articles of incorporation; or

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

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

118 (i) articles of incorporation; or

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

120 (13) "Corporation" or "domestic corporation" means a corporation for profit that:

- 121 (a) is not a foreign corporation; and
122 (b) is incorporated under or subject to Chapter 10a, Utah Revised Business Corporation
123 Act.
- 124 (14) "Delegate" means a person elected or appointed to vote in a representative
125 assembly:
- 126 (a) for the election of a director; or
127 (b) on matters other than the election of a director.
- 128 (15) "Deliver" includes delivery by mail or another means of transmission authorized
129 by Section 16-6a-103, except that delivery to the division means actual receipt by the division.
- 130 (16) "Director" means a member of the board of directors.
- 131 (17) (a) "Distribution" means the payment of a dividend or any part of the income or
132 profit of a nonprofit corporation to the nonprofit corporation's:
- 133 (i) members;
134 (ii) directors; or
135 (iii) officers.
- 136 (b) "Distribution" does not include a fair-value payment for:
- 137 (i) a good sold; or
138 (ii) a service received.
- 139 (18) "Division" means the Division of Corporations and Commercial Code.
- 140 (19) "Effective date," when referring to a document filed by the division, means the
141 time and date determined in accordance with Section 16-6a-108.
- 142 (20) "Effective date of notice" means the date notice is effective as provided in Section
143 16-6a-103.
- 144 (21) (a) "Employee" includes an officer of a nonprofit corporation.
- 145 (b) (i) Except as provided in Subsection (21)(b)(ii), "employee" does not include a
146 director of a nonprofit corporation.
- 147 (ii) Notwithstanding Subsection (21)(b)(i), a director may accept one or more duties
148 that make that director an employee of a nonprofit corporation.
- 149 (22) "Executive director" means the executive director of the Department of
150 Commerce.
- 151 (23) "Entity" includes:

- 152 (a) a domestic or foreign corporation;
- 153 (b) a domestic or foreign nonprofit corporation;
- 154 (c) a limited liability company;
- 155 (d) a profit or nonprofit unincorporated association;
- 156 (e) a business trust;
- 157 (f) an estate;
- 158 (g) a partnership;
- 159 (h) a trust;
- 160 (i) two or more persons having a joint or common economic interest;
- 161 (j) a state;
- 162 (k) the United States; or
- 163 (l) a foreign government.

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

166 (25) "Foreign nonprofit corporation" means an entity:
167 (a) incorporated under a law other than the laws of this state; and
168 (b) that would be a nonprofit corporation if formed under the laws of this state.

169 (26) "Governmental entity" means:
170 (a) (i) the executive branch of the state;
171 (ii) the judicial branch of the state;
172 (iii) the legislative branch of the state;
173 (iv) an independent entity as defined in Section 63E-1-102;
174 (v) a political subdivision of the state;
175 (vi) a state institution of higher education, as defined in Section 53B-3-102;
176 (vii) an entity within the state system of public education; or
177 (viii) the National Guard; or
178 (b) any of the following that is funded or established by a governmental entity listed in

179 Subsection (26)(a) to carry out the public's business:

- 180 (i) an office;
- 181 (ii) a division;
- 182 (iii) an agency;

- 183 (iv) a board;
- 184 (v) a bureau;
- 185 (vi) a committee;
- 186 (vii) a department;
- 187 (viii) an advisory board;
- 188 (ix) an administrative unit; or
- 189 (x) a commission.
- 190 [~~(26)~~] (27) "Governmental subdivision" means:
- 191 (a) a county;
- 192 (b) a city;
- 193 (c) a town; or
- 194 (d) another type of governmental subdivision authorized by the laws of this state.
- 195 [~~(27)~~] (28) "Individual" means:
- 196 (a) a natural person;
- 197 (b) the estate of an incompetent individual; or
- 198 (c) the estate of a deceased individual.
- 199 [~~(28)~~] (29) "Internal Revenue Code" means the federal "Internal Revenue Code of
- 200 1986," as amended from time to time, or to corresponding provisions of subsequent internal
- 201 revenue laws of the United States of America.
- 202 [~~(29)~~] (30) (a) "Mail," "mailed," or "mailing" means deposit, deposited, or depositing
- 203 in the United States mail, properly addressed, first-class postage prepaid.
- 204 (b) "Mail," "mailed," or "mailing" includes registered or certified mail for which the
- 205 proper fee is paid.
- 206 [~~(30)~~] (31) (a) "Member" means one or more persons identified or otherwise appointed
- 207 as a member of a domestic or foreign nonprofit corporation as provided:
- 208 (i) in the articles of incorporation;
- 209 (ii) in the bylaws;
- 210 (iii) by a resolution of the board of directors; or
- 211 (iv) by a resolution of the members of the nonprofit corporation.
- 212 (b) "Member" includes "voting member."
- 213 [~~(31)~~] (32) "Membership" refers to the rights and obligations of a member or members.

214 [~~(32)~~] (33) "Mutual benefit corporation" means a nonprofit corporation:
215 (a) that issues shares of stock to its members evidencing a right to receive distribution
216 of water or otherwise representing property rights; or
217 (b) all of whose assets are contributed or acquired by or for the members of the
218 nonprofit corporation or their predecessors in interest to serve the mutual purposes of the
219 members.

220 [~~(33)~~] (34) "Nonprofit corporation" or "domestic nonprofit corporation" means an
221 entity that:
222 (a) is not a foreign nonprofit corporation; and
223 (b) is incorporated under or subject to this chapter.

224 [~~(34)~~] (35) "Notice" is as provided in Section 16-6a-103.

225 [~~(35)~~] (36) "Party related to a director" means:
226 (a) the spouse of the director;
227 (b) a child of the director;
228 (c) a grandchild of the director;
229 (d) a sibling of the director;
230 (e) a parent of the director;
231 (f) the spouse of an individual described in Subsections [~~(35)~~] (36)(b) through (e);
232 (g) an individual having the same home as the director;
233 (h) a trust or estate of which the director or another individual specified in this
234 Subsection [~~(35)~~] (36) is a substantial beneficiary; or
235 (i) any of the following of which the director is a fiduciary:
236 (i) a trust;
237 (ii) an estate;
238 (iii) an incompetent;
239 (iv) a conservatee; or
240 (v) a minor.

241 [~~(36)~~] (37) "Person" means an:
242 (a) individual; or
243 (b) entity.

244 [~~(37)~~] (38) "Principal office" means:

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

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

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

253 [~~38~~] (39) "Proceeding" includes:

- 254 (a) a civil suit;
- 255 (b) arbitration;
- 256 (c) mediation;
- 257 (d) a criminal action;
- 258 (e) an administrative action; or
- 259 (f) an investigatory action.

260 [~~39~~] (40) "Receive," when used in reference to receipt of a writing or other document
261 by a domestic or foreign nonprofit corporation, means the writing or other document is actually
262 received:

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

- 264 (i) its registered office in this state; or
- 265 (ii) its principal office;

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

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

270 [~~40~~] (41) (a) "Record date" means the date established under Part 6, Members, or Part
271 7, Member Meetings and Voting, on which a nonprofit corporation determines the identity of
272 the nonprofit corporation's members.

273 (b) The determination described in Subsection [~~40~~] (41)(a) shall be made as of the
274 close of business on the record date unless another time for doing so is specified when the
275 record date is fixed.

276 [~~(41)~~] (42) "Registered agent" means the registered agent of:

277 (a) a domestic nonprofit corporation; or

278 (b) a foreign nonprofit corporation.

279 [~~(42)~~] (43) "Registered office" means the office within this state designated by a

280 domestic or foreign nonprofit corporation as its registered office in the most recent document

281 on file with the division providing that information, including:

282 (a) articles of incorporation;

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

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

285 [~~(43)~~] (44) "Secretary" means the corporate officer to whom the bylaws or the board of

286 directors delegates responsibility under Subsection 16-6a-818(3) for:

287 (a) the preparation and maintenance of:

288 (i) minutes of the meetings of:

289 (A) the board of directors; or

290 (B) the members; and

291 (ii) the other records and information required to be kept by the nonprofit corporation

292 pursuant to Section 16-6a-1601; and

293 (b) authenticating records of the nonprofit corporation.

294 [~~(44)~~] (45) "Shareholder" means a person in whose name a share is registered in the

295 records of a nonprofit corporation.

296 [~~(45)~~] (46) "Share" means a unit of interest in a nonprofit corporation.

297 [~~(46)~~] (47) "State," when referring to a part of the United States, includes:

298 (a) a state;

299 (b) a commonwealth;

300 (c) the District of Columbia;

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

302 District of Columbia;

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

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

305 possession of the United States.

306 [~~(47)~~] (48) "Street address" means:

- 307 (a) (i) street name and number;
- 308 (ii) city or town; and
- 309 (iii) United States post office zip code designation; or
- 310 (b) if, by reason of rural location or otherwise, a street name, number, city, or town
- 311 does not exist, an appropriate description other than that described in Subsection [~~(47)~~] (48)(a)
- 312 fixing as nearly as possible the actual physical location, but only if the information includes:
- 313 (i) the rural free delivery route;
- 314 (ii) the county; and
- 315 (iii) the United States post office zip code designation.
- 316 [~~(48)~~] (49) "Tribe" means a tribe, band, nation, pueblo, or other organized group or
- 317 community of Indians, including an Alaska Native village, that is legally recognized as eligible
- 318 for and is consistent with a special program, service, or entitlement provided by the United
- 319 States to Indians because of their status as Indians.
- 320 [~~(49)~~] (50) "Tribal nonprofit corporation" means a nonprofit corporation:
- 321 (a) incorporated under the law of a tribe; and
- 322 (b) that is at least 51% owned or controlled by the tribe.
- 323 [~~(50)~~] (51) "United States" includes a district, authority, office, bureau, commission,
- 324 department, and another agency of the United States of America.
- 325 [~~(51)~~] (52) "Vote" includes authorization by:
- 326 (a) written ballot; and
- 327 (b) written consent.
- 328 [~~(52)~~] (53) (a) "Voting group" means all the members of one or more classes of
- 329 members or directors that, under this chapter, the articles of incorporation, or the bylaws, are
- 330 entitled to vote and be counted together collectively on a matter.
- 331 (b) All members or directors entitled by this chapter, the articles of incorporation, or
- 332 the bylaws to vote generally on a matter are for that purpose a single voting group.
- 333 [~~(53)~~] (54) (a) "Voting member" means a person entitled to vote for all matters
- 334 required or permitted under this chapter to be submitted to a vote of the members, except as
- 335 otherwise provided in the articles of incorporation or bylaws.
- 336 (b) A person is not a voting member solely because of:
- 337 (i) a right the person has as a delegate;

338 (ii) a right the person has to designate a director; or

339 (iii) a right the person has as a director.

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

342 Section 2. Section **16-6a-816** is amended to read:

343 **16-6a-816. Quorum and voting.**

344 (1) Unless a greater or lesser number is required by the bylaws, a quorum of a board of
345 directors consists of a majority of the number of directors in office immediately before the
346 meeting begins.

347 (2) The bylaws may authorize a quorum of a board of directors to consist of:

348 (a) no fewer than [~~1~~/~~3~~]:

349 (i) one-third of the number of directors fixed if the nonprofit corporation has a fixed
350 board size; [~~or~~] and

351 (ii) no fewer than two directors in all circumstances;

352 (b) if a range for the size of the board is established pursuant to Subsection
353 16-6a-803(2), no fewer than [~~1~~/~~3~~] one-third of the number of directors:

354 (i) fixed in accordance with Subsection 16-6a-803(2); or

355 (ii) in office immediately before the meeting begins, if no number is fixed in
356 accordance with Subsection 16-6a-803(2).

357 (3) If a quorum is present when a vote is taken, the affirmative vote of a majority of
358 directors present is the act of the board of directors unless the vote of a greater number of
359 directors is required by this chapter or the bylaws.

360 (4) (a) If provided in the bylaws, for purposes of determining a quorum with respect to
361 a particular proposal, and for purposes of casting a vote for or against a particular proposal, a
362 director may be considered to be present at a meeting and to vote if the director has granted a
363 signed written proxy:

364 (i) to another director who is present at the meeting; and

365 (ii) authorizing the other director to cast the vote that is directed to be cast by the
366 written proxy with respect to the particular proposal that is described with reasonable
367 specificity in the proxy.

368 (b) Except as provided in this Subsection (4) and as permitted by Section 16-6a-813,

369 directors may not vote or otherwise act by proxy.

370 (c) Notwithstanding Subsection (4)(a), a director may grant a proxy to a person who is
371 not a director if:

372 (i) permitted by the bylaws; and

373 (ii) the proxy meets all other requirements of Subsection (4)(a).

374 (5) A director who is present at a meeting of the board of directors when corporate
375 action is taken is considered to have assented to all action taken at the meeting unless:

376 (a) (i) the director objects at the beginning of the meeting, or promptly upon the
377 director's arrival, to holding the meeting or transacting business at the meeting; and

378 (ii) after objecting, the director does not vote for or assent to any action taken at the
379 meeting;

380 (b) the director contemporaneously requests that the director's dissent or abstention as
381 to any specific action taken be entered in the minutes of the meeting; or

382 (c) the director causes written notice of the director's dissent or abstention as to any
383 specific action to be received by:

384 (i) the presiding officer of the meeting before adjournment of the meeting; or

385 (ii) the nonprofit corporation promptly after adjournment of the meeting.

386 (6) The right of dissent or abstention pursuant to Subsection (5) as to a specific action
387 is not available to a director who votes in favor of the action taken.

388 Section 3. Section **16-6a-823** is amended to read:

389 **16-6a-823. Limitation of liability of directors.**

390 (1) (a) Except as provided in Subsection (1)(b) [~~and without limiting the generality of~~
391 ~~Subsection 16-6a-822(6)~~], a nonprofit corporation may eliminate or limit the liability of a
392 director to the nonprofit corporation or to its members for monetary damages for any action
393 taken or any failure to take any action as a director, if:

394 (i) so provided in:

395 (A) the articles of incorporation;

396 (B) the bylaws; or

397 (C) a resolution; and

398 (ii) to the extent permitted in Subsection (3).

399 (b) Subsection (1)(a) does not permit a nonprofit corporation from eliminating or

400 limiting the liability of a director for:

401 (i) the amount of a financial benefit received by a director to which the director is not
402 entitled;

403 (ii) an intentional infliction of harm on:

404 (A) the nonprofit corporation; or

405 (B) the members of a nonprofit corporation;

406 (iii) an intentional violation of criminal law; or

407 (iv) a violation of Section 16-6a-824.

408 (2) A provision authorized under this section may not eliminate or limit the liability of
409 a director for any act or omission occurring prior to the date when the provision becomes
410 effective.

411 (3) Any provision authorized under this section to be included in the articles of
412 incorporation may be adopted in the bylaws or by resolution, but only if the provision is
413 approved by the same percentage of members of each voting group as would be required to
414 approve an amendment to the articles of incorporation including the provision.

415 (4) Any foreign nonprofit corporation authorized to transact business in this state,
416 except as otherwise provided by law, may adopt any provision authorized under this section.

417 Section 4. Section **16-6a-1008** is amended to read:

418 **16-6a-1008. Conversion to a corporation.**

419 (1) (a) A domestic nonprofit corporation may convert to a corporation subject to Title
420 16, Chapter 10a, Utah Revised Business Corporation Act, by filing an amendment of its articles
421 of incorporation with the division pursuant to this section.

422 (b) The day on which a nonprofit domestic corporation files an amendment under this
423 section, the domestic nonprofit corporation becomes a corporation subject to Title 16, Chapter
424 10a, Utah Revised Business Corporation Act[-], except that, notwithstanding Section
425 16-10a-203, the existence of the nonprofit corporation is considered to commence on the day
426 on which the converting corporation:

427 (i) commenced its existence under this chapter; or

428 (ii) otherwise was created, formed, incorporated, or came into being.

429 (2) The amendment of the articles of incorporation to convert to a corporation shall:

430 (a) revise the statement of purpose;

- 431 (b) delete:
- 432 (i) the authorization for members; and
- 433 (ii) any other provisions relating to memberships;
- 434 (c) authorize shares:
- 435 (i) stating the number of shares; and
- 436 (ii) including the information required by Section 16-10a-601 with respect to each class
- 437 of shares the corporation is to be authorized to issue;
- 438 (d) make such other changes as may be necessary or desired; and
- 439 (e) if the corporation has any members, provide for:
- 440 (i) the cancellation of the memberships; or
- 441 (ii) the conversion of the memberships to shares of the corporation.
- 442 (3) If the nonprofit corporation has any voting members, an amendment to convert to a
- 443 corporation shall be approved by all of the members regardless of limitations or restrictions on
- 444 the voting rights of the members.
- 445 (4) If an amendment to the articles of incorporation filed pursuant to this section is
- 446 included in a merger agreement, this section applies, except that any provisions for cancellation
- 447 or conversion of memberships:
- 448 (a) shall be in the merger agreement; and
- 449 (b) may not be in the amendment of the articles of incorporation.
- 450 (5) A conversion under this section may not result in a violation, directly or indirectly,
- 451 of:
- 452 (a) Section 16-6a-1301; or
- 453 (b) any other provision of this chapter.
- 454 (6) The conversion of a nonprofit corporation into a corporation does not affect:
- 455 (a) an obligation or liability of the converting nonprofit corporation incurred before its
- 456 conversion to a corporation; or
- 457 (b) the personal liability of any person incurred before the conversion.
- 458 (7) (a) (i) When a conversion is effective under this section, for purposes of the laws of
- 459 this state, the things listed in Subsection (7)(a)(ii):
- 460 (A) vest in the corporation to which the nonprofit corporation converts;
- 461 (B) are the property of the corporation; and

462 (C) are not considered transferred by the converting nonprofit corporation to the
463 corporation by operation of this Subsection (7)(a).

464 (ii) This Subsection (7)(a) applies to the following of the converting nonprofit
465 corporation:

466 (A) its rights, privileges, and powers;

467 (B) its interests in property, whether real, personal, or mixed;

468 (C) debts due to the converting nonprofit corporation;

469 (D) the debts, liabilities, and duties of the converting nonprofit corporation;

470 (E) the rights and obligations under contract of the converting nonprofit corporation;

471 and

472 (F) other things and causes of action belonging to the converting nonprofit corporation.

473 (b) The title to any real property vested by deed or otherwise in a nonprofit corporation
474 converting to a corporation does not revert and is not in any way impaired by reason of this
475 chapter or of the conversion.

476 (c) A right of a creditor or a lien on property of a converting nonprofit corporation that
477 is described in Subsection (6)(a) or (b) is preserved unimpaired.

478 (d) A debt, liability, or duty of a converting nonprofit corporation:

479 (i) remains attached to the corporation to which the nonprofit corporation converts; and

480 (ii) may be enforced against the corporation to the same extent as if the debts,
481 liabilities, and duties had been incurred or contracted by the corporation in its capacity as a
482 corporation.

483 (e) A converted nonprofit corporation upon conversion to a corporation pursuant to this
484 section is considered the same entity as the corporation.

485 (f) In connection with a conversion of a nonprofit corporation to a corporation under
486 this section, the interests or rights in the nonprofit corporation which is to be converted may be
487 exchanged or converted into one or more of the following:

488 (i) cash, property, interests, or rights in the corporation to which it is converted; or

489 (ii) cash, property or interests in, or rights in another entity.

490 (g) Unless otherwise agreed:

491 (i) a converting nonprofit corporation is not required to:

492 (A) wind up its affairs;

493 (B) pay its liabilities; or
494 (C) distribute its assets; and
495 (ii) a conversion is not considered to constitute a dissolution of the nonprofit
496 corporation, but constitutes a continuation of the existence of the nonprofit corporation in the
497 form of a corporation.

498 Section 5. Section **16-6a-1302** is amended to read:

499 **16-6a-1302. Authorized distributions.**

500 (1) A nonprofit corporation may:

501 (a) make distributions or distribute the nonprofit corporation's assets to a member:

502 (i) that is a domestic or foreign nonprofit corporation; ~~or~~

503 (ii) of a mutual benefit corporation, not inconsistent with its bylaws; or

504 (iii) that is a governmental entity;

505 (b) pay compensation in a reasonable amount to its members, directors, or officers for
506 services rendered;

507 (c) if a cooperative nonprofit corporation, make distributions consistent with its
508 purposes; and

509 (d) confer benefits upon its members in conformity with its purposes.

510 (2) A nonprofit corporation may make distributions upon dissolution as follows:

511 (a) to a member that is a domestic or foreign nonprofit corporation;

512 (b) to its members if it is a mutual benefit corporation;

513 (c) to another nonprofit corporation, including a nonprofit corporation organized to
514 receive the assets of and function in place of the dissolved nonprofit corporation; and

515 (d) otherwise in conformity to this chapter.

516 (3) A mutual benefit corporation may purchase a member's membership in conformity
517 with Section 16-6a-610 if, after the purchase is completed:

518 (a) the mutual benefit corporation would be able to pay its debts as they become due in
519 the usual course of its activities; and

520 (b) the mutual benefit corporation's total assets would at least equal the sum of its total
521 liabilities.

522 (4) Authorized distributions by a dissolved nonprofit corporation may be made by
523 authorized officers or directors, including those elected, hired, or otherwise selected after

524 dissolution if the election, hiring, or other selection after dissolution is not inconsistent with the
525 articles of incorporation and bylaws existing at the time of dissolution.

526 Section 6. Section **16-6a-1411** is amended to read:

527 **16-6a-1411. Procedure for and effect of administrative dissolution.**

528 (1) If the division determines that one or more grounds exist under Section 16-6a-1410
529 for dissolving a nonprofit corporation, the division shall mail to the nonprofit corporation
530 written notice of the determination, stating the one or more grounds for administrative
531 dissolution.

532 (2) (a) If the nonprofit corporation does not correct each ground for dissolution, or
533 demonstrate to the reasonable satisfaction of the division that each ground determined by the
534 division does not exist, within 60 days after mailing of the notice contemplated in Subsection
535 (1), the division shall administratively dissolve the nonprofit corporation.

536 (b) If a nonprofit corporation is dissolved under Subsection (2)(a), the division shall
537 mail written notice of the administrative dissolution to the dissolved nonprofit corporation
538 stating the date of dissolution specified in Subsection (2)(d).

539 (c) The division shall mail written notice of the administrative dissolution to:

540 (i) the last registered agent of the dissolved nonprofit corporation; or

541 (ii) if there is no registered agent of record, at least one officer of the nonprofit
542 corporation.

543 (d) A nonprofit corporation's date of dissolution is five days after the date the division
544 mails written notice of dissolution under Subsection (2)(b).

545 (3) (a) Except as provided in Subsection (3)(b), a nonprofit corporation
546 administratively dissolved continues its corporate existence, but may not carry on any activities
547 except as is appropriate to:

548 (i) wind up and liquidate its affairs under Section 16-6a-1405; and

549 (ii) to give notice to claimants in the manner provided in Sections 16-6a-1406 and
550 16-6a-1407.

551 (b) If the nonprofit corporation is reinstated in accordance with Section 16-6a-1412,
552 business conducted by the nonprofit corporation during a period of administrative dissolution is
553 unaffected by the dissolution.

554 (4) The administrative dissolution of a nonprofit corporation does not terminate the

555 authority of its registered agent.

556 ~~[(5) (a) Upon the administrative dissolution of a nonprofit corporation, the division~~
557 ~~shall be the dissolved nonprofit corporation's agent for service of process.]~~

558 ~~[(b) Service of process on the division under this Subsection (5) is service on the~~
559 ~~dissolved nonprofit corporation.]~~

560 ~~[(c) Upon receipt of process, the division shall deliver a copy of the process to the~~
561 ~~dissolved nonprofit corporation at its principal office.]~~

562 ~~[(6)]~~ (5) A notice mailed under this section shall be:

563 (a) mailed first class, postage prepaid; and

564 (b) addressed to the most current mailing address appearing on the records of the
565 division for:

566 (i) the registered agent of the nonprofit corporation, if the notice is required to be
567 mailed to the registered agent; or

568 (ii) the officer of the nonprofit corporation that is mailed the notice if the notice is
569 required to be mailed to an officer of the nonprofit corporation.

570 Section 7. Section **16-6a-1412** is amended to read:

571 **16-6a-1412. Reinstatement following administrative dissolution -- Reinstatement**
572 **after voluntary dissolution.**

573 (1) A nonprofit corporation administratively dissolved under Section 16-6a-1411 may
574 apply to the division for reinstatement within two years after the effective date of dissolution by
575 delivering to the division for filing an application for reinstatement that states:

576 (a) the effective date of its administrative dissolution and its corporate name on the
577 effective date of dissolution;

578 (b) that the ground or grounds for dissolution:

579 (i) did not exist; or

580 (ii) have been eliminated;

581 (c) (i) the corporate name under which the nonprofit corporation is being reinstated;

582 and

583 (ii) the corporate name that satisfies the requirements of Section 16-6a-401;

584 (d) that all taxes, fees, or penalties imposed pursuant to this chapter, otherwise owed by
585 the nonprofit corporation to the State Tax Commission, or otherwise imposed by the applicable

586 laws of this state have been paid;

587 (e) the address of its registered office;

588 (f) the name of its registered agent at the office stated in Subsection (1)(e); and

589 (g) the additional information as the division determines is necessary or appropriate.

590 (2) The nonprofit corporation shall include in or with the application for reinstatement:

591 (a) the written consent to appointment by the designated registered agent; and

592 (b) a certificate from the State Tax Commission reciting that all taxes owed by the
593 nonprofit corporation have been paid.

594 (3) (a) The division shall revoke the administrative dissolution if:

595 (i) the division determines that the application for reinstatement contains the
596 information required by Subsections (1) and (2); and

597 (ii) that the information is correct.

598 (b) The division shall mail written notice of the revocation to the nonprofit corporation
599 in the manner provided in Subsection 16-6a-1411[(6)](5) stating the effective date of the
600 dissolution.

601 (4) When the reinstatement is effective:

602 (a) the reinstatement relates back to and takes effect as of the effective date of the
603 administrative dissolution;

604 (b) the nonprofit corporation may carry on its activities, under the name stated pursuant
605 to Subsection (1)(c), as if the administrative dissolution had never occurred; and

606 (c) an act of the nonprofit corporation during the period of dissolution is effective and
607 enforceable as if the administrative dissolution had never occurred.

608 (5) (a) The division may make rules for the reinstatement of a nonprofit corporation
609 voluntarily dissolved.

610 (b) The rules made under Subsection (5)(a) shall be substantially similar to the
611 requirements of this section for reinstatement of a nonprofit corporation that is administratively
612 dissolved.

613 Section 8. Section **16-6a-1413** is amended to read:

614 **16-6a-1413. Appeal from denial of reinstatement.**

615 (1) If the division denies a nonprofit corporation's application for reinstatement
616 following administrative dissolution under Section 16-6a-1411, the division shall mail to the

617 nonprofit corporation in the manner provided in Subsection 16-6a-1411[(6)](5) written notice:

618 (a) setting forth the reasons for denying the application; and

619 (b) stating that the nonprofit corporation has the right to appeal the division's
620 determination to the executive director as provided in Subsection (2).

621 (2) If the division denies a nonprofit corporation's application for reinstatement
622 following administrative dissolution, in accordance with Title 63G, Chapter 4, Administrative
623 Procedures Act, the following may appeal the denial to the executive director:

624 (a) the nonprofit corporation for which the reinstatement was requested; or

625 (b) the representative of the nonprofit corporation for which reinstatement was
626 requested.

627 Section 9. Section **16-6a-1516** is amended to read:

628 **16-6a-1516. Procedure for and effect of revocation.**

629 (1) If the division determines that one or more grounds exist under Section 16-6a-1515
630 for revoking the authority of a foreign nonprofit corporation to conduct affairs in this state, the
631 division shall mail to the foreign nonprofit corporation with written notice of the division's
632 determination stating the grounds.

633 (2) (a) If the foreign nonprofit corporation does not correct each ground for revocation
634 or demonstrate to the reasonable satisfaction of the division that each ground determined by the
635 division does not exist, within 60 days after mailing of the notice under Subsection (1), the
636 division shall revoke the foreign nonprofit corporation's authority to conduct affairs in this
637 state.

638 (b) If a foreign nonprofit corporation's authority to conduct affairs in this state is
639 revoked under Subsection (2)(a), the division shall:

640 (i) mail a written notice of the revocation to the foreign nonprofit corporation stating
641 the effective date of the revocation; and

642 (ii) mail a copy of the notice to:

643 (A) the last registered agent of the foreign nonprofit corporation; or

644 (B) if there is no registered agent of record, at least one officer of the corporation.

645 (3) The authority of a foreign nonprofit corporation to conduct affairs in this state
646 ceases on the date shown on the division's certificate revoking the foreign nonprofit
647 corporation's certificate of authority.

648 (4) Revocation of a foreign nonprofit corporation's authority to conduct affairs in this
649 state does not terminate the authority of the registered agent of the foreign nonprofit
650 corporation.

651 ~~[(5) (a) Upon the revocation of a foreign nonprofit corporation's authority to conduct~~
652 ~~affairs in this state, the division becomes an agent for the foreign nonprofit corporation for~~
653 ~~service of process in any proceeding based on a cause of action which arose during the time the~~
654 ~~foreign nonprofit corporation conducted affairs in this state or was authorized to conduct affairs~~
655 ~~in this state.]~~

656 ~~[(b) Service of process on the division under this Subsection (5) is service on the~~
657 ~~foreign nonprofit corporation.]~~

658 ~~[(c) Upon receipt of process, the division shall mail a copy of the process to the foreign~~
659 ~~nonprofit corporation at its principal office, if known.]~~

660 ~~[(6)] (5) A notice mailed under this section shall be:~~

661 (a) mailed first class, postage prepaid; and

662 (b) addressed to the most current mailing address appearing on the records of the
663 division for:

664 (i) the registered agent of the nonprofit corporation, if the notice is required to be
665 mailed to the registered agent; or

666 (ii) the officer of the nonprofit corporation that is mailed the notice if the notice is
667 required to be mailed to an officer of the nonprofit corporation.

668 Section 10. Section **16-10a-1008.5** is amended to read:

669 **16-10a-1008.5. Conversion to a nonprofit corporation.**

670 (1) (a) A corporation may convert to a nonprofit corporation subject to Title 16,
671 Chapter 6a, Utah Revised Nonprofit Corporation Act, by filing an amendment of its articles of
672 incorporation pursuant to this section.

673 (b) The day on which a corporation files an amendment under this section, the
674 corporation becomes a nonprofit corporation subject to Title 16, Chapter 6a, Utah Revised
675 Nonprofit Corporation Act~~[-]~~, except that, notwithstanding Section 16-6a-203, the existence of
676 the nonprofit corporation is considered to commence on the day on which the converting
677 corporation:

678 (i) commenced its existence under this chapter; or

- 679 (ii) otherwise was created, formed, incorporated, or came into being.
- 680 (2) The amendment of the articles of incorporation to convert to a nonprofit
681 corporation shall:
- 682 (a) revise the statement of purposes of the corporation;
- 683 (b) delete:
- 684 (i) the authorization for shares; and
- 685 (ii) any provision relating to authorized or issued shares;
- 686 (c) if any shares have been issued, provide for:
- 687 (i) the cancellation of issued shares; or
- 688 (ii) the conversion of the shares to membership interests in the nonprofit corporation;
- 689 and
- 690 (d) make such other changes as may be necessary or desired.
- 691 (3) If the corporation has issued shares, an amendment to convert to a nonprofit
692 corporation shall be approved by all of the outstanding shares of all classes of shares regardless
693 of limitations or restrictions on the voting rights of the shares.
- 694 (4) If an amendment pursuant to this section is included in a merger agreement, this
695 section applies, except that any provision for the cancellation or conversion of shares shall be
696 set forth in the merger agreement and not in the amendment of the articles of incorporation.
- 697 (5) The conversion of a corporation into a nonprofit corporation does not affect:
- 698 (a) an obligation or liability of the converting corporation incurred before its
699 conversion to a nonprofit corporation; or
- 700 (b) the personal liability of any person incurred before the conversion.
- 701 (6) (a) (i) When a conversion is effective under this section, for purposes of the laws of
702 this state, the things listed in Subsection (6)(a)(ii):
- 703 (A) vest in the nonprofit corporation to which the corporation converts;
- 704 (B) are the property of the nonprofit corporation; and
- 705 (C) are not considered transferred by the converting corporation to the nonprofit
706 corporation by operation of this Subsection (6)(a).
- 707 (ii) This Subsection (6)(a) applies to the following of the converting corporation:
- 708 (A) its rights, privileges, and powers;
- 709 (B) its interests in property, whether real, personal, or mixed;

- 710 (C) debts due to the converting corporation;
711 (D) debts, liabilities, and duties of the converting corporation;
712 (E) rights and obligations under contract of the converting corporation; and
713 (F) other things and causes of action belonging to the converting corporation.
714 (b) The title to any real property vested by deed or otherwise in a corporation
715 converting to a nonprofit corporation does not revert and is not in any way impaired by reason
716 of this chapter or of the conversion.
717 (c) A right of a creditor or a lien on property of a converting corporation that is
718 described in Subsection (6)(a) or (b) is preserved unimpaired.
719 (d) A debt, liability, or duty of a converting corporation:
720 (i) remains attached to the nonprofit corporation to which the corporation converts; and
721 (ii) may be enforced against the nonprofit corporation to the same extent as if the debts,
722 liabilities, and duties had been incurred or contracted by the nonprofit corporation in its
723 capacity as a nonprofit corporation.
724 (e) A converted corporation upon conversion to a nonprofit corporation pursuant to this
725 section is considered the same entity as the nonprofit corporation.
726 (f) In connection with a conversion of a corporation to a nonprofit corporation under
727 this section, the interests or rights in the corporation which is to be converted may be
728 exchanged or converted into one or more of the following:
729 (i) cash, property, interests, or rights in the nonprofit corporation to which it is
730 converted; or
731 (ii) cash, property or interests in, or rights in another entity.
732 (g) Unless otherwise agreed:
733 (i) a converting corporation is not required to:
734 (A) wind up its affairs;
735 (B) pay its liabilities; or
736 (C) distribute its assets; and
737 (ii) a conversion is not considered to constitute a dissolution of the corporation, but
738 constitutes a continuation of the existence of the corporation in the form of a nonprofit
739 corporation.
740 Section 11. Section **16-10a-1421** is amended to read:

741 **16-10a-1421. Procedure for and effect of administrative dissolution.**

742 (1) If the division determines that one or more grounds exist under Section
743 16-10a-1420 for dissolving a corporation, it shall mail the corporation written notice of:

744 (a) the division's determination that one or more grounds exist for dissolving; and

745 (b) the grounds for dissolving the corporation.

746 (2) (a) If the corporation does not correct each ground for dissolution, or demonstrate
747 to the reasonable satisfaction of the division that each ground does not exist, within 60 days
748 after mailing the notice provided by Subsection (1), the division shall administratively dissolve
749 the corporation.

750 (b) If a corporation is dissolved under Subsection (2)(a), the division shall mail written
751 notice of the administrative dissolution to the dissolved corporation, stating the date of
752 dissolution specified in Subsection (2)(d).

753 (c) The division shall mail a copy of the notice of administrative dissolution to:

754 (i) the last registered agent of the dissolved corporation; or

755 (ii) if there is no registered agent of record, at least one officer of the corporation.

756 (d) A corporation's date of dissolution is five days after the date the division mails the
757 written notice of dissolution under Subsection (2)(b).

758 (e) On the date of dissolution, any assumed names filed on behalf of the dissolved
759 corporation under Title 42, Chapter 2, Conducting Business Under [am] Assumed Name, are
760 canceled.

761 (f) Notwithstanding Subsection (2)(e), the name of the corporation that is dissolved and
762 any assumed names filed on its behalf are not available for two years from the date of
763 dissolution for use by any other person:

764 (i) transacting business in this state; or

765 (ii) doing business under an assumed name under Title 42, Chapter 2, Conducting
766 Business Under [am] Assumed Name.

767 (g) Notwithstanding Subsection (2)(e), if the corporation that is dissolved is reinstated
768 in accordance with Section 16-10a-1422, the registration of the name of the corporation and
769 any assumed names filed on its behalf are reinstated back to the date of dissolution.

770 (3) (a) Except as provided in Subsection (3)(b), a corporation administratively dissolved
771 under this section continues its corporate existence, but may not carry on any business except:

772 (i) the business necessary to wind up and liquidate its business and affairs under
773 Section 16-10a-1405; and

774 (ii) to give notice to claimants in the manner provided in Sections 16-10a-1406 and
775 16-10a-1407.

776 (b) If the corporation is reinstated in accordance with Section 16-10a-1422, business
777 conducted by the corporation during a period of administrative dissolution is unaffected by the
778 dissolution.

779 (4) The administrative dissolution of a corporation does not terminate the authority of
780 its registered agent.

781 [~~(5) (a) Upon the administrative dissolution of a corporation, the division shall be an
782 agent of the dissolved corporation for purposes of service of process.]~~

783 [~~(b) Service of process on the division under this Subsection (5) is service on the
784 dissolved corporation.]~~

785 [~~(c) Upon receipt of process under this Subsection (5), the division shall deliver a copy
786 of the process to the dissolved corporation at its principal office.]~~

787 [~~(6)~~ (5) A notice mailed under this section shall be:

788 (a) mailed first-class, postage prepaid; and

789 (b) addressed to the most current mailing address appearing on the records of the
790 division for:

791 (i) the registered agent of the corporation, if the notice is required to be mailed to the
792 registered agent; or

793 (ii) the officer of the corporation that is mailed the notice, if the notice is required to be
794 mailed to an officer of the corporation.

795 Section 12. Section **16-10a-1422** is amended to read:

796 **16-10a-1422. Reinstatement following dissolution.**

797 (1) A corporation dissolved under Section 16-10a-1403 or 16-10a-1421 may apply to
798 the division for reinstatement within two years after the effective date of dissolution by
799 delivering to the division for filing an application for reinstatement that states:

800 (a) the effective date of the corporation's dissolution;

801 (b) the corporation's corporate name as of the effective date of dissolution;

802 (c) that the grounds for dissolution either did not exist or have been eliminated;

- 803 (d) the corporate name under which the corporation is being reinstated;
- 804 (e) that the name stated in Subsection (1)(d) satisfies the requirements of Section
805 16-10a-401;
- 806 (f) that all taxes, fees, or penalties imposed pursuant to this chapter, otherwise owed by
807 the corporation to the State Tax Commission, or otherwise imposed by applicable laws of this
808 state have been paid;
- 809 (g) the address of its registered office in this state;
- 810 (h) the name of its registered agent at the office stated in Subsection (1)(g); and
- 811 (i) any additional information the division determines to be necessary or appropriate.
- 812 (2) The corporation shall include in or with the application for reinstatement:
- 813 (a) the written consent to appointment by the designated registered agent; and
- 814 (b) a certificate from the State Tax Commission reciting that all taxes owed by the
815 corporation have been paid.
- 816 (3) If the division determines that the application for reinstatement contains the
817 information required by Subsections (1) and (2) and that the information is correct, the division
818 shall revoke the administrative dissolution. The division shall mail to the corporation in the
819 manner provided in Subsection 16-10a-1421[~~(6)~~](5) written notice of:
- 820 (a) the revocation; and
- 821 (b) the effective date of the revocation.
- 822 (4) When the reinstatement is effective, it relates back to the effective date of the
823 administrative dissolution. Upon reinstatement:
- 824 (a) an act of the corporation during the period of dissolution is effective and
825 enforceable as if the administrative dissolution had never occurred; and
- 826 (b) the corporation may carry on its business, under the name stated pursuant to
827 Subsection (1)(d), as if the administrative dissolution had never occurred.
- 828 Section 13. Section **16-10a-1423** is amended to read:
- 829 **16-10a-1423. Appeal from denial of reinstatement.**
- 830 If the division denies a corporation's application for reinstatement under Section
831 16-10a-1422 following administrative dissolution, the division shall mail to the corporation in
832 the manner provided in Subsection 16-10a-1421[~~(6)~~](5) written notice:
- 833 (1) setting forth the reasons for denying the application; and

834 (2) stating that the corporation has the right to appeal the division's determination to
835 the executive director of the Department of Commerce in accordance with Title 63G, Chapter
836 4, Administrative Procedures Act.

837 Section 14. Section **16-10a-1531** is amended to read:

838 **16-10a-1531. Procedure for and effect of revocation.**

839 (1) If the division determines that one or more grounds exist under Section
840 16-10a-1530 for revoking the authority of a foreign corporation to transact business in this
841 state, the division shall mail to the foreign corporation written notice of:

- 842 (a) the division's determination that one or more grounds exist for revocation; and
- 843 (b) the grounds for revocation.

844 (2) (a) If the foreign corporation does not correct each ground for revocation or
845 demonstrate to the reasonable satisfaction of the division that each ground determined by the
846 division does not exist, within 60 days after mailing the notice under Subsection (1), the
847 division shall revoke the foreign corporation's authority to transact business in this state.

848 (b) If a foreign corporation's authority to transact business in this state is revoked under
849 Subsection (2)(a), the division shall mail to the foreign corporation written notice of:

- 850 (i) revocation; and
- 851 (ii) the effective date of the revocation.
- 852 (c) The division shall mail a copy of the notice to:
 - 853 (i) the last registered agent of the foreign corporation; or
 - 854 (ii) if there is no registered agent of record, at least one officer of the corporation.

855 (3) The authority of a foreign corporation to transact business in this state ceases on the
856 date shown on the division's certificate revoking the corporation's certificate of authority.

857 (4) Revocation of a foreign corporation's authority to transact business in this state
858 does not terminate the authority of the registered agent of the corporation.

859 ~~[(5) (a) Upon the revocation of a foreign corporation's authority to transact business in~~
860 ~~this state, the division becomes an agent for the foreign corporation for service of process in~~
861 ~~any proceeding based on a cause of action that arose during the time the foreign corporation:]~~

862 ~~[(i) transacted business in this state; or]~~

863 ~~[(ii) was authorized to transact business in this state.]~~

864 ~~[(b) Service of process on the division under this Subsection (5) is service on the~~

865 foreign corporation.]

866 ~~[(c) Upon receipt of process under this Subsection (5), the division shall mail a copy of~~
867 ~~the process to the foreign corporation at its principal office.]~~

868 ~~[(6)]~~ (5) A notice mailed under this section shall be:

869 (a) mailed first-class, postage prepaid; and

870 (b) addressed to the most current mailing address appearing on the records of the
871 division for:

872 (i) the registered agent of the foreign corporation, if the notice is required to be mailed
873 to the registered agent; or

874 (ii) the officer of the foreign corporation that is mailed the notice, if the notice is
875 required to be mailed to an officer of the foreign corporation.

876 Section 15. Section **31A-5-101** is amended to read:

877 **31A-5-101. Definitions.**

878 In this chapter, unless the context requires otherwise:

879 (1) The definitions of the following terms applicable to the Utah Revised Business
880 Corporation Act in [~~Subsections 16-10a-102(2), (23), and (24)] Section 16-10a-102 apply to
881 stock corporations[-]:~~

882 (a) "affiliate";

883 (b) "mail"; and

884 (c) "notice."

885 (2) The definitions to the following terms applicable to nonprofit corporations in
886 [~~Subsections 16-6a-102(3), (6), and (30)] Section 16-6a-102 apply to mutuals[-]:~~

887 (a) "articles of incorporation";

888 (b) "bylaws"; and

889 (c) "member."

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

893 Section 16. Section **31A-9-101** is amended to read:

894 **31A-9-101. Definitions.**

895 (1) As used in this chapter:

896 (a) "Fraternal" or "fraternal benefit society" means a corporation organized or operating
897 under this chapter that:

898 (i) has no capital stock;

899 (ii) exists solely for:

900 (A) the benefit of its members and their beneficiaries; and

901 (B) any lawful social, intellectual, educational, charitable, benevolent, moral, fraternal,
902 patriotic, or religious purpose for the benefit of its members or the public, carried on through
903 voluntary activity of its members in their local lodges or through institutional programs of the
904 fraternal or its local lodges;

905 (iii) has a lodge system;

906 (iv) has a representative form of government; and

907 (v) provides insurance benefits authorized under this chapter.

908 (b) "Laws of a fraternal" include its articles of incorporation and bylaws, however
909 designated.

910 (c) "Lodge system" means one in which:

911 (i) there is a supreme governing body;

912 (ii) subordinate to the supreme governing body are local lodges, however designated,
913 into which natural persons are admitted as members in accordance with the laws of the
914 fraternal;

915 (iii) the local lodges are required by the laws of the fraternal to hold regular meetings at
916 least monthly; and

917 (iv) the local lodges regularly engage in programs involving member participation to
918 implement the purposes of Subsection (1)(a)(ii).

919 (d) "Representative form of government" means the fraternal complies with Section
920 31A-9-403.

921 (2) In any provisions of law made applicable to fraternal by this chapter, the technical
922 terms used in those provisions are applicable to fraternal despite the use of other parallel terms
923 by fraternal.

924 (3) The definitions [~~provided in Subsections 16-6a-102(3), (6), and (30), and Section~~
925 ~~31A-1-301~~] in Section 31A-1-301 and the definitions to the following terms in Section
926 16-6a-102 apply to fraternal[-];

927 (a) "articles of incorporation";

928 (b) "bylaws"; and

929 (c) "member."

930 Section 17. Section **42-2-6.6** is amended to read:

931 **42-2-6.6. Assumed name.**

932 (1) The assumed name:

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

935 (b) shall be distinguishable from any registered name or trademark of record in the
936 offices of the Division of Corporations and Commercial Code, as defined in Subsection
937 16-10a-401(5), except as authorized by the Division of Corporations and Commercial Code
938 pursuant to Subsection (2);

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

941 (i) "Olympic";

942 (ii) "Olympiad"; or

943 (iii) "Citius Altius Fortius";

944 (d) without the written consent of the Division of Consumer Protection issued in
945 accordance with Section 13-34-114, may not contain the words:

946 (i) "university";

947 (ii) "college"; or

948 (iii) "institute"; and

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

951 (i) "incorporated";

952 (ii) "inc."; or

953 (iii) a variation of "incorporated" or "inc."

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

957 (a) Subsection 16-6a-102(25);

958 (b) Subsection 16-6a-102[~~(33)~~](34);

959 (c) Subsection 16-10a-102(11); or

960 (d) Subsection 16-10a-102(20).

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

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

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

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

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

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

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

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

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

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

985 Section 18. Section **48-2c-1401** is amended to read:

986 **48-2c-1401. Conversion of certain entities to a domestic company.**

987 (1) As used in this part, the term "subject entity" means and includes a corporation,
988 business trust or association, a real estate investment trust, a common-law trust, or any other

989 unincorporated business, including a general partnership, a registered limited liability
990 partnership, a limited partnership, a nonprofit corporation, or a foreign company.

991 (2) Any subject entity may convert to a domestic company by complying with Section
992 48-2c-1404 and filing with the division:

993 (a) articles of conversion that satisfy the requirements of Section 48-2c-1402; and

994 (b) articles of organization that satisfy the requirements of Part 4, Formation.

Legislative Review Note

as of 2-10-09 11:28 AM

Office of Legislative Research and General Counsel

S.B. 192 - Corporation Related Amendments

Fiscal Note

2009 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.
