

HB0319S01 compared with HB0319

~~deleted text~~ shows text that was in HB0319 but was deleted in HB0319S01.

inserted text shows text that was not in HB0319 but was inserted into HB0319S01.

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Representative Daniel McCay proposes the following substitute bill:

DIVISION OF CORPORATIONS AND COMMERCIAL CODE REPORTING REQUIREMENTS

2013 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Daniel McCay

Senate Sponsor: _____

LONG TITLE

General Description:

This bill modifies provisions related to filings with the Division of Corporations and Commercial Code.

Highlighted Provisions:

This bill:

- ▶ modifies references to "annual reports" to "periodic reports";
- ▶ requires the filing of certain periodic reports either annually or every ~~five~~three years, at the option of the entity, for entities filing with the Division of Corporations and Commercial Code; and
- ▶ makes technical and conforming amendments.

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Money Appropriated in this Bill:

None

Other Special Clauses:

This bill takes effect on July 1, 2013.

This bill coordinates with S.B. 21, Unincorporated Business Entities, to provide substantive amendments.

Utah Code Sections Affected:

AMENDS:

3-1-25, as last amended by Laws of Utah 2000, Chapter 300

3-1-42, as enacted by Laws of Utah 1994, Chapter 204

16-6a-102, as last amended by Laws of Utah 2009, Chapter 386

16-6a-113, as enacted by Laws of Utah 2000, Chapter 300

16-6a-1410, as last amended by Laws of Utah 2008, Chapter 364

16-6a-1515, as last amended by Laws of Utah 2008, Chapter 364

16-6a-1601, as enacted by Laws of Utah 2000, Chapter 300

16-6a-1607, as last amended by Laws of Utah 2008, Chapter 364

16-6a-1608, as enacted by Laws of Utah 2000, Chapter 300

16-6a-1701, as enacted by Laws of Utah 2000, Chapter 300

16-10a-102, as last amended by Laws of Utah 2008, Chapter 249

16-10a-128, as enacted by Laws of Utah 1992, Chapter 277

16-10a-1420, as last amended by Laws of Utah 2008, Chapter 364

16-10a-1530, as last amended by Laws of Utah 2008, Chapter 364

16-10a-1601, as enacted by Laws of Utah 1992, Chapter 277

16-10a-1607, as last amended by Laws of Utah 2010, Chapter 378

16-10a-1608, as enacted by Laws of Utah 1992, Chapter 277

16-11-14, as last amended by Laws of Utah 2000, Chapter 261

16-16-207, as last amended by Laws of Utah 2010, Chapter 378

16-16-1211, as enacted by Laws of Utah 2008, Chapter 363

16-16-1406, as last amended by Laws of Utah 2010, Chapter 378

16-17-301, as last amended by Laws of Utah 2010, Chapter 378

48-1b-1003 (Effective 07/01/13), as enacted by Laws of Utah 2011, Chapter 353

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48-2a-203.5 (Repealed 07/01/13), as repealed by Laws of Utah 2011, Chapter 353
48-2a-210 (Repealed 07/01/13), as repealed by Laws of Utah 2011, Chapter 353
48-2c-121 (Repealed 07/01/13), as repealed by Laws of Utah 2011, Chapter 353
48-2c-122 (Repealed 07/01/13), as repealed by Laws of Utah 2011, Chapter 353
48-2c-203 (Repealed 07/01/13), as repealed by Laws of Utah 2011, Chapter 353
48-2c-213 (Repealed 07/01/13), as repealed by Laws of Utah 2011, Chapter 353
48-2c-309 (Repealed 07/01/13), as repealed by Laws of Utah 2011, Chapter 353
48-2c-804 (Repealed 07/01/13), as repealed by Laws of Utah 2011, Chapter 353
48-2c-1206 (Repealed 07/01/13), as repealed by Laws of Utah 2011, Chapter 353
48-2c-1207 (Repealed 07/01/13), as repealed by Laws of Utah 2011, Chapter 353
48-2c-1612 (Repealed 07/01/13), as repealed by Laws of Utah 2011, Chapter 353
48-2c-1902 (Repealed 07/01/13), as repealed by Laws of Utah 2011, Chapter 353
48-2d-111 (Effective 07/01/13), as enacted by Laws of Utah 2011, Chapter 353
48-2d-209 (Effective 07/01/13), as enacted by Laws of Utah 2011, Chapter 353
48-2d-210 (Effective 07/01/13), as enacted by Laws of Utah 2011, Chapter 353
48-2d-809 (Effective 07/01/13), as enacted by Laws of Utah 2011, Chapter 353
48-2d-906 (Effective 07/01/13), as enacted by Laws of Utah 2011, Chapter 353
48-3-208 (Effective 07/01/13), as enacted by Laws of Utah 2011, Chapter 353
48-3-209 (Effective 07/01/13), as enacted by Laws of Utah 2011, Chapter 353
48-3-706 (Effective 07/01/13), as enacted by Laws of Utah 2011, Chapter 353
48-3-806 (Effective 07/01/13), as enacted by Laws of Utah 2011, Chapter 353

Utah Code Sections Affected by Coordination Clause:

48-1d-1102, Utah Code Annotated 1953
48-1d-1109, Utah Code Annotated 1953
48-2e-115, Utah Code Annotated 1953
48-2e-211, Utah Code Annotated 1953
48-2e-212, Utah Code Annotated 1953
48-2e-810, Utah Code Annotated 1953
48-3a-211, Utah Code Annotated 1953
48-3a-212, Utah Code Annotated 1953
48-3a-708, Utah Code Annotated 1953

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

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

3-1-25. Filing of periodic reports.

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

Section 2. Section **3-1-42** is amended to read:

3-1-42. Association's records.

(1) An association shall keep as permanent records:

(a) minutes of meetings of its members and board of directors;

(b) a record of each action taken by the consent of the members or board of directors without a meeting;

(c) a record of each action taken on behalf of the association by a committee of the board of directors in place of the board of directors; and

(d) a record of waivers of notices of meetings of members, board of directors, or committees of the board of directors.

(2) An association shall maintain:

(a) appropriate accounting records; and

(b) a record of the names and addresses of its members and shareholders.

(3) An association shall maintain its records in written form or in a form capable of being converted into written form within a reasonable time.

(4) An association shall keep a copy of the following records at its principal office:

(a) its most current articles of incorporation;

(b) its most current bylaws;

(c) the minutes of meetings of members, board of directors, and committees for the past three years;

(d) a list of the names and business addresses of its current officers and directors;

(e) its most recent [~~annual~~] periodic reports delivered to the division as provided under Section 3-1-25; and

(f) financial statements prepared for periods ending during the last three years.

Section 3. Section **16-6a-102** is amended to read:

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16-6a-102. Definitions.

As used in this chapter:

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

(b) "Address" includes:

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

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

(3) "Articles of incorporation" include:

- (a) amended articles of incorporation;
- (b) restated articles of incorporation;
- (c) articles of merger; and
- (d) a document of a similar import to the documents described in Subsections (3)(a)

through (c).

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

- (a) by a:
 - (i) foreign corporation pursuant to Section 16-10a-1506; or
 - (ii) a foreign nonprofit corporation pursuant to Section 16-6a-1506; and
- (b) because the corporate name of the foreign corporation described in Subsection

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

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

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

(6) (a) "Bylaws" means the one or more codes of rules, other than the articles of incorporation, adopted pursuant to this chapter for the regulation or management of the affairs of a domestic or foreign nonprofit corporation irrespective of the one or more names by which

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the codes of rules are designated.

(b) "Bylaws" includes:

- (i) amended bylaws; and
- (ii) restated bylaws.

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

- (i) legal tender;
- (ii) a negotiable instrument; or
- (iii) other cash equivalent readily convertible into legal tender.

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

(8) (a) "Class" means a group of memberships that has the same right with respect to voting, dissolution, redemption, transfer, or other characteristics.

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

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

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

- (i) italics;
- (ii) boldface;
- (iii) contrasting color;
- (iv) capitals; or
- (v) underlining.

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

- (a) the ownership of voting shares;
- (b) contract; or
- (c) a means other than those specified in Subsection (10)(a) or (b).

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

(12) "Corporate name" means:

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

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

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

(i) articles of incorporation; or

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

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

(i) articles of incorporation; or

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

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

(a) is not a foreign corporation; and

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

Act.

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

(a) for the election of a director; or

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

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

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

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

(i) members;

(ii) directors; or

(iii) officers.

(b) "Distribution" does not include a fair-value payment for:

(i) a good sold; or

(ii) a service received.

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

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

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

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

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

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

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

(23) "Entity" includes:

(a) a domestic or foreign corporation;

(b) a domestic or foreign nonprofit corporation;

(c) a limited liability company;

(d) a profit or nonprofit unincorporated association;

(e) a business trust;

(f) an estate;

(g) a partnership;

(h) a trust;

(i) two or more persons having a joint or common economic interest;

(j) a state;

(k) the United States; or

(l) a foreign government.

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

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

(a) incorporated under a law other than the laws of this state; and

(b) that would be a nonprofit corporation if formed under the laws of this state.

(26) "Governmental entity" means:

(a) (i) the executive branch of the state;

(ii) the judicial branch of the state;

(iii) the legislative branch of the state;

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- (iv) an independent entity, as defined in Section 63E-1-102;
- (v) a political subdivision of the state;
- (vi) a state institution of higher education, as defined in Section 53B-3-102;
- (vii) an entity within the state system of public education; or
- (viii) the National Guard; or

(b) any of the following that is established or controlled by a governmental entity listed in Subsection (26)(a) to carry out the public's business:

- (i) an office;
- (ii) a division;
- (iii) an agency;
- (iv) a board;
- (v) a bureau;
- (vi) a committee;
- (vii) a department;
- (viii) an advisory board;
- (ix) an administrative unit; or
- (x) a commission.

(27) "Governmental subdivision" means:

- (a) a county;
- (b) a city;
- (c) a town; or
- (d) another type of governmental subdivision authorized by the laws of this state.

(28) "Individual" means:

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

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

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

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(b) "Mail," "mailed," or "mailing" includes registered or certified mail for which the proper fee is paid.

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

- (i) in the articles of incorporation;
- (ii) in the bylaws;
- (iii) by a resolution of the board of directors; or
- (iv) by a resolution of the members of the nonprofit corporation.

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

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

(33) "Mutual benefit corporation" means a nonprofit corporation:

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

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

(34) "Nonprofit corporation" or "domestic nonprofit corporation" means an entity that:

- (a) is not a foreign nonprofit corporation; and
- (b) is incorporated under or subject to this chapter.

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

(36) "Party related to a director" means:

- (a) the spouse of the director;
- (b) a child of the director;
- (c) a grandchild of the director;
- (d) a sibling of the director;
- (e) a parent of the director;
- (f) the spouse of an individual described in Subsections (36)(b) through (e);
- (g) an individual having the same home as the director;
- (h) a trust or estate of which the director or another individual specified in this

Subsection (36) is a substantial beneficiary; or

- (i) any of the following of which the director is a fiduciary:

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- (i) a trust;
- (ii) an estate;
- (iii) an incompetent;
- (iv) a conservatee; or
- (v) a minor.

(37) "Person" means an:

- (a) individual; or
- (b) entity.

(38) "Principal office" means:

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

- (i) [~~an annual~~] a periodic report;
- (ii) an application for a certificate of authority; or
- (iii) a notice of change of principal office; or
- (b) if no principal office can be determined, a domestic or foreign nonprofit

corporation's registered office.

(39) "Proceeding" includes:

- (a) a civil suit;
- (b) arbitration;
- (c) mediation;
- (d) a criminal action;
- (e) an administrative action; or
- (f) an investigatory action.

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

- (a) by the domestic or foreign nonprofit corporation at:
 - (i) its registered office in this state; or
 - (ii) its principal office;
- (b) by the secretary of the domestic or foreign nonprofit corporation, wherever the

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secretary is found; or

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

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

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

(42) "Registered agent" means the registered agent of:

- (a) a domestic nonprofit corporation; or
- (b) a foreign nonprofit corporation.

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

- (a) articles of incorporation;
- (b) an application for a certificate of authority; or
- (c) a notice of change of registered office.

(44) "Secretary" means the corporate officer to whom the bylaws or the board of directors delegates responsibility under Subsection 16-6a-818(3) for:

- (a) the preparation and maintenance of:
 - (i) minutes of the meetings of:
 - (A) the board of directors; or
 - (B) the members; and
 - (ii) the other records and information required to be kept by the nonprofit corporation pursuant to Section 16-6a-1601; and

(b) authenticating records of the nonprofit corporation.

(45) "Shareholder" means a person in whose name a share is registered in the records of a nonprofit corporation.

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

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

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- (a) a state;
- (b) a commonwealth;
- (c) the District of Columbia;
- (d) an agency or governmental and political subdivision of a state, commonwealth, or District of Columbia;
- (e) territory or insular possession of the United States; or
- (f) an agency or governmental and political subdivision of a territory or insular possession of the United States.

(48) "Street address" means:

- (a) (i) street name and number;
- (ii) city or town; and
- (iii) United States post office zip code designation; or
- (b) if, by reason of rural location or otherwise, a street name, number, city, or town does not exist, an appropriate description other than that described in Subsection (48)(a) fixing as nearly as possible the actual physical location, but only if the information includes:

- (i) the rural free delivery route;
- (ii) the county; and
- (iii) the United States post office zip code designation.

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

(50) "Tribal nonprofit corporation" means a nonprofit corporation:

- (a) incorporated under the law of a tribe; and
- (b) that is at least 51% owned or controlled by the tribe.

(51) "United States" includes a district, authority, office, bureau, commission, department, and another agency of the United States of America.

(52) "Vote" includes authorization by:

- (a) written ballot; and
- (b) written consent.

(53) (a) "Voting group" means all the members of one or more classes of members or

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

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

(54) (a) "Voting member" means a person entitled to vote for all matters required or permitted under this chapter to be submitted to a vote of the members, except as otherwise provided in the articles of incorporation or bylaws.

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

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

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

Section 4. Section **16-6a-113** is amended to read:

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

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

- (a) a certificate of existence for a domestic nonprofit corporation;
- (b) a certificate of authorization for a foreign nonprofit corporation; or
- (c) a certificate that sets forth any facts of record in the division.

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

- (a) (i) the domestic nonprofit corporation's corporate name; or
- (ii) the foreign nonprofit corporation's corporate name registered in this state;
- (b) that:
 - (i) (A) the domestic nonprofit corporation is incorporated under the law of this state;

and

- (B) the date of its incorporation; or
- (ii) the foreign nonprofit corporation is authorized to conduct affairs in this state;
- (c) that all fees, taxes, and penalties owed to this state have been paid, if:
 - (i) payment is reflected in the records of the division; and
 - (ii) nonpayment affects the existence or authorization of the domestic or foreign nonprofit corporation;

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

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

(f) other facts of record in the division that may be requested by the applicant.

(3) Subject to any qualification stated in the certificate, a certificate issued by the division may be relied upon as conclusive evidence of the facts set forth in the certificate.

Section 5. Section **16-6a-1410** is amended to read:

16-6a-1410. Grounds for administrative dissolution.

The division may commence a proceeding under Section 16-6a-1411 for administrative dissolution of a nonprofit corporation if:

(1) the nonprofit corporation does not pay when they are due any taxes, fees, or penalties imposed by this chapter or other applicable laws of this state;

(2) the nonprofit corporation does not deliver its [~~annual~~] periodic report to the division when it is due;

(3) the nonprofit corporation is without a registered agent; or

(4) the nonprofit corporation does not give notice to the division that:

(a) its registered agent has been changed;

(b) its registered agent has resigned; or

(c) the nonprofit corporation's period of duration stated in its articles of incorporation expires.

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

16-6a-1515. Grounds for revocation.

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

(1) the foreign nonprofit corporation does not deliver its [~~annual~~] periodic report to the division when it is due;

(2) the foreign nonprofit corporation does not pay when they are due any taxes, fees, or penalties imposed by this chapter or other applicable laws of this state;

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

(4) the foreign nonprofit corporation does not inform the division by an appropriate filing, within 30 days of the change or resignation, that:

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- (a) its registered agent has changed; or
- (b) its registered agent has resigned;
- (5) an incorporator, director, officer, or agent of the foreign nonprofit corporation signs a document knowing it is false in any material respect with intent that the document be delivered to the division for filing; or
- (6) the division receives a duly authenticated certificate from the division or other official having custody of corporate records in the state or country under whose law the foreign nonprofit corporation is incorporated stating that the foreign nonprofit corporation has dissolved or disappeared as the result of a merger.

Section 7. Section **16-6a-1601** is amended to read:

16-6a-1601. Corporate records.

- (1) A nonprofit corporation shall keep as permanent records:
 - (a) minutes of all meetings of its members and board of directors;
 - (b) a record of all actions taken by the members or board of directors without a meeting;
 - (c) a record of all actions taken by a committee of the board of directors in place of the board of directors on behalf of the nonprofit corporation; and
 - (d) a record of all waivers of notices of meetings of members and of the board of directors or any committee of the board of directors.
- (2) A nonprofit corporation shall maintain appropriate accounting records.
- (3) A nonprofit corporation or its agent shall maintain a record of its members in a form that permits preparation of a list of the name and address of all members:
 - (a) in alphabetical order, by class; and
 - (b) showing the number of votes each member is entitled to vote.
- (4) A nonprofit corporation shall maintain its records in written form or in another form capable of conversion into written form within a reasonable time.
- (5) A nonprofit corporation shall keep a copy of each of the following records at its principal office:
 - (a) its articles of incorporation;
 - (b) its bylaws;
 - (c) resolutions adopted by its board of directors relating to the characteristics,

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qualifications, rights, limitations, and obligations of members or any class or category of members;

(d) the minutes of all members' meetings for a period of three years;

(e) records of all action taken by members without a meeting, for a period of three years;

(f) all written communications to members generally as members for a period of three years;

(g) a list of the names and business or home addresses of its current directors and officers;

(h) a copy of its most recent [~~annual~~] periodic report delivered to the division under Section 16-6a-1607; and

(i) all financial statements prepared for periods ending during the last three years that a member could have requested under Section 16-6a-1606.

Section 8. Section **16-6a-1607** is amended to read:

16-6a-1607. Periodic report for division.

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

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

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

(b) the jurisdiction under whose law it is incorporated;

(c) the information required by Subsection 16-17-203(1);

(d) the street address of its principal office, wherever located; and

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

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

(3) Information in the [~~annual~~] periodic report shall be current as of the date the [~~annual~~] periodic report is executed on behalf of the nonprofit corporation.

(4) (a) [~~The annual report of a~~] A domestic or foreign nonprofit corporation shall [~~be delivered annually~~] deliver the periodic report either annually or every ~~five~~ three years to the

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division no later than 60 days past the date the report was mailed by the division.

(b) The domestic or foreign nonprofit corporation makes the election of either filing a periodic report annually or every ~~five~~three years. The division shall impose the same filing fee for filing annually or every ~~five~~three years.

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

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

(b) If ~~[an annual]~~ a periodic report does not contain the information required by this section, the division shall promptly notify the reporting domestic or foreign nonprofit corporation in writing and return the ~~[annual]~~ periodic report to it for correction.

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

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

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

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

Section 9. Section **16-6a-1608** is amended to read:

16-6a-1608. Statement of person named as director or officer.

Any person named as a director or officer of a domestic or foreign nonprofit corporation in ~~[an annual]~~ a periodic report or other document on file with the division may, if that person does not hold the named position, deliver to the division for filing a statement setting forth:

- (1) that person's name;

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(2) the domestic or foreign nonprofit corporation's name;

(3) information sufficient to identify the report or other document in which the person is named as a director or officer; and

(4) (a) the date on which the person ceased to be a director or officer of the domestic or foreign nonprofit corporation; or

(b) a statement that the person did not hold the position for which the person was named in the corporate report or other document.

Section 10. Section **16-6a-1701** is amended to read:

16-6a-1701. Application to existing domestic nonprofit corporations -- Reports of domestic and foreign nonprofit corporation.

(1) Except as otherwise provided in Section 16-6a-1704, this chapter applies to domestic nonprofit corporations as follows:

(a) domestic nonprofit corporations in existence on April 30, 2001, that were incorporated under any general statute of this state providing for incorporation of nonprofit corporations, including all nonprofit corporations organized under any former provisions of Title 16, Chapter 6, Utah Nonprofit Corporation and Co-operative Association Act;

(b) mutual irrigation, canal, ditch, reservoir, and water companies and water users' associations organized and existing under the laws of this state on April 30, 2001;

(c) corporations organized under the provisions of Title 16, Chapter 7, Corporations Sole, for purposes of applying all provisions relating to merger or consolidation; and

(d) to actions taken by the directors, officers, and members of the entities described in Subsections (1)(a), (b), and (c) after April 30, 2001.

(2) Domestic nonprofit corporations to which this chapter applies, that are organized and existing under the laws of this state on April 30, 2001:

(a) shall continue in existence with all the rights and privileges applicable to nonprofit corporations organized under this chapter; and

(b) from April 30, 2001 shall have all the rights and privileges and shall be subject to all the remedies, restrictions, liabilities, and duties prescribed in this chapter except as otherwise specifically provided in this chapter.

(3) Every existing domestic nonprofit corporation and foreign nonprofit corporation qualified to conduct affairs in this state on April 30, 2001 shall file [~~an annual~~] a periodic

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report with the division setting forth the information prescribed by Section 16-6a-1607. The [~~annual~~] periodic report shall be filed at such time as would have been required had this chapter not taken effect and shall be filed [~~annually~~] thereafter as required in Section 16-6a-1607.

Section 11. Section **16-10a-102** is amended to read:

16-10a-102. Definitions.

As used in this chapter:

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

(b) "Address" includes:

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

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

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

(4) "Articles of incorporation" include:

- (a) amended and restated articles of incorporation;
- (b) articles of merger; and
- (c) a document of a similar import to those described in Subsections (4)(a) and (b).

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

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

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

- (a) legal tender;
- (b) a negotiable instrument; and
- (c) a cash equivalent readily convertible into legal tender.

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

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- (a) italics;
- (b) boldface;
- (c) contrasting color;
- (d) capitals; or
- (e) underlining.

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

(10) "Corporate name" means:

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

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

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

- (a) is not a foreign corporation; and
- (b) is incorporated under or subject to this chapter.

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

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

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

(ii) incurrence of indebtedness by the corporation.

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

- (i) a declaration or payment of a dividend;
- (ii) a purchase, redemption, or other acquisition of shares;
- (iii) distribution of indebtedness; or
- (iv) another form.

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

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

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

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

(18) "Employee" includes an officer but not a director, unless the director accepts a duty that makes that director also an employee.

(19) "Entity" includes:

- (a) a domestic and foreign corporation;
- (b) a nonprofit corporation;
- (c) a limited liability company;
- (d) a profit or nonprofit unincorporated association;
- (e) a business trust;
- (f) an estate;
- (g) a partnership;
- (h) a trust;
- (i) two or more persons having a joint or common economic interest;
- (j) a state;
- (k) the United States; and
- (l) a foreign government.

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

(21) "Governmental subdivision" means:

- (a) county;
- (b) municipality; or
- (c) another type of governmental subdivision authorized by the laws of this state.

(22) "Individual" means:

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

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

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

(25) "Principal office" means the office, in or out of this state, designated by a domestic or foreign corporation as its principal office in the most recent document on file with the division providing the information, including:

- (a) [~~an annual~~] a periodic report;
- (b) an application for a certificate of authority; or
- (c) a notice of change of principal office.

(26) "Proceeding" includes:

- (a) a civil suit;
- (b) arbitration or mediation; and
- (c) a criminal, administrative, or investigatory action.

(27) "Qualified shares" means, with respect to a director's conflicting interest transaction pursuant to Section 16-10a-853, one or more shares entitled to vote on the transaction, except a share:

- (a) that, to the knowledge, before the vote, of the secretary, other officer, or agent of the corporation authorized to tabulate votes, is beneficially owned; or
- (b) the voting of which is controlled, by:
 - (i) a director who has a conflicting interest respecting the transaction;
 - (ii) a related person of that director; or
 - (iii) a person referred to in Subsections (27)(b)(i) and (ii).

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

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

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(29) (a) "Record date" means the date established under Part 6, Shares and Distributions, or Part 7, Shareholders, on which a corporation determines the identity of its shareholders.

(b) The determination under Subsection (29)(a) shall be made as of the close of business on the record date unless another time for doing so is specified when the record date is fixed.

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

- (a) articles of incorporation;
- (b) an application for a certificate of authority; or
- (c) a notice of change of registered office.

(31) "Related person" of a director means:

- (a) the spouse of the director;
- (b) a child, grandchild, sibling, or parent of the director;
- (c) the spouse of a child, grandchild, sibling, or parent of the director;
- (d) an individual having the same home as the director;
- (e) a trust or estate of which the director or any other individual specified in this

Subsection (31) is a substantial beneficiary; or

(f) a trust, estate, incompetent, conservatee, or minor of which the director is a fiduciary.

(32) "Secretary" means the corporate officer to whom the bylaws or the board of directors delegates responsibility under Subsection 16-10a-830(3) for:

- (a) the preparation and maintenance of:
 - (i) minutes of the meetings of the board of directors and of the shareholders; and
 - (ii) the other records and information required to be kept by the corporation by Section

16-10a-830; and

- (b) authenticating records of the corporation.

(33) "Share" means the unit into which the proprietary interests in a corporation are divided.

(34) (a) "Shareholder" means:

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(i) the person in whose name a share is registered in the records of a corporation; or

(ii) the beneficial owner of a share to the extent recognized pursuant to Section 16-10a-723.

(b) For purposes of this chapter:

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

(A) (I) three or fewer coowners; or

(II) in the case of more than three coowners, each coowner in excess of the first three is counted as a separate shareholder;

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

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

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

(iii) if the record of a shareholder is not maintained in accordance with accepted practice, an additional person who would be identified as an owner on that record if it had been maintained in accordance with accepted practice shall be included as a holder of record.

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

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

(37) "Tribal corporation" means a corporation:

(a) incorporated under the law of a tribe; and

(b) that is at least 51% owned or controlled by the tribe.

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

(b) All shares entitled by the articles of incorporation or this chapter to vote generally

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on the matter are for that purpose a single voting group.

Section 12. Section **16-10a-128** is amended to read:

16-10a-128. Certificates issued by the division.

(1) Anyone may apply to the division for a certificate of existence for a domestic corporation, a certificate of authorization for a foreign corporation, or a certificate that sets forth any facts of record in the office of the division.

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

(a) the domestic corporation's corporate name or the foreign corporation's corporate name registered in this state;

(b) that:

(i) the domestic corporation is duly incorporated under the law of this state and the date of its incorporation; or

(ii) the foreign corporation is authorized to transact business in this state;

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

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

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

(d) that its most recent [~~annual~~] periodic report required by Section 16-10a-1607 has been filed by the division;

(e) that articles of dissolution have not been filed; and

(f) other facts of record in the office of the division that may be requested by the applicant.

(3) Subject to any qualification stated in the certificate, a certificate issued by the division may be relied upon as conclusive evidence of the facts set forth in the certificate.

Section 13. Section **16-10a-1420** is amended to read:

16-10a-1420. Grounds for administrative dissolution.

The division may commence a proceeding under Section 16-10a-1421 for administrative dissolution of a corporation if:

(1) the corporation does not pay when they are due any taxes, fees, or penalties imposed by this chapter or other applicable laws of this state;

(2) the corporation does not deliver a corporate or [~~annual~~] periodic report to the

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division when it is due;

(3) the corporation is without a registered agent in this state for 30 days or more;

(4) the corporation does not give notice to the division within 30 days that its registered agent has been changed or that its registered agent has resigned; or

(5) the corporation's period of duration stated in its articles of incorporation expires.

Section 14. Section **16-10a-1530** is amended to read:

16-10a-1530. Grounds for revocation.

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

(1) the foreign corporation does not deliver its [~~annual~~] periodic report to the division when it is due;

(2) the foreign corporation does not pay when they are due any taxes, fees, or penalties imposed by this chapter or other applicable laws of this state;

(3) the foreign corporation is without a registered agent in this state for 30 days or more;

(4) the foreign corporation does not inform the division by an appropriate filing within 30 days of the change or resignation that its registered agent has changed or that its registered agent has resigned;

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

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

Section 15. Section **16-10a-1601** is amended to read:

16-10a-1601. Corporate records.

(1) A corporation shall keep as permanent records minutes of all meetings of its shareholders and board of directors, a record of all actions taken by the shareholders or board of directors without a meeting, and a record of all actions taken on behalf of the corporation by a committee of the board of directors in place of the board of directors, and a record of all

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waivers of notices of meetings of shareholders, meetings of the board of directors, or any meetings of committees of the board of directors.

(2) A corporation shall maintain appropriate accounting records.

(3) A corporation or its agent shall maintain a record of the names and addresses of its shareholders, in a form that permits preparation of a list of shareholders:

(a) that is arranged by voting group and within each voting group by class or series of shares;

(b) that is in alphabetical order within each class or series; and

(c) that shows the address of and the number of shares of each class and series held by each shareholder.

(4) A corporation shall maintain its records in written form or in any form capable of conversion into written form within a reasonable time.

(5) A corporation shall keep a copy of the following records at its principal office:

(a) its articles of incorporation currently in effect;

(b) its bylaws currently in effect;

(c) the minutes of all shareholders' meetings, and records of all action taken by shareholders without a meeting, for the past three years;

(d) all written communications within the past three years to shareholders as a group or to the holders of any class or series of shares as a group;

(e) a list of the names and business addresses of its current officers and directors;

(f) its most recent [~~annual~~] periodic report delivered to the division under Section 16-10a-1607; and

(g) all financial statements prepared for periods ending during the last three years that a shareholder could request under Section 16-10a-1605.

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

16-10a-1607. Periodic report for division.

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

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

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- (b) the jurisdiction under whose law it is incorporated;
- (c) the information required by Subsection 16-17-203(1);
- (d) the street address of its principal office, wherever located; and
- (e) the names of its principal officers.

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

(3) Information in the ~~[annual]~~ periodic report shall be current as of the date the ~~[annual]~~ periodic report is executed on behalf of the corporation.

(4) (a) ~~[The annual report of a]~~ A domestic or foreign corporation shall ~~[be delivered annually]~~ deliver a periodic report annually or every ~~{five}~~ three years to the division no later than the end of the second calendar month following the calendar month in which the periodic report form is mailed by the division. Proof to the satisfaction of the division that the corporation has mailed ~~[an annual]~~ a periodic report form is considered in compliance with this Subsection (4).

(b) The domestic or foreign corporation makes the election of either filing a periodic report annually or every ~~{five}~~ three years. The division shall impose the same filing fee for filing annually or every ~~{five}~~ three years.

(5) If ~~[an annual]~~ a periodic report contains the information required by this section, the division shall file it. If a report does not contain the information required by this section, the division shall promptly notify the reporting domestic or foreign corporation in writing and return the periodic report to it for correction. If the periodic report was otherwise timely filed and is corrected to contain the information required by this section and delivered to the division within 30 days after the effective date of the notice of rejection, the ~~[annual]~~ periodic report is considered to be timely filed.

(6) The fact that an individual's name is signed on ~~[an annual]~~ a periodic report form is prima facie evidence for division purposes that the individual is authorized to certify the report on behalf of the corporation.

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

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

Section 17. Section **16-10a-1608** is amended to read:

16-10a-1608. Statement of person named as director or officer.

[~~(t)~~] Any person named as a director or officer of a domestic or foreign corporation in [~~an annual~~] a periodic report or other document on file with the division may, if [~~he~~] the person does not hold the named position, deliver to the division for filing a statement setting forth:

[~~(a) his~~] (1) the person's name;

[~~(b)~~] (2) the domestic or foreign corporation's name;

[~~(c)~~] (3) information sufficient to identify the report or other document in which [~~he~~] the person is named as a director or officer; and

[~~(d)~~] (4) the date on which [~~he~~] the person ceased to be a director or officer of the domestic or foreign corporation, or a statement that [~~he~~] the person did not hold the position for which [~~he~~] the person was named in the corporate report or other document.

Section 18. Section **16-11-14** is amended to read:

16-11-14. Periodic report -- Filing -- Contents -- Filing fee.

[~~During~~] (1) Either annually or every ~~five~~three years during the month of the anniversary date of incorporation, each professional corporation shall file with the division [~~an annual~~] a periodic report as specified by Section 16-10a-1607[~~;~~]:

(a) giving the names and residence addresses of all shareholders of the professional corporation as of its anniversary date of incorporation next preceding[~~;~~]; and

(b) certifying that all of the shareholders are duly licensed to render the same specific professional services as those for which the corporation was organized or otherwise qualify to be shareholders pursuant to the applicable licensing act for the profession for which the corporation was organized.

(2) A professional corporation makes the election of either filing a periodic report annually or every ~~five~~three years. The division shall impose the same filing fee for filing annually or every ~~five~~three years.

Section 19. Section **16-16-207** is amended to read:

16-16-207. Periodic report for division.

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(1) A limited cooperative association or foreign cooperative authorized to transact business in this state shall deliver to the division for filing [~~an annual~~] a periodic report that states:

(a) the name of the association or foreign cooperative;

(b) the street address and, if different, mailing address of the association's or foreign cooperative's designated office and the name of its agent for service of process at the designated office;

(c) the street address and, if different, mailing address of the association's or foreign cooperative's principal office; and

(d) in the case of a foreign cooperative, the state or other jurisdiction under whose law the foreign cooperative is formed and any alternative name adopted under Section 16-16-1405.

(2) Information in [~~an annual~~] a periodic report shall be current as of the date the report is delivered to the division.

(3) (a) The first [~~annual~~] periodic report shall be delivered to the division between January 1 and April 1 of the year following the calendar year in which the limited cooperative association is formed or the foreign cooperative is authorized to transact business in this state. For subsequent years, [~~an annual~~] a periodic report shall be delivered to the division either annually or every ~~five~~ ~~three~~ years during the month in which falls the anniversary of the limited cooperative association's organization or the foreign cooperative's authorization to transact business.

(b) The limited cooperative association or foreign cooperative makes the election of either filing a periodic report annually or every ~~five~~ ~~three~~ years. The division shall impose the same filing fee for filing annually or every ~~five~~ ~~three~~ years.

(4) If [~~an annual~~] a periodic report does not contain the information required by Subsection (1), the division shall promptly notify the reporting limited cooperative association or foreign cooperative and return the periodic report for correction. If the periodic report is corrected to contain the information required by Subsection (1) and delivered to the division not later than 30 days after the date of the notice from the division, it is timely delivered.

(5) If a filed [~~annual~~] periodic report contains an address of the designated office, name of the agent for service of process, or address of the principal office which differs from the information shown in the records of the division immediately before the filing, the differing

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information in the [~~annual~~] periodic report is considered a statement of change.

(6) If a limited cooperative association fails to deliver [~~an annual~~] a periodic report under this section, the division may proceed under Section 16-16-1211 to dissolve the association administratively.

(7) If a foreign cooperative fails to deliver [~~an annual~~] a periodic report under this section, the division may revoke the certificate of authority of the cooperative.

Section 20. Section **16-16-1211** is amended to read:

16-16-1211. Administrative dissolution.

(1) The division may dissolve a limited cooperative association administratively if the association does not:

(a) pay, not later than 60 days after the due date, any fee, tax, or penalty due to the division under this chapter or other law; or

(b) deliver not later than 60 days after the due date its [~~annual~~] periodic report to the division.

(2) If the division determines that a ground exists for dissolving a limited cooperative association administratively, the division shall file a record of the determination and serve the association with a copy of the record.

(3) If, not later than 60 days after service of a copy of the division's determination under Subsection (2), the association does not correct each ground for dissolution or demonstrate to the satisfaction of the division that each uncorrected ground determined by the division does not exist, the division shall dissolve the association administratively by preparing and filing a declaration of dissolution which states the grounds for dissolution. The division shall serve the association with a copy of the declaration.

(4) A limited cooperative association that has been dissolved administratively continues its existence only for purposes of winding up its activities.

(5) The administrative dissolution of a limited cooperative association does not terminate the authority of its agent for service of process.

Section 21. Section **16-16-1406** is amended to read:

16-16-1406. Revocation of certificate of authority.

(1) A certificate of authority may be revoked by the division in the manner provided in Subsection (2) if the foreign cooperative does not:

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(a) pay, not later than 60 days after the due date, any fee, tax, or penalty due to the division under this chapter or any other law of this state;

(b) deliver, not later than 60 days after the due date, its [~~annual~~] periodic report;

(c) appoint and maintain an agent for service of process; or

(d) deliver for filing a statement of change not later than 30 days after a change has occurred in the name of the agent or the address of the foreign cooperative's designated office.

(2) To revoke a certificate of authority, the division shall file a notice of revocation and send a copy to the foreign cooperative's registered agent for service of process in this state or, if the foreign cooperative does not appoint and maintain an agent for service of process in this state, to the foreign cooperative's principal office. The notice shall state:

(a) the revocation's effective date, which shall be at least 60 days after the date the division sends the copy; and

(b) the foreign cooperative's noncompliance that is the reason for the revocation.

(3) The authority of a foreign cooperative to transact business in this state ceases on the effective date of the notice of revocation unless before that date the foreign cooperative cures each failure to comply stated in the notice. If the foreign cooperative cures the failures, the division shall so indicate on the filed notice.

Section 22. Section **16-17-301** is amended to read:

16-17-301. Service of process on entities.

(1) A registered agent is an agent of the represented entity authorized to receive service of any process, notice, or demand required or permitted by law to be served on the entity.

(2) If an entity that previously filed a registered agent filing with the division no longer has a registered agent, or if its registered agent cannot with reasonable diligence be served, the entity may be served by registered or certified mail, return receipt requested, addressed to the governors of the entity by name at its principal office in accordance with any applicable judicial rules and procedures. The names of the governors and the address of the principal office may be as shown in the most recent [~~annual~~] periodic report filed with the division.

Service is perfected under this Subsection (2) at the earliest of:

(a) the date the entity receives the mail;

(b) the date shown on the return receipt, if signed on behalf of the entity; or

(c) five days after its deposit with the United States Postal Service, if correctly

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addressed and with sufficient postage.

(3) If process, notice, or demand cannot be served on an entity pursuant to Subsection (1) or (2), service of process may be made by handing a copy to the manager, clerk, or other person in charge of any regular place of business or activity of the entity if the person served is not a plaintiff in the action.

(4) Service of process, notice, or demand on a registered agent shall be in the form of a written document, except that service may be made on a commercial registered agent in such other forms of a record, and subject to such requirements as the agent has stated from time to time in its listing under Section 16-17-204 that it will accept.

(5) Service of process, notice, or demand may be perfected by any other means prescribed by law other than this chapter.

Section 23. Section **48-1b-1003 (Effective 07/01/13)** is amended to read:

48-1b-1003 (Effective 07/01/13). Periodic report.

(1) A limited liability partnership, and a foreign limited liability partnership authorized to transact business in this state, shall file [~~an annual~~] a periodic report either annually or every ~~five~~ three years with the division [~~which~~] that contains:

(a) the name of the limited liability partnership and the state or other jurisdiction under whose laws the foreign limited liability partnership is formed;

(b) the street address of the partnership's chief executive office and, if different, the street address of an office of the partnership in this state, if any; and

(c) if the partnership does not have an office in this state, the information required by Subsection 16-17-203(1).

(2) (a) Following the calendar year in which a partnership files a statement of qualification or a foreign partnership becomes authorized to transact business in this state, the partnership shall file [~~an annual~~] a periodic report:

~~(a)~~ (i) during the month of its anniversary date of formation, in the case of a domestic partnership; or

~~(b)~~ (ii) during the month of the anniversary date of being granted authority to transact business in this state, in the case of a foreign partnership authorized to transact business in this state.

(b) The domestic limited liability partnership or foreign limited liability partnership

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makes the election of either filing a periodic report annually or every ~~five~~three years. The division shall impose the same filing fee for filing annually or every ~~five~~three years.

(3) (a) The division may revoke the statement of qualification of a partnership that fails to:

- (i) file [~~an annual~~] a periodic report when due; or
- (ii) pay the required filing fee, established in accordance with Section 63J-1-504.

(b) To take an action under this Subsection (3), the division shall provide the partnership at least 60 days' written notice of intent to revoke the statement. The notice must be mailed to the partnership at its chief executive office set forth in the last filed statement of qualification or [~~annual~~] periodic report. The notice must specify the [~~annual~~] periodic report that has not been filed, the fee that has not been paid, and the effective date of the revocation. The revocation is not effective if the [~~annual~~] periodic report is filed and the fee is paid before the effective date of the revocation.

(4) A revocation under Subsection (3) only affects a partnership's status as a limited liability partnership and is not an event of dissolution of the partnership.

(5) A partnership whose statement of qualification has been revoked may apply to the division for reinstatement within two years after the effective date of the revocation. The application must state:

- (a) the name of the partnership and the effective date of the revocation; and
- (b) that the ground for revocation either did not exist or has been corrected.

(6) A reinstatement under Subsection (5) relates back to and takes effect as of the effective date of the revocation, and the partnership's status as a limited liability partnership continues as if the revocation had never occurred.

Section 24. Section **48-2a-203.5 (Repealed 07/01/13)** is amended to read:

48-2a-203.5 (Repealed 07/01/13). Involuntary dissolution of certificate.

(1) A certificate of limited partnership may be canceled involuntarily by a decree of a district court having competent jurisdiction upon petition by the director of the division, or by a party in interest who shall have standing to bring such an action, when it is established that:

(a) the limited partnership procured the issuance of a stamped copy of its certificate of limited partnership or the execution of the certificate of limited partnership through fraud, in which case the certificate shall be canceled as of the date of its filing; or

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(b) the limited partnership has continually exceeded or abused the authority conferred upon it by law or by the partnership agreement.

(2) A domestic limited partnership or a foreign limited partnership registered in this state is delinquent if:

(a) it does not file [~~an annual~~] a periodic report within the time prescribed by this chapter; or

(b) it fails to maintain a registered agent in this state for 60 consecutive days.

(3) (a) The division shall mail a notice of delinquency of a delinquent limited partnership to:

(i) the registered agent of the limited partnership; or

(ii) if there is no registered agent of record, at least one general partner of the limited partnership.

(b) The notice of delinquency required under Subsection (3)(a) shall state:

(i) the nature of the delinquency; and

(ii) that the limited partnership shall be dissolved unless within 60 days of the mailing of the notice of delinquency it corrects the delinquency.

(c) The division shall include with the notice of delinquency any forms necessary to correct the delinquency.

(4) (a) If the limited partnership does not remove the delinquency within 60 days from the date the division mails the notice of delinquency, the limited partnership's certificate or registration shall be dissolved involuntarily by the director of the division effective on the date specified in Subsection (4)(c).

(b) If a limited partnership's certificate or registration is dissolved under Subsection (4)(a), the division shall mail a certificate of dissolution to:

(i) the registered agent of the limited partnership; or

(ii) if there is no registered agent of record, at least one partner of the limited partnership.

(c) A limited partnership's date of dissolution is five days from the date the division mailed the certificate of dissolution under Subsection (4)(b).

(d) A dissolved limited partnership may not be reinstated except as set forth in Subsection (5).

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(e) On the date of dissolution, any assumed names filed on behalf of the dissolved limited partnership under Title 42, Chapter 2, Conducting Business Under an Assumed Name, are canceled.

(f) Notwithstanding Subsection (4)(e), the name of a dissolved limited partnership and any assumed names filed on its behalf are not available for two years from the date of dissolution for use by any other person:

(i) transacting business in this state; or

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

(g) Notwithstanding Subsection (4)(e), if the limited partnership that is dissolved is reinstated in accordance with this section, the registration of the name of the limited partnership and any assumed names filed on its behalf are reinstated back to the date of dissolution.

(5) Any limited partnership whose certificate or registration has been dissolved under this section or Section 48-2a-203 may be reinstated within two years following the date of dissolution upon:

(a) application; and

(b) payment of:

(i) all penalties; and

(ii) all reinstatement fees.

(6) A limited partner of a limited partnership is not liable as a general partner of the limited partnership solely by reason of the limited partnership having had its limited partnership certificate or registration dissolved.

(7) A limited partnership that has had its certificate or registration dissolved may not maintain any action, suit, or proceeding in any court of this state until it has reinstated its certificate or registration following dissolution.

(8) If the division denies a limited partnership's application for reinstatement following a dissolution under this section, the division shall mail the limited partnership written notice:

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

(b) stating that the limited partnership has the right to appeal the division's determination to the executive director of the Department of Commerce in accordance with

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Title 63G, Chapter 4, Administrative Procedures Act.

(9) A notice or certificate mailed under this section shall be:

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

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

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

(ii) the partner of the limited partnership that is mailed the notice, if the notice is required to be mailed to a partner of the limited partnership.

Section 25. Section **48-2a-210 (Repealed 07/01/13)** is amended to read:

48-2a-210 (Repealed 07/01/13). Periodic report.

(1) (a) [~~Each~~] A domestic limited partnership, and [~~each~~] a foreign limited partnership authorized to transact business in this state, shall file [~~an annual~~] a periodic report with the division either annually or every ~~five~~ three years:

(i) during the month of its anniversary date of formation, in the case of domestic limited partnerships; or

(ii) during the month of the anniversary date of being granted authority to transact business in this state, in the case of foreign limited partnerships authorized to transact business in this state.

(b) The domestic limited partnership or foreign limited partnership makes the election of either filing a periodic report annually or every ~~five~~ three years. The division shall impose the same filing fee for filing annually or every ~~five~~ three years.

~~(b)~~ (c) The [~~annual~~] periodic report required by Subsection (1)(a) shall set forth:

(i) the name of the limited partnership;

(ii) the state or country under the laws of which it is formed;

(iii) the information required by Subsection 16-17-203(1);

(iv) any change of address of a general partner; and

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

(2) (a) The [~~annual~~] periodic report required by Subsection (1) shall:

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

(ii) contain information that is given as of the date of execution of the [~~annual~~] periodic

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report.

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

- (i) the limited partnership, in the case of a domestic limited partnership; or
- (ii) its registration, in the case of a foreign limited partnership authorized to transact business in this state.

(c) The [~~annual~~] periodic report shall be signed by:

- (i) any general partner under penalty of perjury; and
- (ii) if the registered agent has changed since the last [~~annual~~] periodic report or other appointment of a registered agent, the new registered agent.

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

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

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

Section 26. Section **48-2c-121 (Repealed 07/01/13)** is amended to read:

48-2c-121 (Repealed 07/01/13). Scope of notice.

(1) Articles of organization that have been filed with the division constitute notice to third persons, and to members and managers of the company:

(a) that the company is a limited liability company formed under the laws of this state; and

(b) of all statements set forth in the articles of organization that are:

- (i) required by Subsection 48-2c-403(1) to be set forth in articles of organization; and
- (ii) expressly permitted to be set forth in the articles of organization by Subsection 48-2c-403(4).

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(2) The filing with the division of [~~any annual~~] a periodic report required by Section 48-2c-203 constitutes notice to third persons, as well as to members and managers of the company, of the information set forth in the [~~annual~~] periodic report which is required by Section 48-2c-203 to be set forth in [~~an annual~~] a periodic report.

(3) The filing with the division of any statement allowed by Section 48-2c-122 is notice to third persons, as well as to members and managers of the company, of the information set forth in that statement which is expressly permitted to be set forth in that statement by Section 48-2c-122.

(4) The filing with the division of a certified copy of a court order under Subsection 48-2c-809(5) is notice of the contents of the order to:

- (a) third persons;
- (b) members of the company; and
- (c) managers of the company.

Section 27. Section **48-2c-122 (Repealed 07/01/13)** is amended to read:

48-2c-122 (Repealed 07/01/13). Statement of person named as manager or member.

Any person named as a manager or member of a domestic company or foreign company in [~~an annual~~] a periodic report or other document on file with the division may, if that person does not hold the position of manager or member, deliver to the division for filing a written statement setting forth:

- (1) the person's name;
- (2) the name of the company;
- (3) information sufficient to identify the report or other document in which that person is named as a manager or member; and
- (4) the date on which [~~he~~] the person ceased to be a manager or member of the company, or a statement that the person did not hold the position for which that person was named in the report or other document.

Section 28. Section **48-2c-203 (Repealed 07/01/13)** is amended to read:

48-2c-203 (Repealed 07/01/13). Periodic report.

(1) (a) A company or a foreign company authorized to transact business in this state shall file [~~an annual~~] a periodic report with the division either annually or every ~~five~~ three

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years:

(i) during the month of its anniversary date of formation, in the case of domestic companies; or

(ii) during the month of the anniversary date of being granted authority to transact business in this state, in the case of foreign companies authorized to transact business in this state.

(b) The company or foreign company makes the election of either filing a periodic report annually or every ~~five~~three years. The division shall impose the same filing fee for filing annually or every ~~five~~three years.

~~[(b) An annual]~~ (c) A periodic report required by Subsection (1)(a) shall set forth:

(i) the name of the company;

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

(iii) any change in:

(A) the information required by Subsection 16-17-203(1);

(B) if the street address or legal name of any manager in a manager-managed company, any member in a member-managed company, or any person with management authority of a foreign company changes, the new street address or legal name of the manager, member, or other person; and

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

(2) (a) The ~~[annual]~~ periodic report required by Subsection (1) shall:

(i) be made on a form prescribed and furnished by the division; and

(ii) contain information that is given as of the date of signing the ~~[annual]~~ periodic report.

(b) ~~[An annual]~~ A periodic report form shall include a statement notifying the company that failure to file the ~~[annual]~~ periodic report will result in:

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

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

(3) The fact that an individual's name is signed on ~~[an annual]~~ a periodic report form is

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prima facie evidence for division purposes that the individual is authorized to certify the report on behalf of the company.

(4) (a) If the [~~annual~~] periodic report conforms to the requirements of this chapter, the division shall file the periodic report.

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

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

Section 29. Section **48-2c-213 (Repealed 07/01/13)** is amended to read:

48-2c-213 (Repealed 07/01/13). Certificates issued by the division.

(1) Anyone may apply to the division for a certificate of existence for a domestic company, a certificate of authorization for a foreign company, or a certificate that sets forth any facts of record in the office of the division.

(2) A certificate of existence or authorization shall state:

(a) the domestic company's name or the foreign company's name as registered in this state;

(b) (i) that the domestic company is duly formed under the law of this state and the date of its formation; or

(ii) that the foreign company is authorized to transact business in this state;

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

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

(ii) nonpayment affects the existence or authorization of the domestic or foreign company;

(d) that its most recent [~~annual~~] periodic report required by Section 48-2c-203 has been filed with the division;

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

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(f) other facts of record in the office of the division that may be requested by the applicant.

(3) Subject to any qualification stated in the certificate, a certificate issued by the division may be relied upon as conclusive evidence of the facts set forth in the certificate.

Section 30. Section **48-2c-309 (Repealed 07/01/13)** is amended to read:

48-2c-309 (Repealed 07/01/13). Service on withdrawn foreign company.

(1) A foreign company that has withdrawn from this state pursuant to Section 48-2c-1611 shall either:

(a) maintain a registered agent in this state to accept service of process on its behalf in any proceeding based on a cause of action arising during the time it was transacting business in this state, in which case the continued authority of the registered agent shall be specified in the application for withdrawal and any change shall be governed by Title 16, Chapter 17, Model Registered Agents Act, which applies to foreign companies authorized to transact business in this state; or

(b) be considered to have authorized service of process on it, in connection with any cause of action arising during the time it was transacting business in this state, by registered or certified mail, return receipt requested, to:

(i) the address of its principal office, if any, set forth in its application for withdrawal or as listed in the notice, [~~annual~~] periodic report, or document most recently filed with the division; or

(ii) the address for service of process that is stated in its application for withdrawal or as listed in the notice, [~~annual~~] periodic report, or document most recently filed with the division.

(2) Service effected pursuant to Subsection (1)(b) is perfected at the earliest of:

(a) the date the withdrawn foreign company receives the process, notice, or demand;

(b) the date shown on the return receipt, if signed on behalf of the withdrawn foreign company; or

(c) five days after mailing.

(3) This section does not limit or affect the right to serve, in any other manner permitted by law, any process, notice, or demand required or permitted by law to be served upon a withdrawn foreign company.

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Section 31. Section **48-2c-804 (Repealed 07/01/13)** is amended to read:

48-2c-804 (Repealed 07/01/13). Management by managers.

In a manager-managed company, each manager and each member shall be subject to Section 48-2c-807 and:

- (1) (a) the initial managers shall be designated in the articles of organization; and
- (b) after the initial managers, the managers shall be those persons identified in documents filed with the division including:
 - (i) amendments to the articles of organization;
 - (ii) the ~~annual~~ periodic reports required under Section 48-2c-203; and
 - (iii) the statements required or permitted under Section 48-2c-122;
- (2) when there is a change in the management structure from a member-managed company to a manager-managed company, the managers shall be those persons identified in the certificate of amendment to the articles of organization that makes the change;
- (3) each manager who is a natural person must have attained the age of majority under the laws of this state;
- (4) no manager shall have authority to do any act in contravention of the articles of organization or the operating agreement, except as provided in Subsection (6)(g);
- (5) a manager who is also a member shall have all of the rights of a member;
- (6) unless otherwise provided in the articles of organization or operating agreement of the company:
 - (a) except for the initial managers, each manager shall be elected at any time by the members holding at least a majority of the profits interests in the company, and any vacancy occurring in the position of manager shall be filled in the same manner;
 - (b) the number of managers:
 - (i) shall be fixed by the members in the operating agreement; or
 - (ii) shall be the number designated by members holding at least a majority of the profits interests in the company if the operating agreement fails to designate the number of managers;
 - (c) each manager shall serve until the earliest to occur of:
 - (i) the manager's death, withdrawal, or removal;
 - (ii) an event described in Subsection 48-2c-708(1)(f); or

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- (iii) if membership in the company is a condition to being a manager, an event described in Subsection 48-2c-708(1)(d) or (e);
- (d) a manager need not be a member of the company or a resident of this state;
- (e) any manager may be removed with or without cause by the members, at any time, by the decision of members owning a majority of the profits interests in the company;
- (f) there shall be only one class of managers; and
- (g) approval by:
 - (i) all of the members and all of the managers shall be required for matters described in Subsection 48-2c-803(2); and
 - (ii) members holding 2/3 of the profits interests in the company, and 2/3 of the managers shall be required for all matters described in Subsection 48-2c-803(3).

Section 32. Section **48-2c-1206 (Repealed 07/01/13)** is amended to read:

48-2c-1206 (Repealed 07/01/13). Grounds for administrative dissolution.

The division may dissolve a company under Section 48-2c-1207 if:

- (1) the company does not pay when due, any taxes, fees, or penalties imposed by this chapter or other applicable laws of this state;
- (2) the company does not file its [~~annual~~] periodic report with the division when it is due;
- (3) the company is without a registered agent or registered office in this state; or
- (4) the company fails to give notice to the division that:
 - (a) its registered agent has been changed;
 - (b) its registered agent has resigned; or
 - (c) the company's period of duration has expired.

Section 33. Section **48-2c-1207 (Repealed 07/01/13)** is amended to read:

48-2c-1207 (Repealed 07/01/13). Procedure for and effect of administrative dissolution.

- (1) If the division determines that one or more grounds exist under Section 48-2c-1206 for dissolving a company, it shall mail to the company written notice of:
 - (a) the division's determination that one or more grounds exist for dissolving the company; and
 - (b) the grounds for dissolving the company.

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

(b) If a company is dissolved under Subsection (2)(a), the division shall mail written notice of the administrative dissolution to the dissolved company at its principal office, stating the date of dissolution specified in Subsection (2)(d).

(c) The division shall mail a copy of the notice of administrative dissolution including a statement of the grounds for the administrative dissolution, to:

(i) the registered agent of the dissolved company; or

(ii) if there is no registered agent of record, or if the mailing to the registered agent is returned as undeliverable, at least one member if the company is member-managed or one manager of the company if the company is manager-managed, at their addresses as reflected on the notice, ~~[annual]~~ periodic report, or document most recently filed with the division.

(d) A company's effective date of administrative dissolution is five days after the date the division mails the written notice of dissolution under Subsection (2)(b).

(e) On the effective date of dissolution, any assumed names filed on behalf of the dissolved company under Title 42, Chapter 2, Conducting Business Under Assumed Name, are canceled.

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

(i) transacting business in this state; or

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

(g) Notwithstanding Subsection (2)(e), if the company that is dissolved is reinstated in accordance with Section 48-2c-1208, the registration of the name of the company and any assumed names filed on its behalf are reinstated back to the effective date of dissolution.

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

(i) the business necessary to wind up and liquidate its business and affairs under Part

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13, Winding Up; and

(ii) to give notice to claimants in the manner provided in Sections 48-2c-1305 and 48-2c-1306.

(b) If the company is reinstated in accordance with Section 48-2c-1208, business conducted by the company during a period of administrative dissolution is unaffected by the dissolution.

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

(5) A notice mailed under this section shall be:

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

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

(i) the principal office of the company, if the notice is required to be mailed to the company;

(ii) the registered agent of the company, if the notice is required to be mailed to the registered agent; or

(iii) any member if the company is member-managed, or to any manager of the company if the company is manager-managed, if the notice is required to be mailed to a member or manager of the company.

Section 34. Section **48-2c-1612 (Repealed 07/01/13)** is amended to read:

48-2c-1612 (Repealed 07/01/13). Grounds for revocation.

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

(1) the foreign company does not deliver its [~~annual~~] periodic report to the division when it is due;

(2) the foreign company does not pay when they are due any taxes, fees, or penalties imposed by this chapter or other applicable laws of this state;

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

(4) the foreign company does not inform the division under Title 16, Chapter 17, Model Registered Agents Act, that its registered agent has changed or that its registered agent has resigned;

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

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

Section 35. Section **48-2c-1902 (Repealed 07/01/13)** is amended to read:

48-2c-1902 (Repealed 07/01/13). Transitional provisions.

(1) Each limited liability company formed prior to July 1, 2001, under the laws of this state, and existing on July 1, 2001:

(a) shall continue in existence with all rights and privileges applicable to limited liability companies formed under this chapter;

(b) need not amend its articles of organization to include the address of its designated office if it includes the information in its first [~~annual~~] periodic report filed with the division after July 1, 2001, and in all subsequent [~~annual~~] periodic reports; and

(c) that provides professional services as defined in Part 15 of this chapter, need not amend its articles of organization to comply with Section 48-2c-1509 if it includes the information in its first [~~annual~~] periodic report filed with the division after July 1, 2001, and in all subsequent [~~annual~~] periodic reports.

(2) All domestic companies formed prior to July 1, 2001, under the laws this state, as well as their managers, members, and assignees of members, as applicable, shall have all the rights and privileges and shall be subject to all the requirements, restrictions, duties, liabilities, and remedies prescribed in this chapter.

(3) Each foreign limited liability company authorized to transact business in this state as of July 1, 2001, is subject to the provisions of this chapter, but is not required by reason of enactment of this chapter to obtain a new certificate of authority to transact business in this state.

Section 36. Section **48-2d-111 (Effective 07/01/13)** is amended to read:

48-2d-111 (Effective 07/01/13). Required information.

A limited partnership shall maintain at its designated office the following information:

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(1) a current list showing the full name and last known street and mailing address of each partner, separately identifying the general partners, in alphabetical order, and the limited partners, in alphabetical order;

(2) a copy of the initial certificate of limited partnership and all amendments to and restatements of the certificate, together with signed copies of any powers of attorney under which any certificate, amendment, or restatement has been signed;

(3) a copy of any filed articles of conversion or merger;

(4) a copy of the limited partnership's federal, state, and local income tax returns and reports, if any, for the three most recent years;

(5) a copy of any partnership agreement made in a record and any amendment made in a record to any partnership agreement;

(6) a copy of any financial statement of the limited partnership for the three most recent years;

(7) a copy of the three most recent [~~annual~~] periodic reports delivered by the limited partnership to the division pursuant to Section 48-2d-210;

(8) a copy of any record made by the limited partnership during the past three years of any consent given by or vote taken of any partner pursuant to this chapter or the partnership agreement; and

(9) unless contained in a partnership agreement made in a record, a record stating:

(a) the amount of cash, and a description and statement of the agreed value of the other benefits, contributed and agreed to be contributed by each partner;

(b) the times at which, or events on the happening of which, any additional contributions agreed to be made by each partner are to be made;

(c) for any person that is both a general partner and a limited partner, a specification of what transferable interest the person owns in each capacity; and

(d) any events upon the happening of which the limited partnership is to be dissolved and its activities wound up.

Section 37. Section **48-2d-209 (Effective 07/01/13)** is amended to read:

48-2d-209 (Effective 07/01/13). Certificate of existence or authorization.

(1) The division, upon request and payment of the requisite fee, shall furnish a certificate of existence for a limited partnership if the records filed in the division show that the

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division has filed a certificate of limited partnership and has not filed a statement of termination. A certificate of existence must state:

- (a) the limited partnership's name;
- (b) that it was duly formed under the laws of this state and the date of formation;
- (c) whether all fees, taxes, and penalties due to the division under this chapter or other law have been paid;
- (d) whether the limited partnership's most recent [~~annual~~] periodic report required by Section 48-2d-210 has been filed by the division;
- (e) whether the division has administratively dissolved the limited partnership;
- (f) whether the limited partnership's certificate of limited partnership has been amended to state that the limited partnership is dissolved;
- (g) that a statement of termination has not been filed by the division; and
- (h) other facts of record in the division which may be requested by the applicant.

(2) The division, upon request and payment of the requisite fee, shall furnish a certificate of authorization for a foreign limited partnership if the records filed in the division show that the division has filed a certificate of authority, has not revoked the certificate of authority, and has not filed a notice of cancellation. A certificate of authorization must state:

- (a) the foreign limited partnership's name and any alternate name adopted under Subsection 48-2d-905(1) for use in this state;
- (b) that it is authorized to transact business in this state;
- (c) whether all fees, taxes, and penalties due to the division under this chapter or other law have been paid;
- (d) whether the foreign limited partnership's most recent [~~annual~~] periodic report required by Section 48-2d-210 has been filed by the division;
- (e) that the division has not revoked its certificate of authority and has not filed a notice of cancellation; and
- (f) other facts of record in the division which may be requested by the applicant.

(3) Subject to any qualification stated in the certificate, a certificate of existence or authorization issued by the division may be relied upon as conclusive evidence that the limited partnership or foreign limited partnership is in existence or is authorized to transact business in this state.

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Section 38. Section **48-2d-210 (Effective 07/01/13)** is amended to read:

48-2d-210 (Effective 07/01/13). Periodic report for division.

(1) A limited partnership or a foreign limited partnership authorized to transact business in this state shall deliver to the division for filing [~~an annual~~] a periodic report that states:

(a) the name of the limited partnership or foreign limited partnership;

(b) the information required by Subsection 16-17-203(1);

(c) in the case of a limited partnership, the street and mailing address of its principal office; and

(d) in the case of a foreign limited partnership, the state or other jurisdiction under whose law the foreign limited partnership is formed and any alternate name adopted under Subsection 48-2d-905(1).

(2) Information in [~~an annual~~] a periodic report must be current as of the date the [~~annual~~] periodic report is delivered to the division for filing.

(3) [~~An annual~~] (a) A periodic report must be delivered to the division either annually or every ~~five~~three years:

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

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

(b) The limited partnership or foreign limited partnership makes the election of either filing a periodic report annually or every ~~five~~three years. The division shall impose the same filing fee for filing annually or every ~~five~~three years.

(4) If [~~an annual~~] a periodic report does not contain the information required in Subsection (1), the division shall promptly notify the reporting limited partnership or foreign limited partnership and return the periodic report to it for correction. If the periodic report is corrected to contain the information required in Subsection (1) and delivered to the division within 30 days after the effective date of the notice, it is timely delivered.

(5) If a filed [~~annual~~] periodic report contains information provided under Subsection (1)(b) which differs from the information shown in the records of the division immediately

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before the filing, the differing information in the [~~annual~~] periodic report is considered a statement of change under Section 16-17-206.

Section 39. Section **48-2d-809 (Effective 07/01/13)** is amended to read:

48-2d-809 (Effective 07/01/13). Administrative dissolution.

(1) The division may dissolve a limited partnership administratively if the limited partnership does not, within 60 days after the due date:

- (a) pay any fee, tax, or penalty due to the division under this chapter or other law; or
- (b) deliver its [~~annual~~] periodic report to the division.

(2) If the division determines that a ground exists for administratively dissolving a limited partnership, the division shall file a record of the determination and serve the limited partnership with a copy of the filed record.

(3) If within 60 days after service of the copy the limited partnership does not correct each ground for dissolution or demonstrate to the reasonable satisfaction of the division that each ground determined by the division does not exist, the division shall administratively dissolve the limited partnership by preparing, signing, and filing a declaration of dissolution that states the grounds for dissolution. The division shall serve the limited partnership with a copy of the filed declaration.

(4) A limited partnership administratively dissolved continues its existence but may carry on only activities necessary to wind up its activities and liquidate its assets under Sections 48-2d-803 and 48-2d-812 and to notify claimants under Sections 48-2d-806 and 48-2d-807.

(5) The administrative dissolution of a limited partnership does not terminate the authority of its agent for service of process.

Section 40. Section **48-2d-906 (Effective 07/01/13)** is amended to read:

48-2d-906 (Effective 07/01/13). Revocation of certificate of authority.

(1) A certificate of authority of a foreign limited partnership to transact business in this state may be revoked by the division in the manner provided in Subsections (2) and (3) if the foreign limited partnership does not:

(a) pay, within 60 days after the due date, any fee, tax, or penalty due to the division under this chapter or other law;

(b) deliver to the division, within 60 days after the due date, its [~~annual~~] periodic report required under Section 48-2d-210;

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(c) appoint and maintain an agent for service of process as required by Subsection 16-17-203(1); or

(d) deliver to the division for filing a statement of a change under Section 16-17-206 within 30 days after a change has occurred in the name or address of the agent.

(2) To revoke a certificate of authority, the division must prepare, sign, and file a notice of revocation and send a copy to the foreign limited partnership's agent for service of process in this state, or if the foreign limited partnership does not appoint and maintain a proper agent in this state, to the foreign limited partnership's principal office. The notice must state:

(a) the revocation's effective date, which must be at least 60 days after the date the division sends the copy; and

(b) the foreign limited partnership's failures to comply with Subsection (1) which are the reason for the revocation.

(3) The authority of the foreign limited partnership to transact business in this state ceases on the effective date of the notice of revocation unless before that date the foreign limited partnership cures each failure to comply with Subsection (1) stated in the notice. If the foreign limited partnership cures the failures, the division shall so indicate on the filed notice.

Section 41. Section **48-3-208 (Effective 07/01/13)** is amended to read:

48-3-208 (Effective 07/01/13). Certificate of existence or authorization.

(1) The division, upon request and payment of the requisite fee, shall furnish to any person a certificate of existence for a limited liability company if the records filed in the division show that the limited liability company has been formed under Section 48-3-201 and the division has not filed a statement of termination pertaining to the limited liability company.

A certificate of existence must state:

(a) the limited liability company's name;

(b) that the limited liability company was duly formed under the laws of this state and the date of formation;

(c) whether all fees, taxes, and penalties due under this chapter or other law to the division have been paid;

(d) whether the limited liability company's most recent [~~annual~~] periodic report required by Section 48-3-209 has been filed by the division;

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- (e) whether the division has administratively dissolved the limited liability company;
- (f) whether the limited liability company has delivered to the division for filing a statement of dissolution;
- (g) that a statement of termination has not been filed by the division; and
- (h) other facts of record in the division which are specified by the person requesting the certificate.

(2) The division, upon request and payment of the requisite fee, shall furnish to any person a certificate of authorization for a foreign limited liability company if the records filed in the division show that the division has filed a certificate of authority, has not revoked the certificate of authority, and has not filed a notice of cancellation. A certificate of authorization must state:

- (a) the limited liability company's name and any alternate name adopted under Subsection 48-3-805(1) for use in this state;
- (b) that the limited liability company is authorized to transact business in this state;
- (c) whether all fees, taxes, and penalties due under this chapter or other law to the division have been paid;
- (d) whether the limited liability company's most recent [~~annual~~] periodic report required by Section 48-3-209 has been filed by the division;
- (e) that the division has not revoked the limited liability company's certificate of authority and has not filed a notice of cancellation; and
- (f) other facts of record in the division which are specified by the person requesting the certificate.

(3) Subject to any qualification stated in the certificate, a certificate of existence or certificate of authorization issued by the division is conclusive evidence that the limited liability company is in existence or the foreign limited liability company is authorized to transact business in this state.

Section 42. Section **48-3-209 (Effective 07/01/13)** is amended to read:

48-3-209 (Effective 07/01/13). Periodic report for division.

(1) [~~Each year~~] Either annually or every ~~five~~ three years, a limited liability company or a foreign limited liability company authorized to transact business in this state shall deliver to the division for filing a periodic report that states:

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(a) the name of the limited liability company;
(b) the information required by Subsection 16-17-203(1);
(c) the street and mailing addresses of its principal office; and
(d) in the case of a foreign limited liability company, the state or other jurisdiction under whose law the limited liability company is formed and any alternate name adopted under Subsection 48-3-805(1).

(2) Information in [~~an annual~~] a periodic report under this section must be current as of the date the periodic report is delivered to the division for filing.

(3) (a) A periodic report must be delivered to the division either annually or every ~~five~~ three years:

~~(a)~~ (i) during the month of its anniversary date of formation, in the case of a domestic limited liability company; or

~~(b)~~ (ii) during the month of the anniversary date of being granted authority to transact business in this state, in the case of a foreign limited liability company authorized to transact business in this state.

(b) The domestic limited liability company or foreign limited liability company makes the election of either filing a periodic report annually or every ~~five~~ three years. The division shall impose the same filing fee for filing annually or every ~~five~~ three years.

(4) If [~~an annual~~] a periodic report under this section does not contain the information required in Subsection (1), the division shall promptly notify the reporting limited liability company or foreign limited liability company and return the periodic report to it for correction. If the periodic report is corrected to contain the information required in Subsection (1) and delivered to the division within 30 days after the effective date of the notice, it is timely delivered.

(5) If [~~an annual~~] a periodic report under this section contains information provided under Subsection (1)(b) that differs from the information shown in the records of the division immediately before the [~~annual~~] periodic report becomes effective, the differing information in the [~~annual~~] periodic report is considered a statement of change under Section 16-17-206.

Section 43. Section **48-3-706 (Effective 07/01/13)** is amended to read:

48-3-706 (Effective 07/01/13). Administrative dissolution.

(1) The division may dissolve a limited liability company administratively if the

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limited liability company does not:

(a) pay, within 60 days after the due date, any fee, tax, or penalty due to the division under this chapter or law other than this chapter; or

(b) deliver, within 60 days after the due date, its [~~annual~~] periodic report to the division.

(2) If the division determines that a ground exists for administratively dissolving a limited liability company, the division shall file a record of the determination and serve the limited liability company with a copy of the filed record.

(3) If within 60 days after service of the copy pursuant to Subsection (2) a limited liability company does not correct each ground for dissolution or demonstrate to the reasonable satisfaction of the division that each ground determined by the division does not exist, the division shall dissolve the limited liability company administratively by preparing, signing, and filing a declaration of dissolution that states the grounds for dissolution. The division shall serve the limited liability company with a copy of the filed declaration.

(4) A limited liability company that has been administratively dissolved continues in existence but, subject to Section 48-3-707, may carry on only activities necessary to wind up its activities and liquidate its assets under Sections 48-3-703 and 48-3-709 and to notify claimants under Sections 48-3-704 and 48-3-705.

(5) The administrative dissolution of a limited liability company does not terminate the authority of its agent for service of process.

Section 44. Section **48-3-806 (Effective 07/01/13)** is amended to read:

48-3-806 (Effective 07/01/13). Revocation of certificate of authority.

(1) A certificate of authority of a foreign limited liability company to transact business in this state may be revoked by the division in the manner provided in Subsections (2) and (3) if the limited liability company does not:

(a) pay, within 60 days after the due date, any fee, tax, or penalty due to the division under this chapter or law other than this chapter;

(b) deliver, within 60 days after the due date, its [~~annual~~] periodic report required under Section 48-3-209;

(c) appoint and maintain an agent for service of process as required by Subsection 16-17-203(1); or

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(d) deliver for filing a statement of a change under Section 16-17-206 within 30 days after a change has occurred in the name or address of the agent.

(2) To revoke a certificate of authority of a foreign limited liability company, the division must prepare, sign, and file a notice of revocation and send a copy to the limited liability company's agent for service of process in this state, or if the limited liability company does not appoint and maintain a proper agent in this state, to the limited liability company's principal office. The notice must state:

(a) the revocation's effective date, which must be at least 60 days after the date the division sends the copy; and

(b) the grounds for revocation under Subsection (1).

(3) The authority of a foreign limited liability company to transact business in this state ceases on the effective date of the notice of revocation unless before that date the limited liability company cures each ground for revocation stated in the notice filed under Subsection (2). If the limited liability company cures each ground, the division shall file a record so stating.

Section 45. **Effective date.**

This bill takes effect on July 1, 2013.

Section 46. **Coordinating H.B. 319 with S.B. 21 -- Substantive amendments.**

If this H.B. 319 and S.B. 21, Unincorporated Business Entities, both pass and become law, the Legislature intends that the Office of Legislative Research and General Counsel, in preparing the Utah Code database for publication, make changes to the following sections in S.B. 21 to take effect on July 1, 2014:

(1) the reference in Subsection 48-1d-1102(1)(b) to "an annual" be replaced with "a periodic";

(2) Section 48-1d-1109 be modified to read:

"48-1d-1109. Periodic report for division.

(1) Each limited liability partnership and registered foreign limited liability partnership shall deliver to the division for filing a periodic report that states:

(a) the name of the limited liability partnership or foreign limited liability partnership;

(b) the information required under Subsection 16-17-203(1);

(c) the street and mailing addresses of its principal office;

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(d) the name of at least one partner; and

(e) in the case of a foreign limited liability partnership, its jurisdiction of formation and any alternate name adopted under Subsection 48-1d-1206(1).

(2) Information in a periodic report must be current as of the date the periodic report is signed by the limited liability partnership or registered foreign limited liability partnership.

(3) (a) A periodic report must be delivered to the division either for each year following the calendar year in which the limited liability partnership's statement of qualification became effective or the registered foreign limited liability partnership registered to do business in this state or every ~~five~~three years:

(i) in the case of a limited liability partnership, the periodic report must be delivered to the division during the month in which the anniversary date on which the limited liability partnership statement of qualification became effective; and

(ii) in the case of a registered foreign limited liability partnership, the periodic report must be delivered to the division during the month in which the anniversary date on which the registered foreign limited liability partnership registered to do business in this state.

(b) The domestic or foreign limited liability partnership makes the election of either filing a periodic report annually or every ~~five~~three years. The division shall impose the same filing fee for filing annually or every ~~five~~three years.

(4) If a periodic report does not contain the information required by this section, the division promptly shall notify the reporting limited liability partnership or registered foreign limited liability partnership in a record and return the periodic report for correction.

(5) If a periodic report contains the name or address of a registered agent which differs from the information shown in the records of the division immediately before the periodic report becomes effective, the differing information in the periodic report is considered a statement of change under Section 16-17-206.":

(3) the reference in Subsection 48-2e-115(7) to "annual" be replaced with "periodic";

(4) the reference in Subsection 48-2e-211(2)(e) to "annual" be replaced with "periodic";

(5) Section 48-2e-212 be modified to read:

"48-2e-212. Periodic report for division.

(1) A limited partnership or a registered foreign limited partnership shall deliver to the

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division for filing a periodic report that states:

(a) the name of the limited partnership or foreign limited partnership;

(b) the information required by Subsection 16-17-203(1);

(c) the street and mailing addresses of its principal office;

(d) the name of at least one general partner; and

(e) in the case of a foreign limited partnership, the jurisdiction whose law governs the foreign limited partnership's internal affairs and any alternate name adopted under Subsection 48-2e-906(1).

(2) Information in the periodic report must be current as of the date the report is signed by the limited partnership or registered foreign limited partnership.

(3) (a) A report must be delivered to the division for either each year following the calendar year in which the limited partnership's certificate of other limited partnership became effective or the registered foreign limited partnership registered to do business in this state or every ~~five~~three years:

(i) in the case of a limited partnership, the periodic report must be delivered to the division during the month in which the anniversary date on which the limited partnership certificate of limited partnership became effective; and

(ii) in the case of a registered foreign limited partnership, the periodic report must be delivered to the division during the month in which the anniversary date on which the registered foreign limited partnership registered to do business in this state.

(b) The domestic or foreign limited partnership makes the election of either filing a periodic report annually or every ~~five~~three years. The division shall impose the same filing fee for filing annually or every ~~five~~three years.

(4) If a periodic report does not contain the information required by this section, the division promptly shall notify the reporting limited partnership or registered foreign limited partnership in a record and return the report for correction.

(5) If a periodic report contains the name or address of a registered agent which differs from the information shown in the records of the division immediately before the periodic report becomes effective, the differing information in the periodic report is considered a statement of change under Section 16-17-206.":

(6) the reference in Subsection 48-2e-810(1)(b) to "an annual" be replaced with "a

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periodic":

(7) the reference in Subsection 48-3a-211(2)(e) to "annual" be replaced with

"periodic":

(8) Section 48-3a-212 be modified to read:

"48-3a-212. Periodic report for division.

(1) A limited liability company or a registered foreign limited liability company shall deliver to the division for filing a periodic report that states:

(a) the name of the limited liability company or registered foreign limited liability company;

(b) the information required by Subsection 16-17-203(1);

(c) the street and mailing addresses of its principal office;

(d) the name of at least one governing person; and

(e) in the case of a foreign limited liability company, its jurisdiction of formation and any alternate name adopted under Subsection 48-3a-906(1).

(2) Information in the periodic report must be current as of the date the report is signed by the limited liability company or registered foreign limited liability company.

(3) (a) A report must be delivered to the division either for each year following the calendar year in which the limited liability company's certificate of organization became effective or the registered foreign limited liability company registered to do business in this state or every ~~five~~three years:

(i) in the case of a limited liability company, the periodic report must be delivered to the division during the month in which the anniversary date on which the limited liability company's certificate of formation became effective; and

(ii) in the case of a registered foreign limited liability company, the periodic report must be delivered to the division during the month in which the anniversary date on which the registered foreign limited liability company registered to do business in this state.

(b) The domestic or foreign limited liability company makes the election of either filing a periodic report annually or every ~~five~~three years. The division shall impose the same filing fee for filing annually or every ~~five~~three years.

(4) If a periodic report does not contain the information required by this section, the division promptly shall notify the reporting limited liability company or registered foreign

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limited liability company in a record and return the report for correction.

(5) If a periodic report contains the name or address of a registered agent which differs from the information shown in the records of the division immediately before the periodic report becomes effective, the differing information in the periodic report is considered a statement of change under Section 16-17-206."; and

(9) the reference in Subsection 48-3a-708(1)(b) to "an annual" be replaced with "a periodic."

†

Legislative Review Note

~~as of 2-14-13 12:54 PM~~

~~Office of Legislative Research and General Counsel~~