3 PROPOSED LANGUAG

UTAH DEPARTMENT OF COMMERCE

Division of Corporations and Commercial Code

Business and Labor Interim Committee

August 17, 2022

Leigh Veillette | Division Director

Title 13
Commerce and Trade

Chapter 1a
Division of Corporations and Commercial Code

Part 1
Division Administration

13-1a-101 Creation of division -- Responsibilities.

There is established within the Department of Commerce the Division of Corporations and Commercial Code which is responsible for corporation and commercial code filings in this state.

13-1a-102 Director to supervise division -- Appointment.

The division shall be under the supervision, direction, and control of a director. The director shall be appointed by the executive director of the Department of Commerce with the approval of the governor. The director shall hold office at the pleasure of the governor.

13-1a-103 Employment and compensation of personnel -- Compensation of director.

The director, with the approval of the executive director, may employ personnel necessary to carry out the duties and responsibilities of the division at salaries established by the executive director according to standards established by the Division of Human Resource Management. The executive director shall establish the salary of the director according to standards established by the Division of Human Resource Management.

13-1a-104 Annual budget.

On or before the 1st day of October each year, the director shall prepare and submit to the executive director an annual budget of the administrative expenses of the division.

13-1a-105 Authority of director.

The director has authority:

(1) to make rules in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, to administer the responsibilities of the division;

(2) to investigate, upon complaint, the ~~corporation~~ business organization and commercial code filings and compliance governed by the laws administered and enforced by the division; and

(3) under the provisions of Title 63G, Chapter 4, Administrative Procedures Act, to take administrative action against persons in violation of the division rules and the laws administered by it, including the issuance of cease and desist orders.

13-1a-106 Powers of ~~Division~~ division ~~of Corporations and Commercial Code~~ -- Document retention.

(1) The ~~Division~~ division ~~of Corporations and Commercial Code~~ shall have the power and authority reasonably necessary to enable it to efficiently administer the laws and rules for which it is responsible and to perform the duties imposed upon it by law.

(2) The division has authority under Title 63G, Chapter 3, Utah Administrative Rulemaking Act, to make rules and procedures for the processing, retention, and disposal of filed documents to efficiently utilize electronic and computerized document image storage and retrieval.

(3) Notwithstanding the provisions of Section 63A-12-105, original documents filed in the division offices may not be considered property of the state if electronic image reproductions thereof which comply with the provisions of Title 63G, Chapter 2, Government Records Access and Management Act, are retained by the

division.

13-1a-10<u>7</u> Hearing powers.
(1) The director, in accordance with Title 63G, Chapter 4, Administrative Procedures Act, may hold or cause to be held administrative hearings regarding any matter affecting the division or the ~~incorporation or~~ registration activities of any business governed by the laws administered by the division.
(2) The director or the director's designee, for the purposes outlined in this chapter or any chapter administered by the division, may administer oaths, issue subpoenas, compel the attendance of witnesses, and compel the production of papers, books, accounts, documents, and evidence.

~~**13-1a-8 Violation of restraining or injunctive order -- Civil penalty.**~~
~~If any restraining order or injunction issued under this chapter is violated, the division may submit a motion for, or the court on its own motion may impose, a civil penalty of not more than $100 for each day a restraining order, preliminary injunction, or permanent injunction issued under this chapter is violated, if the party has received notice of the restraining order or injunction.~~

13-1a-~~9~~ <u>108</u> Fees of ~~D~~<u>d</u>ivision ~~of Corporations and Commercial Code~~.
~~In addition to the fees prescribed by Title 16, Chapter 6a, Utah Revised Nonprofit Corporation Act, and Title 16, Chapter 10a, Utah Revised Business Corporation Act,~~
T~~t~~he ~~D~~<u>d</u>ivision ~~of Corporations and Commercial Code~~ shall receive and determine fees <u>for services</u> pursuant to Section 63J-1-504<u>.</u> ~~for filing articles of incorporation or amendments of insurance corporations, of canal or irrigation corporations organized for furnishing water to lands owned by the members thereof exclusively, or of water users' associations organized in conformity with the requirements of the United States under the Reclamation Act of June 17, 1902, and which are authorized to furnish water only to their stockholders. No license fee may be imposed on insurance corporations, canal or irrigation corporations organized for furnishing water to lands owned by the members thereof exclusively, or water users' associations organized in conformity with the requirements of the United States under the Reclamation Act of June 17, 1902, and which are authorized to furnish water only to the stockholders at the time any such corporation files its articles of incorporation, articles of amendment increasing the number of authorized shares, or articles of merger or consolidation, any provision of Title 16, Chapter 10a, Utah Revised Business Corporation Act, to the contrary notwithstanding.~~

<u>Part 2</u>
<u>General Provisions</u>

<u>13-1a-201 Definitions.</u>
<u>In this chapter:
(1) "Annual report" means the report required by Section 13-1a-313.
(2) "Assumed name filing" means a record delivered to the division for filing pursuant to Title 42, Chapter 2.
(3) "Business corporation" means a domestic business corporation incorporated under or subject to Title 16, Chapter 10a, Chapter 10b, Chapter 11, or Chapter 13, or a foreign business corporation.
(4) "Business trust" means a trust formed under the statutory law of another state which is not a foreign statutory trust and does not have a predominately donative purpose.
(5) "Commercial registered agent" means a person listed under Section 13-1a-505.
(6) "Common-law business trust" means a common-law trust that does not have a predominately donative purpose.
(7) "Distributional interest" means the right under an unincorporated entity's organic law and organic rules to receive distributions from the entity.</u>

(8) “Division” means the Division of Corporations and Commercial Code within the Utah Department of Commerce.
(9) “Domestic”, with respect to an entity, means governed as to its internal affairs by the law of Utah.
(10) “Effective date”, when referring to a record filed by the division, means the time and date determined in accordance with Section 13-1a-303.
(11) “Entity”:
(a) means:
(i) a business corporation;
(ii) a nonprofit corporation;
(iii) a general partnership, including a limited liability partnership;
(iv) a limited partnership, including a limited liability limited partnership;
(v) a limited liability company;
(vi) a limited cooperative association;
(vii) a statutory trust, business trust, or common-law business trust; or
(viii) any other person that has:
(A) a legal existence separate from any interest holder of that person; or
(B) the power to acquire an interest in real property in its own name; and
(b) does not include:
(i) an individual;
(ii) a trust with a predominately donative purpose or a charitable trust;
(iii) an association or relationship that is not listed in subsection (a) and is not a partnership under Title 48 or a similar provision of the law of another jurisdiction;
(iv) a decedent’s estate; or
(v) a government or a governmental subdivision, agency, or instrumentality.
(12) “Entity filing” means a record delivered to the division for filing pursuant to Title 16 or Title 48.
(13) “Executive director” means the executive director of the Utah Department of Commerce.
(14) “Filed record” means a record filed by the division pursuant to Title 16, Title 42, or Title 48.
(15) “Filing entity” means an entity whose formation requires the filing of a public organic record. The term does not include a limited liability partnership.
(16) “Foreign”, with respect to an entity, means governed as to its internal affairs by the law of a jurisdiction other than Utah.
(17) “General partnership” means a domestic general partnership formed under or subject to Title 48 or a foreign general partnership. The term includes a limited liability partnership.
(18) “Governance interest” means a right under the organic law or organic rules of an unincorporated entity, other than as a governor, agent, assignee, or proxy, to:
(a) receive or demand access to information concerning, or the books and records of, the entity;
(b) vote for or consent to the election of the governors of the entity; or
(c) receive notice of or vote on or consent to an issue involving the internal affairs of the entity.
(19) “Governor” means:
(a) a director of a business corporation;
(b) a director or trustee of a nonprofit corporation;
(c) a general partner of a general partnership;
(d) a general partner of a limited partnership;
(e) a manager of a manager-managed limited liability company;
(f) a member of a member-managed limited liability company;
(g) a director of a limited cooperative association;
(h) a manager of an unincorporated nonprofit association;
(i) a trustee of a statutory trust, business trust, or common-law business trust; or

(j) any other person under whose authority the powers of an entity are exercised and under whose direction the activities and affairs of the entity are managed pursuant to the organic law and organic rules of the entity.
(20) "Interest" means:
(a) a share in a business corporation;
(b) a membership in a nonprofit corporation;
(c) a governance interest in a general partnership;
(d) a governance interest in a limited partnership;
(e) a governance interest in a limited liability company;
(f) a member's interest in a limited cooperative association;
(g) a membership in an unincorporated nonprofit association;
(h) a beneficial interest in a statutory trust, business trust, or common-law business trust; or
(i) a governance interest or distributional interest in any other type of unincorporated entity.
(21) "Interest holder" means:
(a) a shareholder of a business corporation;
(b) a member of a nonprofit corporation;
(c) a general partner of a general partnership;
(d) a general partner of a limited partnership;
(e) a limited partner of a limited partnership;
(f) a member of a limited liability company;
(g) a member of a limited cooperative association;
(h) a member of an unincorporated nonprofit association;
(i) a beneficiary or beneficial owner of a statutory trust, business trust, or common-law business trust; or
(j) any other direct holder of an interest.
(22) "Jurisdiction", used to refer to a political entity, means the United States, a state, a foreign country, or a political subdivision of a foreign country.
(23) "Jurisdiction of formation" means the jurisdiction whose law includes the organic law of an entity.
(24) "Limited cooperative association" means a domestic limited cooperative association formed under or subject to Title 16, Chapter 16 or a foreign limited cooperative association.
(25) "Limited liability company" means a domestic limited liability company formed under or subject to Title 48, Chapter 3a, or Chapter 4, or a foreign limited liability company. The term includes a professional service company, series limited liability company, low-profit limited liability company, and benefit limited liability company.
(26) "Limited liability limited partnership" means a domestic limited liability limited partnership formed under or subject to Title 48 or a foreign limited liability limited partnership.
(27) "Limited liability partnership" means a domestic limited liability partnership registered under or subject to Title 48 or a foreign limited liability partnership.
(28) "Limited partnership" means a domestic limited partnership formed under or subject to Title 48 or a foreign limited partnership. The term includes a limited liability limited partnership.
(29) "Noncommercial registered agent" means a person that is not a commercial registered agent and is:
(a) an individual or domestic or foreign entity that serves in this state as the registered agent of an entity; or
(b) an individual who holds the office or other position in an entity which is designated as the registered agent pursuant to Section 13-1a-504.
(30) "Nonfiling entity" means an entity whose formation does not require the filing of a public organic record.
(31) "Nonprofit corporation" means a domestic nonprofit corporation incorporated under or subject to Title 16, Chapter 6a or a foreign nonprofit corporation.
(32) "Nonregistered foreign entity" means a foreign entity that is not registered to do business in this state pursuant to a statement of registration filed by the division.
(33) "Organic law" means the law of an entity's jurisdiction of formation governing the internal affairs of the

entity.
(34) "Organic rules" means the public organic record and private organic rules of an entity.
(35) "Person" means an individual, business corporation, nonprofit corporation, partnership, limited partnership, limited liability company, limited cooperative association, unincorporated nonprofit association, statutory trust, business trust, common-law business trust, estate, trust, association, joint venture, public corporation, government or governmental subdivision, agency, or instrumentality, or any other legal or commercial entity.
(36) "Principal office" means the principal executive office of an entity, whether or not the office is located in this state.
(37) "Private organic rules" means the rules, whether or not in a record, that govern the internal affairs of an entity, are binding on all its interest holders, and are not part of its public organic record, if any. The term includes:
(a) the bylaws of a business corporation;
(b) the bylaws of a nonprofit corporation;
(c) the partnership agreement of a general partnership;
(d) the partnership agreement of a limited partnership;
(e) the operating agreement of a limited liability company;
(f) the bylaws of a limited cooperative association;
(g) the governing principles of an unincorporated nonprofit association; and
(h) the trust instrument of a statutory trust or similar rules of a business trust or common-law business trust.
(38) "Proceeding" includes a civil action, arbitration, mediation, administrative proceeding, criminal prosecution, and investigatory action.
(39) "Property" means all property, whether real, personal, or mixed or tangible or intangible, or any right or interest therein.
(40) "Public organic record" means the record the filing of which by the division is required to form an entity and any amendment to or restatement of that record. The term includes:
(a) the articles of incorporation of a business corporation;
(b) the articles of incorporation of a nonprofit corporation;
(c) the certificate of limited partnership of a limited partnership;
(d) the certificate of organization of a limited liability company;
(e) the articles of organization of a limited cooperative association; and
(f) the certificate of trust of a statutory trust or similar record of a business trust.
(41) "Receipt", as used in this title, means actual receipt. "Receive" has a corresponding meaning.
(42) "Record", used as a noun, means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.
(43) "Registered agent" means an agent of an entity which is authorized to receive service of any process, notice, or demand required or permitted by law to be served on the entity. The term includes a commercial registered agent and a noncommercial registered agent.
(44) "Registered foreign entity" means a foreign entity that is registered to do business in Utah pursuant to a statement of registration filed by the division.
(45) "Sign" means, with present intent to authenticate or adopt a record:
(a) to execute or adopt a tangible symbol; or
(b) to attach to or logically associate with the record an electronic symbol, sound, or process.
(46) "State" means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States.
(47) "Transfer" includes:
(a) an assignment;
(b) a conveyance;
(c) a sale;

(d) a lease;
(e) an encumbrance, including a mortgage or security interest;
(f) a gift; and
(g) a transfer by operation of law.
(48) "Tribunal" means a court, an arbitrator in a binding arbitration proceeding, or a legislative body, administrative agency, or other body acting in an adjudicative capacity. A legislative body, administrative agency, or other body acts in an adjudicative capacity when a neutral official, after the presentation of evidence or legal argument by a party or parties, will render a binding legal judgment directly affecting a party's interest in a particular matter.
(49) "Tribal entity" means an entity formed under the law of a tribe and at least 51% owned or controlled by the tribe under whose law the entity is formed.
(50) "Tribe" means 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.
(51) "Type of entity" means a generic form of entity:
(a) recognized at common law; or
(b) formed under an organic law, whether or not some entities formed under that law are subject to provisions of that law that create different categories of the form of entity.
(52) "Written" means inscribed on a tangible medium. "Writing" has a corresponding meaning.

13-1a-202 Applicability of part.
This chapter applies to:
(1) An entity formed under or subject to:
(a) Title 16 Corporations; or
(b) Title 48 Unincorporated Business Entity Act; and
(2) An assumed name registered under or subject to Title 42, Chapter 2.

13-1a-203 Delivery of record.
(a) Except as otherwise provided in this part, permissible means of delivery of a record include delivery by hand, mail, conventional commercial practice, and electronic transmission.
(b) Delivery to the division is effective only when a record is received by the division.

Part 3
Filing

13-1a-301 Entity filing and assumed name filing requirements.
(1) To be filed by the division, an entity filing or assumed name filing must be received by the division, comply with this part, and satisfy the following:
(a) The entity filing or assumed name filing must be required or permitted by the title and chapter under which it is filed.
(b) The entity filing or assumed name filing must be physically delivered in written form unless and to the extent the division permits electronic delivery of entity filings.
(c) The words in the entity filing or assumed name filing must be in English, and numbers must be in Arabic or Roman numerals, but the name of the entity need not be in English if written in English letters or Arabic or Roman numerals.
(d) The entity filing or assumed name filing must be signed by or on behalf of a person authorized or required under Section 13-1a-309 to sign the filing. The filing shall state beneath or opposite the signature of the person signing the filing the signer's name and capacity in which the document is signed.

(e) The entity filing or assumed name filing must be signed by or on behalf of a person authorized or required under Section 13-1a-309 to sign the filing, but need not contain a seal, attestation, acknowledgement, or verification.
(f) The entity filing or assumed name filing must be typewritten or machine generated and may not be handwritten.
(2) If a law other than this part prohibits the disclosure by the division of information contained in an entity filing or assumed name filing, the division shall file the entity filing or assumed name filing if the filing otherwise complies with this section but may redact the information.
(3) When an entity filing or assumed name filing is delivered to the division for filing, any fee required under this part must be paid in a manner permitted by the division.
(4) The division may require that an entity filing and assumed name filing delivered in written form be accompanied by:
(a) an identical or conformed copy; or
(b) a cover sheet.

13-1a-302 Forms.
(1) The division may provide forms for entity filings and assumed name filings required or permitted to be made by Title 16, Title 42, and Title 48, but, except as otherwise provided in subsection (2), their use is not required.
(2) The division may require that a cover sheet for an entity filing and an assumed name filing be on a form prescribed by the division.
(3) A requirement that a cover sheet be used may not require the inclusion with the filing any item that is not otherwise required by this chapter or the title and chapter under which the filing is filed.

13-1a-303 Effective date and time.
Except as otherwise provided in this chapter and subject to Subsection 13-1a-305(4), an entity filing or assumed name filing is effective:
(1) on the date and at the time of its filing by the division as provided in Subsection 13-1a-306(2);
(2) on the date of filing and at the time specified in the entity filing as its effective time, if later than the time under subsection (1);
(3) if permitted by the title and chapter under which the entity filing or assumed name filing is filed, at a specified delayed effective date and time, which may not be more than 90 days after the date of filing; or
(4) if a delayed effective date as permitted by this title is specified, but no time is specified, at 12:01 a.m. on the date specified, which may not be more than 90 days after the date of filing.

13-1a-304 Withdrawal of filed record before effectiveness.
(1) Except as otherwise provided in this title, a record delivered to the division for filing may be withdrawn before it takes effect by delivering to the division for filing a statement of withdrawal.
(2) A statement of withdrawal must:
(a) be signed by each person that signed the record being withdrawn, except as otherwise agreed by those persons;
(b) identify the record to be withdrawn; and
(c) if signed by fewer than all the persons that signed the record being withdrawn, state that the record is withdrawn in accordance with the agreement of all the persons that signed the record.
(3) On filing by the division of a statement of withdrawal, the action or transaction evidenced by the original filed record does not take effect.

13-1a-305 Correcting filed record.

(1) A person on whose behalf a filed record was delivered to the division for filing may correct the record if:
(a) the record at the time of filing was inaccurate;
(b) the record was defectively signed; or
(c) the electronic transmission of the record to the division was defective.
(2) To correct a filed record, a person on whose behalf the record was delivered to the division must deliver to the division for filing a statement of correction.
(3) A statement of correction:
(a) may not state a delayed effective date;
(b) must be signed by the person correcting the filed record;
(c) must identify the filed record to be corrected;
(d) must specify the inaccuracy or defect to be corrected; and
(e) must correct the inaccuracy or defect.
(4) A statement of correction is effective as of the effective date of the filed record that it corrects except as to persons relying on the uncorrected filed record and adversely affected by the correction. As to those persons, the statement of correction is effective when filed.

13-1a-306 Duty of division to file; review of refusal to file.
(1) The division shall file an entity filing or assumed name filing delivered to the division for filing which satisfies this chapter and the title and chapter under which it is filed. The duty of the division under this section is ministerial.
(2) When the division files an entity filing or assumed name filing, the division shall record it as filed on the date and at the time of its delivery. After filing an entity filing or assumed name filing, the division shall deliver to the person that submitted the filing a copy of the filing with an acknowledgment of the date and time of filing.
(3) If the division refuses to file an entity filing, the division, not later than 10 business days after the filing is delivered, shall:
(a) return the entity filing or notify the person that submitted the filing of the refusal; and
(b) provide a brief explanation in a record of the reason for the refusal.
(4) If the division refuses to file an entity filing, the person that submitted the filing may, in accordance with Title 63G, Chapter 4, Administrative Procedures Act petition the executive director to compel its filing. The filing and the explanation of the division of the refusal to file must be attached to the petition. The court may decide the matter in a summary proceeding.
(5) The filing of or refusal to file an entity filing does not:
(a) affect the validity or invalidity of the filing in whole or in part; or
(b) create a presumption that the information contained in the filing is correct or incorrect.

13-1a-307 Evidentiary effect of copy of filed record.
A certification from the division accompanying a copy of a filed record is conclusive evidence that the copy is an accurate representation of the original record on file with the division.

13-1a-308 Certificate of good standing or registration.
(1) On request of any person, the division shall issue a certificate of existence for a domestic filing entity or a certificate of registration for a registered foreign entity or a registered assumed name.
(2) A certificate under subsection (1) must state:
(a) the domestic filing entity's name or the registered foreign entity's name used in this state;
(b) in the case of a domestic filing entity:
(i) that its public organic record has been filed and has taken effect;
(ii) the date the public organic record became effective;

(iii) the period of the entity's duration if the records of the division reflect that its period of duration is less than perpetual; and
(iv) that the records of the division do not reflect that the entity has been dissolved;
(c) in the case of a registered foreign entity, that it is registered to do business in this state;
(d) that all fees, taxes, interest, and penalties owed to this state by the domestic or foreign entity and collected through the division have been paid, if:
(i) payment is reflected in the records of the division; and
(ii) nonpayment affects the good standing or registration of the domestic or foreign entity;
(e) that the most recent annual report required by Section 13-1a-313 has been delivered to the division for filing;
(f) that a proceeding is not pending under Section 13-1a-702; and
(g) other facts reflected in the records of the division pertaining to the domestic or foreign entity or assumed name which the person requesting the certificate reasonably requests.
(3) Subject to any qualification stated in the certificate, a certificate issued by the division under subsection (1) may be relied on as conclusive evidence of the facts stated in the certificate.

13-1a-309 Signing of entity filing.
(1) Signing an entity filing or assumed name filing is an affirmation under the penalties of perjury that the facts stated in the filing are true in all material respects.
(2) An entity filing under Title 16, Chapter 6a shall be signed by:
(a) the chair of the board of directors of a nonprofit corporation;
(b) all of the directors of a nonprofit corporation;
(c) an officer of the nonprofit corporation;
(d) if directors have not been selected or the nonprofit corporation has not been formed, an incorporator;
(e) if the nonprofit corporation is in the hands of a receiver, trustee, or other court-appointed fiduciary, that receiver, trustee, or court-appointed fiduciary;
(f) if the document is that of a registered agent, by the registered agent, if the person is an individual, or by a person authorized by the registered agent to execute the document, if the registered agent is an entity; or
(g) an attorney in fact if a nonprofit corporation retains the power of attorney with the nonprofit corporation's records.
(3) An entity filing under Title 16, Chapter 10a shall be signed by:
(a) by the chairman of the board of directors of a business corporation, by all of its directors, or by one of its officers;
(b) if directors have not been selected or the business corporation has not been formed, by an incorporator;
(c) if the business corporation is in the hands of a receiver, trustee, or other court-appointed fiduciary, by that fiduciary;
(d) if the document is that of a registered agent, by the registered agent, if the person is an individual, or by a person authorized by the registered agent to execute the document, if the registered agent is an entity; or
(e) by an attorney in fact if the corporation retains the power of attorney with the corporation's records.
(4) An entity filing under Title 16, Chapter 16 shall be signed by:
(a) in the case of the limited cooperative association's initial articles of organization, or a statement of cancellation, at least one organizer;
(b) in the case of a record signed on behalf of an existing limited cooperative association, an officer;
(c) in the case of a record filed on behalf of a dissolved limited cooperative association, a person winding up activities or a person appointed to wind up those activities; or
(d) in the case of any other record, an authorized agent.
(5) An entity filing under Title 48, Chapter 1d shall be signed by:
(a) in the case of a partnership, a person authorized by the partnership;
(b) in the case of a dissolved partnership that has no partner, a person appointed to wind up the partnership's

activities and affairs or a person appointed to wind up the business;
(c) in the case of a statement of denial by a person, that person; or
(d) in the case of any other record, an agent.
(6) Title 48, Chapter 2e shall be signed by:
(a) in the case of an initial certificate of limited partnership, all general partners listed in the certificate of limited partnership;
(b) in the case of an amendment to the certificate of limited partnership adding or deleting a statement that the limited partnership is a limited liability limited partnership, all general partners listed in the certificate of limited partnership;
(c) in the case of an amendment to the certificate of limited partnership designating as general partner a person admitted under Subsection 48-2e-801(1)(c)(ii) following the dissociation of a limited partnership's last general partner, that person;
(d) in the case of an amendment to the certificate of limited partnership required by Subsection 48-2e-802(3) following the appointment of a person to wind up the dissolved limited partnership's activities and affairs, that person;
(e) in the case of any other amendment to the certificate of limited partnership:
(f) at least one general partner listed in the certificate of limited partnership;
(g) each other person designated in the amendment as a new general partner; and
(h) each person that the amendment indicates has dissociated as a general partner, unless:
(i) the person is deceased or a guardian or general conservator has been appointed for the person and the amendment so states; or
(ii) the person has previously delivered to the division for filing a statement of dissociation;
(i) in the case of a restated certificate of limited partnership, at least one general partner listed in the certificate of limited partnership;
(j) in the case of a statement of termination, all general partners listed in the certificate of limited partnership or, if the certificate of a dissolved limited partnership lists no general partners, by the person appointed pursuant to Subsection 48-2e-802(3) or (4) to wind up the dissolved limited partnership's activities and affairs;
(k) in the case of any other record delivered by a limited partnership to the division for filing, at least one general partner listed in the certificate of limited partnership;
(l) in the case of a statement by a person pursuant to Subsection 48-2e-605(1)(c) stating that the person has dissociated as a general partner, that person;
(m) in the case of a statement of negation by a person pursuant to Subsection 48-2e-306(1)(b), that person;
(n) in the case of a record delivered on behalf of a foreign limited partnership to the division for filing, at least one general partner of the foreign limited partnership; and
(o) in the case of any other record delivered on behalf of any person to the division for filing, that person.
(7) An entity filing under Title 48, Chapter 3a shall be signed by:
(a) except as provided in subsection (7)(b) and (7)(c) and in the case of a record signed on behalf of a limited liability company, a person authorized by the limited liability company;
(b) in the case of the initial certificate of organization, at least one person acting as an organizer;
(c) in the case of a record delivered on behalf of a dissolved limited liability company that has no member, the person winding up the limited liability company's activities and affairs or a person appointed to wind up the activities and affairs;
(d) in the case of a statement of denial by a person, that person; and
(e) in the case of any other record delivered on behalf of a person, that person.
(8) An assumed name filing under Title 42, Chapter 2 shall be signed by the person owning, and the person carrying on, conducting, or transaction business under the assumed name.
(9) A record filed under this title may be signed by an agent. Whenever this title requires a particular individual to sign an entity filing or assumed name filing and the individual is deceased or incompetent, the filing may be

signed by a legal representative of the individual.
(10) A person that signs a record as an agent or legal representative affirms as a fact that the person is authorized to sign the record.

13-1a-310 Signing and filing pursuant to judicial order.
(1) If a person required by this title to sign or deliver a record to the division for filing under this title does not do so, any other person that is aggrieved may petition a court of competent jurisdiction to order:
(a) the person to sign the record;
(b) the person to deliver the record to the division for filing; or
(c) the division to file the record unsigned.
(2) If the petitioner under subsection (1) is not the entity to which the record pertains, the petitioner shall make the entity a party to the action.
(3) A record filed under subsection (1)(c) is effective without being signed.

13-1a-311 Liability for inaccurate information in filed record.
If a record delivered to the division for filing under this title and filed by the division contains inaccurate information, a person that suffers a loss by reliance on the information may recover damages for the loss from a person that signed the record or caused another to sign it on the person's behalf and knew at the time the record was signed that the information was inaccurate.

13-1a-312 Delivery by division.
Except as otherwise provided by Section 13-1a-511 or by law of this state other than this title, the division may deliver a record to a person by delivering it:
(1) in person to the person that submitted it for filing;
(2) to the address of the person's registered agent;
(3) to the principal office address of the person; or
(4) to another address the person provides to the division for delivery, including an email address.

13-1a-313 Annual report for division.
(1) A domestic filing entity, domestic limited liability partnership, or registered foreign entity shall deliver to the division for filing an annual report that states:
(a) the name of the entity and its jurisdiction of formation;
(b) the name and street and mailing addresses of the entity's registered agent in this state;
(c) the street and mailing addresses of the entity's principal office;
(d)(i) for a nonprofit corporation, the names and addresses of its directors and principal officers;
(ii) for a business corporation, the names of its principal officers;
(iii) for a limited liability partnership, the name of at least one partner;
(iv) for a limited partnership, the name of at least one general partner;
(v) for a limited liability company and any other entity, the name of at least one governor;
(e) the entity's North American Industry Classification System (NAICS) code.
(2) Information in an annual report must be current as of the date the report is signed by the entity.
(3) An annual report must be delivered to the division for each year following the calendar year in which the public organic record of the domestic filing entity became effective under Section 13-1a-303, the statement of qualification of a domestic limited liability partnership became effective under Section 13-1a-303, or the foreign filing entity registered to do business in Utah. The annual report must be delivered to the division during the month in which is the anniversary date on which the public organic record of the domestic filing entity became effective, the statement of qualification of a domestic limited liability partnership became effective, or the foreign filing entity registered to do business in Utah.

(4) If an annual report does not contain the information required by this section, the division promptly shall notify the reporting entity in a record and return the report for correction. If the corrected annual report is delivered to the division within 30 days of the notification to the reporting entity, the annual report is considered timely filed as long as the original filing was otherwise timely filed.
(5) If an annual 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 report becomes effective, the differing information is considered a statement of change under Section 13-1a-507.
(6) The fact that a person's name is signed on an annual report is prima facie evidence for division purposes that the person is authorized to certify the report on behalf of the domestic filing entity, domestic limited liability partnership, or registered foreign entity.
(7) The division may allow a domestic filing entity, a domestic limited liability partnership, or a registered foreign entity to file an amendment to its most recently filed annual report during the period between annual reports.

Part 4
Name of Business

13-1a-401 Permitted names.
(1) Except as otherwise provided in subsection (4) or (6), the name of a domestic filing entity or domestic limited liability partnership, an assumed name, and the name under which a foreign entity may register to do business in Utah, must be distinguishable on the records of the division from any:
(a) name of an existing domestic filing entity which at the time is not administratively dissolved;
(b) name of an existing domestic filing entity which at the time is administratively dissolved but is eligible for reinstatement under Section 13-1a-703;
(c) name of a limited liability partnership whose statement of qualification is in effect;
(d) name under which a foreign entity is registered to do business in Utah under Part 5;
(e) name reserved under Section 13-1a-403;
(f) name registered under Section 13-1a-404; or
(g) assumed name registered under Title 42, Chapter 2.
(2) If an entity, or an owner of an assumed name, consents in a record to the use of its name and submits an undertaking in a form satisfactory to the division to change its name to a name that is distinguishable on the records of the division from any name in any category of names in subsection (1), the name of the consenting entity or owner of an assumed name may be used by the person to which the consent was given.
(3) Except as otherwise provided in subsection (4), in determining whether a name is the same as or not distinguishable on the records of the division from the name of another entity the following may not be taken into account:
(a) words, phrases, or abbreviations indicating the type of entity, such as "corporation", "corp.", "incorporated", "Inc.", "professional corporation", "PC", "P.C.", "professional association", "PA", "P.A.", "Limited", "Ltd.", "limited partnership", "LP", "L.P.", "limited liability partnership", "LLP", "L.L.P.", "registered limited liability partnership", "RLLP", "R.L.L.P.", "limited liability limited partnership", "LLLP", "L.L.L.P.", "registered limited liability limited partnership", "RLLLP", "R.L.L.L.P.", "limited liability company", "LLC", or "L.L.C.";
(b) the presence or absence of the words or symbols of the words "the", "and", "a", or "plus";
(c) differences in punctuation and special characters;
(d) differences in capitalization;
(e) differences between singular and plural forms of words;
(f) differences in abbreviations; and
(g) differences in whether letters or numbers immediately follow each other or are separated by one or more spaces if the sequence of letters and numbers is identical;

(5) An entity name or an assumed name may not contain:
(a) without the written consent of the United States Olympic Committee, the words:
(i) “Olympic”;
(ii) “Olympiad”; or
(iii) “Citius Altius Fortius”;
(b) without the written consent of the Division of Consumer Protection within the Utah Department of Commerce the words:
(i) “university”;
(ii) “college”; or
(iii) institute” or “institution”;
(c) for an entity or assumed name that changes its name or is formed on or after May 4, 2022, the number sequence “911”; or
(d) without the written consent of the Utah Department of Financial Institutions, the words:
(i) “bank” or “banker” or “banking”;
(ii) “banc”;
(iii) “banque”;
(iv) “banco”;
(v) “bancorp”;
(vi) “bancorporation”;
(vii) “credit union”;
(viii) “trust”;
(ix) “trust company”;
(x) “trustee”;
(xi) “escrow”;
(xii) “thrift”;
(xiii) “ILC”;
(xiv) “industrial loan corporation”;
(xv) “industrial bank”;
(xvi) “savings association”;
(xvii) “savings and loan association”;
(xviii) “building association”; or
(xix) “building and loan association”.
(6) An entity name or an assumed name may not imply that the entity or the owner of the assumed name is an agency of the State of Utah or any of its political subdivisions, if the entity or owner of the assumed name is not actually an agency of the State of Utah or any of its political subdivisions.
(7) An entity or owner of an assumed name may use a name that is not distinguishable from a name described in subsection (1)(a) through (g) if the entity delivers to the division for filing a certified copy of a final judgment of a court of competent jurisdiction establishing the right of the entity or owners of the assumed name to use the name in Utah.

13-1a-402 Name requirements for certain types of entities.
(1) The name of a business corporation:
(a) except for the name of a depository institution as defined in Section 7-1-103, must contain the word "corporation”, "incorporated”, “company”, or “limited”, or the abbreviation “Corp.”, “Inc.”, “Co.”, or “Ltd.”, or words or abbreviations of similar import in another language; and
(b) may not contain any word or phrase that indicates or implies that the business corporation is organized for a purpose other than that permitted by Section 16-10a-301 and the business corporation’s articles of incorporation.

(2) The name of a nonprofit corporation:
(a) may contain the word "corporation", "incorporated", "company", or the abbreviation "Corp.", "Inc.", "Co.", or "Ltd.", or words or abbreviations of similar import in another language; and
(b) may not contain any word or phrase that indicates or implies that the nonprofit corporation is organized for a purpose other than that permitted by Section 16-6a-301 and the nonprofit corporation's articles of incorporation.
(3) The name of a professional corporation:
(a) must contain the word "professional corporation" or the abbreviation "P.C."; and
(b) may not:
(i) contain the word "incorporation", or the abbreviation "inc."; or
(ii) contain any word or phrase that indicates or implies that the professional corporation is organized for a purpose other than than permitted by 16-11-6 and the professional corporation's articles of organization.
(5) (a) The name of a limited partnership:
(i) may contain the name of any partner; and
(ii) may not contain the word "association", "corporation", "incorporated", "limited liability company", or "limited company"; and
(b) The name of a limited partnership that is not a limited liability limited partnership:
(i) must contain the phrase "limited partnership" or the abbreviation "L.P." or "LP"; and
(ii) may not contain the phrase "limited liability limited partnership" or "registered limited liability limited partnership" or the abbreviation "L.L.L.P.", "LLLP", "R.L.L.L.P.", or "RLLLP"; and
(c) If the limited partnership is a limited liability limited partnership:
(i) the name must contain the phrase "limited liability limited partnership" or the abbreviation "L.L.L.P." or "LLLP" "R.L.L.L.P.", or "RLLLP"; and
(ii) may not contain the abbreviation "L.P." or "LP".
(6) The name of a limited liability partnership:
(a) must contain the phrase "limited liability partnership" or "registered limited liability partnership" or the abbreviation "L.L.P.", "R.L.L.P.", "LLP", or "RLLP"; and
(b) may not contain the word "association", "corporation", "incorporated", "limited liability company", "limited company", "limited partnership", or the abbreviation "Ltd.".
(7)(a)The name of a limited liability company:
(i) must contain the phrase "limited liability company" or "limited company" or the abbreviation "L.L.C.", "LLC", "L.C.", or "LC". "Limited" may be abbreviated as "Ltd.", and "company" may be abbreviated as "Co."; and
(ii) may not contain the word "association", "corporation", "incorporated", or "partnership", or the phrase "limited partnership", or the abbreviation "L.P.".
(b) The name of a professional services company:
(i) in lieu of the requirement of subsection (7)(a)(i) must contain the phrase "professional limited liability company" or the abbreviation "P.L.L.C.", or "PLLC";
(ii) notwithstanding subsection (7)(b)(i), may omit the phrase "professional limited liability company" or the abbreviation "P.L.L.C.", or "PLLC" if the name complies with subsection (7)(a)(i); and
(iii) subsections (7)(a)(i) and (7)(b)(i) and (7)(b)(ii) do not prevent the use of a name if the name is the personal name of an individual member or individual former member of the professional services company or the name of an individual who was associated with a predecessor of the professional services company.
(c) The name of a low-profit limited liability company shall contain in its name the abbreviation "L3C" or "l3c".
(d)(i) The name of a benefit company may contain the phrase "benefit limited liability company", "benefit limited company", or "benefit company", or the abbreviation "B.L.L.C.", "BLLC", "B.L.C.", or "BLC". "Limited" may be abbreviated as "Ltd.", and "company" may be abbreviated as "Co."; and
(ii) A benefit company that complies with subsection (7)(d)(i) satisfies the requirement of (7)(a)(i).

(8) The name of a limited cooperative association must contain the phrase "limited cooperative association" or "limited cooperative" or the abbreviation "L.C.A." or "LCA". "Limited" may be abbreviated as "Ltd.". "Cooperative" may be abbreviated as "Co-op.", "Coop.", "Co-op", or "Coop". "Association" may be abbreviated as "Assoc.", "Assoc", "Assn.", or "Assn".
(9) The name of a business development corporation shall contain the phrase "business development corporation".
(10) The name of a business trust shall end with the phrase "business trust".
(11) Only names of:
(a) nonprofit corporations and business corporations may contain the word "corporation", or "incorporated" or the abbreviation "Corp." or "Inc.";
(b) professional corporations may contain the phrase "professional corporation";
(c) limited liability partnerships may contain the phrase "registered limited liability partnership" or "limited liability partnership", or the abbreviation "R.L.L.P.", "L.L.P.", "RLLP", or "LLP"; and
(d) limited liability companies may contain the phrase "limited liability company", or "limited company" or the abbreviation "L.L.C.", "L.C.", "LLC", or "LC".

13-1a-403 Reservation of name.
(1) A person may reserve the exclusive use of an entity name by delivering an application to the division for filing. The application must state the name and address of the applicant and the name to be reserved. If the division finds that the entity name is available, the division shall reserve the name for the applicant's exclusive use for 120 days.
(2) The reservation may be renewed.
(3) The owner of a reserved entity name may transfer the reservation to another person by delivering to the division a signed notice in a record of the transfer which states the name and address of the transferee.

13-1a-404 Registration of name.
(1) A foreign filing entity or foreign limited liability partnership not registered to do business in this state under Part 5 may register its name, or an alternate name adopted pursuant to Section 13-1a-606, if the name is distinguishable on the records of the division from the names that are not available under Section 13-1a-401.
(2) To register its name or an alternate name adopted pursuant to Section 13-1a-606, a foreign filing entity or foreign limited liability partnership must deliver to the division for filing an application stating the entity's name, the jurisdiction and date of its formation, and any alternate name adopted pursuant to Section 13-1a-606. If the division finds that the name applied for is available, the division shall register the name for the applicant's exclusive use.
(3) The registration of a name under this section is effective until December 31 of the year in which registration is effective.
(4) A foreign filing entity or foreign limited liability partnership whose name registration is effective may renew the registration for successive one-year periods by delivering, not earlier than three months before the expiration of the registration, to the division for filing a renewal application that complies with this section. When filed, the renewal application renews the registration for a succeeding one-year period.
(5) A foreign filing entity or foreign limited liability partnership whose name registration is effective may register as a foreign filing entity or foreign limited liability partnership under the registered name or consent in a signed record to the use of that name by another entity.

13-1a-405 Limited rights.
The authorization granted by the division to a person to use a name or to reserve a name does not:
(1) abrogate or limit the law governing unfair competition or unfair trade practices;
(2) derogate from the common law the principles of equity or the statutes of Utah or of the United States with

respect to the right to acquire and protect names and trademarks; or
(3) create an exclusive right in geographic or generic terms contained within a name.

Part 5
Registered Agent of Business

13-1a-501 Definitions.
In this part:
(1) "Designation of agent" means a statement designating a registered agent delivered to the division for filing under:
(a) Title 16;
(b) Title 48;
(c) Section 13-1a-510 by a nonregistered foreign entity or domestic nonfiling entity; or
(d) Title 42, Chapter 2.
(2) "Registered agent filing" means:
(a) the public organic record of a domestic filing entity;
(b) a statement of qualification of a domestic limited liability partnership;
(c) a registration statement filed pursuant to Section 13-1a-603; or
(d) a designation of agent.
(3) "Represented entity" means:
(a) a domestic filing entity;
(b) a domestic limited liability partnership;
(c) a registered foreign entity;
(d) a domestic or foreign unincorporated nonprofit association for which a designation of agent is in effect;
(e) a domestic nonfiling entity for which a designation of agent is in effect;
(f) a nonregistered foreign entity for which a designation of agent is in effect; or
(g) for purposes of this part, an assumed name registered pursuant to Title 42, Chapter 2.

13-1a-502 Entities required to designate and maintain registered agent.
The following shall designate and maintain a registered agent in this state:
(1) a domestic filing entity;
(2) a domestic limited liability partnership;
(3) a registered foreign entity; and
(4) an assumed name registered pursuant to Title 42, Chapter 2.

13-1a-503 Addresses in filing.
If a provision of this part other than Section 13-1a-509 requires that a record state an address, the record must state:
(1) a street address or rural route box number in Utah; and
(2) a mailing address in Utah, if different from the address described in subsection (1).

13-1a-504 Designation of registered agent.
(1) A registered agent filing must be signed by the represented entity and state:
(a) the name of the entity's commercial registered agent; or
(b) if the entity does not have a commercial registered agent:
(i) the name and address of the entity's noncommercial registered agent; or
(ii) the title of an office or other position with the entity, if service of process, notices, and demands are to be sent to whichever individual is holding that office or position, and the address to which process, notices, or

demands are to be sent.
(2) The designation of a registered agent pursuant to subsection (1)(a) or (1)(b) is an affirmation of fact by the represented entity that the agent has consented to serve.

13-1a-505 Listing of commercial registered agent.
(1) A person may become listed as a commercial registered agent by delivering to the division for filing a commercial-registered-agent listing statement signed by the person which states:
(a) the name of the individual or the name of the entity, type of entity, and jurisdiction of formation of the entity;
(b) that the person is in the business of serving as a commercial registered agent in this state; and
(c) the address of a place of business of the person in this state to which service of process, notices, and demands being served on or sent to entities represented by the person may be delivered.
(2) A commercial-registered-agent listing statement may include the information regarding acceptance by the agent of service of process, notices, and demands in a form other than a written record as provided in Section 13-1a-511.
(3) If the name of a person delivering to the division for filing a commercial-registered-agent listing statement is not distinguishable on the records of the division from the name of another commercial registered agent listed under this section, the person shall adopt a fictitious name that is distinguishable and use that name in its statement and when it does business in this state as a commercial registered agent.
(4) The commercial registered agent listing statement must be accompanied by a list in alphabetical order of the entities represented by the person. The division shall note the filing of the commercial-registered-agent listing statement in the index of filings maintained by the division for each listed entity. The statement has the effect of deleting the address of the registered agent from the registered agent filing of each of those entities.

13-1a-506 Termination of listing of commercial registered agent.
(1) A commercial registered agent may terminate its listing as a commercial registered agent by delivering to the division for filing a commercial-registered-agent termination statement signed by the agent which states:
(a) the name of the agent as listed under Section 13-1a-505; and
(b) that the agent is no longer in the business of serving as a commercial registered agent in this state.
(2) A commercial-registered-agent termination statement takes effect at 12:01 a.m. on the 31st day after the day on which it is filed by the division.
(3) The commercial registered agent promptly shall furnish each entity represented by the agent notice in a record of the filing of the commercial-registered-agent termination statement.
(4) When a commercial-registered-agent termination statement takes effect, the commercial registered agent ceases to be the registered agent for each entity formerly represented by it. Until an entity formerly represented by a terminated commercial registered agent designates a new registered agent, service of process may be made on the entity pursuant to Section 13-1a-511. Termination of the listing of a commercial registered agent under this section does not affect any contractual rights a represented entity has against the agent or that the agent has against the entity.

13-1a-507 Change of registered agent by represented entity.
(1) A represented entity may change the information on file under Section 13-1a-504 by delivering to the division for filing a statement of change signed by the entity which states:
(a) the name of the entity; and
(b) the information that is to be in effect as a result of the filing of the statement of change.
(2) The interest holders or governors of a domestic entity need not approve the filing of:
(a) a statement of change under this section; or
(b) a similar filing changing the registered agent or registered office, if any, of the entity in any other

jurisdiction.
(3) A statement of change under this section designating a new registered agent is an affirmation of fact by the represented entity that the agent has consented to serve.
(4) As an alternative to using the procedure in this section, a represented entity may change the information on file under Section 13-1a-504 by amending its most recent registered agent filing in a manner provided by the law of this state other than this title for amending the filing.

13-1a-508 Change of name or address by noncommercial registered agent.
(1) If a noncommercial registered agent changes its name or its address in effect with respect to a represented entity under Section 13-1a-504, the agent shall deliver to the division for filing, with respect to each entity represented by the agent, a statement of change signed by the agent which states:
(a) the name of the entity;
(b) the name and address of the agent in effect with respect to the entity;
(c) if the name of the agent has changed, the new name; and
(d) if the address of the agent has changed, the new address.
(2) A noncommercial registered agent promptly shall furnish the represented entity with notice in a record of the delivery to the division for filing of a statement of change and the changes made in the statement.

13-1a-509 Resignation of registered agent.
(1) A registered agent may resign as agent for a represented entity by delivering to the division for filing a statement of resignation signed by the agent which states:
(a) the name of the entity;
(b) the name of the agent;
(c) that the agent resigns from serving as registered agent for the entity; and
(d) the address of the entity to which the agent will send the notice required by subsection (c).
(2) A statement of resignation takes effect on the earlier of:
(a) 12:01 a.m. on the 31st day after the day on which it is filed by the division; or
(b) the designation of a new registered agent for the represented entity.
(3) A registered agent promptly shall furnish to the represented entity notice in a record of the date on which a statement of resignation was filed.
(4) When a statement of resignation takes effect, the person that resigned ceases to have responsibility under this part for any matter thereafter tendered to it as agent for the represented entity. The resignation does not affect any contractual rights the entity has against the agent or that the agent has against the entity.
(5) A registered agent may resign with respect to a represented entity whether or not the entity is in good standing.

13-1a-510 Designation of registered agent by nonregistered foreign entity or nonfiling domestic entity.
(1) A nonregistered foreign entity or domestic nonfiling entity may deliver to the division for filing a statement designating a registered agent signed by the entity which states:
(a) the name, type of entity, and jurisdiction of formation of the entity; and
(b) the information required by Section 13-1a-504.
(2) A statement under subsection (1) is effective for five years after the date of filing unless canceled or terminated earlier.
(3) A statement under subsection (1) must be signed by a person authorized to manage the affairs of the nonregistered foreign entity or domestic nonfiling entity. The signing of the statement is an affirmation of fact that the person is authorized to manage the affairs of the entity and that the agent has consented to serve.
(4) Designation of a registered agent under subsection (1) does not register a nonregistered foreign entity to do business in this state.

(5) A statement under subsection (1) may not be rejected for filing because the name of the entity signing the statement is not distinguishable on the records of the division from the name of another entity appearing on those records. The filing of such a statement does not make the name of the entity signing the statement unavailable for use by another entity.
(6) An entity that delivers to the division for filing a statement under subsection (1) designating a registered agent may cancel the statement by delivering to the division for filing a statement of cancellation that states the name of the entity and that the entity is canceling its designation of a registered agent in this state.
(7) A statement under subsection (1) for a nonregistered foreign entity terminates on the date the entity becomes a registered foreign entity.

13-1a-511 Service of process, notice, or demand on entity.
(1) A represented entity may be served with any process, notice, or demand required or permitted by law by serving its registered agent.
(2) If a represented entity ceases to have 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, or by similar commercial delivery service, addressed to the entity at the entity's principal office. The address of the principal office of a domestic filing entity, domestic limited liability partnership, or registered foreign entity must be as shown in the entity's most recent annual report filed by the division. Service is effected under this subsection on the earliest of:
(a) the date the entity receives the mail or delivery by the commercial delivery service;
(b) the date shown on the return receipt, if signed by the entity; or
(c) five days after its deposit with the United States Postal Service or commercial delivery service, if correctly addressed and with sufficient postage or payment.
(3) If process, notice, or demand cannot be served on an entity pursuant to subsection (1) or (2), service may be made by handing a copy to the individual in charge of any regular place of business or activity of the entity if the individual served is not a plaintiff in the action.
(4) Service of process, notice, or demand on a registered agent must be in a written record, but service may be made on a commercial registered agent in other forms, and subject to such requirements, as the agent has stated in its listing under Section 13-1a-505 that it will accept.
(5) Service of process, notice, or demand may be made by other means under law other than this chapter.

13-1a-512 Duties of registered agent.
The only duties under this part of a registered agent that has complied with this part are:
(1) to forward to the represented entity at the address most recently supplied to the agent by the entity any process, notice, or demand pertaining to the entity which is served on or received by the agent;
(2) to provide the notices required by this part to the entity at the address most recently supplied to the agent by the entity;
(3) if the agent is a noncommercial registered agent, to keep current the information required by Section 13-1a-504 in the most recent registered agent filing for the entity; and
(4) if the agent is a commercial registered agent, to keep current the information listed for it under Section 13-1a-505.

13-1a-513 Jurisdiction and venue.
The designation or maintenance in this state of a registered agent does not by itself create the basis for personal jurisdiction over the represented entity in this state. The address of the agent does not determine venue in an action or a proceeding involving the entity.

Part 6

Foreign Entities

13-1a-601 Governing law.

(1) The law of the jurisdiction of formation of an entity governs:
(a) the internal affairs of the entity;
(b) the liability that a person has as an interest holder or governor for a debt, obligation, or other liability of the entity; and
(c) the liability of a series of a limited liability company, statutory trust, or other unincorporated entity.
(2) A foreign entity is not precluded from registering to do business in Utah because of any difference between the law of the entity's jurisdiction of formation and the law of Utah.
(3) Registration of a foreign entity to do business in Utah does not authorize the foreign entity to engage in any activities and affairs or exercise any power that a domestic entity of the same type may not engage in or exercise in Utah.

13-1a-602 Registration to do business in Utah.

(1) A foreign filing entity or foreign limited liability partnership may not do business in Utah until it registers with the division under this chapter.
(2) A foreign filing entity or foreign limited liability partnership doing business in Utah may not maintain an action or proceeding in Utah unless it is registered to do business in Utah.
(3) The failure of a foreign filing entity or foreign limited liability partnership to register to do business in Utah does not impair the validity of a contract or act of the foreign filing entity or foreign limited liability partnership or preclude it from defending an action or proceeding in Utah.
(4) A limitation on the liability of a series of a foreign unincorporated entity or an interest holder or governor of a foreign filing entity or of a partner of a foreign limited liability partnership is not waived solely because the foreign unincorporated entity or any series thereof, foreign filing entity or foreign limited liability partnership does business in Utah without registering.
(5) Subsections 13-1a-601(1) and 13-1a-601(2) apply even if a foreign entity fails to register under this part.
(6) (a) A tribunal may stay a proceeding commenced by a foreign filing entity or foreign limited liability partnership, its successor, or assignee until it determines whether the foreign filing entity or foreign limited liability partnership, its successor, or assignee is required to register to do business in Utah.
(b) If the tribunal determines that a foreign filing entity or foreign limited liability partnership, its successor, or assignee is required to register to do business in Utah, the court may further stay the proceeding until the foreign registration statement is filed by the division.

13-1a-603 Foreign registration statement.

(1) To register to do business in Utah, a foreign filing entity or foreign limited liability partnership must deliver a foreign registration statement to the division for filing. The statement must be signed by the entity and state:
(a) the name of the foreign filing entity or foreign limited liability partnership and, if the name does not comply with Section 13-1a-401 or 13-1a-402, an alternate name adopted pursuant to Section 13-1a-606;
(b) the type of entity and, if it is a foreign limited partnership, whether it is a foreign limited liability limited partnership;
(c) the entity's jurisdiction of formation;
(d) the street and mailing addresses of the entity's principal office and, if the law of the entity's jurisdiction of formation requires the entity to maintain an office in that jurisdiction, the street and mailing addresses of the office;
(e) the information required by Section 13-1a-504; and
(f) the entity's North American Industry Classification System (NAICS) code.
(2)(a) The division may permit a tribal entity to deliver a foreign registration statement to the division for filing.

(b) If a tribal entity elects to deliver a foreign registration statement for filing, for purposes of this chapter, the tribal entity shall be treated in the same manner as a foreign filing entity.

13-1a-604 Amendment of foreign registration statement.
(1) A registered foreign entity shall sign and deliver to the division for filing an amendment to its foreign registration statement if there is a change in:
(a) the name of the entity;
(b) the type of entity, including, if it is a foreign limited partnership, whether the entity became or ceased to be a foreign limited liability limited partnership;
(c) the entity's jurisdiction of formation; or
(d) an address required by Subsection 13-1a-603(1)(d); and
(2) If there is a change in the information required by Section 13-1a-504, the registered foreign entity shall deliver to the division for filing a statement of change pursuant to Section 13-1a-507.

13-1a-605 Activities not constituting doing business.
(1) Activities of a foreign filing entity or foreign limited liability partnership which do not constitute doing business in Utah under this part include:
(a) maintaining, defending, mediating, arbitrating, or settling an action or proceeding;
(b) carrying on any activity concerning its internal affairs, including holding meetings of its interest holders or governors;
(c) maintaining accounts in financial institutions;
(d) maintaining offices or agencies for the transfer, exchange, and registration of securities of the entity or maintaining trustees or depositories with respect to those securities;
(e) selling through independent contractors;
(f) soliciting or obtaining orders by any means if the orders require acceptance outside this state before they become contracts;
(g) creating or acquiring indebtedness, mortgages, or security interests in property;
(h) securing or collecting debts or enforcing mortgages or security interests in property securing the debts, and holding, protecting, or maintaining property so acquired;
(i) conducting an isolated transaction that is not in the course of similar transactions;
(j) owning, without more, property;
(k) doing business in interstate commerce;
(l) distributing information to its interest holders or governors; and
(m) granting funds.
(2) A person does not do business in Utah solely by being an interest holder or governor of a foreign entity that does business in Utah.
(3) This section does not apply in determining the contacts or activities that may subject a foreign filing entity or foreign limited liability partnership to service of process, taxation, or regulation under law of Utah other than this title or to the jurisdiction of the courts of Utah.

13-1a-606 Noncomplying name of foreign entity.
(1) A foreign filing entity or foreign limited liability partnership whose name does not comply with Section 13-1a-401 or 13-1a-402 for an entity of its type may not register to do business in Utah until it adopts, for the purpose of doing business in Utah, an alternate name that complies with Sections 13-1a-401 and 13-1a-402. A foreign entity that registers under an alternate name under this subsection need not comply with Title 42, Chapter 2. After registering to do business in Utah with an alternate name, a foreign entity shall do business in Utah under:
(a) the alternate name;

(b) the foreign entity's name, with the addition of its jurisdiction of formation; or
(c) a name the foreign entity is authorized to use under Title 42, Chapter 2.
(2) If a registered foreign entity changes its name to one that does not comply with Section 13-1a-401 or 13-1a-402, it may not do business in Utah until it complies with subsection (1) by amending its registration to adopt an alternate name that complies with Sections 13-1a-401 and 13-1a-402.

13-1a-607 Withdrawal of registration of registered foreign entity.
(1) A registered foreign entity may withdraw its registration by delivering a statement of withdrawal to the division for filing. The statement of withdrawal must be signed by the entity and state:
(a) the name of the entity and its jurisdiction of formation;
(b) that the entity is not doing business in Utah and that it withdraws its registration to do business in Utah;
(c) that the entity revokes the authority of its registered agent to accept service on its behalf in Utah; and
(d) an address to which service of process may be made under subsection (2).
(2) To withdraw, a foreign nonprofit corporation or foreign business corporation must include with the statement of withdrawal a certificate from the Utah State Tax Commission reciting that all taxes owed by the foreign nonprofit corporation or foreign business corporation have been paid.
(3) After the withdrawal of the registration of an entity, service of process in any action or proceeding based on a cause of action arising during the time the entity was registered to do business in Utah may be made pursuant to Section 13-1a-511.

13-1a-608 Withdrawal deemed on conversion to domestic filing entity or domestic limited liability partnership.
A registered foreign entity that converts to any type of domestic filing entity or to a domestic limited liability partnership is deemed to have withdrawn its registration on the effective date of the conversion.

13-1a-609 Withdrawal on dissolution or conversion to nonfiling entity other than limited liability partnership.
(1) A registered foreign entity that has dissolved and completed winding up or has converted to a domestic or foreign nonfiling entity other than a limited liability partnership shall deliver a statement of withdrawal to the division for filing. The statement must be signed by the dissolved or converted entity and state:
(a) in the case of a foreign entity that has completed winding up:
(i) its name and jurisdiction of formation; and
(ii) that the foreign entity surrenders its registration to do business in Utah; and
(b) in the case of a foreign entity that has converted to a domestic or foreign nonfiling entity other than a limited liability partnership:
(i) the name of the converting foreign entity and its jurisdiction of formation;
(ii) the type of nonfiling entity to which it has converted and its jurisdiction of formation;
(iii) that it withdraws its registration to do business in Utah and revokes the authority of its registered agent to accept service on its behalf; and
(iv) a mailing address to which service of process may be made under subsection (2).
(2) After a withdrawal under this section is effective, service of process in any action or proceeding based on a cause of action arising during the time the foreign filing entity was registered to do business in Utah may be made pursuant to Section 13-1a-511.

13-1a-610 Transfer of registration.
(1) If a registered foreign entity merges into a nonregistered foreign entity or converts to a foreign entity required to register with the division to do business in Utah, the foreign entity shall deliver to the division for filing an application for transfer of registration. The application must be signed by the surviving or converted

entity and state:
(a) the name of the registered foreign entity before the merger or conversion;
(b) the type of entity it was before the merger or conversion;
(c) the name of the applicant entity and, if the name does not comply with Section 13-1a-401 or 13-1a-402, an alternate name adopted pursuant to Subsection 13-1a-606(1);
(d) the type of entity of the applicant entity and its jurisdiction of formation; and
(e) the following information regarding the applicant entity, if different than the information for the foreign entity before the merger or conversion:
(i) the street and mailing addresses of the principal office of the entity and, if the law of the entity's jurisdiction of formation requires it to maintain an office in that jurisdiction, the street and mailing addresses of that office; and
(ii) the information required pursuant to Subsection 13-1a-504(1).
(2) When an application for transfer of registration takes effect, the registration of the registered foreign entity to do business in Utah is transferred without interruption to the entity into which it has merged or to which it has been converted.

13-1a-611 Termination of registration.
(1) The division may terminate the registration of a registered foreign entity in the manner provided in subsections (2) and (3) if:
(a) the entity does not:
(i) pay, not later than 60 days after the due date, any fee required to be paid to the division under Section 13-1a-108;
(ii) deliver to the division for filing, not later than 60 days after the due date, an annual report;
(iii) have a registered agent as required by Section 13-1a-502; or
(iv) deliver to the division for filing a statement of change under Section 13-1a-507 not later than 30 days after a change occurs in the name or address of the entity's registered agent.
(b) the division receives a duly authenticated certificate from the entity's jurisdiction of formation stating that the entity has dissolved or disappeared as the result of a merger.
(2) The division may terminate the registration of a registered foreign entity by:
(a) filing a notice of termination or noting the termination in the records of the division; and
(b) delivering a copy of the notice or the information in the notation to the entity's registered agent or, if the entity does not have a registered agent, to the entity's principal office.
(3) The notice must state or the information in the notation under subsection (2) must include:
(a) the effective date of the termination, which must be at least 60 days after the date the division delivers the copy; and
(b) the grounds for termination under subsection (1).
(4) The registration of a registered foreign entity to do business in this state ceases on the effective date of the notice of termination or notation under subsection (2), unless before that date the entity cures each ground for termination stated in the notice or notation. If the entity cures each ground, the division shall file a record so stating.
(5) A foreign entity may seek administrative review of termination of registration by the executive director, in accordance with Title 63G, Chapter 4, Administrative Procedures Act, not later than 30 days after the effective date of termination.

Part 7
Administrative Dissolution

13-1a-701 Grounds.

The division may commence a proceeding under Section 13-1a-702 to dissolve a domestic filing entity administratively if:
(1) the entity does not:
(a) pay any fee required to be paid to the division not later than six months after it is due;
(b) deliver an annual report to the division not later than six months after it is due;
(c) have a registered agent in this state for 60 consecutive days; or
(2) the entity's period of duration stated in its public organic record expires.

13-1a-702 Procedure and effect.
(1) If the division determines that one or more grounds exist under Section 13-1a-701 for administratively dissolving a domestic filing entity, the division shall serve the entity pursuant to 13-1a-312 with notice in a record of the division's determination.
(2) If a domestic filing entity, not later than 60 days after service of the notice required by subsection (1), does not cure or demonstrate to the satisfaction of the division the nonexistence of each ground determined by the division, the division shall administratively dissolve the entity by signing a statement of administrative dissolution that recites the grounds for dissolution and the effective date of dissolution. The division shall file the statement and serve a copy on the entity pursuant to 13-1a-312.
(3) A domestic filing entity that is dissolved administratively continues its existence as the same type of entity but may not carry on any activities except as necessary to wind up its activities and affairs, give notice to claimants, and liquidate its assets in the manner provided in its organic law or to apply for reinstatement under Section 13-1a-703.
(4) The administrative dissolution of a domestic filing entity does not terminate the authority of its registered agent.

13-1a-703 Reinstatement.
(1) A domestic filing entity that is dissolved administratively under Section 13-1a-702 may apply to the division for reinstatement not later than two years after the effective date of dissolution. The application must be signed by the entity and state:
(a) the name of the entity at the time of its administrative dissolution and, if the entity desires to change its name, a different name that satisfies Sections 13-1a-401 and 13-1a-402;
(b) the address of the principal office of the entity and the name and address of its registered agent;
(c) the effective date of the entity's administrative dissolution;
(d) that the grounds for dissolution did not exist or have been cured;
(e) that the entity has paid any taxes, fees, or penalties owed to the Utah State Tax Commission or is current on a payment plan with the Utah State Tax Commission for any taxes, fees, or penalties owed to the Utah State Tax Commission.
(2) To be reinstated, a domestic nonprofit corporation or domestic business corporation must include with the application for reinstatement a certificate from the Utah State Tax Commission that states that the domestic nonprofit corporation or domestic business corporation has paid any taxes, fees, or penalties owed to the Utah State Tax Commission or is current on a payment plan with the Utah State Tax Commission for any taxes, fees, or penalties owed to the Utah State Tax Commission.
(3) If the division determines that an application under subsection (1) contains the required information, is satisfied that the information is correct, and determines that all payments required to be made to the division have been made, the division shall:
(a) cancel the statement of administrative dissolution and prepare a statement of reinstatement that states the division determination and the effective date of reinstatement;
(b) file the statement of reinstatement; and
(c) serve a copy on the entity.

(4) When reinstatement under this section is effective, the following rules apply:
(a) The reinstatement relates back to and takes effect as of the effective date of the administrative dissolution.
(b) The domestic filing entity resumes carrying on its activities and affairs as if the administrative dissolution had never occurred.
(c) The rights of a person arising out of an act or omission in reliance on the dissolution before the person knew or had notice of the reinstatement are not affected.
(d) Business conducted by the domestic filing entity during a period of administrative dissolution is unaffected by the dissolution.

13-1a-704 Administrative review of denial of reinstatement.
(1) If the division denies a domestic filing entity's application for reinstatement following administrative dissolution, the division shall serve the entity with a notice in a record that explains the reasons for denial.
(2) An entity may seek administrative review of denial of reinstatement by the executive director, in accordance with Title 63G, Chapter 4, Administrative Procedures Act, not later than 30 days after service of the notice of denial.

Part 8
Miscellaneous Provisions

13-1a-801 Reservation of Power to Amend or Repeal.
The Utah State Legislature has power to amend or repeal all or part of this chapter at any time, and all domestic and foreign entities subject to this chapter are governed by the amendment or repeal.

13-1a-802 Supplemental Principles of Law.
Unless displaced by particular provisions of this chapter, the principles of law and equity supplement this chapter.

13-1a-803 Uniformity or Consistency of Application and Construction.
In applying and construing the parts of this chapter based on uniform or model acts, consideration must be given to the need to promote uniformity or consistency of the law with respect to its subject matter among states that enact it.

13-1a-804 Relation to Electronic Signatures in Global and National Commerce Act.
This chapter modifies, limits, and supersedes the Electronic Signatures in Global and National Commerce Act, 15 U.S.C. Section 7001 et seq., but does not modify, limit, or supersede Section 101(c) of that act, 15 U.S.C. Section 7001(c), or authorize electronic delivery of any of the notices described in Section 103(b) of that act, 15 U.S.C. Section 7003(b).

13-1a-805 Savings Clause.
The repeal of a statute by this chapter does not affect:
(1) (a) the operation of the statute or an action taken under it before its repeal;
(b) a ratification, right, remedy, privilege, obligation, or liability acquired, accrued, or incurred under the statute before its repeal;
(c) a violation of the statute or any penalty, forfeiture, or punishment incurred because of the violation before its repeal; or
(d) an action commenced or proceeding brought before the effective date of this chapter.
(2) An entity formed, or an assumed name registered, under a statute repealed by this chapter which was lawfully using a name or, as part of its name, a word that could not be used as or included in the name of an entity formed under this chapter may continue to use the name or word as part of its name until its registration

expires or the entity is administratively dissolved and is ineligible for reinstatement, if the use or inclusion of the word or name was lawful when first adopted by the entity in this state.

13-1a-806 Severability Clause.

If any provision of this chapter or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of this chapter which can be given effect without the invalid provision or application, and to this end the provisions of this chapter are severable.

13-1a-807 Repeals.

The following acts and parts of acts are repealed:

(1) Title 16, Chapter 17, Model Registered Agents Act.

Chapter 6a
Utah Revised Nonprofit Corporation Act

Part 1
General Provisions

16-6a-101 Title.

This chapter is known as the "Utah Revised Nonprofit Corporation Act."

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 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;
(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 within the Utah Department of Commerce.
(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~~13-1a-303.
~~(20) "Effective date of notice" means the date notice is effective as provided in Section 16-6a-103.~~
(21) "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 email, texting, facsimile, or otherwise.
(22)
(a) "Employee" includes an officer of a nonprofit corporation.
(b)
(i) Except as provided in Subsection (22)(b)(ii), "employee" does not include a director of a nonprofit corporation.
(ii) Notwithstanding Subsection (22)(b)(i), a director may accept one or more duties that make that director an employee of a nonprofit corporation.
(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) "Executive director" means the executive director of the Department of Commerce.~~
(25) "Foreign corporation" means a corporation for profit incorporated under a law other than the laws of this state.
(26) "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.
(27) "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;
(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 (27)(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.
(28) "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.
(29) "Individual" means:
(a) a natural person;
(b) the estate of an incompetent individual; or
(c) the estate of a deceased individual.
(30) "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.
(31)
(a) "Mail," "mailed," or "mailing" means deposit, deposited, or depositing in the United States mail, properly addressed, first-class postage prepaid.
(b) "Mail," "mailed," or "mailing" includes registered or certified mail for which the proper fee is paid.
(32)
(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:
(i) "voting member"; and
(ii) a shareholder in a water company.
(33) "Membership" refers to the rights and obligations of a member or members.
(34) "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.
(35) "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.
(36) "Notice" means the same as that term is defined in Section 16-6a-103.
(37) "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 (37)(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 (37) is a substantial beneficiary; or
(i) any of the following of which the director is a fiduciary:
(i) a trust;
(ii) an estate;
(iii) an incompetent;
(iv) a conservatee; or
(v) a minor.
(38) "Person" means an:
(a) individual; or
(b) entity.
(39) "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 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.
(40) "Proceeding" includes:
(a) a civil suit;
(b) arbitration;
(c) mediation;
(d) a criminal action;
(e) an administrative action; or
(f) an investigatory action.
(41) "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 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.
(42)
(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 (42)(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.
(43) "Registered agent" means the registered agent of:
(a) a domestic nonprofit corporation; or
(b) a foreign nonprofit corporation.
(44) "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.
(45) "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.
(46) "Share" means a unit of interest in a nonprofit corporation.
(47) "Shareholder" means a person in whose name a share is registered in the records of a nonprofit corporation.
(48) "State," when referring to a part of the United States, includes:
(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.
~~(49) "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 (49)(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.~~
~~(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) "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.~~
(52) "United States" includes a district, authority, office, bureau, commission, department, and another agency of the United States of America.
(53) "Vote" includes authorization by:
(a) written ballot; and
(b) written consent.
(54)
(a) "Voting group" means all the members of one or more classes of members or 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.
(55)
(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.
(56) "Water company" means:
(a) the same as that term is defined in Subsection 16-4-102(5); or
(b) a mutual benefit corporation, when the stock in the mutual benefit corporation represents a right to receive a distribution of water for beneficial use.

16-6a-103 Notice.
(1) Notice given under this chapter shall be in writing unless oral notice is reasonable under the circumstances.
(2)
(a) Notice may be communicated:
(i) in person;
(ii) by telephone;
(iii) by electronic transmission; or
(iv) by mail or private carrier.

(b) If the forms of personal notice described in Subsection (2)(a) are impracticable, notice may be communicated by:
(i)
(A) a newspaper of general circulation in the county or similar governmental subdivision in which the corporation's principal or registered office is located; and
(B) as required in Section 45-1-101; or
(ii) radio, television, or other form of public broadcast communication in the county or similar governmental subdivision in which the corporation's principal or registered office is located.
(3) Written notice to a domestic or foreign nonprofit corporation authorized to conduct affairs in this state may be addressed to:
(a) its registered agent at its registered office; or
(b) the corporation's secretary at its principal office.
(4)
(a) Written notice by a domestic or foreign nonprofit corporation to its members, is effective as to each member when mailed, if:
(i) in a comprehensible form; and
(ii) addressed to the member's address shown in the domestic or foreign nonprofit corporation's current record of members.
(b) If three successive notices given to a member pursuant to Subsection (5) have been returned as undeliverable, further notices to that member are not necessary until another address of the member is made known to the nonprofit corporation.
(5) Except as provided in Subsection (4), written notice, if in a comprehensible form, is effective at the earliest of the following:
(a) when received;
(b) five days after it is mailed; or
(c) on the date shown on the return receipt if:
(i) sent by registered or certified mail;
(ii) sent return receipt requested; and
(iii) the receipt is signed by or on behalf of the addressee.
(6) Oral notice is effective when communicated if communicated in a comprehensible manner.
(7) Notice by publication is effective on the date of first publication.
(8) A written notice or report delivered as part of a newsletter, magazine, or other publication regularly sent to members shall constitute a written notice or report if:
(a) addressed or delivered to the member's address shown in the nonprofit corporation's current list of members; or
(b) if two or more members are residents of the same household and have the same address in the nonprofit corporation's current list of members, addressed or delivered to one of the members at the address appearing on the current list of members.
(9)
(a) If this chapter prescribes notice requirements for particular circumstances, the notice requirements for the particular circumstances govern.
(b) If articles of incorporation or bylaws prescribe notice requirements not inconsistent with this section or other provisions of this chapter, the notice requirements of the articles of incorporation or bylaws govern.

16-6a-104 Powers of the division.

The division has the power reasonably necessary to perform the duties required of the division under this chapter.

~~**16-6a-105 Filing requirements.**~~
~~(1) To be entitled to filing by the division, a document shall satisfy the requirements of:~~
~~(a) this section; and~~
~~(b) any other section of this chapter that adds to or varies the requirements of this section.~~

~~(2) This chapter shall require or permit filing the document with the division.~~
~~(3)~~
~~(a) A document shall contain the information required by this chapter.~~
~~(b) In addition to the document information required by this chapter, a document may contain other information.~~
~~(4) A document shall be:~~
~~(a) typewritten; or~~
~~(b) machine printed.~~
~~(5)~~
~~(a) A document shall be in the English language.~~
~~(b) A corporate name need not be in English if written in:~~
~~(i) English letters; or~~
~~(ii) Arabic or Roman numerals.~~
~~(c) Notwithstanding Subsection (5)(a), a certificate of existence required of a foreign nonprofit corporation need not be in English if accompanied by a reasonably authenticated English translation.~~
~~(6)~~
~~(a) A document shall be:~~
~~(i) executed by a person in Subsection (6)(b); or~~
~~(ii) a true copy made by photographic, xerographic, electronic, or other process that provides similar copy accuracy of a document that has been executed by a person listed in Subsection (6)(b).~~
~~(b) A document shall be executed by:~~
~~(i) the chair of the board of directors of a domestic or foreign nonprofit corporation;~~
~~(ii) all of the directors of a domestic or foreign nonprofit corporation;~~
~~(iii) an officer of the domestic or foreign nonprofit corporation;~~
~~(iv) if directors have not been selected or the domestic or foreign nonprofit corporation has not been formed, an incorporator;~~
~~(v) if the domestic or foreign nonprofit corporation is in the hands of a receiver, trustee, or other court-appointed fiduciary, that receiver, trustee, or court-appointed fiduciary;~~
~~(vi) if the document is that of a registered agent:~~
~~(A) the registered agent, if the person is an individual; or~~
~~(B) a person authorized by the registered agent to execute the document, if the registered agent is an entity; or~~
~~(vii) an attorney in fact if a nonprofit corporation retains the power of attorney with the nonprofit corporation's records.~~
~~(7) A document shall state beneath or opposite the signature of the person executing the document:~~
~~(a) the signer's name; and~~
~~(b) the capacity in which the document is signed.~~
~~(8) A document may contain:~~
~~(a) the corporate seal;~~
~~(b) an attestation by the secretary or an assistant secretary; or~~
~~(c) an acknowledgment, verification, or proof.~~
~~(9) The signature of each person signing a document, whether or not the document contains an acknowledgment, verification, or proof permitted by Subsection (8), constitutes the affirmation or acknowledgment of the person, under penalties of perjury, that:~~
~~(a) the document is:~~
~~(i) the person's act and deed; or~~
~~(ii) the act and deed of the entity on behalf of which the document is executed; and~~
~~(b) the facts stated in the document are true.~~
~~(10) If the division has prescribed a mandatory form or cover sheet for the document under Section 16-6a-106, a document shall be:~~
~~(a) in or on the prescribed form; or~~
~~(b) have the required cover sheet.~~
~~(11) A document shall be:~~
~~(a) delivered to the division for filing; and~~

(b) accompanied by:
(i) one exact or conformed copy, except as provided in Section 16-6a-1510;
(ii) the correct filing fee; and
(iii) any franchise tax, license fee, or penalty required by this chapter or other law.
(12) Except with respect to a filing pursuant to Section 16-6a-1510, a document shall state, or be accompanied by a writing stating, the address to which the division may send a copy upon completion of the filing.

16-6a-106 Forms.
(1)
(a) The division may prescribe forms or cover sheets for documents required or permitted to be filed by this chapter.
(b) If the division prescribes a form or cover sheet pursuant to Subsection (1)(a), the division shall provide the form or cover sheet on request.
(2) Notwithstanding Subsection (1):
(a) the use of a form or cover sheet is not mandatory unless the division specifically requires the use of the form or cover sheet; and
(b) a requirement that a form or cover sheet be used may not:
(i) preclude in any way the inclusion in any document of any item that is not prohibited to be included by this chapter; or
(ii) require the inclusion with the filed document of any item that is not otherwise required by this chapter.

16-6a-107 Fees.
(1) Unless otherwise provided by statute, the division shall charge and collect a fee for services established by the division in accordance with Section 63J-1-504 including fees:
(a) for furnishing a certified copy of any document, instrument, or paper relating to a domestic or foreign nonprofit corporation; and
(b) for the certificate and affixing the seal to a certified copy described in Subsection (1)(a).
(2)
(a) The division shall provide expedited, 24-hour processing of any item under this section upon request.
(b) The division shall charge and collect additional fees established by the division in accordance with Section 63J-1-504 for expedited service provided under Subsection (2)(a).
(3)
(a) The division shall charge and collect a fee determined by the division in accordance with Section 63J-1-504 at the time of any service of process on the director of the division as resident agent of a domestic or foreign nonprofit corporation.
(b) The fee paid under Subsection (3)(a) may be recovered as taxable costs by the party to the suit or action causing the service to be made if the party prevails in the suit or action.

16-6a-108 Effective time and date of filed documents.
(1)
(a) Except as provided in Subsection (2) and Subsection 16-6a-109(4), a document submitted to the division for filing under this chapter is effective:
(i) at the time of filing; and
(ii) on the date it is filed.
(b) The division's endorsement on the document as described in Subsection 16-6a-110(2) is evidence of the time and date of filing.
(2)
(a) Unless otherwise provided in this chapter, a document, other than an application for a reserved or registered name, may specify conspicuously on its face:
(i) a delayed effective time;
(ii) a delayed effective date; or
(iii) both a delayed effective time and date.

~~(b) If in accordance with Subsection (2)(a), a delayed time, date, or both, is specified, the document becomes effective as provided in this Subsection (2).~~
~~(c) If both a delayed effective time and date are specified, the document becomes effective as specified.~~
~~(d) If a delayed effective time but no date is specified, the document is effective on the date it is filed, as that date is specified in the division's time and date endorsement on the document, at the later of:~~
~~(i) the time specified on the document as its effective time; or~~
~~(ii) the time specified in the time and date endorsement.~~
~~(e) If a delayed effective date but no time is specified, the document is effective at the close of business on the date specified as the delayed effective date.~~
~~(f) Notwithstanding the other provisions of this Subsection (2), a delayed effective date for a document may not be later than 90 days after the date the document is filed. If a document specifies a delayed effective date that is more than 90 days after the date the document is filed, the document is effective 90 days after the day the document is filed.~~
~~(3) If a document specifies a delayed effective date pursuant to Subsection (2), the document may be prevented from becoming effective by the same domestic or foreign nonprofit corporation that originally submitted the document for filing delivering to the division, prior to the specified effective date of the document, a certificate of withdrawal:~~
~~(a) executed:~~
~~(i) on behalf of the same domestic or foreign nonprofit corporation that originally submitted the document for filing; and~~
~~(ii) in the same manner as the document being withdrawn;~~
~~(b) stating that:~~
~~(i) the document has been revoked by:~~
~~(A) appropriate corporate action; or~~
~~(B) court order or decree pursuant to Section 16-6a-1007; and~~
~~(ii) the document is void; and~~
~~(c) if a court order or decree pursuant to Section 16-6a-1007 revokes the document, the court order or decree was entered by a court having jurisdiction of the proceeding for the reorganization of the nonprofit corporation under a specified statute of the United States.~~

~~16-6a-109 Correcting filed documents.~~
~~(1) A domestic or foreign nonprofit corporation may correct a document filed with the division if the document:~~
~~(a) contains an incorrect statement; or~~
~~(b) was defectively executed, attested, sealed, verified, or acknowledged.~~
~~(2) A document is corrected by delivering to the division for filing articles of correction that:~~
~~(a)~~
~~(i) describe the document, including its filing date; or~~
~~(ii) have attached a copy of the document;~~
~~(b) specify:~~
~~(i)~~
~~(A) the incorrect statement; and~~
~~(B) the reason it is incorrect; or~~
~~(ii) the manner in which the execution, attestation, sealing, verification, or acknowledgment was defective; and~~
~~(c) correct:~~
~~(i) the incorrect statement; or~~
~~(ii) defective execution, attestation, sealing, verification, or acknowledgment.~~
~~(3) Articles of correction may be executed by any person:~~
~~(a) designated in Subsection 16-6a-105(6); or~~
~~(b) who executed the document that is corrected.~~
~~(4)~~
~~(a) Articles of correction are effective on the effective date of the document they correct except as to a person:~~
~~(i) relying on the uncorrected document; and~~

(ii) adversely affected by the correction.
(b) As to a person described in Subsection (4)(a), the articles of correction are effective when filed.

16-6a-110 Filing duty of division.
(1) If a document delivered to the division for filing satisfies the requirements of Section 16-6a-105, the division shall file the document.
(2)
(a) The division files a document by stamping or otherwise endorsing "Filed" together with the name of the division and the date and time of acceptance for filing on both the document and the accompanying copy.
(b) After filing a document, except as provided in Sections 16-6a-1510 and 16-6a-1608, the division shall deliver the accompanying copy, with the receipt for any filing fees:
(i)
(A) to the domestic or foreign nonprofit corporation for which the filing is made; or
(B) to the representative of the domestic or foreign nonprofit corporation for which the filing is made; and
(ii) at the address:
(A) indicated on the filing; or
(B) that the division determines to be appropriate.
(3) If the division refuses to file a document, the division within 10 days after the day the document is delivered to the division shall return to the person requesting the filing:
(a) the document; and
(b) a written notice providing a brief explanation of the reason for the refusal to file.
(4)
(a) The division's duty to file a document under this section is ministerial.
(b) Except as otherwise specifically provided in this chapter, the division's filing or refusal to file a document does not:
(i) affect the validity or invalidity of the document in whole or in part;
(ii) relate to the correctness or incorrectness of information contained in the document; or
(iii) create a presumption that:
(A) the document is valid or invalid; or
(B) information contained in the document is correct or incorrect.

16-6a-111 Appeal from division's refusal to file document.
If the division refuses to file a document delivered to it for filing, in accordance with Title 63G, Chapter 4, Administrative Procedures Act, the following may appeal the refusal to the executive director:
(1) the domestic or foreign nonprofit corporation for which the filing was requested; or
(2) the representative of the domestic or foreign nonprofit corporation for which filing was requested.

16-6a-112 Evidentiary effect of copy of filed document.
One or more of the following is conclusive evidence that the original document has been filed with the division:
(1) a certificate attached to a copy of a document filed by the division; or
(2) an endorsement, seal, or stamp placed on the copy by the division.

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;~~
~~(d) that the domestic or foreign nonprofit corporation's most recent annual 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.~~

~~16-6a-114 Penalty for signing false documents.~~
~~(1) It is unlawful for a person to sign a document:~~
~~(a) knowing it to be false in any material respect; and~~
~~(b) with intent that the document be delivered to the division for filing.~~
~~(2) An offense under this section is a class A misdemeanor punishable by a fine not to exceed the fine specified in Section 76-3-301.~~

16-6a-115 Liability to third parties.

The directors, officers, employees, and members of a nonprofit corporation are not personally liable in their capacity as directors, officers, employees, and members for the acts, debts, liabilities, or obligations of a nonprofit corporation.

16-6a-116 Private foundations.

Except when otherwise determined by a court of competent jurisdiction, a nonprofit corporation that is a private foundation as defined in Section 509(a), Internal Revenue Code:
(1) shall make distributions for each taxable year at the time and in the manner as not to subject the nonprofit corporation to tax under Section 4942, Internal Revenue Code;
(2) may not engage in any act of self-dealing as defined in Section 4941(d), Internal Revenue Code;
(3) may not retain any excess business holdings as defined in Section 4943(c), Internal Revenue Code;
(4) may not make any investments that would subject the nonprofit corporation to taxation under Section 4944, Internal Revenue Code; and
(5) may not make any taxable expenditures as defined in Section 4945(d), Internal Revenue Code.

16-6a-117 Judicial relief.
(1)
(a) A director, officer, delegate, or member may petition the applicable district court to take an action provided in Subsection (1)(b) if for any reason it is impractical or impossible for a nonprofit corporation in the manner prescribed by this chapter, its articles of incorporation, or bylaws to:
(i) call or conduct a meeting of its members, delegates, or directors; or
(ii) otherwise obtain the consent of its members, delegates, or directors.
(b) If a petition is filed under Subsection (1)(a), the applicable district court, in the manner it finds fair and equitable under the circumstances, may order that:
(i) a meeting be called; or
(ii) a written consent or other form of obtaining the vote of members, delegates, or directors be authorized.
(c) For purposes of this section, the applicable district court is:
(i) the district court of the county in this state where the nonprofit corporation's principal office is located; or
(ii) if the nonprofit corporation has no principal office in this state:

(A) the district court of the county in which the registered office is located; or
(B) if the nonprofit corporation has no registered office in this state, the district court in and for Salt Lake County.
(2)
(a) A court specified in Subsection (1) shall, in an order issued pursuant to this section, provide for a method of notice reasonably designed to give actual notice to all persons who would be entitled to notice of a meeting held pursuant to this chapter, the articles of incorporation, or bylaws.
(b) The method of notice described in Subsection (1) complies with this section whether or not the method of notice:
(i) results in actual notice to all persons described in Subsection (2)(a); or
(ii) conforms to the notice requirements that would otherwise apply.
(c) In a proceeding under this section, the court may determine who are the members or directors of a nonprofit corporation.
(3) An order issued pursuant to this section may dispense with any requirement relating to the holding of or voting at meetings or obtaining votes that would otherwise be imposed by this chapter, the articles of incorporation, or bylaws, including any requirement as to:
(a) quorums; or
(b) the number or percentage of votes needed for approval.
(4)
(a) Whenever practical, any order issued pursuant to this section shall limit the subject matter of a meeting or other form of consent authorized to items the resolution of which will or may enable the nonprofit corporation to continue managing its affairs without further resort to this section, including amendments to the articles of incorporation or bylaws.
(b) Notwithstanding Subsection (4)(a), an order under this section may authorize the obtaining of whatever votes and approvals are necessary for the dissolution, merger, or sale of assets of a nonprofit corporation.
(5) A meeting or other method of obtaining the vote of members, delegates, or directors conducted pursuant to and that complies with an order issued under this section:
(a) is for all purposes a valid meeting or vote, as the case may be; and
(b) shall have the same force and effect as if it complied with every requirement imposed by this chapter, the articles of incorporation, or bylaws.
(6) In addition to a meeting held under this section, a court-ordered meeting may be held pursuant to Section 16-6a-703.

~~**16-6a-118 Electronic documents.**~~
~~(1) Notwithstanding the other requirements of this chapter except subject to Section 16-6a-106, the division may by rule permit a writing required or permitted to be filed with the division under this chapter:~~
~~(a) to be delivered, mailed, or filed:~~
~~(i) in an electronic medium; or~~
~~(ii) by electronic transmission; or~~
~~(b) to be signed by photographic, electronic, or other means prescribed by rule, except that a writing signed in an electronic medium shall be signed by electronic signature in accordance with Title 46, Chapter 4, Uniform Electronic Transactions Act.~~
~~(2) The division may by rule provide for any writing required or permitted to be prepared, delivered, or mailed by the division under this chapter to be prepared, delivered, or mailed:~~
~~(a) in an electronic medium; or~~
~~(b) by electronic transmission.~~

16-6a-119 Execution against a mutual benefit corporation.
(1) As used in this section:
(a) "Judicial lien" means one or more of the following:
(i) a judgment lien; or
(ii) other lien obtained by a judicial or equitable process or proceeding.

(b) "Water right" means:
(i) a right to use water evidenced by a means identified in Section 73-1-10; or
(ii) a right to use water under an approved application:
(A) to appropriate;
(B) for a change of use; or
(C) for the exchange of water.
(c) "Water rights and related assets" means a water right or title to:
(i) a water conveyance facility; or
(ii) other asset of a mutual benefit corporation necessary to divert or distribute water to its members.
(2) Except as provided in Subsection (3), a court may not do the following with regard to a judicial lien recorded on or after May 12, 2009 against the water rights and related assets of a mutual benefit corporation earlier than 180 days after the day on which the judicial lien is recorded or takes effect:
(a) execute the judicial lien;
(b) impose a levy as a result of the judicial lien; or
(c) force the sale, transfer, or change in ownership of the water rights and related assets pursuant to the judicial lien.
(3) This section does not apply to a judicial lien related to a cause of action brought against a mutual benefit corporation by a shareholder under Section 73-3-3.5.

Part 2
Incorporation

16-6a-201 Incorporators.
(1) One or more persons may act as incorporators of a nonprofit corporation by delivering to the division for filing articles of incorporation meeting the requirements of Section 16-6a-202.
(2) An incorporator who is a natural person shall be 18 years of age or older.

16-6a-202 Articles of incorporation.
(1) The articles of incorporation shall set forth:
(a) one or more purposes for which the nonprofit corporation is organized;
(b) a corporate name for the nonprofit corporation that satisfies the requirements of Sections ~~16-6a-401~~13-1a-401 and 13-1a-402;
(c) the information required by Subsection ~~16-17-203(1)~~13-1a-504;
(d) the name and address of each incorporator;
(e) whether or not the nonprofit corporation will have voting members;
(f) if the nonprofit corporation is to issue shares of stock evidencing membership in the nonprofit corporation or interests in water or other property rights:
(i) the aggregate number of shares that the nonprofit corporation has authority to issue; and
(ii) if the shares are to be divided into classes:
(A) the number of shares of each class;
(B) the designation of each class; and
(C) a statement of the preferences, limitations, and relative rights of the shares of each class; ~~and~~
(g) provisions not inconsistent with law regarding the distribution of assets on dissolution~~.~~; and
(h) the nonprofit corporation's North American Industry Classification System (NAICS) code.
(2) The articles of incorporation may but need not set forth:
(a) the names and addresses of the individuals who are to serve as the initial directors;
(b) provisions not inconsistent with law regarding:
(i) managing the business and regulating the affairs of the nonprofit corporation;
(ii) defining, limiting, and regulating the powers of:
(A) the nonprofit corporation;
(B) the board of directors of the nonprofit corporation; and
(C) the members of the nonprofit corporation or any class of members;

(iii) whether cumulative voting will be permitted; and
(iv) the characteristics, qualifications, rights, limitations, and obligations attaching to each or any class of members; and
(c) any provision that under this chapter is permitted to be in the articles of incorporation or required or permitted to be set forth in the bylaws, including elective provisions that in accordance with this chapter shall be included in the articles of incorporation to be effective.
(3)
(a) It is sufficient under Subsection (1)(a) to state, either alone or with other purposes, that the purpose of the nonprofit corporation is to engage in any lawful act for which a nonprofit corporation may be organized under this chapter.
(b) If the articles of incorporation include the statement described in Subsection (3)(a), all lawful acts and activities shall be within the purposes of the nonprofit corporation, except for express limitations, if any.
(4) The articles of incorporation need not set forth any corporate power enumerated in this chapter.
(5) The articles of incorporation shall:
(a) be signed by each incorporator; and
(b) meet the filing requirements of Section ~~16-6a-105~~13-1a-301.
(6)
(a) If this chapter conditions any matter upon the presence of a provision in the bylaws, the condition is satisfied if the provision is present either in:
(i) the articles of incorporation; or
(ii) the bylaws.
(b) If this chapter conditions any matter upon the absence of a provision in the bylaws, the condition is satisfied only if the provision is absent from both:
(i) the articles of incorporation; and
(ii) the bylaws.

16-6a-203 Incorporation.
(1) A nonprofit corporation is incorporated, and its corporate existence begins:
(a) when the articles of incorporation are filed by the division; or
(b) if a delayed effective date is specified pursuant to Subsection ~~16-6a-108(2)~~13-1a-303, on the delayed effective date, unless a certificate of withdrawal is filed prior to the delayed effective date.
(2) Notwithstanding Subsection ~~16-6a-110(4)~~13-1a-306(5), the filing of the articles of incorporation by the division is conclusive proof that all conditions precedent to incorporation have been satisfied, except in a proceeding by the state to:
(a) cancel or revoke the incorporation; or
(b) involuntarily dissolve the nonprofit corporation.

16-6a-204 Liability for preincorporation transactions.
All persons purporting to act as or on behalf of a nonprofit corporation, knowing there is no incorporation under this chapter, are jointly and severally liable for all liabilities created while so acting.

16-6a-205 Organization of the nonprofit corporation.
(1) After incorporation:
(a) if initial directors are named in the articles of incorporation, the initial directors may hold an organizational meeting, at the call of a majority of the initial directors, to complete the organization of the nonprofit corporation by:
(i) appointing officers;
(ii) adopting bylaws, if desired; and
(iii) carrying on any other business brought before the meeting; or
(b) if initial directors are not named in the articles of incorporation, until directors are elected, the incorporators may hold an organizational meeting at the call of a majority of the incorporators to do whatever is necessary and proper to complete the organization of the nonprofit corporation, including:

(i) the election of directors and officers;
(ii) the appointment of members; and
(iii) the adoption and amendment of bylaws.
(2) Action required or permitted by this chapter to be taken by incorporators at an organizational meeting may be taken without a meeting if the action taken is evidenced by one or more written consents that:
(a) describe the action taken; and
(b) are signed by each incorporator.
(3) An organizational meeting may be held in or out of this state.

16-6a-206 Bylaws.
(1)
(a) The board of directors of a nonprofit corporation may adopt initial bylaws for the nonprofit corporation.
(b) If no directors of the nonprofit corporation have been elected, the incorporators may adopt initial bylaws for the nonprofit corporation.
(c) If neither the incorporators nor the board of directors have adopted initial bylaws, the members, if any, may adopt initial bylaws.
(2) The bylaws of a nonprofit corporation may contain any provision for managing the business and regulating the affairs of the nonprofit corporation that is not inconsistent with law or the articles of incorporation, including management and regulation of the nonprofit corporation in the event of an emergency.

16-6a-207 Incorporation of cooperative association.
(1)
(a) If a cooperative association meets the requirements of Subsection (1)(b), it may:
(i) be incorporated under this chapter; and
(ii) use the word “cooperative” as part of its corporate or business name.
(b) A cooperative association described in Subsection (1)(a):
(i) may not be an association subject to the insurance or credit union laws of this state; and
(ii) shall state in its articles of incorporation that:
(A) a member may not have more than one vote regardless of the number or amount of stock or membership capital owned by the member unless voting is based in whole or in part on the volume of patronage of the member with the cooperative association; and
(B) savings in excess of dividends and additions to reserves and surplus shall be distributed or allocated to members or patrons on the basis of patronage.
(2)
(a) Any cooperative association incorporated in accordance with Subsection (1):
(i) has all the rights and is subject to the limitations provided in Section 3-1-11; and
(ii) may pay dividends on its stock, if it has stock, subject to the limitations of Section 3-1-11.
(b) The articles of incorporation or the bylaws of a cooperative association incorporated in accordance with Subsection (1) may provide for:
(i) the establishment and alteration of voting districts;
(ii) the election of delegates to represent:
(A) the districts described in Subsection (2)(b)(i); and
(B) the members of the districts described in Subsection (2)(b)(i);
(iii) the establishment and alteration of director districts; and
(iv) the election of directors to represent the districts described in Subsection (2)(b)(ii) by:
(A) the members of the districts; or
(B) delegates elected by the members.
(3)
(a) A corporation organized under Title 3, Uniform Agricultural Cooperative Association Act, or Title 16, Chapter 16, Uniform Limited Cooperative Association Act, may convert itself into a cooperative association subject to this chapter by adopting appropriate amendments to its articles of incorporation by which:
(i) it elects to become subject to this chapter; and

(ii) makes changes in its articles of incorporation that are:
(A) required by this chapter; and
(B) any other changes permitted by this chapter.
(b) The amendments described in Subsection (3)(a) shall be adopted and filed in the manner provided by the law then applicable to the cooperative nonprofit corporation.
(4) Except as otherwise provided in this section, a cooperative nonprofit corporation is subject to this chapter.
(5) A corporation that is a cooperative under this chapter may convert to a limited cooperative association under Title 16, Chapter 16, Uniform Limited Cooperative Association Act, by complying with that chapter.

Part 3
Purposes And Powers

16-6a-301 Purposes.
(1) Every nonprofit corporation incorporated under this chapter that in its articles of incorporation has a statement meeting the requirements of Subsection 16-6a-202(3)(a) may engage in any lawful activity except for express limitations set forth in the articles of incorporation.
(2)
(a) A nonprofit corporation engaging in an activity that is subject to regulation under another statute of this state may incorporate under this chapter only if permitted by, and subject to all limitations of, the other statute.
(b) Without limiting Subsection (2)(a), an organization may not be organized under this chapter if the organization is subject to the:
(i) insurance laws of this state; or
(ii) laws governing depository institutions as defined in Section 7-1-103.

16-6a-302 General powers.
Unless its articles of incorporation provide otherwise, and except as restricted by the Utah Constitution, every nonprofit corporation has:
(1) perpetual duration and succession in its corporate name; and
(2) the same powers as an individual to do all things necessary or convenient to carry out its permitted activities and affairs, including without limitation the power to:
(a) sue and be sued, complain and defend in its corporate name;
(b)
(i) have a corporate seal, that may be altered at will; and
(ii) use the corporate seal, or a facsimile of the corporate seal, by impressing or affixing it or in any other manner reproducing it;
(c) make and amend bylaws, not inconsistent with its articles of incorporation or with the laws of this state, for managing and regulating the affairs of the nonprofit corporation;
(d) purchase, receive, lease, or otherwise acquire, and own, hold, improve, use, and otherwise deal with, real or personal property, or any legal or equitable interest in property, wherever located;
(e) sell, convey, mortgage, pledge, lease, exchange, and otherwise dispose of all or any part of its property and assets;
(f) purchase, receive, subscribe for, or otherwise acquire, own, hold, vote, use, sell, mortgage, lend, pledge, or otherwise dispose of, and deal in and with shares or other interests in, or obligations of, any other entity;
(g) make contracts and guarantees, incur liabilities, borrow money, issue its notes, bonds, and other obligations and secure any of its obligations by mortgage or pledge of any of its property, assets, franchises, or income;
(h) lend money, invest and reinvest its funds, and receive and hold real and personal property as security for repayment, except that a nonprofit corporation may not lend money to or guarantee the obligation of a director or officer of the nonprofit corporation;
(i) be an agent, associate, fiduciary, manager, member, partner, promoter, or trustee of, or to hold any similar position with, any entity;
(j) conduct its business, locate offices, and exercise the powers granted by this chapter within or without this state;

(k)
(i) elect directors and appoint officers, employees, and agents of the nonprofit corporation;
(ii) define the duties of the directors, officers, employees, and agents; and
(iii) fix the compensation of the directors, officers, employees, and agents;
(l) pay compensation in a reasonable amount to its directors, officers, or members for services rendered, including:
(i) payment of advances for expenses reasonably expected to be incurred; and
(ii) expenses relating to relocation of directors, officers, or employees;
(m) pay pensions and establish pension plans, pension trusts, profit sharing plans, share bonus plans, share option plans, and benefit or incentive plans for any or all of its current or former directors, officers, employees, and agents;
(n) make contributions to or for any person for:
(i) the public welfare;
(ii) charitable, religious, scientific, or educational purposes; or
(iii) for other purposes that further the corporate interest;
(o) pursue any lawful activity that will aid governmental policy;
(p) make payments or do any other act, not inconsistent with law, that furthers the business and affairs of the nonprofit corporation;
(q) establish rules governing the conduct of the business and affairs of the nonprofit corporation in the event of an emergency;
(r) impose dues, assessments, admission fees, and transfer fees upon its members;
(s)
(i) establish conditions for admission of members;
(ii) admit members; and
(iii) issue or transfer membership;
(t) carry on a business;
(u) indemnify current or former directors, officers, employees, fiduciaries, or agents as provided in this chapter;
(v) limit the liability of its directors as provided in Subsection 16-6a-823(1);
(w) cease its corporate activities and dissolve; and
(x) issue certificates or stock evidencing:
(i) membership in the nonprofit corporation; or
(ii) interests in water or other property rights.

16-6a-303 Emergency powers.
(1) In anticipation of or during an emergency defined in Subsection (4), the board of directors may:
(a) modify lines of succession to accommodate the incapacity of any director, officer, employee, or agent;
(b) adopt bylaws to be effective only in an emergency; and
(c)
(i) relocate the principal office;
(ii) designate an alternative principal office or regional office; or
(iii) authorize officers to relocate or designate an alternative principal office or regional office.
(2) During an emergency as defined in Subsection (4), unless emergency bylaws provide otherwise:
(a) notice of a meeting of the board of directors:
(i) need be given only to those directors whom it is practicable to reach; and
(ii) may be given in any practicable manner, including by publication or radio; and
(b) the officers of the nonprofit corporation present at a meeting of the board of directors may be considered to be directors for the meeting, in order of rank and within the same rank in order of seniority, as necessary to achieve a quorum.
(3) Corporate action taken in good faith during an emergency under this section to further the ordinary business affairs of the nonprofit corporation:
(a) binds the nonprofit corporation; and
(b) may not be the basis for the imposition of liability on any director, officer, employee, or agent of the

nonprofit corporation on the ground that the action was not an authorized corporate action.
(4) An emergency exists for purposes of this section if a quorum of the directors cannot readily be obtained because of a catastrophic event.

16-6a-304 Ultra vires.
(1) Except as provided in Subsection (2), the validity of corporate action may not be challenged on the ground that the nonprofit corporation lacks or lacked power to act.
(2) A nonprofit corporation's power to act may be challenged:
(a) in a proceeding against the nonprofit corporation to enjoin the act brought by:
(i) a director; or
(ii) one or more voting members in a derivative proceeding;
(b) in a proceeding by or in the right of the nonprofit corporation, whether directly, derivatively, or through a receiver, trustee, or other legal representative, against an incumbent or former director, officer, employee, or agent of the nonprofit corporation; or
(c) in a proceeding by the attorney general under Section 16-6a-1414.
(3) In a proceeding under Subsection (2)(a) to enjoin an unauthorized corporate act, the court may:
(a) enjoin or set aside the act, if:
(i) it would be equitable to do so; and
(ii) all affected persons are parties to the proceeding; and
(b) award damages for loss, including anticipated profits, suffered by the nonprofit corporation or another party because of an injunction issued under this section.

~~**Part 4**~~
~~**Name**~~

~~**16-6a-401 Corporate name.**~~
~~(1) The corporate name of a nonprofit corporation:~~
~~(a) may, but need not contain:~~
~~(i) the word "corporation," "incorporated," or "company"; or~~
~~(ii) an abbreviation of "corporation," "incorporated," or "company";~~
~~(b) may not contain:~~
~~(i) any word or phrase that indicates or implies that the nonprofit corporation is organized for a purpose other than that permitted by:~~
~~(A) Section 16-6a-301; and~~
~~(B) the nonprofit corporation's articles of incorporation; or~~
~~(ii) for a nonprofit corporation that changes the nonprofit corporation's name or is incorporated in or authorized to do business in the state on or after May 4, 2022, the number sequence "911";~~
~~(c) except as authorized by the division under Subsection (2), shall be distinguishable, as defined in Section 16-10a-401, from:~~
~~(i) the name of any domestic corporation incorporated in this state;~~
~~(ii) the name of any foreign corporation authorized to conduct affairs in this state;~~
~~(iii) the name of any domestic nonprofit corporation incorporated in this state;~~
~~(iv) the name of any foreign nonprofit corporation authorized to conduct affairs in this state;~~
~~(v) the name of any domestic limited liability company formed in this state;~~
~~(vi) the name of any foreign limited liability company authorized to conduct affairs in this state;~~
~~(vii) the name of any limited partnership formed or authorized to conduct affairs in this state;~~
~~(viii) any name that is reserved under Section 16-6a-402 or 16-10a-402;~~
~~(ix) the name of any entity that has registered the entity's name under Section 42-2-5;~~
~~(x) the name of any trademark or service mark registered by the division; or~~
~~(xi) any assumed name filed under Section 42-2-5;~~
~~(d) shall be, for purposes of recordation, either translated into English or transliterated into letters of the English alphabet if the nonprofit corporation's name is not in English;~~

(c) without the written consent of the United States Olympic Committee, may not contain the words:
(i) "Olympic";
(ii) "Olympiad"; or
(iii) "Citius Altius Fortius"; and
(f) without the written consent of the Division of Consumer Protection issued in accordance with Section 13-34-114, may not contain the words:
(i) "university";
(ii) "college"; or
(iii) "institute" or "institution."
(2) The division may authorize the use of the name applied for if:
(a) the name is distinguishable from one or more of the names and trademarks described in Subsection (1)(c) that are on the division's records; or
(b) if the applicant delivers to the division a certified copy of the final judgment of a court of competent jurisdiction establishing the applicant's right to use the name applied for in this state registered or reserved with the division pursuant to the laws of this state.
(3) A nonprofit corporation may use the name of another domestic or foreign corporation that is used in this state if:
(a) the other corporation is incorporated or authorized to conduct affairs in this state; and
(b) the proposed user corporation:
(i) has merged with the other corporation;
(ii) has been formed by reorganization of the other corporation; or
(iii) has acquired all or substantially all of the assets, including the corporate name, of the other corporation.
(4)
(a) A nonprofit corporation may apply to the division for authorization to file the nonprofit corporation's articles of incorporation under, or to register or reserve, a name that is not distinguishable upon the division's records from one or more of the names described in Subsection (1).
(b) The division shall approve the application filed under Subsection (4)(a) if:
(i) the other person whose name is not distinguishable from the name under which the applicant desires to file, or which the applicant desires to register or reserve:
(A) consents to the filing, registration, or reservation in writing; and
(B) submits an undertaking in a form satisfactory to the division to change the person's name to a name that is distinguishable from the name of the applicant; or
(ii) the applicant delivers to the division a certified copy of the final judgment of a court of competent jurisdiction establishing the applicant's right to make the requested filing in this state under the name applied for.
(5) Only names of corporations may contain the:
(a) words "corporation," or "incorporated"; or
(b) abbreviation "corp." or "inc."
(6) The division may not issue a certificate of incorporation to any association violating the provisions of this section.

16-6a-402 Reserved name.
(1)
(a) Any person may apply for the reservation of the exclusive use of a corporate name by delivering an application for reservation of name to the division for filing, setting forth:
(i) the name and address of the applicant; and
(ii) the name proposed to be reserved.
(b)
(i) If the division finds that the name applied for would be available for corporate use, the division shall reserve the name for the applicant's exclusive use for 120 days from the day the division receives the application under Subsection (1)(a).
(ii) A reservation may be renewed.

~~(2) The owner of a reserved corporate name may transfer the reservation to any other person by delivery to the division for filing of a notice of the transfer that has been executed by the owner and states:~~
~~(a) the reserved name;~~
~~(b) the name of the owner; and~~
~~(c) the name and address of the transferee.~~
~~(3)~~
~~(a) The corporate name set forth in a document described in Subsection (3)(b) is reserved until the document:~~
~~(i) becomes effective pursuant to Subsection 16-6a-108(2); or~~
~~(ii) is withdrawn under Subsection 16-6a-108(3).~~
~~(b) Subsection (3)(a) applies to a document that:~~
~~(i) is one of the following:~~
~~(A) articles of incorporation;~~
~~(B) articles of amendment to articles of incorporation;~~
~~(C) restated articles of incorporation; or~~
~~(D) articles of merger;~~
~~(ii) specifies a delayed effective date pursuant to Subsection 16-6a-108(2);~~
~~(iii) sets forth a new corporate name; and~~
~~(iv) is filed by the division.~~

~~16-6a-403 Corporate name -- Limited rights.~~

~~The authorization granted by the division to file articles of incorporation under a corporate name or to reserve a name does not:~~
~~(1) abrogate or limit the law governing unfair competition or unfair trade practices;~~
~~(2) derogate from the common law the principles of equity or the statutes of this state or of the United States with respect to the right to acquire and protect names and trademarks; or~~
~~(3) create an exclusive right in geographic or generic terms contained within a name.~~

Part 6
Members

16-6a-601 No requirement of members.

A nonprofit corporation is not required to have members.

16-6a-602 Number and classes.

(1) A nonprofit corporation may have:
(a) one or more classes of voting or nonvoting members; and
(b) one or more members in each class described in Subsection (1)(a).
(2) The bylaws may designate:
(a) the class or classes of members; and
(b) the qualifications and rights of the members of each class of members including the matters or items for which voting members may vote.

16-6a-603 Admission.

(1) The bylaws may establish:
(a) criteria or procedures for admission of members; and
(b) the procedure for replacing:
(i) a member; or
(ii) a membership interest.
(2) A person may not be admitted as a member without the person's consent.

16-6a-604 Consideration.

Unless otherwise provided by the bylaws, a nonprofit corporation may admit members:

(1) for no consideration; or
(2) for such consideration as is determined by the board of directors.

16-6a-605 Differences in rights and obligations of members.

Unless otherwise provided by this chapter or the bylaws:
(1) all voting members shall have the same rights and obligations with respect to voting and all other matters that this chapter specifically reserves to voting members; and
(2) with respect to matters not reserved under Subsection (1), all members, including voting members, shall have the same rights and obligations.

16-6a-606 Transfers.

(1) Except as provided in Subsection (3), and unless otherwise provided in the articles of incorporation or the bylaws, a member of a nonprofit corporation may not transfer:
(a) a membership; or
(b) any right arising from a membership.
(2) Except as provided in Subsection (3), where transfer rights have been provided in the articles of incorporation or the bylaws of a nonprofit corporation, a restriction on transfer rights may not be binding with respect to a member holding a membership issued before the adoption of the restriction, unless the restriction is approved by the affected member.
(3)
(a) For a water company, unless otherwise provided by the articles of incorporation or bylaws, ownership of shares is transferrable.
(b) Any restriction on the transfer of ownership under Subsection (3)(a):
(i) shall be reasonable;
(ii) shall be adopted in good faith and for a legitimate purpose;
(iii) shall be adopted in the best interest of the water company and its shareholders; and
(iv) may not discriminate against any individual shareholder or class of shareholders, but in a company where there are classes or divisions of stock, restrictions may differ between the classes or divisions.
(c) Nothing in this section is intended to alter any right or remedy a shareholder may have under Sections 16-6a-612, 16-6a-808, 16-6a-809, 16-6a-822, 16-6a-824, and 16-6a-825, or any other applicable law.

16-6a-607 Creditor's action against member.

A proceeding may not be brought by a creditor to reach the liability, if any, of a member to the nonprofit corporation unless:
(1)
(a) final judgment has been rendered in favor of the creditor against the nonprofit corporation; and
(b) execution has been returned unsatisfied in whole or in part; or
(2) a proceeding described in Subsection (1) would be useless.

16-6a-608 Resignation.

(1) Unless otherwise provided by the bylaws, a member may resign at any time.
(2) The resignation of a member does not relieve the member from any obligation or commitment the member may have to the nonprofit corporation incurred or made prior to resignation.

16-6a-609 Termination, expulsion, or suspension.

(1) Unless otherwise provided by the bylaws, except pursuant to a procedure that is fair and reasonable:
(a) a member of a nonprofit corporation may not be expelled or suspended; and
(b) membership in a nonprofit corporation may not be terminated or suspended.
(2) For purposes of this section, a procedure is fair and reasonable when either:
(a) the bylaws or a written policy of the board of directors set forth a procedure that provides:
(i) not less than 15 days prior written notice of:
(A) the expulsion, suspension, or termination; and

(B) the reasons for the expulsion, suspension, or termination; and
(ii) an opportunity for the member to be heard:
(A) orally or in writing;
(B) not less than five days before the effective date of the expulsion, suspension, or termination; and
(C) by one or more persons authorized to decide that the proposed expulsion, termination, or suspension not take place; or
(b) it is fair and reasonable taking into consideration all of the relevant facts and circumstances.
(3) For purposes of this section, any written notice given by mail shall be given by first-class or certified mail sent to the last address of the member shown on the nonprofit corporation's records.
(4) Unless otherwise provided by the bylaws, any proceeding challenging an expulsion, suspension, or termination, including a proceeding in which defective notice is alleged, shall be commenced within one year after the effective date of the expulsion, suspension, or termination.
(5) Unless otherwise provided by the bylaws, a member who has been expelled or suspended may be liable to the nonprofit corporation for dues, assessments, or fees as a result of an obligation incurred or commitment made prior to the effective date of the expulsion or suspension.
(6) A mutual benefit corporation that complies with Section 70A-8-409.1 is considered to have followed a fair and reasonable procedure for purposes of this section without the existence of a written policy or bylaw otherwise required by this section.

16-6a-610 Purchase of memberships.
(1) Unless otherwise provided in the articles of incorporation or the bylaws, a nonprofit corporation may not purchase the membership of a member:
(a) who resigns; or
(b) whose membership is terminated.
(2)
(a) If so authorized, a nonprofit corporation may purchase the membership of a member who resigns or whose membership is terminated for the amount and pursuant to the conditions set forth in or authorized by:
(i) its articles of incorporation or its bylaws; or
(ii) agreement with the affected member.
(b) A payment permitted under Subsection (2)(a) may not violate:
(i) Section 16-6a-1301; or
(ii) any other provision of this chapter.
(3) A mutual benefit corporation may purchase a member's membership if, after the purchase is completed:
(a) the mutual benefit corporation would be able to pay its debts as they become due in the usual course of its activities; and
(b) the mutual benefit corporation's total assets would at least equal the sum of its total liabilities.
(4) A water company may purchase the shares of a shareholder who is delinquent in payment of shareholder assessments, in accordance with Chapter 4, Share Assessment Act.

16-6a-611 Property rights.
(1) A member has no right relating to management, control, purpose, or duration of the nonprofit corporation, except as provided by:
(a) the articles of incorporation or the bylaws of a mutual benefit corporation; or
(b) other applicable law.
(2) Unless otherwise provided by agreement, articles of incorporation, or the bylaws of a water company, and subject to the general liabilities and obligations of the water company, a shareholder in a water company has:
(a) an equitable, beneficial interest in the use of the water supply of the water company, proportionate to the shareholder's shares in the water company, which is an interest in real property; and
(b) the right to have the shareholder's proportionate share of the water delivered through a diversion structure, ditch, canal, storage and distribution facility, or other appurtenance of the water company, in accordance with:
(i) the distribution method of the water company; or
(ii) an approved change application under Section 73-3-3.5.

16-6a-612 Derivative suits.
(1) Without affecting the right of a member or director to bring a proceeding against a nonprofit corporation or its directors or officers, a proceeding may be brought in the right of a nonprofit corporation to procure a judgment in its favor by a complainant who is:
(a) a voting member; or
(b) a director in a nonprofit corporation that does not have voting members.
(2) A complainant may not commence or maintain a derivative proceeding unless the complainant:
(a) is a voting member, or a director in a nonprofit corporation that does not have voting members, at the time the proceeding is brought; and
(b) fairly and adequately represents the nonprofit corporation's interests in enforcing the nonprofit corporation's right.
(3)
(a) A complainant may not commence a derivative proceeding until:
(i) a written demand is made upon the nonprofit corporation to take suitable action; and
(ii) 90 days have expired from the date the demand described in Subsection (3)(a)(i) is made, unless:
(A) the complainant is notified before the 90-day period expires that the demand is rejected by the nonprofit corporation; or
(B) irreparable injury to the nonprofit corporation would result by waiting for the 90-day period's expiration.
(b) A complaint in a derivative proceeding shall be:
(i) verified; and
(ii) allege with particularity the demand made to obtain action by the board of directors.
(c) A derivative proceeding shall comply with the procedures of Utah Rules of Civil Procedure, Rule 23~~.1~~A.
(d) The court shall stay any derivative proceeding until the inquiry is completed and for an additional period as the court considers appropriate if:
(i) the nonprofit corporation commences an inquiry into the allegations made in the demand or complaint; and
(ii) a person or group described in Subsection (4) is conducting an active review of the allegations in good faith.
(e) If a nonprofit corporation proposes to dismiss a derivative proceeding pursuant to Subsection (4)(a), discovery by a complainant in the derivative proceeding:
(i) is limited to facts relating to:
(A) whether the person or group conducting the inquiry is independent and disinterested;
(B) the good faith of the inquiry; and
(C) the reasonableness of the procedures followed by the person or group conducting the inquiry; and
(ii) may not extend to any facts or substantive issues with respect to the act, omission, or other matter that is the subject matter of the derivative proceeding.
(4)
(a) A derivative proceeding shall be dismissed by the court on motion by the corporation if a person or group specified in Subsection (4)(b) or (4)(f) determines in good faith, after conducting a reasonable inquiry upon which the person's or group's conclusions are based, that the maintenance of the derivative proceeding is not in the best interest of the nonprofit corporation.
(b) Unless a panel is appointed pursuant to Subsection (4)(f), the determination in Subsection (4)(a) shall be made by:
(i) a majority vote of independent directors present at a meeting of the board of directors, if the independent directors constitute a quorum; or
(ii) a majority vote of a committee consisting of two or more independent directors appointed by a majority vote of independent directors present at a meeting of the board of directors, whether or not the independent directors appointing the committee constituted a quorum.
(c) None of the following by itself causes a director to be considered not independent for purposes of this section:
(i) the nomination or election of the director by persons:
(A) who are defendants in the derivative proceeding; or
(B) against whom action is demanded;

(ii) the naming of the director as:
(A) a defendant in the derivative proceeding; or
(B) a person against whom action is demanded; or
(iii) the approval by the director of the act being challenged in the derivative proceeding or demand if the act resulted in no personal benefit to the director.
(d) If a derivative proceeding is commenced after a determination is made rejecting a demand by a complainant, the complaint shall allege with particularity facts establishing either:
(i) that a majority of the board of directors did not consist of independent directors at the time the determination was made; or
(ii) that the requirements of Subsection (4)(a) are not met.
(e)
(i) If a majority of the board of directors does not consist of independent directors at the time the determination is made to reject a demand by a shareholder, the corporation has the burden of proving that the requirements of Subsection (4)(a) are met.
(ii) If a majority of the board of directors consists of independent directors at the time the determination is made to reject a demand by a complainant, the plaintiff has the burden of proving that the requirements of Subsection (4)(a) are not met.
(f)
(i) The court may appoint a panel of one or more independent persons upon motion by the corporation to make a determination whether the maintenance of the derivative proceeding is in the best interest of the corporation.
(ii) If the court appoints a panel under Subsection (4)(f)(i), the plaintiff has the burden of proving that the requirements of Subsection (4)(a) are not met.
(g) A person may appeal an interlocutory order of a court that grants or denies a motion to dismiss brought pursuant to Subsection (4)(a).
(5) On termination of a derivative proceeding the court may order:
(a) the nonprofit corporation to pay the plaintiff's reasonable expenses, including attorney fees, incurred in the proceeding, if it finds that the proceeding results in a substantial benefit to the nonprofit corporation;
(b) the plaintiff to pay a defendant's reasonable expenses, including attorney fees, incurred in defending the proceeding, if it finds that the proceeding was commenced or maintained:
(i) without reasonable cause; or
(ii) for an improper purpose; or
(c) a party to pay an opposing party's reasonable expenses, including attorney fees, incurred because of the filing of a pleading, motion, or other paper, if the court finds that the pleading, motion, or other paper was:
(i)
(A) not well grounded in fact, after reasonable inquiry; or
(B) not warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law; and
(ii) interposed for an improper purpose, such as to:
(A) harass;
(B) cause unnecessary delay; or
(C) cause needless increase in the cost of litigation.

16-6a-613 Delegates.
(1) A nonprofit corporation may provide in its bylaws for delegates having some or all of the authority of members.
(2) The bylaws may set forth provisions relating to:
(a) the characteristics, qualifications, rights, limitations, and obligations of delegates, including their selection and removal;
(b) calling, noticing, holding, and conducting meetings of delegates; and
(c) carrying on corporate activities during and between meetings of delegates.

Part 7

Member Meetings and Voting

16-6a-Annual and regular meetings.
(1) Unless the bylaws eliminate the requirement for holding an annual meeting, a nonprofit corporation that has voting members shall hold a meeting of the voting members annually:
(a) at a time and date stated in or fixed in accordance with the bylaws; or
(b) if a time and date is not stated in or fixed in accordance with the bylaws, at a time and date stated in or fixed in accordance with a resolution of the board of directors.
(2) A nonprofit corporation with members may hold regular membership meetings at:
(a) a time and date stated in or fixed in accordance with the bylaws; or
(b) if a time and date is not stated in or fixed in accordance with the bylaws, at a time and date stated in or fixed in accordance with a resolution of the board of directors.
(3)
(a) Annual and regular membership meetings may be held in or out of this state:
(i) at the place stated in or fixed in accordance with the bylaws; or
(ii) if no place is stated in or fixed in accordance with the bylaws, at a place stated in or fixed in accordance with a resolution of the board of directors.
(b) If no place is stated or fixed in accordance with Subsection (3)(a), annual and regular meetings shall be held at the nonprofit corporation's principal office.
(4) The failure to hold an annual or regular meeting at the time and date determined pursuant to Subsection (1) does not:
(a) affect the validity of any corporate action; or
(b) work a forfeiture or dissolution of the nonprofit corporation.

16-6a-702 Special meetings.
(1) A nonprofit corporation shall hold a special meeting of its members:
(a) on call of:
(i) its board of directors; or
(ii) the person or persons authorized by the bylaws or resolution of the board of directors to call a special meeting; or
(b) unless otherwise provided by the bylaws, if the nonprofit corporation receives one or more written demands for the meeting, that:
(i) state the purpose or purposes for which the meeting is to be held; and
(ii) are signed and dated by members holding at least 10% of all the votes entitled pursuant to the bylaws to be cast on any issue proposed to be considered at the meeting.
(2) If not otherwise fixed under Section 16-6a-703 or 16-6a-706, the record date for determining the members entitled to demand a special meeting pursuant to Subsection (1)(b) is the later of the date of:
(a) the earliest of any of the demands pursuant to which the meeting is called; or
(b) the date that is 60 days before the date the first of the demands is received by the nonprofit corporation.
(3) If a notice for a special meeting demanded pursuant to Subsection (1)(b) is not given pursuant to Section 16-6a-704 within 30 days after the date the written demand is delivered to a corporate officer, regardless of the requirements of Subsection (4), a person signing the demand may:
(a) set the time and place of the meeting; and
(b) give notice pursuant to Section 16-6a-704.
(4)
(a) A special meeting of the members may be held in or out of this state:
(i) at the place stated in or fixed in accordance with the bylaws; or
(ii) if a place is not stated in or fixed in accordance with the bylaws, at a place stated in or fixed in accordance with a resolution of the board of directors.
(b) If no place is stated or fixed in accordance with Subsection (3)(a) or (4)(a), a special meeting of the members shall be held at the nonprofit corporation's principal office.
(5) Unless otherwise provided by the bylaws, only business within the purposes described in the notice of the

meeting required by Subsection 16-6a-704(3) may be conducted at a special meeting of the members.

16-6a-703 Court-ordered meeting.
(1)
(a) Upon an application described in Subsection (1)(b) the holding of a meeting of the members may be summarily ordered by:
(i) the district court of the county in this state where the nonprofit corporation's principal office is located; or
(ii) if the nonprofit corporation has no principal office in this state, the district court in and for Salt Lake County.
(b) Subsection (1)(a) applies to an application by:
(i) any voting member entitled to participate in an annual meeting if an annual meeting was required to be held and was not held within 15 months after:
(A) the corporation's last annual meeting; or
(B) if there has been no annual meeting, the date of incorporation; or
(ii) any person who participated in a call of or demand for a special meeting effective under Subsection 16-6a-702(1), if:
(A) notice of the special meeting was not given within 30 days after:
(I) the date of the call; or
(II) the date the last of the demands necessary to require the calling of the meeting was received by the nonprofit corporation pursuant to Subsection 16-6a-702(1)(b); or
(B) the special meeting was not held in accordance with the notice.
(2) A court that orders a meeting under Subsection (1) may:
(a) fix the time and place of the meeting;
(b) determine the members entitled to participate in the meeting;
(c) specify a record date for determining members entitled to notice of and to vote at the meeting;
(d) prescribe the form and content of the notice of the meeting;
(e)
(i) fix the quorum required for specific matters to be considered at the meeting; or
(ii) direct that the votes represented at the meeting constitute a quorum for action on the specific matters to be considered at the meeting; and
(f) enter other orders necessary or appropriate to accomplish the holding of the meeting.

16-6a-704 Notice of meeting.
(1) A nonprofit corporation shall give to each member entitled to vote at the meeting notice consistent with its bylaws of meetings of members in a fair and reasonable manner.
(2) Any notice that conforms to the requirements of Subsection (3) is fair and reasonable, but other means of giving notice may also be fair and reasonable when all the circumstances are considered.
(3) Notice is fair and reasonable if:
(a) the nonprofit corporation notifies its members of the place, date, and time of each annual, regular, and special meeting of members:
(i) no fewer than 10 days before the meeting;
(ii) if notice is mailed by other than first-class or registered mail, no fewer than 30 days, nor more than 60 days before the meeting date; and
(iii) if notice is given:
(A) by newspaper as provided in Subsection 16-6a-103(2)(b)(i)(A), by publication three separate times with:
(I) the first of the publications no more than 60 days before the meeting date; and
(II) the last of the publications no fewer than 10 days before the meeting date; and
(B)
(I) by publication in accordance with Section 45-1-101; and
(II) as provided in Subsection 16-6a-103(2)(b)(i)(B), for 60 days before the meeting date;
(b) the notice of an annual or regular meeting includes a description of any matter or matters that:
(i) must be approved by the members; or

(ii) for which the members' approval is sought under Sections 16-6a-825, 16-6a-910, 16-6a-1003, 16-6a-1010, 16-6a-1102, 16-6a-1202, and 16-6a-1402; and
(c) unless otherwise provided by this chapter or the bylaws, the notice of a special meeting includes a description of the purpose or purposes for which the meeting is called.
(4)
(a) Unless otherwise provided by the bylaws, if an annual, regular, or special meeting of members is adjourned to a different date, time, or place, notice need not be given of the new date, time, or place, if the new date, time, or place is announced at the meeting before adjournment.
(b) Notwithstanding Subsection (4)(a), if a new record date for the adjourned meeting is or shall be fixed under Section 16-6a-706, notice of the adjourned meeting shall be given under this section to the members of record as of the new record date.
(5) When giving notice of an annual, regular, or special meeting of members, a nonprofit corporation shall give notice of a matter a member intends to raise at the meeting if:
(a) requested in writing to do so by a person entitled to call a special meeting; and
(b) the request is received by the secretary or president of the nonprofit corporation at least 10 days before the nonprofit corporation gives notice of the meeting.

16-6a-705 Waiver of notice.
(1)
(a) A member may waive any notice required by this chapter or by the bylaws, whether before or after the date or time stated in the notice as the date or time when any action will occur or has occurred.
(b) A waiver described in Subsection (1) shall be:
(i) in writing;
(ii) signed by the member entitled to the notice; and
(iii) delivered to the nonprofit corporation for:
(A) inclusion in the minutes; or
(B) filing with the corporate records.
(c) A waiver satisfies the requirements of Subsection (1)(b) if communicated by electronic transmission.
(d) The delivery and filing required under Subsection (1)(b) may not be conditions of the effectiveness of the waiver.
(2) A member's attendance at a meeting:
(a) waives objection to lack of notice or defective notice of the meeting, unless the member at the beginning of the meeting objects to holding the meeting or transacting business at the meeting because of lack of notice or defective notice; and
(b) waives objection to consideration of a particular matter at the meeting that is not within the purpose or purposes described in the meeting notice, unless the member objects to considering the matter when it is presented.

16-6a-706 Record date -- Determining members entitled to notice and vote.
(1)
(a) The bylaws may fix or provide the manner of fixing a date as the record date for determining the members entitled to notice of a members' meeting.
(b) If the bylaws do not fix or provide for fixing a record date described in Subsection (1)(a), the board of directors may fix a future date as the record date.
(c) If a record date is not fixed in accordance with Subsection (1)(a) or (b), members entitled to notice of the meeting are the members of the nonprofit corporation:
(i) at the close of business on the business day preceding the day on which notice is given; or
(ii) if notice is waived, at the close of business on the business day preceding the day on which the meeting is held.
(2)
(a) The bylaws may fix or provide the manner of fixing a date as the record date for determining the members entitled to vote at a members' meeting.

(b) If the bylaws do not fix or provide for fixing a record date described in Subsection (2)(a), the board may fix a future date as the record date.
(c) If a record date is not fixed in accordance with Subsection (2)(a) or (b), members entitled to vote at the meeting are the members of the nonprofit corporation:
(i) on the date of the meeting; and
(ii) who are otherwise eligible to vote.
(3)
(a) The bylaws may fix or provide the manner for determining a date as the record date for the purpose of determining the members entitled to exercise any rights in respect of any other lawful action.
(b) If the bylaws do not fix or provide for fixing a record date described in Subsection (3)(a), the board of directors may fix a future date as the record date.
(c) If a record date is not fixed in accordance with Subsection (3)(a) or (b), members entitled to exercise the right are members of the nonprofit corporation at the later of:
(i) the close of business on the day on which the board adopts the resolution relating to the exercise of the right; or
(ii) the close of business on the 60th day before the date of the exercise of the right.
(4) A record date fixed under this section may not be more than 70 days before the meeting or action requiring a determination of members occurs.
(5)
(a) A determination of members entitled to notice of or to vote at a meeting of members is effective for any adjournment of the meeting unless the board of directors fixes a new date for determining the right to notice or the right to vote.
(b) The board of directors shall fix a new date for determining the right to notice or the right to vote if the meeting is adjourned to a date more than 120 days after the record date for determining members entitled to notice of the original meeting.
(6) If a court orders a meeting adjourned to a date more than 120 days after the date fixed for the original meeting, the court may:
(a) provide that the original record date for notice or voting continues in effect; or
(b) fix a new record date for notice or voting.

16-6a-707 Action without meeting.
(1) Unless otherwise provided in the articles of incorporation and Subsection (5), and subject to the limitations of Subsection 16-6a-1704(3), any action that may be taken at any annual or special meeting of members may be taken without a meeting and without prior notice, if one or more consents in writing, setting forth the action taken, are signed by the members having not less than the minimum voting power that would be necessary to authorize or take the action at a meeting at which all members entitled to vote on the action were present and voted.
(2)
(a) Unless the written consents of all members entitled to vote have been obtained, notice of any member approval without a meeting shall be given at least 10 days before the consummation of the transaction, action, or event authorized by the member action to:
(i) those members entitled to vote who have not consented in writing; and
(ii) those members:
(A) not entitled to vote; and
(B) to whom this chapter requires that notice of the proposed action be given.
(b) The notice required pursuant to Subsection (2)(a) shall contain or be accompanied by the same material that under this chapter would have been required to be sent in a notice of meeting at which the proposed action would have been submitted to the members for action.
(3) Any member giving a written consent, or the member's proxyholder or a personal representative of the member or their respective proxyholder, may revoke the consent by a signed writing:
(a) describing the action;
(b) stating that the member's prior consent is revoked; and

(c) that is received by the nonprofit corporation prior to the effectiveness of the action.
(4)
(a) A member action taken pursuant to this section is not effective unless all written consents on which the nonprofit corporation relies for the taking of an action pursuant to Subsection (1) are:
(i) received by the nonprofit corporation within a 60-day period; and
(ii) not revoked pursuant to Subsection (3).
(b) Action taken by the members pursuant to this section is effective:
(i) as of the date the last written consent necessary to effect the action is received by the nonprofit corporation; or
(ii) if all of the written consents necessary to effect the action specify a later date as the effective date of the action, the later date specified in the consents.
(c) If the nonprofit corporation has received written consents in accordance with Subsection (1) signed by all members entitled to vote with respect to the action, the effective date of the member action may be any date that is specified in all the written consents as the effective date of the member action.
(d)
(i) Unless otherwise provided by the bylaws, a member may deliver a written consent under this section by an electronic transmission that provides the nonprofit corporation with a complete copy of the written consent.
(ii) An electronic transmission consenting to an action under this section is considered to be written, signed, and dated for purposes of this section if the electronic transmission is delivered with information from which the corporation can determine:
(A) that the electronic transmission is transmitted by the member; and
(B) the date on which the electronic transmission is transmitted.
(iii) The date on which an electronic transmission is transmitted is considered the date on which a consent is signed.
(5) Notwithstanding Subsection (1), directors may not be elected by written consent except by unanimous written consent of all members entitled to vote for the election of directors.
(6) If not otherwise determined under Section 16-6a-703 or 16-6a-706, the record date for determining the members entitled to take action without a meeting or entitled to be given notice under Subsection (2) of action taken without a meeting is the date the first member delivers to the nonprofit corporation a writing upon which the action is taken pursuant to Subsection (1).
(7) Action taken under this section has the same effect as action taken at a meeting of members and may be so described in any document.

16-6a-708 Meetings by telecommunication.
(1) Unless otherwise provided in the bylaws, any or all of the members may participate in an annual, regular, or special meeting of the members by, or the meeting may be conducted through the use of, any means of communication by which all persons participating in the meeting may hear each other during the meeting.
(2) A member participating in a meeting by a means permitted under Subsection (1) is considered to be present in person at the meeting.

16-6a-709 Action by written ballot.
(1) Unless otherwise provided by the bylaws, any action that may be taken at any annual, regular, or special meeting of members may be taken without a meeting if the nonprofit corporation delivers a written ballot to every member entitled to vote on the matter.
(2) A written ballot described in Subsection (1) shall:
(a) set forth each proposed action; and
(b) provide an opportunity to vote for or against each proposed action.
(3)
(a) Approval by written ballot pursuant to this section shall be valid only when:
(i) the time, as determined under Subsection (8), by which all ballots must be received by the nonprofit corporation has passed so that a quorum can be determined; and
(ii) the number of approvals equals or exceeds the number of votes that would be required to approve the matter

at a meeting at which the total number of votes cast was the same as the number of votes cast by ballot.
(b) Unless otherwise provided in this chapter or in accordance with Section 16-6a-716, for purposes of taking action by written ballot the number of votes cast by written ballot pursuant to this section constitute a quorum for action on the matter.
(4) All solicitations for votes by written ballot shall:
(a) indicate the number of responses needed to meet the quorum requirements;
(b) state the percentage of approvals necessary to approve each matter other than election of directors;
(c) specify the time by which a ballot must be received by the nonprofit corporation in order to be counted; and
(d) be accompanied by written information sufficient to permit each person casting the ballot to reach an informed decision on the matter.
(5) Unless otherwise provided by the bylaws, a written ballot may not be revoked.
(6) Action taken under this section has the same effect as action taken at a meeting of members and may be described as such in any document.
(7) Unless otherwise provided by the bylaws, a written ballot delivered to every member entitled to vote on the matter or matters therein, as described in this section, may also be used in connection with any annual, regular, or special meeting of members, thereby allowing members the choice of either voting in person or by written ballot delivered by a member to the nonprofit corporation in lieu of attendance at such meeting. Any written ballot shall comply with the requirements of Subsection (2) and shall be counted equally with the votes of members in attendance at any meeting for every purpose, including satisfaction of a quorum requirement.
(8)
(a) Members shall be provided a fair and reasonable amount of time before the day on which the nonprofit corporation must receive ballots.
(b) An amount of time is considered to be fair and reasonable if:
(i) members are given at least 15 days from the day on which the notice is mailed, if the notice is mailed by first-class or registered mail;
(ii) members are given at least 30 days from the day on which the notice is mailed, if the notice is mailed by other than first-class or registered mail; or
(iii) considering all the circumstances, the amount of time is otherwise reasonable.

16-6a-710 Members' list for meeting and action by written ballot.
(1)
(a) Unless otherwise provided by the bylaws, after fixing a record date for a notice of a meeting or for determining the members entitled to take action by written ballot, a nonprofit corporation shall prepare a list of the names of all its members who are:
(i)
(A) entitled to notice of the meeting; and
(B) to vote at the meeting; or
(ii) to take the action by written ballot.
(b) The list required by Subsection (1) shall:
(i) be arranged by voting group;
(ii) be alphabetical within each voting group;
(iii) show the address of each member entitled to notice of, and to vote at, the meeting or to take such action by written ballot; and
(iv) show the number of votes each member is entitled to vote at the meeting or by written ballot.
(2)
(a) If prepared in connection with a meeting of the members, the members' list required by Subsection (1) shall be available for inspection by any member entitled to vote at the meeting:
(i)
(A) beginning the earlier of:
(I) 10 days before the meeting for which the list was prepared; or
(II) two business days after notice of the meeting is given; and
(B) continuing through the meeting, and any adjournment of the meeting; and

(ii)
(A) at the nonprofit corporation's principal office; or
(B) at a place identified in the notice of the meeting in the city where the meeting will be held.
(b)
(i) The nonprofit corporation shall make the members' list required by Subsection (1) available at the meeting.
(ii) Any member entitled to vote at the meeting or an agent or attorney of a member entitled to vote at the meeting is entitled to inspect the members' list at any time during the meeting or any adjournment.
(c) A member entitled to vote at the meeting, or an agent or attorney of a member entitled to vote at the meeting, is entitled on written demand to inspect and, subject to Subsection 16-6a-1602(3) and Subsections 16-6a-1603(2) and (3), to copy a members' list required by Subsection (1):
(i) during:
(A) regular business hours; and
(B) the period it is available for inspection; and
(ii) at the member's expense.
(3)
(a) On application of a member of a nonprofit corporation, the applicable district court may take an action described in Subsection (3)(b) if the nonprofit corporation refuses to allow a member entitled to vote at the meeting or by the written ballot, or an agent or attorney of a member entitled to vote at the meeting or by the written ballot, to inspect or copy the members' list during the period it is required to be available for inspection under Subsection (2).
(b) Under Subsection (3)(a), the applicable court may:
(i) summarily order the inspection or copying of the members' list at the nonprofit corporation's expense; and
(ii) until the inspection or copying is complete:
(A) postpone or adjourn the meeting for which the members' list was prepared; or
(B) postpone the time when the nonprofit corporation must receive written ballots in connection with which the members' list was prepared.
(c) For purposes of this Subsection (3), the applicable court is:
(i) the district court of the county in this state where the nonprofit corporation's principal office is located; or
(ii) if the nonprofit corporation has no principal office in this state, the district court in and for Salt Lake County.
(4) If a court orders inspection or copying of a members' list pursuant to Subsection (3), unless the nonprofit corporation proves that it refused inspection or copying of the list in good faith because it had a reasonable basis for doubt about the right of the member or the agent or attorney of the member to inspect or copy the members' list:
(a) the court shall order the nonprofit corporation to pay the member's costs, including reasonable counsel fees, incurred in obtaining the order;
(b) the court may order the nonprofit corporation to pay the member for any damages the member incurred; and
(c) the court may grant the member any other remedy afforded the member by law.
(5) If a court orders inspection or copying of a members' list pursuant to Subsection (3), the court may impose reasonable restrictions on the use or distribution of the list by the member.
(6) Failure to prepare or make available the members' list does not affect the validity of action taken at the meeting or by means of the written ballot.

16-6a-711 Voting entitlement generally.
(1) Unless otherwise provided by the bylaws:
(a) only voting members may vote with respect to any matter required or permitted under this chapter to be submitted to a vote of the members;
(b) all references in this chapter to votes of or voting by the members permit voting only by the voting members; and
(c) voting members may vote with respect to all matters required or permitted under this chapter to be submitted to a vote of the members.
(2) Unless otherwise provided by the bylaws, each member entitled to vote may cast:

(a) one vote on each matter submitted to a vote of members for nonprofit corporations other than those in Subsection (2)(b); and
(b) one vote for each share held by the member on each matter submitted for a vote of members if the nonprofit corporation issues shares to its members.
(3) Unless otherwise provided by the bylaws, if a membership stands of record in the names of two or more persons, the membership's acts with respect to voting have the following effect:
(a) If only one votes, the act binds all of the persons whose membership is jointly held.
(b) If more than one votes, the vote is divided on a pro-rata basis.

16-6a-712 Proxies.
(1) Unless otherwise provided by the bylaws, a member entitled to vote may vote or otherwise act in person or by proxy.
(2) Without limiting the manner in which a member may appoint a proxy to vote or otherwise act for the member, Subsections (2)(a) and (b) constitute valid means of appointing a proxy.
(a) A member may appoint a proxy by signing an appointment form, either personally or by the member's attorney-in-fact.
(b)
(i) Subject to Subsection (2)(b)(ii) a member may appoint a proxy by transmitting or authorizing the transmission of a telegram, teletype, facsimile, or other electronic transmission providing a written statement of the appointment to:
(A) the proxy;
(B) a proxy solicitor;
(C) a proxy support service organization;
(D) another person duly authorized by the proxy to receive appointments as agent for the proxy; or
(E) the nonprofit corporation.
(ii) An appointment transmitted under Subsection (2)(b)(i) shall set forth or be transmitted with written evidence from which it can be determined that the member transmitted or authorized the transmission of the appointment.
(3)
(a) An appointment of a proxy is effective against the nonprofit corporation when received by the nonprofit corporation, including receipt by the nonprofit corporation of an appointment transmitted pursuant to Subsection (2)(b).
(b) An appointment is valid for 11 months unless a different period is expressly provided in the appointment form.
(4) Any complete copy, including an electronic transmission, of an appointment of a proxy may be substituted for or used in lieu of the original appointment for any purpose for which the original appointment could be used.
(5) An appointment of a proxy is revocable by the member.
(6) An appointment of a proxy is revoked by the person appointing the proxy:
(a) attending any meeting and voting in person; or
(b) signing and delivering to the secretary or other officer or agent authorized to tabulate proxy votes:
(i) a writing stating that the appointment of the proxy is revoked; or
(ii) a subsequent appointment form.
(7) The death or incapacity of the member appointing a proxy does not affect the right of the nonprofit corporation to accept the proxy's authority unless notice of the death or incapacity is received by the secretary or other officer or agent authorized to tabulate votes before the proxy exercises the proxy's authority under the appointment.
(8) Subject to Section 16-6a-713 and to any express limitation on the proxy's authority appearing on the appointment form, a nonprofit corporation is entitled to accept the proxy's vote or other action as that of the member making the appointment.

16-6a-713 Nonprofit corporation's acceptance of votes.
(1) If the name signed on any of the following corresponds to the name of a member, the nonprofit corporation,

if acting in good faith, may accept and give the following effect as the act of the member:
(a) a vote;
(b) a consent;
(c) a written ballot;
(d) a waiver;
(e) a proxy appointment; or
(f) a proxy appointment revocation.
(2) If the name signed on any writing listed in Subsection (1) does not correspond to the name of a member, the nonprofit corporation, if acting in good faith, may accept the writing and give it effect as the act of the member if:
(a)
(i) the member is an entity; and
(ii) the name signed purports to be that of an officer or agent of the entity;
(b)
(i) the name signed purports to be that of an administrator, executor, guardian, or conservator representing the member; and
(ii) evidence of fiduciary status acceptable to the nonprofit corporation with respect to the writing listed in Subsection (1) that:
(A) has been requested by the nonprofit corporation; and
(B) is presented to the nonprofit corporation;
(c)
(i) the name signed purports to be that of a receiver or trustee in bankruptcy of the member; and
(ii) evidence of this status acceptable to the nonprofit corporation with respect to the writing listed in Subsection (1) that:
(A) has been requested by the nonprofit corporation; and
(B) is presented to the nonprofit corporation;
(d)
(i) the name signed purports to be that of a pledgee, beneficial owner, or attorney-in-fact of the member; and
(ii) evidence acceptable to the nonprofit corporation of the signatory's authority to sign for the member has been presented with respect to the writing listed in Subsection (1) that:
(A) has been requested by the nonprofit corporation; and
(B) is presented to the nonprofit corporation;
(e)
(i) two or more persons are the member as cotenants or fiduciaries;
(ii) the name signed purports to be the name of at least one of the cotenants or fiduciaries; and
(iii) the person signing appears to be acting on behalf of all the cotenants or fiduciaries; or
(f) the acceptance of the writing listed in Subsection (1) is otherwise proper under rules established by the nonprofit corporation that are not inconsistent with this Subsection (2).
(3) The nonprofit corporation is entitled to reject a writing listed in Subsection (1) if the secretary or other officer or agent authorized to tabulate votes, acting in good faith, has reasonable basis for doubt about:
(a) the validity of the signature on it; or
(b) the signatory's authority to sign for the member.
(4) The nonprofit corporation and its officer or agent who accepts or rejects a writing listed in Subsection (1) in good faith and in accordance with the standards of this section are not liable in damages for the consequences of the acceptance or rejection.
(5) Corporate action based on the acceptance or rejection of a writing listed in Subsection (1) under this section is valid unless a court of competent jurisdiction determines otherwise.

16-6a-714 Quorum and voting requirements for voting groups.
(1)
(a) Members entitled to vote as a separate voting group may take action on a matter at a meeting only if a quorum of those members exists with respect to that matter.

(b) Unless otherwise provided in this chapter or in accordance with Section 16-6a-716, at a meeting of the voting group, the members of the voting group that are represented for any purpose at the meeting constitute a quorum of that voting group for action on a matter.
(2) Once a member is represented for any purpose at a meeting, including the purpose of determining that a quorum exists, the member is considered present for quorum purposes:
(a) for the remainder of the meeting; and
(b) for any adjournment of that meeting, unless:
(i) otherwise provided in the bylaws; or
(ii) a new record date is or shall be set for that adjourned meeting.
(3) Action on a matter other than the election of directors by a voting group is approved if:
(a) a quorum exists;
(b) the votes cast within the voting group favoring the action exceed the votes cast within the voting group opposing the action; and
(c) a greater number of affirmative votes is not required by this chapter or the bylaws.
(4) The election of directors is governed by Section 16-6a-717.

16-6a-715 Action by single and multiple voting groups.
(1) If this chapter or the bylaws provide for voting by a single voting group on a matter, action on that matter is taken when voted upon by that voting group as provided in Section 16-6a-714.
(2)
(a) If this chapter or the bylaws provide for voting by two or more voting groups on a matter, action on that matter is taken only when voted upon by each of those voting groups counted separately as provided in Section 16-6a-714.
(b) One voting group may vote on a matter even though no action is taken by another voting group entitled to vote on the matter.

16-6a-716 Greater quorum or voting requirements.
(1) The articles of incorporation or bylaws may provide for a greater:
(a) quorum requirement for members or voting groups than is provided for by this chapter; or
(b) voting requirement for members or voting groups than is provided by this chapter.
(2) An amendment to the articles of incorporation or the bylaws that adds, changes, or deletes a greater quorum or voting requirement shall meet the same quorum requirement and be adopted by the same vote and voting groups required to take action under the greater of the quorum and voting requirements:
(a) then in effect; or
(b) proposed to be adopted.

16-6a-717 Voting for directors -- Cumulative voting.
(1) If the bylaws provide for cumulative voting for directors by the voting members, voting members may cumulatively vote, by:
(a) multiplying the number of votes the voting members are entitled to cast by the number of directors for whom they are entitled to vote; and
(b)
(i) casting the product for a single candidate; or
(ii) distributing the product among two or more candidates.
(2) Cumulative voting is not authorized at a particular meeting unless:
(a) the meeting notice or statement accompanying the notice states that cumulative voting will take place; or
(b)
(i) a voting member gives notice during the meeting and before the vote is taken of the voting member’s intent to cumulate votes; and
(ii) if one voting member gives this notice, all other voting members participating in the election are entitled to cumulate their votes without giving further notice.
(3)

(a) Unless otherwise provided in the bylaws, in an election of multiple directors, that number of candidates equaling the number of directors to be elected, having the highest number of votes cast in favor of their election, are elected to the board of directors.
(b) Unless otherwise provided in the bylaws, when only one director is being voted upon, the candidate having the highest number of votes cast in his or her favor is elected to the board of directors.

16-6a-718 Voting agreements.
(1) Two or more members may provide for the manner in which they will vote by signing an agreement for that purpose.
(2) A voting agreement created under this section is specifically enforceable.

Part 8
Directors and Officers

16-6a-801 Requirement for board of directors.
(1) A nonprofit corporation shall have a board of directors.
(2)
(a) Except as may otherwise be provided in this chapter, including Subsection (2)(b), all corporate powers shall be exercised by or under the authority of, and the business and affairs of the nonprofit corporation managed under the direction of, the board of directors.
(b)
(i) The articles of incorporation may authorize one or more persons to exercise some or all of the powers that would otherwise be exercised by the board of directors.
(ii) To the extent the articles of incorporation authorize a person other than the board of directors to have the authority and perform a duty of the board of directors, the directors shall be relieved to that extent from such authority and duty.
(3) The board of directors may be divided into classes, each with such respective rights and duties as the articles of incorporation or bylaws may provide.
(4) The board of directors and the directors may be known by any other name designated in the bylaws.

16-6a-802 Qualifications of directors.
(1) A director shall be:
(a) a natural person; and
(b) 18 years of age or older.
(2) The bylaws may prescribe other qualifications for directors in addition to the requirements under Subsection (1).
(3) A director need not be a resident of this state or a member of the nonprofit corporation unless required by the bylaws.

16-6a-803 Number of directors.
(1) A board of directors shall consist of three or more directors, with the number specified in, or fixed in accordance with, the bylaws.
(2)
(a) The bylaws may establish, or permit the voting members or the board of directors to establish, a range for the size of the board of directors by fixing a minimum and maximum number of directors.
(b) If a range for the size of the board of directors is established in accordance with Subsection (2)(a), the number of directors may be fixed or changed from time to time within the range by:
(i) the voting members; or
(ii) the board of directors.

16-6a-804 Election, appointment, and designation of directors.
(1)

(a) All directors except the initial directors shall be elected, appointed, or designated as provided in the bylaws.
(b) If no method of election, appointment, or designation is set forth in the bylaws, the directors other than the initial directors shall be elected as follows:
(i) if the nonprofit corporation has voting members, all directors except the initial directors shall be elected by the voting members at each annual meeting of the voting members; and
(ii) if the nonprofit corporation does not have voting members, all directors except the initial directors shall be elected by the board of directors.
(2)
(a) The bylaws may authorize the election of all or a specified number or portion of directors, except the initial directors, by:
(i) the members of one or more voting groups of voting members; or
(ii) the directors of one or more authorized classes of directors.
(b) A class of voting members or directors entitled to elect one or more directors is a separate voting group for purposes of the election of directors.
(3) The bylaws may authorize the appointment of one or more directors by one or more persons, or by the holder of the office or position, as the bylaws shall specify.
(4) The bylaws may provide for election of directors by voting members or delegates:
(a) on the basis of chapter or other organizational unit;
(b) by region or other geographic unit;
(c) by preferential voting; or
(d) by any other reasonable method.
(5) For purposes of this chapter, designation occurs when the bylaws:
(a) name an individual as a director; or
(b) designate the holder of some office or position as a director.

16-6a-805 Terms of directors generally.
(1)
(a) The bylaws may specify the terms of directors.
(b) In the absence of any term specified in the bylaws, the term of each director shall be one year.
(c) Unless otherwise provided in the bylaws, directors may be elected for successive terms.
(2) Unless otherwise provided in the bylaws, the terms of the initial directors of a nonprofit corporation expire at the first meeting at which directors are elected or appointed.
(3) A decrease in the number of directors or in the term of office does not shorten an incumbent director's term.
(4) Unless otherwise provided in the bylaws, the term of a director filling a vacancy expires at the end of the unexpired term that the director is filling, except that if a director is elected to fill a vacancy created by reason of an increase in the number of directors, the term of the director shall expire on the later of:
(a) the next meeting at which directors are elected; or
(b) the term, if any, designated for the director at the time of the creation of the position being filled.
(5) Unless otherwise provided in the bylaws, despite the expiration of a director's term, a director continues to serve until:
(a) the director's successor is elected, appointed, or designated and qualifies; or
(b) there is a decrease in the number of directors.
(6) A director whose term has expired may deliver to the division for filing a statement to that effect pursuant to Section 16-6a-1608.

16-6a-806 Staggered terms for directors.
(1) The bylaws may provide for staggering the terms of directors by dividing the total number of directors into any number of groups.
(2) The terms of office of the several groups permitted under Subsection (1) need not be uniform.

16-6a-807 Resignation of directors.
(1) A director may resign at any time by giving written notice of resignation to the board's chair, the nonprofit

corporation's secretary, or as otherwise provided in the bylaws.
(2) A resignation of a director is effective when the notice is received by the nonprofit corporation unless the notice specifies a later effective date.
(3) A director who resigns may deliver to the division for filing a statement that the director resigns pursuant to Section 16-6a-1608.
(4) The failure to attend or meet obligations shall be effective as a resignation at the time of the board of director's vote to confirm the failure if:
(a) at the beginning of a director's term on the board, the bylaws provide that a director may be considered to have resigned for failing to:
(i) attend a specified number of board meetings; or
(ii) meet other specified obligations of directors; and
(b) the failure to attend or meet obligations is confirmed by an affirmative vote of the board of directors.

16-6a-808 Removal of directors.
(1) Directors elected by voting members or directors may be removed as provided in Subsections (1)(a) through (f).
(a) The voting members may remove one or more directors elected by them with or without cause unless the bylaws provide that directors may be removed only for cause.
(b) If a director is elected by a voting group, only that voting group may participate in the vote to remove that director.
(c) Unless otherwise provided in the bylaws, a director may be removed:
(i) when the director is elected by the voting members, only if a majority of the voting members votes to remove the director; or
(ii) when the director is elected by a voting group, only if a majority of the voting group votes to remove the director.
(d) A director elected by voting members may be removed by the voting members only:
(i) at a meeting called for the purpose of removing that director; and
(ii) if the meeting notice states that the purpose, or one of the purposes, of the meeting is removal of the director.
(e) An entire board of directors may be removed under Subsections (1)(a) through (d).
(f)
(i) Except as provided in Subsection (1)(f)(ii), a director elected by the board of directors may be removed with or without cause by the vote of a majority of the directors then in office or such greater number as is set forth in the bylaws.
(ii) A director elected by the board of directors to fill the vacancy of a director elected by the voting members may be removed without cause by the voting members but not the board of directors.
(g) A director who is removed pursuant to this section may deliver to the division for filing a statement to that effect pursuant to Section 16-6a-1608.
(2) Unless otherwise provided in the bylaws:
(a) an appointed director may be removed without cause by the person appointing the director;
(b) the person described in Subsection (2)(a) shall remove the director by giving written notice of the removal to:
(i) the director; and
(ii) the nonprofit corporation; and
(c) unless the written notice described in Subsection (2)(b) specifies a future effective date, a removal is effective when the notice is received by both:
(i) the director to be removed; and
(ii) the nonprofit corporation.
(3) A designated director, as provided in Subsection 16-6a-804(5), may be removed by an amendment to the bylaws deleting or changing the designation.
(4) Removal of a director under this section is not affected by Subsection 16-6a-805(5).

16-6a-809 Removal of directors by judicial proceeding.
(1)
(a) The applicable court may remove a director in a proceeding commenced either by the nonprofit corporation or by voting members holding at least 10% of the votes entitled to be cast in the election of the director's successor if the court finds that:
(i) the director engaged in:
(A) fraudulent or dishonest conduct; or
(B) gross abuse of authority or discretion with respect to the nonprofit corporation; or
(ii)
(A) a final judgment has been entered finding that the director has violated a duty set forth in Section 16-6a-822; and
(B) removal is in the best interests of the nonprofit corporation.
(b) For purposes of this Subsection (1), the applicable court is the:
(i) district court of the county in this state where a nonprofit corporation's principal office is located; or
(ii) if the nonprofit corporation has no principal office in this state:
(A) the district court of the county in which its registered office is located; or
(B) if the nonprofit corporation has no registered office, the district court for Salt Lake County.
(2) The court that removes a director may bar the director for a period prescribed by the court from:
(a) reelection;
(b) reappointment; or
(c) designation.
(3) If voting members commence a proceeding under Subsection (1), the voting members shall make the nonprofit corporation a party defendant.
(4) A director who is removed pursuant to this section may deliver to the division for filing a statement to that effect pursuant to Section 16-6a-1608.

16-6a-810 Vacancy on board.
(1) Unless otherwise provided in the bylaws, if a vacancy occurs on a board of directors, including a vacancy resulting from an increase in the number of directors:
(a) the voting members, if any, may fill the vacancy;
(b) the board of directors may fill the vacancy; or
(c) if the directors remaining in office constitute fewer than a quorum of the board of directors, the remaining directors may fill the vacancy by the affirmative vote of a majority of all the directors remaining in office.
(2) Notwithstanding Subsection (1), unless otherwise provided in the bylaws, if the vacant office was held by a director elected by a voting group of voting members:
(a) if one or more of the remaining directors were elected by the same voting group of voting members:
(i) only the directors elected by the same voting group of voting members are entitled to vote to fill the vacancy if it is filled by directors; and
(ii) the directors elected by the same voting group of voting members may fill the vacancy by the affirmative vote of a majority of the directors remaining in office; and
(b) only that voting group is entitled to vote to fill the vacancy if it is filled by the voting members.
(3) Notwithstanding Subsection (1) and unless otherwise provided in the bylaws, only the directors elected by the same voting group of directors are entitled to vote to fill the vacancy if:
(a) the vacant office was held by a director elected by a voting group of directors; and
(b) any persons in that voting group remain as directors.
(4) Unless otherwise provided in the bylaws, if a vacant office was held by an appointed director, only the person who appointed the director may fill the vacancy.
(5)
(a) If a vacant office was held by a designated director, as provided in Subsection 16-6a-804(5), the vacancy shall be filled as provided in the bylaws.
(b) In the absence of an applicable bylaw provision, the vacancy may not be filled by the board.
(6) A vacancy that will occur at a specific later date by reason of a resignation effective at a later date under

Subsection 16-6a-807(2) or otherwise, may be filled before the vacancy occurs, but the new director may not take office until the vacancy occurs.

16-6a-811 Compensation of directors.

Unless otherwise provided in the bylaws, the board of directors may authorize and fix the compensation of directors.

16-6a-812 Meetings.

(1) Unless the bylaws eliminate the requirement for holding an annual meeting, a nonprofit corporation that does not have voting members shall hold a meeting of the directors annually:
(a) at a time and date stated in or fixed in accordance with the bylaws; or
(b) if a time and date is not stated in or fixed in accordance with the bylaws, at a time and date stated in or fixed in accordance with a resolution of the board of directors.
(2) The board of directors may hold regular or special meetings in or out of this state.
(3)
(a) Unless otherwise provided in the bylaws, the board of directors may permit any director to participate in a meeting by, or conduct the meeting through the use of, any means of communication by which all directors participating may hear each other during the meeting.
(b) A director participating in a meeting by a means permitted under Subsection (2) is considered to be present in person at the meeting.
(4) The failure to hold an annual or regular meeting at the time and date determined pursuant to Subsection (1) or (2) does not:
(a) affect the validity of any corporate action; or
(b) result in forfeiture or dissolution of the nonprofit corporation.

16-6a-813 Action without meeting.

(1)
(a) Unless otherwise provided in the bylaws, any action required or permitted by this chapter to be taken at a board of directors' meeting may be taken without a meeting if all members of the board consent to the action in writing.
(b) Action is taken under Subsection (1)(a) at the time the last director signs a writing describing the action taken, unless, before that time, any director revokes a consent by a writing signed by the director and received by the secretary or any other person authorized by the bylaws or the board of directors to receive the revocation.
(c) Action under Subsection (1)(a) is effective at the time it is taken under Subsection (1)(a) unless the board of directors establishes a different effective date.
(2)
(a) Unless otherwise provided in the bylaws, any action required or permitted by this chapter to be taken at a board of directors' meeting may be taken without a meeting if notice is transmitted in writing to each member of the board and each member of the board by the time stated in the notice:
(i)
(A) signs a writing for such action; or
(B) signs a writing against such action, abstains in writing from voting, or fails to respond or vote; and
(ii) fails to demand in writing that action not be taken without a meeting.
(b) The notice required by Subsection (2)(a) shall state:
(i) the action to be taken;
(ii) the time by which a director must respond to the notice;
(iii) that failure to respond by the time stated in the notice will have the same effect as:
(A) abstaining in writing by the time stated in the notice; and
(B) failing to demand in writing by the time stated in the notice that action not be taken without a meeting; and
(iv) any other matters the nonprofit corporation determines to include.
(c) Action is taken under this Subsection (2) only if at the end of the time stated in the notice transmitted pursuant to Subsection (2)(a):

(i) the affirmative votes in writing for the action received by the nonprofit corporation and not revoked pursuant to Subsection (2)(e) equal or exceed the minimum number of votes that would be necessary to take such action at a meeting at which all of the directors then in office were present and voted; and
(ii) the nonprofit corporation has not received a written demand by a director that the action not be taken without a meeting other than a demand that has been revoked pursuant to Subsection (2)(e).
(d) A director's right to demand that action not be taken without a meeting shall be considered to have been waived unless the nonprofit corporation receives such demand from the director in writing by the time stated in the notice transmitted pursuant to Subsection (2)(a) and the demand has not been revoked pursuant to Subsection (2)(e).
(e) A director who in writing has voted, abstained, or demanded action not be taken without a meeting pursuant to this Subsection (2) may revoke the vote, abstention, or demand in writing received by the nonprofit corporation by the time stated in the notice transmitted pursuant to Subsection (2)(a).
(f) Unless the notice transmitted pursuant to Subsection (2)(a) states a different effective date, action taken pursuant to this Subsection (2) is effective at the end of the time stated in the notice transmitted pursuant to Subsection (2)(a).
(3)
(a) Unless otherwise provided by the bylaws, a communication under this section may be delivered by an electronic transmission.
(b) An electronic transmission communicating a vote, abstention, demand, or revocation under Subsection (2) is considered to be written, signed, and dated for purposes of this section if the electronic transmission is delivered with information from which the nonprofit corporation can determine:
(i) that the electronic transmission is transmitted by the director; and
(ii) the date on which the electronic transmission is transmitted.
(c) The date on which an electronic transmission is transmitted is considered the date on which the vote, abstention, demand, or revocation is signed.
(d) For purposes of this section, communications to the nonprofit corporation are not effective until received.
(4) Action taken pursuant to this section:
(a) has the same effect as action taken at a meeting of directors; and
(b) may be described as an action taken at a meeting of directors in any document.

16-6a-814 Notice of meeting.
(1)
(a) A nonprofit corporation shall give to each director entitled to vote at an annual meeting notice of the annual meeting consistent with the nonprofit corporation's bylaws in a fair and reasonable manner.
(b) Any notice that conforms to the requirements of Subsection (1)(c) is fair and reasonable, but other means of giving notice may also be fair and reasonable when all the circumstances are considered.
(c) Notice under Subsection (1)(a) is fair and reasonable if the nonprofit corporation notifies each director of the place, date, and time of the annual meeting:
(i) no fewer than 10 days before the meeting, unless otherwise provided by the bylaws;
(ii) if notice is mailed by other than first-class or registered mail, no fewer than 30 days, nor more than 60 days before the meeting date; and
(iii) if notice is given:
(A) by newspaper as provided in Subsection 16-6a-103(2)(b)(i)(A), by publication three separate times with:
(I) the first of the publications no more than 60 days before the meeting date; and
(II) the last of the publications no fewer than 10 days before the meeting date; and
(B)
(I) as provided in Subsection 16-6a-103(2)(b)(i)(B); and
(II) for 60 days before the meeting date.
(2) Unless otherwise provided in this chapter or in the bylaws, regular meetings of the board of directors may be held without notice of the date, time, place, or purpose of the meeting.
(3)
(a) Unless the bylaws provide for a longer or shorter period, special meetings of the board of directors shall be

preceded by at least two days notice of the date, time, and place of the meeting.
(b) The notice required by Subsection (3)(a) need not describe the purpose of the special meeting unless otherwise required by this chapter or the bylaws.

16-6a-815 Waiver of notice.
(1)
(a) A director may waive any notice of a meeting before or after the time and date of the meeting stated in the notice.
(b) Except as provided by Subsection (2), the waiver shall be:
(i) in writing;
(ii) signed by the director entitled to the notice; and
(iii) delivered to the nonprofit corporation for filing with the corporate records.
(c) A waiver satisfies the requirements of Subsection (1)(b) if communicated by electronic transmission.
(d) The delivery and filing required by Subsection (1)(b) may not be conditions of the effectiveness of the waiver.
(2) A director's attendance at or participation in a meeting waives any required notice to that director of the meeting unless:
(a)
(i) at the beginning of the meeting or promptly upon the director's later arrival, the director objects to holding the meeting or transacting business at the meeting because of lack of notice or defective notice; and
(ii) after objecting, the director does not vote for or assent to action taken at the meeting; or
(b) if special notice was required of a particular purpose pursuant to Subsection 16-6a-814(3):
(i) the director objects to transacting business with respect to the purpose for which the special notice was required; and
(ii) after objecting, the director does not vote for or assent to action taken at the meeting with respect to the purpose.

16-6a-816 Quorum and voting.
(1) Unless a greater or lesser number is required by the bylaws, a quorum of a board of directors consists of a majority of the number of directors in office immediately before the meeting begins.
(2) The bylaws may authorize a quorum of a board of directors to consist of:
(a) no fewer than:
(i) one-third of the number of directors fixed if the nonprofit corporation has a fixed board size; and
(ii) no fewer than two directors in all circumstances;
(b) if a range for the size of the board is established pursuant to Subsection 16-6a-803(2), no fewer than one-third of the number of directors:
(i) fixed in accordance with Subsection 16-6a-803(2); or
(ii) in office immediately before the meeting begins, if no number is fixed in accordance with Subsection 16-6a-803(2).
(3) If a quorum is present when a vote is taken, the affirmative vote of a majority of directors present is the act of the board of directors unless the vote of a greater number of directors is required by this chapter or the bylaws.
(4)
(a) If provided in the bylaws, for purposes of determining a quorum with respect to a particular proposal, and for purposes of casting a vote for or against a particular proposal, a director may be considered to be present at a meeting and to vote if the director has granted a signed written proxy:
(i) to another director who is present at the meeting; and
(ii) authorizing the other director to cast the vote that is directed to be cast by the written proxy with respect to the particular proposal that is described with reasonable specificity in the proxy.
(b) Except as provided in this Subsection (4) and as permitted by Section 16-6a-813, directors may not vote or otherwise act by proxy.
(c) Notwithstanding Subsection (4)(a), a director may grant a proxy to a person who is not a director if:

(i) permitted by the bylaws; and
(ii) the proxy meets all other requirements of Subsection (4)(a).
(5) A director who is present at a meeting of the board of directors when corporate action is taken is considered to have assented to all action taken at the meeting unless:
(a)
(i) the director objects at the beginning of the meeting, or promptly upon the director's arrival, to holding the meeting or transacting business at the meeting; and
(ii) after objecting, the director does not vote for or assent to any action taken at the meeting;
(b) the director contemporaneously requests that the director's dissent or abstention as to any specific action taken be entered in the minutes of the meeting; or
(c) the director causes written notice of the director's dissent or abstention as to any specific action to be received by:
(i) the presiding officer of the meeting before adjournment of the meeting; or
(ii) the nonprofit corporation promptly after adjournment of the meeting.
(6) The right of dissent or abstention pursuant to Subsection (5) as to a specific action is not available to a director who votes in favor of the action taken.

16-6a-817 Committees of the board.
(1) Unless otherwise provided in the bylaws, the board of directors may:
(a) create one or more committees of the board; and
(b) appoint two or more directors to serve on the committees created under Subsection (1)(a).
(2) Unless otherwise provided in the bylaws, the creation of a committee of the board and appointment of directors to it shall be approved by the greater of:
(a) a majority of all the directors in office when the action is taken; or
(b) the number of directors required by the bylaws to take action under Section 16-6a-816.
(3) Unless otherwise provided in the bylaws, a committee of the board and the members of the committee are subject to Sections 16-6a-812 through 16-6a-816, which govern:
(a) meetings;
(b) action without meeting;
(c) notice;
(d) waiver of notice; and
(e) quorum and voting requirements.
(4) To the extent stated in the bylaws or by the board of directors, each committee of the board shall have the authority of the board of directors as described in Section 16-6a-801, except that a committee of the board may not:
(a) authorize distributions;
(b) approve or propose to members any action required by this chapter to be approved by members;
(c) elect, appoint, or remove a director;
(d) amend articles of incorporation;
(e) adopt, amend, or repeal bylaws;
(f) approve a plan of conversion or a plan of merger not requiring member approval; or
(g) approve a sale, lease, exchange, or other disposition of all, or substantially all, of its property, with or without goodwill, otherwise than in the usual and regular course of business.
(5) The creation of, delegation of authority to, or action by a committee does not alone constitute compliance by a director with the standards of conduct described in Section 16-6a-822.
(6)
(a) Subject to Subsection (6)(b), nothing in this part shall prohibit or restrict a nonprofit corporation from establishing in its bylaws or by action of the board of directors or otherwise one or more committees, advisory boards, auxiliaries, or other bodies of any kind:
(i) having the members and rules of procedure as the bylaws or board of directors may provide;
(ii) established to provide the advice, service, and assistance to the nonprofit corporation as may be specified in the bylaws or by the board of directors; and

(iii) established to carry out the duties and responsibilities for the nonprofit corporation, as may be specified in the bylaws or by the board of directors.
(b) Notwithstanding Subsection (6)(a), if any committee or other body established under Subsection (6)(a) has one or more members who are entitled to vote on committee matters and who are not then also directors, the committee or other body may not exercise any power or authority reserved to the board of directors, in this chapter or in the bylaws.

16-6a-818 Officers.
(1)
(a) A nonprofit corporation shall have the officers designated:
(i) in its bylaws; or
(ii) by the board of directors in a manner not inconsistent with the bylaws.
(b) An officer shall be:
(i) a natural person; and
(ii) 18 years of age or older.
(c) An officer need not be a director or a member of the nonprofit corporation, unless the bylaws so prescribe.
(2)
(a) An officer may be appointed by the board of directors or in such other manner as the board of directors or bylaws may provide.
(b) An appointed officer may appoint one or more officers or assistant officers if authorized by:
(i) the bylaws; or
(ii) the board of directors.
(3) The bylaws or the board of directors shall delegate to the secretary or to one or more other persons responsibility for:
(a) the preparation and maintenance of:
(i) minutes of the directors' and members' meetings; and
(ii) other records and information required to be kept by the nonprofit corporation under Section 16-6a-1601; and
(b) authenticating records of the nonprofit corporation.
(4) The same individual may simultaneously hold more than one office in a nonprofit corporation.

16-6a-819 Duties of officers.
Each officer shall have the authority and shall perform the duties set forth with respect to the office:
(1) in the bylaws; or
(2) to the extent not inconsistent with the bylaws, prescribed with respect to the office by:
(a) the board of directors; or
(b) an officer authorized by the board of directors.

16-6a-820 Resignation and removal of officers.
(1) An officer may resign at any time by giving written notice of resignation to the nonprofit corporation.
(2) A resignation of an officer is effective when the notice is received by the nonprofit corporation unless the notice specifies a later effective date.
(3) If a resignation is made effective at a later date, the board of directors may:
(a)
(i) permit the officer to remain in office until the effective date; and
(ii) fill the pending vacancy before the effective date if the successor does not take office until the effective date; or
(b)
(i) remove the officer at any time before the effective date; and
(ii) fill the vacancy created by the removal.
(4)
(a) Unless otherwise provided in the bylaws, the board of directors may remove any officer at any time with or

without cause.
(b) The bylaws or the board of directors may make provisions for the removal of officers by:
(i) other officers; or
(ii) the voting members.
(5) An officer who resigns, is removed, or whose appointment has expired may deliver to the division for filing a statement to that effect pursuant to Section 16-6a-1608.

16-6a-821 Contract rights with respect to officers.
(1) The appointment of an officer does not itself create contract rights.
(2)
(a) An officer's removal does not affect the officer's contract rights, if any, with the nonprofit corporation.
(b) An officer's resignation does not affect the nonprofit corporation's contract rights, if any, with the officer.

16-6a-822 General standards of conduct for directors and officers.
(1)
(a) A director shall discharge the director's duties as a director, including the director's duties as a member of a committee of the board, in accordance with Subsection (2).
(b) An officer with discretionary authority shall discharge the officer's duties under that authority in accordance with Subsection (2).
(2) A director or an officer described in Subsection (1) shall discharge the director or officer's duties:
(a) in good faith;
(b) with the care an ordinarily prudent person in a like position would exercise under similar circumstances; and
(c) in a manner the director or officer reasonably believes to be in the best interests of the nonprofit corporation.
(3) In discharging duties, a director or officer is entitled to rely on information, opinions, reports, or statements, including financial statements and other financial data, if prepared or presented by:
(a) one or more officers or employees of the nonprofit corporation whom the director or officer reasonably believes to be reliable and competent in the matters presented;
(b) legal counsel, a public accountant, or another person as to matters the director or officer reasonably believes are within the person's professional or expert competence;
(c) religious authorities or ministers, priests, rabbis, or other persons:
(i) whose position or duties in the nonprofit corporation, or in a religious organization with which the nonprofit corporation is affiliated, the director or officer believes justify reliance and confidence; and
(ii) who the director or officer believes to be reliable and competent in the matters presented; or
(d) in the case of a director, a committee of the board of directors of which the director is not a member if the director reasonably believes the committee merits confidence.
(4) A director or officer is not acting in good faith if the director or officer has knowledge concerning the matter in question that makes reliance otherwise permitted by Subsection (3) unwarranted.
(5) A director, regardless of title, may not be considered to be a trustee with respect to any property held or administered by the nonprofit corporation including property that may be subject to restrictions imposed by the donor or transferor of the property.
(6) A director or officer is not liable to the nonprofit corporation, its members, or any conservator or receiver, or any assignee or successor-in-interest of the nonprofit corporation or member, for any action taken, or any failure to take any action, as an officer or director, as the case may be, unless:
(a) the director or officer has breached or failed to perform the duties of the office as set forth in this section; and
(b) the breach or failure to perform constitutes:
(i) willful misconduct; or
(ii) intentional infliction of harm on:
(A) the nonprofit corporation; or
(B) the members of the nonprofit corporation; or
(iii) gross negligence.

16-6a-823 Limitation of liability of directors.
(1)
(a) Except as provided in Subsection (1)(b), a nonprofit corporation may eliminate or limit the liability of a director to the nonprofit corporation or to its members for monetary damages for any action taken or any failure to take any action as a director, if:
(i) so provided in:
(A) the articles of incorporation;
(B) the bylaws; or
(C) a resolution; and
(ii) to the extent permitted in Subsection (3).
(b) Subsection (1)(a) does not permit a nonprofit corporation from eliminating or limiting the liability of a director for:
(i) the amount of a financial benefit received by a director to which the director is not entitled;
(ii) an intentional infliction of harm on:
(A) the nonprofit corporation; or
(B) the members of a nonprofit corporation;
(iii) an intentional violation of criminal law; or
(iv) a violation of Section 16-6a-824.
(2) A provision authorized under this section may not eliminate or limit the liability of a director for any act or omission occurring prior to the date when the provision becomes effective.
(3) Any provision authorized under this section to be included in the articles of incorporation may be adopted in the bylaws or by resolution, but only if the provision is approved by the same percentage of members of each voting group as would be required to approve an amendment to the articles of incorporation including the provision.
(4) Any foreign nonprofit corporation authorized to transact business in this state, except as otherwise provided by law, may adopt any provision authorized under this section.

16-6a-824 Liability of directors for unlawful distributions.
(1)
(a) A director who votes for or assents to a distribution made in violation of Section 16-6a-1301 or the articles of incorporation is personally liable to the nonprofit corporation for the amount of the distribution that exceeds what could have been distributed without violating Section 16-6a-1301 or the articles of incorporation, if it is established that the director's duties were not performed in compliance with Section 16-6a-822.
(b) In any proceeding commenced under this section, a director has all of the defenses ordinarily available to a director.
(2) A director held liable under Subsection (1) for an unlawful distribution is entitled to contribution:
(a) from every other director who could be held liable under Subsection (1) for the unlawful distribution; and
(b) from each member who accepted the distribution knowing the distribution was made in violation of Section 16-6a-1301 or the articles of incorporation.
(3) The amount of the contribution from each member under Subsection (2)(b) is the amount of the distribution to the member multiplied by the percentage of the amount of distribution to all members that exceeded what could have been distributed to members without violating Section 16-6a-1301 or the articles of incorporation.

16-6a-825 Conflicting interest transaction.
(1) As used in this section, "conflicting interest transaction" means a contract, transaction, or other financial relationship between a nonprofit corporation and:
(a) a director of the nonprofit corporation;
(b) a party related to a director; or
(c) an entity in which a director of the nonprofit corporation:
(i) is a director or officer; or
(ii) has a financial interest.
(2) Except as otherwise provided in this section, upon the finding of a conflicting interest transaction, in an

action properly brought before it, a court may:
(a) rule that the conflicting interest transaction is void or voidable;
(b) enjoin or set aside the conflict of interest transaction; or
(c) determine that the conflicting interest transaction gives rise to an award of damages or other sanctions.
(3)
(a) A loan may not be made directly or indirectly by a nonprofit corporation to:
(i) a director or officer of the nonprofit corporation;
(ii) a natural person related to a director or officer; or
(iii) an entity in which a director, officer, or natural person related to a director or officer has any ownership, management right, or financial interest.
(b) A director or officer who assents to or participates in the making of a loan in violation of Subsection (3)(a) shall be liable to the nonprofit corporation for the amount of the loan until the repayment of the loan.
(4)
(a) If the conditions of Subsection (4)(b) are met, a conflicting interest transaction may not be void or voidable or be enjoined, set aside, or give rise to an award of damages or other sanctions in a proceeding by a member or by or in the right of the nonprofit corporation, solely because:
(i) the conflicting interest transaction involves:
(A) a director of the nonprofit corporation;
(B) a party related to a director; or
(C) an entity in which a director of the nonprofit corporation is a director or officer or has a financial interest;
(ii) the director is present at or participates in the meeting of the nonprofit corporation's board of directors or of the committee of the board of directors that authorizes, approves, or ratifies the conflicting interest transaction; or
(iii) the director's vote is counted for the purpose described in Subsection (4)(a)(ii).
(b) Subsection (4)(a) applies if:
(i)
(A) the material facts as to the director's relationship or interest and as to the conflicting interest transaction are disclosed or are known to the board of directors or the committee; and
(B) the board of directors or committee in good faith authorizes, approves, or ratifies the conflicting interest transaction by the affirmative vote of a majority of the disinterested directors, even though the disinterested directors are less than a quorum;
(ii)
(A) the material facts as to the director's relationship or interest and as to the conflicting interest transaction are disclosed or are known to the members entitled to vote on the conflicting interest transaction; and
(B) the conflicting interest transaction is specifically authorized, approved, or ratified in good faith by a vote of the members entitled to vote thereon;
(iii) the conflicting interest transaction is consistent with a provision in the articles of incorporation or bylaws which:
(A) commits the nonprofit corporation to support one or more other nonprofit corporations, charitable trusts, or charitable entities; or
(B) authorizes one or more directors to exercise discretion in making gifts or contributions to one or more other nonprofit corporations, charitable trusts, or charitable entities; or
(iv) the conflicting interest transaction is fair as to the nonprofit corporation.
(5) Common or interested directors may be counted in determining the presence of a quorum at a meeting of the board of directors or of a committee that authorizes, approves, or ratifies the conflicting interest transaction.
(6) For purposes of this section, "a natural person related to a director or officer" means any natural person whose familial, financial, professional, or employment relationship with the director or officer would, under the circumstances, reasonably be expected to exert an influence on the director's or officer's judgment when voting on a transaction.

16-6a-826 Common members, directors, or officers.
(1) Two or more nonprofit corporations may have members, directors, or officers that are common to each

nonprofit corporation.
(2) The fact of common members, directors, or officers in two or more nonprofit corporations may not, by itself, create an inference that the nonprofit corporations individually or collectively:
(a) are agents or alter egos of one another; or
(b) have been formed or availed of, for an improper purpose.
(3) The doctrine of "piercing the corporate veil" may not be applied to one or more nonprofit corporations solely because of the fact of common members, directors, or officers.

Part 9
Indemnification

16-6a-901 Indemnification definitions.

As used in this part:
(1)
(a) "Director" means an individual who:
(i) is or was a director of a nonprofit corporation; or
(ii) while a director of a nonprofit corporation at the nonprofit corporation's request, is or was serving as a director, officer, partner, member, manager, trustee, employee, fiduciary, or agent of:
(A) another domestic or foreign corporation;
(B) another nonprofit corporation;
(C) another person; or
(D) an employee benefit plan.
(b) A director is considered to be serving an employee benefit plan at the nonprofit corporation's request if the director's duties to the nonprofit corporation also impose duties on, or otherwise involve services by, the director to the employee benefit plan or to participants in or beneficiaries of the employee benefit plan.
(c) "Director" includes, unless the context requires otherwise, the estate or personal representative of a director.
(2) "Expenses" includes attorneys' fees.
(3) "Liability" means the obligation incurred with respect to a proceeding to pay a judgment, settlement, penalty, or fine, including:
(a) an excise tax assessed with respect to an employee benefit plan; or
(b) reasonable expenses.
(4) "Nonprofit corporation" includes any domestic or foreign entity that is a predecessor of a nonprofit corporation by reason of a merger or other transaction in which the predecessor's existence ceased upon consummation of the transaction.
(5)
(a) "Officer," "employee," "fiduciary," and "agent" include any person who, while serving the indicated relationship to the nonprofit corporation, at the nonprofit corporation's request, is or was serving as a director, officer, partner, trustee, employee, fiduciary, or agent of:
(i) another domestic or foreign corporation;
(ii) another person; or
(iii) an employee benefit plan.
(b) An officer, employee, fiduciary, or agent is considered to be serving an employee benefit plan at the nonprofit corporation's request if that person's duties to the nonprofit corporation also impose duties on, or otherwise involve services by, that person to the plan or participants in, or beneficiaries of the plan.
(c) Unless the context requires otherwise, "officer," "employee," "fiduciary," and "agent" include the estates or personal representatives of the officer, employee, fiduciary, or agent.
(6)
(a) "Official capacity" means:
(i) when used with respect to a director, the office of director in a corporation; and
(ii) when used with respect to a person other than a director, as contemplated in Section 16-6a-907, the office in a corporation held by the officer or the employment, fiduciary, or agency relationship undertaken by the person on behalf of the corporation.

(b) “Official capacity” does not include service for any:
(i) other foreign or domestic corporation;
(ii) other person; or
(iii) employee benefit plan.
(7) “Party” includes an individual who was, is, or is threatened to be made a named defendant or respondent in a proceeding.
(8) “Proceeding” means any threatened, pending, or completed action, suit, or proceeding, whether civil, criminal, administrative, or investigative and whether formal or informal.

16-6a-902 Authority to indemnify directors.
(1) Except as provided in Subsection (4), a nonprofit corporation may indemnify an individual made a party to a proceeding because the individual is or was a director, against liability incurred in the proceeding if:
(a) the individual’s conduct was in good faith;
(b) the individual reasonably believed that the individual’s conduct was in, or not opposed to, the corporation’s best interests; and
(c) in the case of any criminal proceeding, the individual had no reasonable cause to believe the individual’s conduct was unlawful.
(2) A director’s conduct with respect to any employee benefit plan for a purpose the director reasonably believed to be in or not opposed to the interests of the participants in and beneficiaries of the plan is conduct that satisfies the requirement of Subsection (1)(b).
(3) The termination of a proceeding by judgment, order, settlement, conviction, or upon a plea of nolo contendere or its equivalent is not, of itself, determinative that the director did not meet the standard of conduct described in this section.
(4) A nonprofit corporation may not indemnify a director under this section:
(a) in connection with a proceeding by or in the right of the nonprofit corporation in which the director was adjudged liable to the nonprofit corporation; or
(b) in connection with any other proceeding charging that the director derived an improper personal benefit, whether or not involving action in the director’s official capacity, in which proceeding the director was adjudged liable on the basis that the director derived an improper personal benefit.
(5) Indemnification permitted under this section in connection with a proceeding by or in the right of the nonprofit corporation is limited to reasonable expenses incurred in connection with the proceeding.

16-6a-903 Mandatory indemnification of directors.
(1) Unless limited by its bylaws, a nonprofit corporation shall indemnify a director described in Subsection (2) against reasonable expenses incurred by the director in connection with the proceeding or claim with respect to which the director has been successful.
(2) Subsection (1) applies to a director who was successful, on the merits or otherwise, in the defense of:
(a) any proceeding to which the director was a party because the director is or was a director of the nonprofit corporation; or
(b) any claim, issue, or matter in the proceeding, to which the director was a party because the director is or was a director of the nonprofit corporation.

16-6a-904 Advance of expenses for directors.
(1) A nonprofit corporation may pay for or reimburse the reasonable expenses incurred by a director who is a party to a proceeding in advance of final disposition of the proceeding if:
(a) the director furnishes the nonprofit corporation a written affirmation of the director’s good faith belief that the director has met the applicable standard of conduct described in Section 16-6a-902;
(b) the director furnishes the nonprofit corporation a written undertaking, executed personally or on the director’s behalf, to repay the advance, if it is ultimately determined that the director did not meet the standard of conduct; and
(c) a determination is made that the facts then known to those making the determination would not preclude indemnification under this part.

(2) The undertaking required by Subsection (1)(b):
(a) shall be an unlimited general obligation of the director;
(b) need not be secured; and
(c) may be accepted without reference to financial ability to make repayment.
(3) Determinations and authorizations of payments under this section shall be made in the manner specified in Section 16-6a-906.

16-6a-905 Court-ordered indemnification of directors.
(1) Unless a nonprofit corporation's articles of incorporation provide otherwise, a director of the nonprofit corporation who is or was a party to a proceeding may apply for indemnification to:
(a) the court conducting the proceeding; or
(b) another court of competent jurisdiction.
(2) On receipt of an application described in Subsection (1), the court, after giving any notice the court considers necessary, may order indemnification in the following manner:
(a) if the court determines that the director is entitled to mandatory indemnification under Section 16-6a-903, the court shall:
(i) order indemnification; and
(ii) order the nonprofit corporation to pay the director's reasonable expenses incurred to obtain court-ordered indemnification; and
(b) if the court determines that the director is fairly and reasonably entitled to indemnification in view of all the relevant circumstances, whether or not the director met the applicable standard of conduct set forth in Section 16-6a-902 or was adjudged liable as described in Subsection 16-6a-902(4), the court may order indemnification as the court determines to be proper, except that the indemnification with respect to any proceeding in which liability has been adjudged in the circumstances described in Subsection 16-6a-902(4) is limited to reasonable expenses incurred.

16-6a-906 Determination and authorization of indemnification of directors.
(1)
(a) A nonprofit corporation may not indemnify a director under Section 16-6a-902 unless authorized in the specific case after a determination has been made that indemnification of the director is permissible in the circumstances because the director has met the standard of conduct set forth in Section 16-6a-902.
(b) A nonprofit corporation may not advance expenses to a director under Section 16-6a-904 unless:
(i) authorized in the specific case after the written affirmation and undertaking required by Subsections 16-6a-904(1)(a) and (1)(b) are received; and
(ii) the determination required by Subsection 16-6a-904(1)(c) has been made.
(2)
(a) The determinations required by Subsection (1) shall be made:
(i) by the board of directors by a majority vote of those present at a meeting at which a quorum is present if only those directors not parties to the proceeding are counted in satisfying the quorum;
(ii) if a quorum cannot be obtained under Subsection (2)(a)(i), by a majority vote of a committee of the board of directors:
(A) designated by the board of directors; and
(B) consisting of two or more directors not parties to the proceeding; or
(iii) by persons listed in Subsection (3).
(b) The directors who are parties to the proceeding may participate in the designation of directors for the committee described in Subsection (2)(a)(ii).
(3)
(a) The determination required to be made by Subsection (1) shall be made by a person described in Subsection (3)(b) if:
(i)
(A) a quorum cannot be obtained in accordance with Subsection (2)(a)(i); and
(B) a committee cannot be established under Subsection (2)(a)(ii); or

(ii) even if a quorum is obtained or a committee is designated, a majority of the directors constituting the quorum or committee directs.
(b) If a condition described in Subsection (3)(a) is met, the determination required to be made by Subsection (1) shall be made:
(i) by independent legal counsel selected by:
(A) a vote of the board of directors or the committee in the manner specified in Subsection (2)(a)(i) or (ii); or
(B) if a quorum of the full board cannot be obtained and a committee cannot be established, by independent legal counsel selected by a majority vote of the full board of directors; or
(ii) by the voting members, but a voting member may not vote on the determination if the voting member is:
(A) a director; and
(B) at the time seeking indemnification.
(4)
(a) Except as provided in Subsection (4)(b), an authorization of indemnification and advance of expenses shall be made in the same manner as the determination that indemnification or advance of expenses is permissible.
(b) Notwithstanding Subsection (4)(a), if the determination that indemnification or advance of expenses is permissible is made by independent legal counsel, authorization of indemnification and advance of expenses shall be made by the body that selected the independent legal counsel.

16-6a-907 Indemnification of officers, employees, fiduciaries, and agents.

Unless a nonprofit corporation's articles of incorporation provide otherwise:
(1) to the same extent as a director, an officer of the nonprofit corporation is entitled to:
(a) mandatory indemnification under Section 16-6a-903; and
(b) apply for court-ordered indemnification under Section 16-6a-905;
(2) a nonprofit corporation may indemnify and advance expenses to an officer, employee, fiduciary, or agent of the nonprofit corporation to the same extent as to a director; and
(3) a nonprofit corporation may indemnify and advance expenses to an officer, employee, fiduciary, or agent who is not a director to a greater extent if:
(a) not inconsistent with public policy; and
(b) provided for by:
(i) its articles of incorporation or bylaws;
(ii) general or specific action of its board of directors; or
(iii) contract.

16-6a-908 Insurance.

(1) A nonprofit corporation may purchase and maintain liability insurance:
(a) on behalf of a person who:
(i) is or was a director, officer, employee, fiduciary, or agent of the nonprofit corporation; or
(ii) while serving as a director, officer, employee, fiduciary, or agent of the nonprofit corporation at the request of the nonprofit corporation, is or was serving as a director, officer, partner, trustee, employee, fiduciary, or agent of:
(A) another foreign or domestic nonprofit corporation;
(B) other person; or
(C) an employee benefit plan; and
(b) against liability asserted against or incurred by the person in that capacity or arising from the person's status as a director, officer, employee, fiduciary, or agent, whether or not the nonprofit corporation would have power to indemnify the person against the same liability under Section 16-6a-902, 16-6a-903, or 16-6a-907.
(2) Insurance may be procured from any insurance company designated by the board of directors, whether the insurance company is formed under the laws of this state or any other jurisdiction of the United States or elsewhere, including any insurance company in which the nonprofit corporation has an equity or any other interest through stock ownership or otherwise.

16-6a-909 Limitations on indemnification of directors.

(1)
(a) A provision treating a nonprofit corporation's indemnification of, or advance for expenses to, directors that is contained in the following is valid only if and to the extent the provision is not inconsistent with this part:
(i) the articles of incorporation or bylaws of the nonprofit corporation;
(ii) a resolution of the nonprofit corporation's members or board of directors;
(iii) a contract, except an insurance policy; or
(iv) other writing.
(b) If the articles of incorporation limit indemnification or advance of expenses, indemnification and advance of expenses are valid only to the extent not inconsistent with the articles of incorporation.
(2) This part does not limit a nonprofit corporation's power to pay or reimburse expenses incurred by a director in connection with the director's appearance as a witness in a proceeding at a time when the director has not been made a named defendant or respondent to the proceeding.

16-6a-910 Notice to voting members of indemnification of director.
(1) If a nonprofit corporation indemnifies or advances expenses to a director under this part in connection with a proceeding by or in the right of the nonprofit corporation, the nonprofit corporation shall give written notice of the indemnification or advance to the voting members with or before the notice of the next voting members' meeting.
(2) If the next voting member action after the indemnification or advance is taken without a meeting at the instigation of the board of directors, the notice shall be given to the voting members at or before the time the first voting member signs a writing consenting to the action.

Part 10
Amendment of Articles of Incorporation and Bylaws

16-6a-1001 Authority to amend articles of incorporation.
(1) A nonprofit corporation may amend its articles of incorporation at any time to:
(a) add or change a provision that is required or permitted in the articles of incorporation; or
(b) delete a provision not required in the articles of incorporation.
(2) Whether a provision is required or permitted in the articles of incorporation is determined as of the effective date of the amendment.

16-6a-1002 Amendment of articles of incorporation by board of directors or incorporators.
(1) Unless otherwise provided in the articles of incorporation, the board of directors may adopt, without member approval, one or more amendments to the articles of incorporation to:
(a) delete the names and addresses of the initial directors;
(b) change the information required by Subsection ~~16-17-203(1)~~13-1a-504, but an amendment is not required to change the information;
(c) change the corporate name by:
(i) substituting the word "corporation," "incorporated," "company," "limited," or an abbreviation of any such word for a similar word or abbreviation in the name; or
(ii) adding, deleting, or changing a geographical attribution; or
(d) make any other change expressly permitted by this chapter to be made without member action.
(2) The board of directors may adopt, without member action, one or more amendments to the articles of incorporation to change the corporate name, if necessary, in connection with the reinstatement of a nonprofit corporation pursuant to Section ~~16-6a-1412~~13-1a-703.
(3)
(a) Subject to any approval required pursuant to Section 16-6a-1013, if a nonprofit corporation has no members, no members entitled to vote on amendments, or no members yet admitted to membership, one or more amendments to the nonprofit corporation's articles of incorporation may be adopted by:
(i) its incorporators until directors have been chosen; or
(ii) its directors after the directors have been chosen.

(b) A nonprofit corporation described in Subsection (3)(a) shall provide notice of any meeting at which an amendment is to be voted upon.
(c) The notice required by Subsection (3)(b) shall:
(i) be in accordance with Section 16-6a-814;
(ii) state that the purpose, or one of the purposes, of the meeting is to consider a proposed amendment to the articles of incorporation; and
(iii)
(A) contain or be accompanied by a copy or summary of the amendment; or
(B) state the general nature of the amendment.
(d) An amendment described in Subsection (3)(a) shall be approved:
(i) by a majority of the incorporators, until directors have been chosen; or
(ii) after directors are chosen by a majority of the directors in office at the time the amendment is adopted or such greater number as is set forth in the bylaws.

16-6a-1003 Amendment of articles of incorporation by board of directors and members.
(1) The board of directors or the members representing at least 10% of all of the votes entitled to be cast on the amendment may propose an amendment to the articles of incorporation for submission to the members unless a different vote or voting class is required by:
(a) this chapter;
(b) the articles of incorporation;
(c) the bylaws; or
(d) the members or the board of directors acting pursuant to Subsection (5).
(2) For an amendment to the articles of incorporation to be adopted pursuant to Subsection (1):
(a) the board of directors shall recommend the amendment to the members unless:
(i) the amendment is proposed by members; or
(ii) the board of directors:
(A) determines that because of conflict of interest or other special circumstances it should make no recommendation; and
(B) communicates the basis for its determination to the members with the amendment; and
(b) the members entitled to vote on the amendment shall approve the amendment as provided in Subsection (5).
(3) The proposing board of directors or the proposing members may condition the effectiveness of the amendment on any basis.
(4)
(a) The nonprofit corporation shall give notice, in accordance with Section 16-6a-704, to each member entitled to vote on the amendment of the members' meeting at which the amendment will be voted upon.
(b) The notice required by Subsection (4)(a) shall:
(i) state that the purpose, or one of the purposes, of the meeting is to consider the amendment; and
(ii)
(A) contain or be accompanied by a copy or a summary of the amendment; or
(B) shall state the general nature of the amendment.
(5) The amendment shall be approved by the votes required by Sections 16-6a-714 and 16-6a-715 by every voting group entitled to vote on the amendment unless a greater vote is required by:
(a) this chapter;
(b) the articles of incorporation;
(c) bylaws adopted by the members; or
(d) the proposing board of directors or the proposing members acting pursuant to Subsection (3).
(6) If the board of directors or the members seek to have the amendment approved by the members by written consent or by written ballot, the material soliciting the approval shall contain or be accompanied by a copy or summary of the amendment.

16-6a-1004 Voting on amendments of articles of incorporation by voting groups.
(1) Unless otherwise provided by this chapter or the articles of incorporation, if membership voting is otherwise

required by this chapter, the members of a class who are entitled to vote are entitled to vote as a separate voting group on an amendment to the articles of incorporation if the amendment would:
(a) affect the rights, privileges, preferences, restrictions, or conditions of that class as to voting, dissolution, redemption, or transfer of memberships in a manner different than the amendment would affect another class;
(b) change the rights, privileges, preferences, restrictions, or conditions of that class as to voting, dissolution, redemption, or transfer by changing the rights, privileges, preferences, restrictions, or conditions of another class;
(c) increase or decrease the number of memberships authorized for that class;
(d) increase the number of memberships authorized for another class;
(e) effect an exchange, reclassification, or termination of the memberships of that class; or
(f) authorize a new class of memberships.
(2) If a class is to be divided into two or more classes as a result of an amendment to the articles of incorporation, the amendment shall be approved by the members of each class that would be created by the amendment.

16-6a-1005 Articles of amendment to articles of incorporation.

A nonprofit corporation amending its articles of incorporation shall deliver to the division for filing articles of amendment setting forth:
(1) the name of the nonprofit corporation;
(2) the text of each amendment adopted;
(3) the date of each amendment's adoption;
(4) if the amendment was adopted by the board of directors or incorporators without member action, a statement to that effect and that:
(a) the nonprofit corporation does not have members; or
(b) member action was not required;
(5) if the amendment was adopted by the members, a statement that the number of votes cast for the amendment by the members or by each voting group entitled to vote separately on the amendment was sufficient for approval by the members or voting group respectively; and
(6) if approval of the amendment by some person or persons other than the members, the board of directors, or the incorporators is required pursuant to Section 16-6a-1013, a statement that the approval was obtained.

16-6a-1006 Restated articles of incorporation.

(1)
(a) The board of directors may restate the articles of incorporation at any time with or without member action.
(b) The incorporators of a nonprofit corporation may restate the articles of incorporation at any time if the nonprofit corporation:
(i) has no members; and
(ii) no directors have been chosen.
(2)
(a) The restatement may include one or more amendments to the articles of incorporation.
(b) Notwithstanding Subsection (1), if the restatement includes an amendment requiring member approval, it shall be adopted as provided in Section 16-6a-1003.
(3)
(a) If the board of directors submits a restatement for member action, the nonprofit corporation shall give notice, in accordance with Section 16-6a-704, to each member entitled to vote on the restatement of the members' meeting at which the restatement will be voted upon.
(b) The notice required by Subsection (3)(a) shall:
(i) state that the purpose, or one of the purposes, of the meeting is to consider the restatement; and
(ii) contain or be accompanied by a copy of the restatement that identifies any amendment or other change it would make in the articles of incorporation.
(4) A nonprofit corporation restating its articles of incorporation shall deliver to the division for filing articles of restatement setting forth:

(a) the name of the nonprofit corporation;
(b) the text of the restated articles of incorporation;
(c) if the restatement contains an amendment to the articles of incorporation that was adopted by the members, the information required by Subsection 16-6a-1005(5);
(d) if the restatement was adopted by the board of directors or incorporators without member action, a statement to that effect and that member action was not required; and
(e) the restatement does not need to contain the name or address of the incorporator or incorporators that were included in the articles of incorporation when originally filed.
(5) Upon filing by the division or at any later effective date determined pursuant to Section ~~16-6a-108~~13-1a-303, restated articles of incorporation supersede the original articles of incorporation and all prior amendments to the original articles of incorporation.

16-6a-1007 Amendment of articles of incorporation pursuant to reorganization.
(1) Articles of incorporation may be amended, without action by the board of directors or members, to carry out a plan of reorganization ordered or decreed by a court of competent jurisdiction under a statute of this state or of the United States if the articles of incorporation after amendment contain only provisions required or permitted by Section 16-6a-202.
(2) For an amendment to the articles of incorporation to be made pursuant to Subsection (1), one or more individuals designated by the court shall deliver to the division for filing articles of amendment setting forth:
(a) the name of the nonprofit corporation;
(b) the text of each amendment approved by the court;
(c) the date of the court's order or decree approving the articles of amendment;
(d) the title of the reorganization proceeding in which the order or decree was entered; and
(e) a statement that the court had jurisdiction of the proceeding under a specified statute of this state or of the United States.
(3) This section does not apply after entry of a final decree in the reorganization proceeding even though the court retains jurisdiction of the proceeding for limited purposes unrelated to consummation of the reorganization plan.

16-6a-1008 Conversion to a business corporation.
(1)
(a) A domestic nonprofit corporation may convert to a corporation subject to Chapter 10a, Utah Revised Business Corporation Act, by filing an amendment of its articles of incorporation with the division pursuant to this section.
(b) The day on which a nonprofit domestic corporation files an amendment under this section, the domestic nonprofit corporation becomes a corporation subject to Chapter 10a, Utah Revised Business Corporation Act, except that, notwithstanding Section 16-10a-203, the existence of the nonprofit corporation is considered to commence on the day on which the converting corporation:
(i) commenced its existence under this chapter; or
(ii) otherwise was created, formed, incorporated, or came into being.
(2) The amendment of the articles of incorporation to convert to a corporation shall:
(a) revise the statement of purpose;
(b) delete:
(i) the authorization for members; and
(ii) any other provisions relating to memberships;
(c) authorize shares:
(i) stating the number of shares; and
(ii) including the information required by Section 16-10a-601 with respect to each class of shares the corporation is to be authorized to issue;
(d) make such other changes as may be necessary or desired; and
(e) if the corporation has any members, provide for:
(i) the cancellation of the memberships; or

(ii) the conversion of the memberships to shares of the corporation.
(3) If the nonprofit corporation has any voting members, an amendment to convert to a corporation shall be approved by all of the voting members regardless of limitations or restrictions on the voting rights of the members.
(4) If an amendment to the articles of incorporation filed pursuant to this section is included in a merger agreement, this section applies, except that any provisions for cancellation or conversion of memberships:
(a) shall be in the merger agreement; and
(b) may not be in the amendment of the articles of incorporation.
(5) A conversion under this section may not result in a violation, directly or indirectly, of:
(a) Section 16-6a-1301; or
(b) any other provision of this chapter.
(6) The conversion of a nonprofit corporation into a corporation does not affect:
(a) an obligation or liability of the converting nonprofit corporation incurred before its conversion to a corporation; or
(b) the personal liability of any person incurred before the conversion.
(7)
(a)
(i) When a conversion is effective under this section, for purposes of the laws of this state, the things listed in Subsection (7)(a)(ii):
(A) vest in the corporation to which the nonprofit corporation converts;
(B) are the property of the corporation; and
(C) are not considered transferred by the converting nonprofit corporation to the corporation by operation of this Subsection (7)(a).
(ii) This Subsection (7)(a) applies to the following of the converting nonprofit corporation:
(A) its rights, privileges, and powers;
(B) its interests in property, whether real, personal, or mixed;
(C) debts due to the converting nonprofit corporation;
(D) the debts, liabilities, and duties of the converting nonprofit corporation;
(E) the rights and obligations under contract of the converting nonprofit corporation; and
(F) other things and causes of action belonging to the converting nonprofit corporation.
(b) The title to any real property vested by deed or otherwise in a nonprofit corporation converting to a corporation does not revert and is not in any way impaired by reason of this chapter or of the conversion.
(c) A right of a creditor or a lien on property of a converting nonprofit corporation that is described in Subsection (6)(a) or (b) is preserved unimpaired.
(d) A debt, liability, or duty of a converting nonprofit corporation:
(i) remains attached to the corporation to which the nonprofit corporation converts; and
(ii) may be enforced against the corporation to the same extent as if the debts, liabilities, and duties had been incurred or contracted by the corporation in its capacity as a corporation.
(e) A converted nonprofit corporation upon conversion to a corporation pursuant to this section is considered the same entity as the corporation.
(f) In connection with a conversion of a nonprofit corporation to a corporation under this section, the interests or rights in the nonprofit corporation which is to be converted may be exchanged or converted into one or more of the following:
(i) cash, property, interests, or rights in the corporation to which it is converted; or
(ii) cash, property or interests in, or rights in another entity.
(g) Unless otherwise agreed:
(i) a converting nonprofit corporation is not required solely as a result of the conversion to:
(A) wind up its affairs;
(B) pay its liabilities; or
(C) distribute its assets; and
(ii) a conversion is not considered to constitute a dissolution of the nonprofit corporation, but constitutes a continuation of the existence of the nonprofit corporation in the form of a corporation.

16-6a-1008.7 Conversion to or from a domestic limited liability company.
(1)
(a) A domestic nonprofit corporation may convert to a domestic limited liability company subject to Title 48, Chapter 3a, Utah Revised Uniform Limited Liability Company Act, pursuant to Section 48-3a-1405, by complying with:
(i) this Subsection (1); and
(ii) Section 48-3a-1041.
(b) If a domestic nonprofit corporation converts to a domestic limited liability company in accordance with this Subsection (1), the articles of conversion or statement of conversion, as applicable, shall:
(i) comply with Sections 48-3a-1042 and 48-3a-1045; and
(ii) if the corporation has any members, provide for:
(A) the cancellation of any membership; or
(B) the conversion of any membership in the domestic nonprofit corporation to a membership interest in the domestic limited liability company.
(c) Before articles of conversion or statement of conversion may be filed with the division, the conversion shall be approved:
(i) in the manner provided for the articles of incorporation or bylaws of the domestic nonprofit corporation; or
(ii) if the articles of incorporation or bylaws of the domestic nonprofit corporation do not provide the method for approval:
(A) if the domestic nonprofit corporation has voting members, by all of the members of the domestic nonprofit corporation regardless of limitations or restrictions on the voting rights of the members; or
(B) if the nonprofit domestic corporation does not have voting members, by a majority of:
(I) the directors in office at the time the conversion is approved by the board of directors; or
(II) if directors have not been appointed or elected, the incorporators.
(2) A domestic limited liability company may convert to a domestic nonprofit corporation subject to this chapter by:
(a) filing articles of incorporation in accordance with this chapter; and
(b) complying with Section 48-3a-1041, pursuant to Section 48-3a-1405.
(3) Any conversion under this section may not result in a violation, directly or indirectly, of:
(a) Section 16-6a-1301; or
(b) any other provision of this chapter.

16-6a-1009 Effect of amendment of articles of incorporation.
(1) An amendment to the articles of incorporation does not affect:
(a) any existing right of persons other than members;
(b) any cause of action existing against or in favor of the nonprofit corporation; or
(c) any proceeding to which the nonprofit corporation is a party.
(2) An amendment changing a nonprofit corporation’s corporate name does not abate a proceeding brought by or against a nonprofit corporation in its former corporate name.

16-6a-1010 Amendment of bylaws by board of directors or members.
(1) The board of directors may amend the bylaws at any time to add, change, or delete a provision, unless:
(a) this chapter or the articles of incorporation or bylaws:
(i) reserve the power exclusively to the members in whole or part; or
(ii) otherwise prohibit the board of directors from amending the bylaws to add, change, or delete a provision; or
(b) it would result in a change of the rights, privileges, preferences, restrictions, or conditions of a membership class as to voting, dissolution, redemption, or transfer by changing the rights, privileges, preferences, restrictions, or conditions of another class.
(2)
(a) Unless otherwise provided by the bylaws, the members may amend the bylaws even though the bylaws may also be amended by the board of directors.

(b) Amendments to the bylaws by members shall be made in accordance with Sections 16-6a-1003 and 16-6a-1004 as if each reference in Sections 16-6a-1003 and 16-6a-1004 to the article of incorporation was a reference to the bylaws.

16-6a-1011 Bylaw changing quorum or voting requirement for members.
(1)
(a) If authorized by the articles of incorporation, the members may adopt, amend, or repeal bylaws that fix a greater quorum or voting requirement for members, or voting groups of members, than is required by this chapter.
(b) An action by the members under Subsection (1)(a) is subject to Part 6, Members, and Part 7, Member Meetings and Voting.
(2) Bylaws that fix a greater quorum requirement or a greater voting requirement for members pursuant to Section 16-6a-716 may not be amended by the board of directors.

16-6a-1012 Bylaw changing quorum or voting requirement for directors.
(1) Bylaws that fix a greater quorum or voting requirement for the board of directors may be amended:
(a) if adopted by the members, only by the members; or
(b) if adopted by the board of directors, by:
(i) the members; or
(ii) the board of directors.
(2) Bylaws adopted or amended by the members that fix a greater quorum or voting requirement for the board of directors may provide that the bylaws may be amended only by a specified vote of:
(a) the members; or
(b) the board of directors.
(3) Action by the board of directors under Subsection (1)(b) to adopt or amend bylaws that change the quorum or voting requirement for the board of directors shall meet the greater of the quorum and voting requirement for taking the action:
(a) then in effect; or
(b) proposed to be adopted.

16-6a-1013 Approval by third persons.
(1) The articles of incorporation may require an amendment to the articles of incorporation or bylaws to be approved in writing by a specified person or persons other than the board of directors.
(2) A provision permitted under Subsection (1) may only be amended with the approval in writing of the person or persons specified in the provision.

16-6a-1014 Amendment terminating members or redeeming or canceling memberships.
(1) An amendment to the articles of incorporation or bylaws of a nonprofit corporation shall meet the requirements of this chapter and this section if the amendment would:
(a) terminate all members or any class of members; or
(b) redeem or cancel all memberships or any class of memberships.
(2) Before adopting a resolution proposing an amendment as described in Subsection (1), the board of directors of a nonprofit corporation shall give notice of the general nature of the amendment to the members.

Part 11
Merger

16-6a-1101 Merger.
(1) One or more domestic corporations, foreign corporations, domestic nonprofit corporations, or foreign nonprofit corporations may merge into a nonprofit corporation:
(a) if the board of directors of each domestic corporation, foreign corporation, domestic nonprofit corporation, or foreign nonprofit corporation party to the merger adopts a plan of merger;

(b) if the members of each domestic nonprofit corporation entitled to vote on the plan of merger, approve the plan of merger if required by Section 16-6a-1102;
(c) if the shareholders of each domestic corporation entitled to vote on the plan of merger, approve the plan of merger, if required by Section 16-10a-1103;
(d) if the merger is permitted by and consistent with the laws of the state or country under whose law each foreign corporation or foreign nonprofit corporation party to the merger is incorporated;
(e) if the shareholders of each such foreign corporation approve the plan of merger and as required by applicable law of the states or countries under whose law each foreign corporation party to the merger is incorporated; and
(f) if the members of each such foreign nonprofit corporation approve the plan of merger and as required by applicable law of the states or countries under whose law each foreign nonprofit corporation party to the merger is incorporated.
(2) The plan of merger required by Subsection (1) shall set forth:
(a) the name of each party to the merger planning to merge;
(b) the name of the surviving domestic nonprofit corporation into which each party to the merger plans to merge;
(c) the terms and conditions of the merger;
(d) the manner and basis of converting in whole or part the shares or memberships if any, of each party to the merger into shares, memberships, obligations, or other interests of:
(i) the surviving domestic nonprofit corporation;
(ii) any other entity; or
(iii) into money or other property; and
(e) any amendments to the articles of incorporation of the surviving domestic nonprofit corporation to be effected by the merger.
(3) In addition to the provisions required by Subsection (2), the plan of merger may set forth other provisions relating to the merger.
(4) One or more domestic corporations may merge into a domestic nonprofit corporation if:
(a) the board of directors of each participating domestic corporation adopts the plan of merger;
(b) the shareholders of each participating domestic corporation adopt the plan of merger in accordance with Section 16-10a-1103; and
(c) the merger is effected in compliance with Chapter 6a, Part 11, Merger.

16-6a-1102 Action on plan of merger.
(1) After adopting the plan of merger, the board of directors of each domestic nonprofit corporation that is a party to the merger shall submit the plan of merger to its members, if any are entitled to vote on the plan of merger, for approval.
(2) If the domestic nonprofit corporation has members entitled to vote with respect to the approval of a plan of merger, a plan of merger is approved by the members if:
(a)
(i) the board of directors recommends the plan of merger to the members entitled to vote on the plan of merger; or
(ii)
(A) the board of directors determines that, because of conflict of interest or other special circumstances, it should make no recommendation; and
(B) communicates the basis for its determination to the members with the plan; and
(b) the members entitled to vote on the plan of merger approve the plan as provided in Subsection (7).
(3) After adopting the plan of merger, the board of directors of each domestic nonprofit corporation party to the merger shall submit the plan of merger for written approval by any person or persons:
(a) whose approval is required by the articles of incorporation of the domestic nonprofit corporation; and
(b) as required by Section 16-6a-1013 for an amendment to the articles of incorporation or bylaws.
(4)
(a) If the domestic nonprofit corporation does not have members entitled to vote on a merger, the merger shall

be approved and adopted by a majority of the directors elected and in office at the time the plan of merger is considered by the board of directors.
(b) The domestic nonprofit corporation shall provide notice of any meeting of the board of directors at which the approval described in Subsection (4)(a) is to be obtained in accordance with Section 16-6a-814.
(c) The notice required by Subsection (4)(b) shall state that the purpose, or one of the purposes, of the meeting is to consider the proposed merger.
(5) The board of directors may condition the effectiveness of the plan of merger on any basis.
(6)
(a) The domestic nonprofit corporation shall give notice, in accordance with Section 16-6a-704, to each member entitled to vote on the plan of merger of the members' meeting at which the plan will be voted on.
(b) The notice required by Subsection (6)(a) shall:
(i) state that the purpose, or one of the purposes, of the meeting is to consider the plan of merger; and
(ii) contain or be accompanied by a copy of the plan of merger or a summary of the plan of merger.
(7) The plan of merger shall be approved by the votes required by Sections 16-6a-714 and 16-6a-715 by every voting group entitled to vote on the plan of merger unless a greater vote is required by:
(a) this chapter;
(b) the articles of incorporation;
(c) bylaws adopted by the members; or
(d) the board of directors acting pursuant to Subsection (5).
(8) Separate voting by voting groups is required on a plan of merger if the plan contains a provision that, if contained in an amendment to the articles of incorporation, would require action by one or more separate voting groups on the amendment.

16-6a-1103 Articles of merger.
(1) After a plan of merger is approved, pursuant to Section 16-6a-1102, the surviving domestic nonprofit corporation shall deliver to the division for filing articles of merger setting forth:
(a) the plan of merger;
(b) if shareholder or member approval was not required of any party to the merger:
(i) a statement to the effect that approval was not required; and
(ii) a statement that the plan of merger was approved by a sufficient vote of the board of directors of each party to the merger;
(c) if approval of the shareholders or members of one or more domestic corporation, foreign corporation, domestic nonprofit corporation, or foreign nonprofit corporation party to the merger was required, a statement that the number of votes cast for the plan by each voting group entitled to vote separately on the merger was sufficient for approval by that voting group; and
(d) if approval of the plan by some person or persons other than the shareholders, members, or the board of directors is required pursuant to Subsection 16-6a-1102(3), or other applicable law, a statement that the approval was obtained.
(2) A merger takes effect upon the effective date stated in the articles of merger, which may not be prior to the date the articles of merger are filed.
(3) Articles of merger shall be executed by each party to the merger.

16-6a-1104 Effect of merger.
(1) When a merger takes effect:
(a) every domestic corporation, foreign corporation, domestic nonprofit corporation, or foreign nonprofit corporation party to the merger merges into the surviving domestic nonprofit corporation;
(b) the separate existence of every domestic corporation, foreign corporation, domestic nonprofit corporation, or foreign nonprofit corporation party to the merger except the surviving domestic nonprofit corporation ceases;
(c) the title to all real estate and other property owned by every domestic corporation, foreign corporation, domestic nonprofit corporation, or foreign nonprofit corporation party to the merger is transferred to and vested in the surviving domestic nonprofit corporation without reversion or impairment;
(d) the surviving domestic nonprofit corporation has all liabilities of each domestic corporation, foreign

corporation, domestic nonprofit corporation, or foreign nonprofit corporation party to the merger;
(e)
(i) a proceeding pending by or against any party to the merger may be continued as if the merger did not occur; or
(ii) the surviving domestic nonprofit corporation may be substituted in the proceeding for the party to the merger whose existence ceased;
(f) the articles of incorporation of the surviving domestic nonprofit corporation are amended to the extent provided in the plan of merger; and
(g) the shares or memberships of each domestic corporation, foreign corporation, domestic nonprofit corporation, or foreign nonprofit corporation party to the merger that are to be converted into shares, memberships, obligations, or other interests of the surviving domestic nonprofit corporation or into money or other property are converted, and the former holders of the shares and memberships are entitled only to the rights provided in the articles of merger.
(2)
(a) A transfer to and vesting in the surviving domestic nonprofit corporation described in Subsection (1)(c) occurs by operation of law.
(b) Consent or approval of any other person may not be required in connection with any transfer or vesting unless the consent or approval is specifically required in the event of merger by:
(i) law; or
(ii) express provision in any contract, agreement, decree, order, or other instrument to which any of the domestic corporations, foreign corporations, domestic nonprofit corporations, or foreign nonprofit corporations so merged is a party or by which it is bound.

16-6a-1105 Merger with foreign nonprofit corporation.
(1) One or more domestic nonprofit corporations may merge with one or more foreign nonprofit corporations if:
(a) the merger is permitted by the law of the state or country under whose law each foreign nonprofit corporation is incorporated;
(b) each foreign nonprofit corporation complies with the provisions of the law described in Subsection (1)(a) in effecting the merger;
(c) if the foreign nonprofit corporation is the surviving nonprofit corporation of the merger, the foreign nonprofit corporation:
(i) complies with Section 16-6a-1103; and
(ii) in addition to the information required by Section 16-6a-1103, provides the address of its principal office; and
(d) each domestic nonprofit corporation complies with:
(i) the applicable provisions of Sections 16-6a-1101 and 16-6a-1102; and
(ii) if it is the surviving nonprofit corporation of the merger, with Section 16-6a-1103.
(2) Upon the merger taking effect, a surviving foreign nonprofit corporation of a merger may be served with process in any proceeding brought against it as provided in Section ~~16-17-301~~13-1a-511.
(3) Service effected pursuant to Subsection (2) is perfected at the earliest of:
(a) the date the foreign nonprofit corporation receives the process, notice, or demand;
(b) the date shown on the return receipt, if signed on behalf of the foreign nonprofit corporation; or
(c) five days after mailing.
(4) Subsection (2) does not prescribe the only means, or necessarily the required means, of serving a surviving foreign nonprofit corporation of a merger.

Part 12
Sale of Property

16-6a-1201 Sale of property.
(1) Unless the bylaws otherwise provide, a nonprofit corporation may, as authorized by the board of directors:
(a) sell, lease, exchange, or otherwise dispose of all or substantially all of its property in the usual and regular

course of business; or
(b) mortgage, pledge, dedicate to the repayment of indebtedness, whether with or without recourse, or otherwise encumber all or substantially all of its property whether or not in the usual and regular course of business.
(2) Unless otherwise provided in the bylaws, approval of a transaction described in this section by the members is not required.

16-6a-1202 Sale of property other than in regular course of activities.
(1)
(a) A nonprofit corporation may sell, lease, exchange, or otherwise dispose of all, or substantially all, of its property, with or without its good will, other than in the usual and regular course of business on the terms and conditions and for the consideration determined by the board of directors, if:
(i) the board of directors proposes the transaction; and
(ii) the members entitled to vote on the transaction approve the transaction.
(b) A sale, lease, exchange, or other disposition of all, or substantially all, of the property of a nonprofit corporation, with or without its good will, in connection with its dissolution, other than in the usual and regular course of business, and other than pursuant to a court order, shall be subject to this section.
(c) A sale, lease, exchange, or other disposition of all, or substantially all, of the property of a nonprofit corporation, with or without its good will, pursuant to a court order is not subject to this section.
(2)
(a) A nonprofit corporation shall comply with Subsection (2)(b) to vote or otherwise consent with respect to the sale, lease, exchange, or other disposition of all, or substantially all, of the property with or without the good will of another entity that the nonprofit corporation controls if:
(i) the nonprofit corporation is entitled to vote or otherwise consent; and
(ii) the property interests held by the nonprofit corporation in the other entity constitute all, or substantially all, of the property of the nonprofit corporation.
(b) A nonprofit corporation may vote or otherwise consent to a transaction described in Subsection (2)(a) only if:
(i) the board of the directors of the nonprofit corporation proposes the vote or consent; and
(ii) the members, if any are entitled to vote on the vote or consent, approve giving the vote or consent.
(3) For a transaction described in Subsection (1) or a consent described in Subsection (2) to be approved by the members:
(a)
(i) the board of directors shall recommend the transaction or the consent to the members; or
(ii) the board of directors shall:
(A) determine that because of a conflict of interest or other special circumstance it should make no recommendation; and
(B) communicate the basis for its determination to the members at a membership meeting with the submission of the transaction or consent; and
(b) the members entitled to vote on the transaction or the consent shall approve the transaction or the consent as provided in Subsection (6).
(4) The board of directors may condition the effectiveness of the transaction or the consent on any basis.
(5)
(a) The nonprofit corporation shall give notice, in accordance with Section 16-6a-704 to each member entitled to vote on the transaction described in Subsection (1) or the consent described in Subsection (2), of the members' meeting at which the transaction or the consent will be voted upon.
(b) The notice required by Subsection (1) shall:
(i) state that the purpose, or one of the purposes, of the meeting is to consider:
(A) in the case of action pursuant to Subsection (1), the sale, lease, exchange, or other disposition of all, or substantially all, of the property of the nonprofit corporation; or
(B) in the case of action pursuant to Subsection (2), the nonprofit corporation's consent to the sale, lease, exchange, or other disposition of all, or substantially all, of the property of another entity, the property interests of which:

(I) are held by the nonprofit corporation; and
(II) constitute all, or substantially all, of the property of the nonprofit corporation;
(ii) contain or be accompanied by a description of:
(A) the transaction, in the case of action pursuant to Subsection (1); or
(B) the transaction underlying the consent, in the case of action pursuant to Subsection (2); and
(iii) in the case of action pursuant to Subsection (2), identify the entity whose property is the subject of the transaction.
(6) The transaction described in Subsection (1) or the consent described in Subsection (2) shall be approved by the votes required by Sections 16-6a-714 and 16-6a-715 by every voting group entitled to vote on the transaction or the consent unless a greater vote is required by:
(a) this chapter;
(b) the articles of incorporation;
(c) bylaws adopted by the members; or
(d) the board of directors acting pursuant to Subsection (4).
(7) After a transaction described in Subsection (1) or a consent described in Subsection (2) is authorized, the transaction may be abandoned or the consent withheld or revoked, subject to any contractual rights or other limitations on such abandonment, withholding, or revocation, without further action by the members.
(8) A transaction that constitutes a distribution is governed by Part 13, Distributions, and not by this section.

Part 13
Distributions

16-6a-1301 Distributions prohibited.

Except as authorized by Section 16-6a-1302, a nonprofit corporation may not make a distribution.

16-6a-1302 Authorized distributions.

(1) A nonprofit corporation may:
(a) make distributions or distribute the nonprofit corporation's assets to a:
(i) member that is a domestic or foreign nonprofit corporation;
(ii) member of a mutual benefit corporation, not inconsistent with its bylaws;
(iii) shareholder of a water company in a manner consistent with its articles of incorporation, bylaws, and the provisions of this chapter; or
(iv) governmental entity;
(b) pay compensation in a reasonable amount to its members, directors, or officers for services rendered;
(c) if a cooperative nonprofit corporation, make distributions consistent with its purposes; and
(d) confer benefits upon its members in conformity with its purposes.
(2) A nonprofit corporation may make distributions upon dissolution as follows:
(a) to a member that is a domestic or foreign nonprofit corporation;
(b) to its members if it is a mutual benefit corporation;
(c) to a shareholder of a water company in proportion to the shareholder's interest in the water company, consistent with the water company's articles of incorporation and bylaws;
(d) to another nonprofit corporation, including a nonprofit corporation organized to receive the assets of and function in place of the dissolved nonprofit corporation; and
(e) otherwise in conformity with Part 14, Dissolution.
(3) Authorized distributions by a dissolved nonprofit corporation may be made by authorized officers or directors, including those elected, hired, or otherwise selected after dissolution if the election, hiring, or other selection after dissolution is not inconsistent with the articles of incorporation and bylaws existing at the time of dissolution.

Part 14
Dissolution

16-6a-1401 Dissolution by incorporators or directors if no members.
(1) If a nonprofit corporation has no members, the following may authorize the dissolution of the nonprofit corporation:
(a) a majority of its directors; or
(b) if it has no directors, a majority of its incorporators.
(2) The directors or incorporators in approving dissolution shall adopt a plan of dissolution indicating to whom the assets owned or held by the nonprofit corporation will be distributed after all creditors have been paid.

16-6a-1402 Dissolution by directors and members.
(1) If a nonprofit corporation has members, dissolution of a nonprofit corporation may be authorized in the manner provided in Subsection (2).
(2) For a proposal to dissolve the nonprofit corporation to be authorized:
(a) the board of directors shall adopt the proposal to dissolve;
(b) the board of directors shall:
(i) recommend the proposal to dissolve to the members; or
(ii)
(A) determine that because of a conflict of interest or other special circumstance, it should make no recommendation; and
(B) communicate the basis for its determination to the members; and
(c) the members entitled to vote on the proposal to dissolve shall approve the proposal to dissolve as provided in Subsection (5).
(3) The board of directors may condition the effectiveness of the dissolution, and the members may condition their approval of the dissolution, on any basis.
(4)
(a) The nonprofit corporation shall give notice, in accordance with Section 16-6a-704, to each member entitled to vote on the proposal of the members' meeting at which the proposal to dissolve will be voted on.
(b) The notice required by Subsection (4)(a) shall:
(i) state that the purpose, or one of the purposes, of the meeting is to consider the proposal to dissolve the nonprofit corporation; and
(ii) contain or be accompanied by a copy of the proposal or a summary of the proposal.
(5) The proposal to dissolve shall be approved by the votes required by Sections 16-6a-714 and 16-6a-715 by every voting group entitled to vote on the proposal to dissolve unless a greater vote is required by:
(a) this chapter;
(b) the articles of incorporation;
(c) bylaws adopted by the members; or
(d) the board of directors acting pursuant to Subsection (3).
(6) The plan of dissolution shall indicate to whom the assets owned or held by the nonprofit corporation will be distributed after all creditors have been paid.

16-6a-1403 Articles of dissolution.
(1) At any time after dissolution is authorized, the nonprofit corporation may dissolve by delivering to the division for filing articles of dissolution setting forth:
(a) the name of the nonprofit corporation;
(b)
(i)
(A) the address of the nonprofit corporation's principal office; or
(B) if a principal office is not to be maintained, a statement that the nonprofit corporation will not maintain a principal office; and
(ii) if different from the address of the principal office or if no principal office is to be maintained, the address to which service of process may be mailed pursuant to Section 16-6a-1409;
(c) the date dissolution was authorized;
(d) if dissolution was authorized by the directors or the incorporators pursuant to Section 16-6a-1401, a

statement to that effect;
(e) if dissolution was approved by the members pursuant to Section 16-6a-1402, a statement that the number of votes cast for the proposal to dissolve by each voting group entitled to vote separately on the proposal was sufficient for approval by that voting group; and
(f) any additional information as the division determines is necessary or appropriate.
(2) A nonprofit corporation is dissolved upon the effective date of its articles of dissolution.
(3) Articles of dissolution need not be filed by a nonprofit corporation that is dissolved pursuant to Section 16-6a-1418.

16-6a-1404 Revocation of dissolution.
(1) A nonprofit corporation may revoke its dissolution within 120 days after the effective date of the dissolution.
(2)
(a) Except as provided in Subsection (2)(b), revocation of dissolution shall be authorized in the same manner as the dissolution was authorized.
(b) The board of directors may revoke the dissolution without member action if:
(i) the dissolution is authorized pursuant to Section 16-6a-1402; and
(ii) the authorization permitted revocation by action of the board of directors alone.
(3)
(a) After the revocation of dissolution is authorized, the nonprofit corporation may revoke the dissolution by delivering to the division for filing, within 120 days after the effective date of dissolution:
(i) articles of revocation of dissolution; and
(ii) a copy of its articles of dissolution.
(b) The articles of revocation of dissolution shall set forth:
(i) the name of the nonprofit corporation;
(ii) the effective date of the dissolution that was revoked;
(iii) the date that the revocation of dissolution was authorized;
(iv) if, pursuant to Subsection (2), the directors or the incorporators revoked a dissolution authorized under Section 16-6a-1401, a statement that the revocation of dissolution was authorized by the directors or the incorporators, as the case may be;
(v) if, pursuant to Subsection (2), the directors revoked a dissolution approved by the members, a statement that the revocation was permitted by action of the directors pursuant to that approval; and
(vi) if the revocation of dissolution was approved pursuant to Subsection (2) by the members, a statement that the number of votes cast for revocation of dissolution by each voting group entitled to vote separately on the proposal to dissolve was sufficient for approval by that voting group.
(4)
(a) Revocation of dissolution is effective as provided in Subsection ~~16-6a-108(1)~~13-1a-303.
(b) A delayed effective date may not be specified pursuant to Subsection ~~16-6a-108(2)~~13-1a-303.
(5) When the revocation of dissolution is effective:
(a) the revocation relates back to and takes effect as of the effective date of the dissolution; and
(b) the nonprofit corporation may carry on its activities and use its corporate name as if dissolution had never occurred.

16-6a-1405 Effect of dissolution.
(1) A dissolved nonprofit corporation continues its corporate existence but may not carry on any activities except as is appropriate to wind up and liquidate its affairs, including:
(a) collecting its assets;
(b) returning, transferring, or conveying assets held by the nonprofit corporation upon a condition requiring return, transfer, or conveyance, which condition occurs by reason of the dissolution, in accordance with the condition;
(c) transferring, subject to any contractual or legal requirements, its assets as provided in or authorized by its articles of incorporation or bylaws;

(d) discharging or making provision for discharging its liabilities; and
(e) doing every other act necessary to wind up and liquidate its assets and affairs.
(2) Dissolution of a nonprofit corporation does not:
(a) transfer title to the nonprofit corporation's property including title to water rights, water conveyance facilities, or other assets of a nonprofit corporation organized to divert or distribute water to its members;
(b) subject its directors or officers to standards of conduct different from those prescribed in this chapter;
(c) change quorum or voting requirements for its board of directors or members;
(d) change provisions for selection, resignation, or removal of its directors or officers, or both;
(e) change provisions for amending its bylaws or its articles of incorporation;
(f) prevent commencement of a proceeding by or against the nonprofit corporation in its corporate name; or
(g) abate or suspend a proceeding pending by or against the nonprofit corporation on the effective date of dissolution.
(3) Nothing in this section may be applied in a manner inconsistent with a court's power of judicial dissolution exercised in accordance with Section 16-6a-1414 or 16-6a-1415.

16-6a-1406 Disposition of known claims by notification.
(1) A dissolved nonprofit corporation may dispose of the known claims against it by following the procedures described in this section.
(2) A dissolved nonprofit corporation electing to dispose of known claims pursuant to this section may give written notice of the dissolution to known claimants at any time after the effective date of the dissolution. The written notice shall:
(a) describe the information that shall be included in a claim;
(b) provide an address to which written notice of any claim shall be given to the nonprofit corporation;
(c) state the deadline by which the dissolved nonprofit corporation shall receive a claim, which may not be fewer than 120 days after the effective date of the notice; and
(d) state that unless sooner barred by any other state statute limiting actions, a claim will be barred if not received by the deadline stated in Subsection (2)(c).
(3) Unless sooner barred by any other statute limiting actions, a claim against the dissolved nonprofit corporation is barred if:
(a)
(i) a claimant was given notice under Subsection (2); and
(ii) the claim is not received by the dissolved nonprofit corporation by the deadline stated in the notice; or
(b)
(i) the dissolved nonprofit corporation delivers to the claimant written notice of rejection of the claim within 90 days after receipt of the claim; and
(ii) the claimant whose claim was rejected by the dissolved nonprofit corporation does not commence a proceeding to enforce the claim within 90 days after the effective date of the rejection notice.
(4) Claims that are not rejected by the dissolved nonprofit corporation in writing within 90 days after receipt of the claim by the dissolved nonprofit corporation shall be considered accepted.
(5) The failure of the dissolved nonprofit corporation to give notice to any known claimant pursuant to Subsection (2) does not affect the disposition under this section of any claim held by any other known claimant.
(6) For purposes of this section:
(a) "claim" does not include:
(i) a contingent liability; or
(ii) a claim based on an event occurring after the effective date of dissolution; and
(b) an action to enforce a claim includes:
(i) any civil action; and
(ii) any arbitration under any agreement for binding arbitration between the dissolved nonprofit corporation and the claimant.

16-6a-1407 Disposition of claims by publication.
(1) A dissolved nonprofit corporation may publish notice of its dissolution and request that persons with claims

against the nonprofit corporation present them in accordance with the notice.
(2) The notice described in Subsection (1) shall:
(a) be published:
(i) one time in a newspaper of general circulation in:
(A) the county where:
(I) the dissolved nonprofit corporation's principal office is located; or
(II) if the dissolved nonprofit corporation has no principal office in this state, its registered office is or was last located; or
(B) if neither Subsection (2)(a)(i)(A) or (B) apply, Salt Lake County; and
(ii) as required in Section 45-1-101;
(b) describe the information that shall be included in a claim;
(c) provide an address at which any claim shall be given to the nonprofit corporation; and
(d) state that unless sooner barred by any other statute limiting actions, a claim will be barred if an action to enforce the claim is not commenced within three years after publication of the notice.
(3) If the dissolved nonprofit corporation publishes a newspaper or website notice in accordance with Subsection (2), then unless sooner barred under Section 16-6a-1406 or under any other statute limiting actions, the claim of any claimant against the dissolved nonprofit corporation is barred unless the claimant commences an action to enforce the claim against the dissolved nonprofit corporation within three years after the publication date of the notice.
(4) For purposes of this section:
(a) "claim" means any claim, including claims of this state, whether:
(i) known;
(ii) due or to become due;
(iii) absolute or contingent;
(iv) liquidated or unliquidated;
(v) founded on contract, tort, or other legal basis; or
(vi) otherwise; and
(b) an action to enforce a claim includes:
(i) any civil action; and
(ii) any arbitration under any agreement for binding arbitration between the dissolved nonprofit corporation and the claimant.

16-6a-1408 Enforcement of claims against dissolved nonprofit corporation.
(1) Subject to Subsection (2), a claim may be enforced under Section 16-6a-1406 or 16-6a-1407:
(a) against the dissolved nonprofit corporation to the extent of its undistributed assets; and
(b) if assets have been distributed in liquidation, against any person, other than a creditor of the nonprofit corporation, to whom the nonprofit corporation distributed its property.
(2) Notwithstanding Subsection (1), a distributee's total liability for all claims under this section may not exceed the total value of assets distributed to the distributee, as the value is determined at the time of distribution.
(3)
(a) A distributee required to return any portion of the value of assets received by the distributee in liquidation shall be entitled to contribution from all other distributees.
(b) Each contribution under Subsection (3)(a):
(i) shall be in accordance with the contributing distributee's rights and interests; and
(ii) may not exceed the value of the assets received by the contributing distributee in liquidation.

16-6a-1409 Service on dissolved nonprofit corporation.
(1) A dissolved nonprofit corporation shall:
(a) maintain a registered agent to accept service of process on its behalf; or
(b) be considered to have authorized service of process on it by registered or certified mail, return receipt requested, to:

(i) the address of its principal office, if any:
(A) as set forth in its articles of dissolution; or
(B) as last changed by notice delivered to the division for filing; or
(ii) the address for service of process that:
(A) is stated in its articles of dissolution; or
(B) as last changed by notice delivered to the division for filing.
(2) Service effected pursuant to Subsection (1)(b) is perfected at the earliest of:
(a) the date the dissolved nonprofit corporation receives the process, notice, or demand;
(b) the date shown on the return receipt, if signed on behalf of the dissolved nonprofit corporation; or
(c) five days after mailing.
(3) Subsection (1) does not prescribe the only means, or necessarily the required means, of serving a dissolved nonprofit corporation.

~~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 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.~~

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

~~(1) If the division determines that one or more grounds exist under Section 16-6a-1410 for dissolving a nonprofit corporation, the division shall mail to the nonprofit corporation written notice of the determination, stating the one or more grounds for administrative dissolution.~~
~~(2)~~
~~(a) If the nonprofit corporation 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, within 60 days after mailing of the notice contemplated in Subsection (1), the division shall administratively dissolve the nonprofit corporation.~~
~~(b) If a nonprofit corporation is dissolved under Subsection (2)(a), the division shall mail written notice of the administrative dissolution to the dissolved nonprofit corporation stating the date of dissolution specified in Subsection (2)(d).~~
~~(c) The division shall mail written notice of the administrative dissolution to:~~
~~(i) the last registered agent of the dissolved nonprofit corporation; or~~
~~(ii) if there is no registered agent of record, at least one officer of the nonprofit corporation.~~
~~(d) A nonprofit corporation's date of dissolution is five days after the date the division mails written notice of dissolution under Subsection (2)(b).~~
~~(3)~~
~~(a) Except as provided in Subsection (3)(b), a nonprofit corporation administratively dissolved continues its corporate existence, but may not carry on any activities except as is appropriate to:~~
~~(i) wind up and liquidate its affairs under Section 16-6a-1405; and~~
~~(ii) to give notice to claimants in the manner provided in Sections 16-6a-1406 and 16-6a-1407.~~
~~(b) If the nonprofit corporation is reinstated in accordance with Section 16-6a-1412, business conducted by the nonprofit corporation during a period of administrative dissolution is unaffected by the dissolution.~~
~~(4) The administrative dissolution of a nonprofit corporation 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 registered agent of the nonprofit corporation, if the notice is required to be mailed to the registered agent; or
(ii) the officer of the nonprofit corporation that is mailed the notice if the notice is required to be mailed to an officer of the nonprofit corporation.

16-6a-1412 Reinstatement following administrative dissolution -- Reinstatement after voluntary dissolution.
(1) A nonprofit corporation administratively dissolved under Section 16-6a-1411 may apply to the division for reinstatement within two years after the effective date of dissolution by delivering to the division for filing an application for reinstatement that states:
(a) the effective date of its administrative dissolution and its corporate name on the effective date of dissolution;
(b) that the ground or grounds for dissolution:
(i) did not exist; or
(ii) have been eliminated;
(c)
(i) the corporate name under which the nonprofit corporation is being reinstated; and
(ii) the corporate name that satisfies the requirements of Section 16-6a-401;
(d) that the nonprofit corporation has paid all fees or penalties imposed under this chapter or other applicable state law;
(e) that the nonprofit corporation:
(i) has paid any taxes, fees, or penalties owed to the State Tax Commission; or
(ii) is current on a payment plan with the State Tax Commission for any taxes, fees, or penalties owed to the State Tax Commission;
(f) the address of the nonprofit corporation's registered office;
(g) the name of the nonprofit corporation's registered agent at the office stated in Subsection (1)(f); and
(h) any additional information the division determines is necessary or appropriate.
(2) The nonprofit corporation shall include in or with the application for reinstatement:
(a) the written consent to appointment by the designated registered agent; and
(b) a certificate from the State Tax Commission that states that the nonprofit corporation:
(i) has paid any taxes, fees, or penalties owed to the State Tax Commission; or
(ii) is current on a payment plan with the State Tax Commission for any taxes, fees, or penalties owed to the State Tax Commission.
(3)
(a) The division shall revoke the administrative dissolution if:
(i) the division determines that the application for reinstatement contains the information required by Subsections (1) and (2); and
(ii) that the information is correct.
(b) The division shall mail written notice of the revocation to the nonprofit corporation in the manner provided in Subsection 16-6a-1411(5) stating the effective date of the dissolution.
(4) When the reinstatement is effective:
(a) the reinstatement relates back to and takes effect as of the effective date of the administrative dissolution;
(b) the nonprofit corporation may carry on its activities, under the name stated pursuant to Subsection (1)(c), as if the administrative dissolution had never occurred; and
(c) an act of the nonprofit corporation during the period of dissolution is effective and enforceable as if the administrative dissolution had never occurred.
(5)
(a) The division may make rules for the reinstatement of a nonprofit corporation voluntarily dissolved.
(b) The rules made under Subsection (5)(a) shall be substantially similar to the requirements of this section for reinstatement of a nonprofit corporation that is administratively dissolved.

~~**16-6a-1413 Appeal from denial of reinstatement.**~~
~~(1) If the division denies a nonprofit corporation's application for reinstatement following administrative dissolution under Section 16-6a-1411, the division shall mail to the nonprofit corporation in the manner provided in Subsection 16-6a-1411(5) written notice:~~
~~(a) setting forth the reasons for denying the application; and~~
~~(b) stating that the nonprofit corporation has the right to appeal the division's determination to the executive director as provided in Subsection (2).~~
~~(2) If the division denies a nonprofit corporation's application for reinstatement following administrative dissolution, in accordance with Title 63G, Chapter 4, Administrative Procedures Act, the following may appeal the denial to the executive director:~~
~~(a) the nonprofit corporation for which the reinstatement was requested; or~~
~~(b) the representative of the nonprofit corporation for which reinstatement was requested.~~

16-6a-1414 Grounds for judicial dissolution.
(1) A nonprofit corporation may be dissolved in a proceeding by the attorney general or the division director if it is established that:
(a) the nonprofit corporation obtained its articles of incorporation through fraud; or
(b) the nonprofit corporation has continued to exceed or abuse the authority conferred upon it by law.
(2) A nonprofit corporation may be dissolved in a proceeding by a member or director if it is established that:
(a)
(i) the directors are deadlocked in the management of the corporate affairs;
(ii) the members, if any, are unable to break the deadlock; and
(iii) irreparable injury to the nonprofit corporation is threatened or being suffered;
(b) the directors or those in control of the nonprofit corporation have acted, are acting, or will act in a manner that is illegal, oppressive, or fraudulent;
(c) the members are deadlocked in voting power and have failed, for a period that includes at least two consecutive annual meeting dates, to elect successors to directors whose terms have expired or would have expired upon the election of their successors; or
(d) the corporate assets are being misapplied or wasted.
(3) A nonprofit corporation may be dissolved in a proceeding by a creditor if it is established that:
(a)
(i) the creditor's claim has been reduced to judgment;
(ii) the execution on the judgment has been returned unsatisfied; and
(iii) the nonprofit corporation is insolvent; or
(b)
(i) the nonprofit corporation is insolvent; and
(ii) the nonprofit corporation has admitted in writing that the creditor's claim is due and owing.
(4)
(a) If a nonprofit corporation has been dissolved by voluntary or administrative action taken under this part:
(i) the nonprofit corporation may bring a proceeding to wind up and liquidate its business and affairs under judicial supervision in accordance with Section 16-6a-1405; and
(ii) the attorney general, a director, a member, or a creditor may bring a proceeding to wind up and liquidate the affairs of the nonprofit corporation under judicial supervision in accordance with Section 16-6a-1405, upon establishing the grounds set forth in Subsections (1) through (3).
(b) As used in Sections 16-6a-1415 through 16-6a-1417:
(i) a "judicial proceeding to dissolve the nonprofit corporation" includes a proceeding brought under this Subsection (4); and
(ii) a "decree of dissolution" includes an order of a court entered in a proceeding under this Subsection (4) that directs that the affairs of a nonprofit corporation shall be wound up and liquidated under judicial supervision.

16-6a-1415 Procedure for judicial dissolution.
(1)

(a) A proceeding by the attorney general or director of the division to dissolve a nonprofit corporation shall be brought in:
(i) the district court of the county in this state where the nonprofit corporation's principal office is located; or
(ii) if the nonprofit corporation has no principal office in this state, in the district court in and for Salt Lake County.
(b) A proceeding brought by a party that is not listed in Subsection (1)(a) but is named in Section 16-6a-1414 shall be brought in:
(i) the district court of the county in this state where the nonprofit corporation's principal office is located; or
(ii) if it has no principal office in this state, in the district court of Salt Lake County.
(2) It is not necessary to make directors or members parties to a proceeding to dissolve a nonprofit corporation unless relief is sought against the directors or members individually.
(3) A court in a proceeding brought to dissolve a nonprofit corporation may:
(a) issue injunctions;
(b) appoint a receiver or custodian pendente lite with all powers and duties the court directs; or
(c) take other action required to preserve the corporate assets wherever located, and carry on the activities of the nonprofit corporation until a full hearing can be held.

16-6a-1416 Receivership or custodianship.
(1)
(a) A court in a judicial proceeding brought to dissolve a nonprofit corporation may appoint:
(i) one or more receivers to wind up and liquidate the affairs of the nonprofit corporation; or
(ii) one or more custodians to manage the affairs of the nonprofit corporation.
(b) Before appointing a receiver or custodian, the court shall hold a hearing, after giving notice to:
(i) all parties to the proceeding; and
(ii) any interested persons designated by the court.
(c) The court appointing a receiver or custodian has exclusive jurisdiction over the nonprofit corporation and all of its property, wherever located.
(d) The court may appoint as a receiver or custodian:
(i) an individual;
(ii) a domestic or foreign corporation authorized to conduct affairs in this state; or
(iii) a domestic or foreign nonprofit corporation authorized to conduct affairs in this state.
(e) The court may require the receiver or custodian to post bond, with or without sureties, in an amount specified by the court.
(2) The court shall describe the powers and duties of the receiver or custodian in its appointing order that may be amended from time to time. Among other powers the receiver shall have the power to:
(a) dispose of all or any part of the property of the nonprofit corporation, wherever located:
(i) at a public or private sale; and
(ii) if authorized by the court; and
(b) sue and defend in the receiver's own name as receiver of the nonprofit corporation in all courts.
(3) The custodian may exercise all of the powers of the nonprofit corporation, through or in place of its board of directors or officers, to the extent necessary to manage the affairs of the nonprofit corporation in the best interests of its members and creditors.
(4) If doing so is in the best interests of the nonprofit corporation and its members and creditors, the court may:
(a) during a receivership, redesignate the receiver as a custodian; and
(b) during a custodianship, redesignate the custodian as a receiver.
(5) The court from time to time during the receivership or custodianship may order compensation paid and expense disbursements or reimbursements made from the assets of the nonprofit corporation or proceeds from the sale of the assets to:
(a) the receiver;
(b) the custodian; or
(c) the receiver's or custodian's attorney.

16-6a-1417 Decree of dissolution.
(1) If after a hearing the court determines that one or more grounds for judicial dissolution described in Section 16-6a-1414 exist:
(a) the court may enter a decree:
(i) dissolving the nonprofit corporation; and
(ii) specifying the effective date of the dissolution; and
(b) the clerk of the court shall deliver a certified copy of the decree to the division which shall file it accordingly.
(2) After entering the decree of dissolution, the court shall direct:
(a) the winding up and liquidation of the nonprofit corporation's affairs in accordance with Section 16-6a-1405; and
(b) the giving of notice to:
(i)
(A) the nonprofit corporation's registered agent; or
(B) the division if it has no registered agent; and
(ii) to claimants in accordance with Sections 16-6a-1406 and 16-6a-1407.
(3) The court's order or decision may be appealed as in other civil proceedings.

16-6a-1418 Dissolution upon expiration of period of duration.
(1) A nonprofit corporation shall be dissolved upon and by reason of the expiration of its period of duration, if any, stated in its articles of incorporation.
(2) For purposes of this section:
(a) a provision in the articles of incorporation is considered a provision for a period of duration if it is to the effect that the nonprofit corporation or its existence shall be terminated:
(i) at a specified date;
(ii) after a stated period of time;
(iii) upon a contingency; or
(iv) any event similar to those described in Subsections (2)(a)(i) through (iii); and
(b) the following shall be considered to be the expiration of the nonprofit corporation's period of duration:
(i) the occurrence of the specified date;
(ii) the expiration of the stated period of time;
(iii) the occurrence of the contingency; or
(iv) the satisfaction of the provision described in Subsection (2)(a)(iv).

16-6a-1419 Deposit with state treasurer.
Assets of a dissolved nonprofit corporation that are to be transferred to a creditor, claimant, or member of the nonprofit corporation shall be reduced to cash and deposited with the state treasurer in accordance with Title 67, Chapter 4a, Revised Uniform Unclaimed Property Act, if the creditor, claimant, or member:
(1) cannot be found; or
(2) is not legally competent to receive the assets.

Part 15
Foreign Nonprofit Corporations

~~**16-6a-1501 Authority to conduct affairs required.**~~
~~(1)~~
~~(a) A foreign nonprofit corporation may not conduct affairs in this state until its application for authority to conduct affairs is filed by the division.~~
~~(b) This part shall be applicable to foreign nonprofit corporations that conduct affairs governed by other statutes of this state only to the extent this part is not inconsistent with such other statutes.~~
~~(2) A foreign nonprofit corporation may not be considered to be conducting affairs in this state within the meaning of Subsection (1) by reason of carrying on in this state any one or more of the following activities:~~

(a) maintaining, defending, or settling in its own behalf any proceeding or dispute;
(b) holding meetings of its board of directors or members or carrying on other activities concerning internal corporate affairs;
(c) maintaining bank accounts;
(d) maintaining offices or agencies for the transfer, exchange, and registration of memberships or securities;
(e) maintaining trustees or depositaries with respect to the memberships or securities described in Subsection (2)(d);
(f) selling through independent contractors;
(g) soliciting or obtaining orders, if the orders require acceptance outside this state before they become contracts, whether by mail or through employees or agents or otherwise;
(h) creating, as borrower or lender, or acquiring indebtedness, mortgages, or other security interests in real or personal property;
(i) securing or collecting debts in its own behalf or enforcing mortgages or security interests in property securing the debts;
(j) owning, without more, real or personal property;
(k) conducting an isolated transaction that is:
(i) completed within 30 days; and
(ii) not one in the course of repeated transactions of a like nature;
(l) conducting affairs in interstate commerce;
(m) granting funds;
(n) distributing information to its members; or
(o) any other activity not considered to constitute conducting affairs in this state in the discretion of the division.
(3) The list of activities in Subsection (2) is not exhaustive.
(4) Nothing in this section shall limit or affect the right to subject a foreign nonprofit corporation that does not, or is not required to, have authority to conduct affairs in this state:
(a) to the jurisdiction of the courts of this state; or
(b) to serve upon any foreign nonprofit corporation any process, notice, or demand required or permitted by law to be served upon a nonprofit corporation pursuant to:
(i) any applicable provision of law; or
(ii) any applicable rules of civil procedure.

16-6a-1502 Consequences of conducting affairs without authority.
(1) A foreign nonprofit corporation, its successor, or anyone acting on its behalf, conducting affairs in this state without authority may not be permitted to maintain a proceeding in any court in this state until an application for authority to conduct affairs is filed.
(2)
(a) A foreign nonprofit corporation or successor that conducts affairs in this state without authority shall be liable to this state in an amount equal to the sum of:
(i) all fees imposed by this chapter or prior law that would have been paid for all years or portions of years during which it conducted affairs in this state without authority; and
(ii) all penalties imposed by the division for failure to pay the fees described in Subsection (2)(a)(i).
(b) An application for authority to conduct affairs may not be filed until payment of the amounts due under this Subsection (2) is made.
(3)
(a) A court may stay a proceeding commenced by a foreign nonprofit corporation, its successor, or assignee until it determines whether the foreign nonprofit corporation, its successor, or assignee is required to file an application for authority to conduct affairs.
(b) If the court determines that a foreign nonprofit corporation, its successor, or assignee is required to file an application for authority to conduct affairs, the court may further stay the proceeding until the required application for authority to conduct affairs has been filed with the division.
(4)
(a) A foreign nonprofit corporation that conducts affairs in this state without authority is subject to a civil

penalty, payable to this state, of $100 for each day in which it transacts business in this state without authority.
(b) Notwithstanding Subsection (4)(a), the civil penalty imposed under Subsection (4)(a) may not exceed a total of $5,000 for each year.
(c) The following are subject to a civil penalty payable to the state not exceeding $1,000:
(i) each officer of a foreign nonprofit corporation who authorizes, directs, or participates in the conducting of affairs in this state without authority; and
(ii) each agent of a foreign nonprofit corporation who transacts business in this state on behalf of a foreign nonprofit corporation that is not authorized.
(d) The division may make rules to carry out the provisions of this Subsection (4), including procedures to request the division to abate for reasonable cause a penalty imposed under this Subsection (4).
(e) If the division imposes a civil penalty under this Subsection (4) on a foreign nonprofit corporation, in accordance with Title 63G, Chapter 4, Administrative Procedures Act, the following may appeal the civil penalty to the executive director:
(i) the foreign nonprofit corporation; or
(ii) the representative of the foreign nonprofit corporation.
(5)
(a) The civil penalties set forth in Subsection (4) may be recovered in an action brought:
(i) in an appropriate court in Salt Lake County; or
(ii) in any other county in this state in which the foreign nonprofit corporation:
(A) has a registered, principal, or business office; or
(B) has conducted affairs.
(b) Upon a finding by the court that a foreign nonprofit corporation or any of its officers or agents have conducted affairs in this state in violation of this part, in addition to or instead of a civil penalty, the court shall issue an injunction restraining:
(i) the further conducting of affairs of the foreign nonprofit corporation; and
(ii) the further exercise of any corporate rights and privileges in this state.
(c) Upon issuance of the injunction described in Subsection (5)(b), the foreign nonprofit corporation shall be enjoined from conducting affairs in this state until:
(i) all civil penalties have been paid, plus any interest and court costs assessed by the court; and
(ii) the foreign nonprofit corporation has otherwise complied with the provisions of this part.
(6) Notwithstanding Subsections (1) and (2), the failure of a foreign nonprofit corporation to have authority to conduct affairs in this state does not:
(a) impair the validity of its corporate acts; or
(b) prevent the foreign nonprofit corporation from defending any proceeding in this state.

16-6a-1503 Application for authority to conduct affairs.
(1) A foreign nonprofit corporation may apply for authority to conduct affairs in this state by delivering to the division for filing an application for authority to conduct affairs setting forth:
(a) its corporate name and its assumed corporate name, if any;
(b) the name of the state or country under whose law it is incorporated;
(c) its date of incorporation;
(d) its period of duration;
(e) the street address of its principal office;
(f) the information required by Subsection 16-17-203(1);
(g) the names and usual business addresses of its current directors and officers;
(h) the date it commenced or expects to commence conducting affairs in this state; and
(i) the additional information the division determines is necessary or appropriate to determine whether the application for authority to conduct affairs should be filed.
(2) With the completed application required by Subsection (1) the foreign nonprofit corporation shall deliver to the division for a certificate of existence, or a document of similar import that is:
(a) authenticated by the division or other official having custody of corporate records in the state or country under whose law it is incorporated; and

(b) dated within 90 days before the day on which the application for authority to conduct affairs is filed.
(3) The foreign nonprofit corporation shall include in the application for authority to conduct affairs, or in an accompanying document, written consent to appointment by its designated registered agent.
(4)
(a) The division may permit a tribal nonprofit corporation to apply for authority to conduct affairs in this state in the same manner as a nonprofit corporation incorporated in another state.
(b) If a tribal nonprofit corporation elects to apply for authority to conduct affairs in this state, for purposes of this chapter, the tribal nonprofit corporation shall be treated in the same manner as a foreign nonprofit corporation incorporated under the laws of another state.

16-6a-1504 Amended application for authority to conduct affairs.
(1) A foreign nonprofit corporation authorized to conduct affairs in this state shall deliver an amended application for authority to conduct affairs to the division for filing if the foreign nonprofit corporation changes:
(a) its corporate name;
(b) its assumed corporate name;
(c) the period of its duration;
(d) the state or country of its incorporation; or
(e) any of the information required by Subsection 16-17-203(1).
(2) The requirements of Section 16-6a-1503 for filing an original application for authority to conduct affairs apply to filing an amended application for authority to conduct affairs under this section.

16-6a-1505 Effect of filing an application for authority to conduct affairs.
(1) Filing an application for authority to conduct affairs authorizes the foreign nonprofit corporation to conduct affairs in this state, subject to the right of the state to revoke the authority as provided in this part.
(2) A foreign nonprofit corporation that has authority to conduct affairs in this state:
(a) has the same rights and privileges as, but no greater rights or privileges than, a domestic nonprofit corporation of like character; and
(b) except as otherwise provided by this chapter, is subject to the same duties, restrictions, penalties, and liabilities imposed on or later to be imposed on, a domestic nonprofit corporation of like character.
(3) This chapter does not authorize this state to regulate the organization or internal affairs of a foreign nonprofit corporation authorized to conduct affairs in this state.

16-6a-1506 Corporate name and assumed corporate name of foreign nonprofit corporation.
(1)
(a) Except as provided in Subsection (2), if the corporate name of a foreign nonprofit corporation does not satisfy the requirements of Section 16-6a-401, to obtain authority to conduct affairs in this state, the foreign nonprofit corporation shall assume for use in this state a name that satisfies the requirements of Section 16-6a-401.
(b) Section 16-6a-401 applies to a domestic nonprofit corporation.
(2) A foreign nonprofit corporation may obtain authority to conduct affairs in this state with a name that does not meet the requirements of Subsection (1) because it is not distinguishable as required under Subsection 16-6a-401(2), if the foreign nonprofit corporation delivers to the division for filing either:
(a)
(i) a written consent to the foreign nonprofit corporation's use of the name, given and signed by the other person entitled to the use of the name; and
(ii) a written undertaking by the other person, in a form satisfactory to the division, to change its name to a name that is distinguishable from the name of the applicant; or
(b) a certified copy of a final judgment of a court of competent jurisdiction establishing the prior right of the foreign nonprofit corporation to use the requested name in this state.
(3) A foreign nonprofit corporation may use in this state the name, including the fictitious name, of another domestic or foreign nonprofit corporation that is used or registered in this state if:
(a) the other corporation is incorporated or authorized to conduct affairs in this state; and

(b) the foreign nonprofit corporation:
(i) has merged with the other corporation; or
(ii) has been formed by reorganization of the other corporation.
(4) If a foreign nonprofit corporation authorized to conduct affairs in this state, whether under its corporate name or an assumed corporate name, changes its corporate name to one that does not satisfy the requirements of Subsections (1) through (3), or the requirements of Section 16-6a-401, the foreign nonprofit corporation:
(a) may not conduct affairs in this state under the changed name;
(b) shall use an assumed corporate name that does meet the requirements of this section; and
(c) shall deliver to the division for filing an amended application for authority to conduct affairs pursuant to Section 16-6a-1504.

16-6a-1507 Registered name of foreign nonprofit corporation.
(1)
(a) A foreign nonprofit corporation may register its corporate name as provided in this section if the name would be available for use as a corporate name for a domestic nonprofit corporation under Section 16-6a-401.
(b) If the foreign nonprofit corporation's corporate name would not be available for use as a corporate name for a domestic nonprofit corporation, the foreign nonprofit corporation may register its corporate name modified by the addition of any of the following words or abbreviations, if the modified name would be available for use under Section 16-6a-401:
(i) "corporation";
(ii) "incorporated";
(iii) "company";
(iv) "corp.";
(v) "inc."; or
(vi) "co."
(2) A foreign nonprofit corporation registers its corporate name, or its corporate name with any addition permitted by Subsection (1), by delivering to the division for filing an application for registration:
(a) setting forth:
(i) its corporate name;
(ii) the name to be registered that shall meet the requirements of Section 16-6a-401 that apply to domestic nonprofit corporations;
(iii) the state or country and date of incorporation; and
(iv) a brief description of the nature of the business in which it is engaged; and
(b) accompanied by a certificate of existence, or a document of similar import from the state or country of incorporation as evidence that the foreign nonprofit corporation is in existence or has authority to conduct affairs under the laws of the state or country in which it is organized.
(3)
(a) A name is registered for the applicant upon the effective date of the application.
(b) An initial registration is effective for one year.
(4)
(a) A foreign nonprofit corporation that has in effect a registration of its corporate name as permitted by Subsection (1) may renew the registration by delivering to the division for filing a renewal application for registration, that complies with the requirements of Subsection (2).
(b) When filed, the renewal application for registration renews the registration for the year following filing.
(5)
(a) A foreign nonprofit corporation that has in effect registration of its corporate name may:
(i) apply for authority to conduct affairs in this state under the registered name in accordance with the procedure set forth in this part; or
(ii) assign the registration to another foreign nonprofit corporation by delivering to the division for filing an assignment of the registration that states:
(A) the registered name;
(B) the name of the assigning foreign nonprofit corporation;

~~(C) the name of the assignee; and~~
~~(D) the assignee's application for registration of the name.~~
~~(b) The assignee's application for registration of the name required by Subsection (5)(a) shall meet the requirements of this part.~~
~~(6)~~
~~(a) A foreign nonprofit corporation that has in effect registration of its corporate name may terminate the registration at any time by delivering to the division for filing a statement of termination:~~
~~(i) setting forth the corporate name; and~~
~~(ii) stating that the registration is terminated.~~
~~(b) A registration automatically terminates upon the filing of an application for authority to conduct affairs in this state under the registered name.~~
~~(7) The registration of a corporate name under Subsection (1) constitutes authority by the division to file an application meeting the requirements of this part for authority to conduct affairs in this state under the registered name, but the authorization is subject to the limitations applicable to corporate names as set forth in Section 16-6a-403.~~

~~16-6a-1510 Resignation of registered agent of foreign nonprofit corporation.~~
~~(1)~~
~~(a) The registered agent of a foreign nonprofit corporation authorized to conduct affairs in this state may resign the agency appointment by delivering to the division for filing a statement of resignation, that shall:~~
~~(i) be signed by the resigning registered agent; and~~
~~(ii) be accompanied by two exact or conformed copies of the statement of resignation; and~~
~~(iii) include a declaration that notice of the resignation has been given to the foreign nonprofit corporation.~~
~~(b) The statement of resignation may include a statement that the registered office is also discontinued.~~
~~(2) After filing the statement of resignation, the division shall deliver:~~
~~(a) one copy of the statement of resignation to the registered office of the foreign nonprofit corporation; and~~
~~(b) one copy of the statement of resignation to its principal office, if known.~~
~~(3) The agency appointment terminates, and the registered office discontinues if so provided, 31 days after the filing date of the statement of resignation.~~

~~16-6a-1511 Service on foreign nonprofit corporation.~~
~~(1) The registered agent of a foreign nonprofit corporation authorized to conduct affairs in this state is the foreign corporation's agent for service of process, notice, or demand required or permitted by law to be served on the foreign nonprofit corporation.~~
~~(2)~~
~~(a) If a foreign nonprofit corporation authorized to conduct affairs in this state has no registered agent or if the registered agent cannot with reasonable diligence be served, the foreign nonprofit corporation may be served by registered or certified mail, return receipt requested, addressed to the foreign nonprofit corporation at its principal office.~~
~~(b) Service is perfected under this Subsection (2) at the earliest of:~~
~~(i) the date the foreign nonprofit corporation receives the process, notice, or demand;~~
~~(ii) the date shown on the return receipt, if signed on behalf of the foreign nonprofit corporation; or~~
~~(iii) five days after mailing.~~
~~(3) This section does not prescribe the only means, or necessarily the required means, of serving a foreign nonprofit corporation authorized to conduct affairs in this state.~~

16-6a-1512 Merger of foreign nonprofit corporations ~~authorized to conduct affairs in this state~~registered to do business in Utah.
(1) If two or more foreign nonprofit corporations ~~authorized to conduct affairs in this state~~registered to do business in Utah are a party to a statutory merger permitted by the laws of the state or country under the laws of which they are incorporated within 30 days after the merger becomes effective, the surviving nonprofit corporation shall file with the division a certificate of fact of merger certified by the proper officer of the state

or country under the laws of which the statutory merger was effected.
(2) It is not necessary for a foreign nonprofit corporation ~~authorized to conduct affairs in this state~~registered to do business in Utah that is a party to a statutory merger described in Subsection (1) to ~~procure~~ deliver a new foreign registration statement or an amend~~ed~~ment to its ~~certificate of authority to conduct affairs in this state~~foreign registration statement unless the name of the surviving nonprofit corporation is changed by the statutory merger.

~~16-6a-1513 Withdrawal of foreign nonprofit corporation.~~
~~(1) A foreign nonprofit corporation authorized to conduct affairs in this state may not withdraw from this state until its application for withdrawal has been filed by the division.~~
~~(2) A foreign nonprofit corporation authorized to conduct affairs in this state may apply for withdrawal by delivering to the division for filing an application for withdrawal setting forth:~~
~~(a) its corporate name and its assumed name, if any;~~
~~(b) the name of the state or country under whose law it is incorporated;~~
~~(c)~~
~~(i)~~
~~(A) the address of its principal office; or~~
~~(B) if a principal office is not to be maintained, a statement that the foreign nonprofit corporation will not maintain a principal office; and~~
~~(ii) if different from the address of the principal office or if no principal office is to be maintained, the address to which service of process may be mailed pursuant to Section 16-6a-1514;~~
~~(d) that the foreign nonprofit corporation is not conducting affairs in this state;~~
~~(e) that it surrenders its authority to conduct affairs in this state;~~
~~(f) whether its registered agent will continue to be authorized to accept service on its behalf in any proceeding based on a cause of action arising during the time it was authorized to conduct affairs in this state; and~~
~~(g) any additional information that the division determines is necessary or appropriate to:~~
~~(i) determine whether the foreign nonprofit corporation is entitled to withdraw; and~~
~~(ii) determine and assess any unpaid taxes, fees, and penalties payable by the foreign nonprofit corporation as prescribed by this chapter.~~
~~(3) A foreign nonprofit corporation's application for withdrawal may not be filed by the division until:~~
~~(a) all outstanding fees and state tax obligations have been paid; and~~
~~(b) the division has received a certificate from the State Tax Commission reciting that all taxes owed by the foreign nonprofit corporation have been paid.~~

~~16-6a-1514 Service on withdrawn foreign nonprofit corporation.~~
~~(1) A foreign nonprofit corporation that has withdrawn from this state pursuant to Section 16-6a-1513 shall:~~
~~(a) maintain a registered agent in this state to accept service on its behalf in any proceeding based on a cause of action arising during the time it was authorized to conduct affairs in this state, in which case the continued authority of the registered agent shall be specified in the application for withdrawal; or~~
~~(b) be considered to have authorized service of process on it in connection with any cause of action by registered or certified mail, return receipt requested, to:~~
~~(i) the address of its principal office, if any:~~
~~(A) set forth in its application for withdrawal; or~~
~~(B) as last changed by notice delivered to the division for filing; or~~
~~(ii) the address for service of process:~~
~~(A) that is stated in its application for withdrawal; or~~
~~(B) as last changed by notice delivered to the division for filing.~~
~~(2) Service effected pursuant to Subsection (1)(b) is perfected at the earliest of:~~
~~(a) the date the withdrawn foreign nonprofit corporation receives the process, notice, or demand;~~
~~(b) the date shown on the return receipt, if signed on behalf of the withdrawn foreign nonprofit corporation; or~~
~~(c) five days after mailing.~~
~~(3) Subsection (1) does not prescribe the only means, or necessarily the required means, of serving a withdrawn~~

foreign nonprofit corporation.

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 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:
(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.

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

(1) If the division determines that one or more grounds exist under Section 16-6a-1515 for revoking the authority of a foreign nonprofit corporation to conduct affairs in this state, the division shall mail to the foreign nonprofit corporation with written notice of the division's determination stating the grounds.
(2)
(a) If the foreign nonprofit corporation does not correct each ground for revocation or demonstrate to the reasonable satisfaction of the division that each ground determined by the division does not exist, within 60 days after mailing of the notice under Subsection (1), the division shall revoke the foreign nonprofit corporation's authority to conduct affairs in this state.
(b) If a foreign nonprofit corporation's authority to conduct affairs in this state is revoked under Subsection (2)(a), the division shall:
(i) mail a written notice of the revocation to the foreign nonprofit corporation stating the effective date of the revocation; and
(ii) mail a copy of the notice to:
(A) the last registered agent of the foreign nonprofit corporation; or
(B) if there is no registered agent of record, at least one officer of the corporation.
(3) The authority of a foreign nonprofit corporation to conduct affairs in this state ceases on the date shown on the division's certificate revoking the foreign nonprofit corporation's certificate of authority.
(4) Revocation of a foreign nonprofit corporation's authority to conduct affairs in this state does not terminate the authority of the registered agent of the foreign nonprofit corporation.
(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 registered agent of the nonprofit corporation, if the notice is required to be mailed to the registered agent; or
(ii) the officer of the nonprofit corporation that is mailed the notice if the notice is required to be mailed to an officer of the nonprofit corporation.

16-6a-1517 Appeal from revocation.

If the division revokes the authority of a foreign nonprofit corporation to conduct affairs in this state, in accordance with Title 63G, Chapter 4, Administrative Procedures Act, the following may appeal the refusal to the executive director:
(1) the foreign nonprofit corporation; or

~~(2) the representative of the foreign nonprofit corporation.~~

16-6a-1518 Domestication of foreign nonprofit corporations.

(1)

(a) Any foreign nonprofit corporation may become a domestic nonprofit corporation:

(i) by delivering to the division for filing articles of domestication meeting the requirements of Subsection (2);

(ii) if the board of directors of the foreign nonprofit corporation adopts the articles of domestication; and

(iii) its members, if any, approve the domestication.

(b) The adoption and approval of the domestication shall be in accordance with the consent requirements of Section 16-6a-1003 for amending articles of incorporation.

(2)

(a) The articles of domestication shall meet the requirements applicable to articles of incorporation set forth in Sections ~~16-6a-105~~13-1a-301 and 16-6a-202, except that:

(i) the articles of domestication need not name, or be signed by, the incorporators of the foreign nonprofit corporation; and

(ii) any reference to the foreign nonprofit corporation's registered office, registered agent, or directors shall be to:

(A) the registered office and agent in Utah; and

(B) the directors in office at the time of filing the articles of domestication.

(b) The articles of domestication shall set forth:

(i) the date on which and jurisdiction where the foreign nonprofit corporation was first formed, incorporated, or otherwise came into being;

(ii) the name of the foreign nonprofit corporation immediately prior to the filing of the articles of domestication;

(iii) any jurisdiction that constituted the seat, location of incorporation, principal place of business, or central administration of the foreign nonprofit corporation immediately prior to the filing of the articles of domestication; and

(iv) a statement that the articles of domestication were:

(A) adopted by the foreign nonprofit corporation's board of directors; and

(B) approved by its members, if any.

(3)

(a) Upon the filing of articles of domestication with the division, the foreign nonprofit corporation shall:

(i) be domesticated in this state;

(ii) be subject to all of the provisions of this chapter after the date of filing the articles of domestication; and

(iii) continue as if it had been incorporated under this chapter.

(b) Notwithstanding any other provisions of this chapter, the existence of the foreign nonprofit corporation shall be considered to have commenced on the date the foreign nonprofit corporation commenced its existence in the jurisdiction in which the foreign nonprofit corporation was first formed, incorporated, or otherwise came into being.

(4) The articles of domestication, upon filing with the division, shall:

(a) become the articles of incorporation of the foreign nonprofit corporation; and

(b) be subject to amendments or restatement the same as any other articles of incorporation under this chapter.

(5) The domestication of any foreign nonprofit corporation in this state may not be considered to affect any obligation or liability of the foreign nonprofit corporation incurred prior to its domestication.

(6) The filing of the articles of domestication may not affect the choice of law applicable to the foreign nonprofit corporation, except that from the date the articles of domestication are filed, the law of Utah, including the provisions of this chapter, shall apply to the foreign nonprofit corporation to the same extent as if the foreign nonprofit corporation had been incorporated as a domestic nonprofit corporation of this state on that date.

Part 16
Records, Information, and Reports

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, 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 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.

16-6a-1602 Inspection of records by directors and members.
(1) A director or member is entitled to inspect and copy any of the records of the nonprofit corporation described in Subsection 16-6a-1601(5):
(a) during regular business hours;
(b) at the nonprofit corporation's principal office; and
(c) if the director or member gives the nonprofit corporation written demand, at least five business days before the date on which the member wishes to inspect and copy the records.
(2) In addition to the rights set forth in Subsection (1), a director or member is entitled to inspect and copy any of the other records of the nonprofit corporation:
(a) during regular business hours;
(b) at a reasonable location specified by the nonprofit corporation; and
(c) at least five business days before the date on which the member wishes to inspect and copy the records, if the director or member:
(i) meets the requirements of Subsection (3); and
(ii) gives the nonprofit corporation written demand.
(3) A director or member may inspect and copy the records described in Subsection (2) only if:
(a) the demand is made:
(i) in good faith; and
(ii) for a proper purpose;
(b) the director or member describes with reasonable particularity the purpose and the records the director or member desires to inspect; and
(c) the records are directly connected with the described purpose.
(4) Notwithstanding Section 16-6a-102, for purposes of this section:
(a) "member" includes:

(i) a beneficial owner whose membership interest is held in a voting trust; and
(ii) any other beneficial owner of a membership interest who establishes beneficial ownership; and
(b) "proper purpose" means a purpose reasonably related to the demanding member's or director's interest as a member or director.
(5) The right of inspection granted by this section may not be abolished or limited by the articles of incorporation or bylaws.
(6) This section does not affect:
(a) the right of a director or member to inspect records under Section 16-6a-710;
(b) the right of a member to inspect records to the same extent as any other litigant if the member is in litigation with the nonprofit corporation; or
(c) the power of a court, independent of this chapter, to compel the production of corporate records for examination.
(7) A director or member may not use any information obtained through the inspection or copying of records permitted by Subsection (2) for any purposes other than those set forth in a demand made under Subsection (3).

16-6a-1603 Scope of inspection right.
(1) A director's or member's agent or attorney has the same inspection and copying rights as the director or member.
(2) The right to copy records under Section 16-6a-1602 includes, if reasonable, the right to receive copies made by photographic, xerographic, electronic, or other means.
(3) Except as provided in Section 16-6a-1606, the nonprofit corporation may impose a reasonable charge covering the costs of labor and material for copies of any documents provided to the director or member. The charge may not exceed the estimated cost of production and reproduction of the records.
(4) The nonprofit corporation may comply with a director's or member's demand to inspect the record of members under Subsection 16-6a-1601(3) by furnishing to the director or member a list of directors or members that:
(a) complies with Subsection 16-6a-1601(3); and
(b) is compiled no earlier than the date of the director's or member's demand.

16-6a-1604 Court-ordered inspection of corporate records.
(1)
(a) A director or member may petition the applicable court if:
(i) a nonprofit corporation refuses to allow a director or member, or the director's or member's agent or attorney, to inspect or copy any records that the director or member is entitled to inspect or copy under Subsection 16-6a-1602(1); and
(ii) the director or member complies with Subsection 16-6a-1602(1).
(b) If petitioned under Subsection (1)(a), the court may summarily order the inspection or copying of the records demanded at the nonprofit corporation's expense on an expedited basis.
(2)
(a) A director or member may petition the applicable court if:
(i) a nonprofit corporation refuses to allow a director or member, or the director's or member's agent or attorney, to inspect or copy any records that the director or member is entitled to inspect or copy pursuant to Subsections 16-6a-1602(2) and (3) within a reasonable time following the director's or member's demand; and
(ii) the director or member complies with Subsections 16-6a-1602(2) and (3).
(b) If the court is petitioned under Subsection (2)(a), the court may summarily order the inspection or copying of the records demanded.
(3) If a court orders inspection or copying of the records demanded under Subsection (1) or (2), unless the nonprofit corporation proves that it refused inspection or copying in good faith because it had a reasonable basis for doubt about the right of the director or member, or the director's or member's agent or attorney, to inspect or copy the records demanded:
(a) the court shall also order the nonprofit corporation to pay the director's or member's costs, including reasonable counsel fees, incurred to obtain the order;

(b) the court may order the nonprofit corporation to pay the director or member for any damages the member incurred;
(c) if inspection or copying is ordered pursuant to Subsection (2), the court may order the nonprofit corporation to pay the director's or member's inspection and copying expenses; and
(d) the court may grant the director or member any other remedy provided by law.
(4) If a court orders inspection or copying of records demanded, it may impose reasonable restrictions on the use or distribution of the records by the demanding director or member.
(5) For purposes of this section, the applicable court is:
(a) the district court of the county in this state where the nonprofit corporation's principal office is located; or
(b) if the nonprofit corporation has no principal office in this state, the district court in and for Salt Lake County.

16-6a-1605 Limitations on use of membership list.
(1) Without consent of the board of directors, a membership list or any part of a membership list may not be obtained or used by any person for any purpose unrelated to a member's interest as a member.
(2) Without limiting the generality of Subsection (1), without the consent of the board of directors, a membership list or any part of a membership list may not be:
(a) used to solicit money or property unless the money or property will be used solely to solicit the votes of the members in an election to be held by the nonprofit corporation;
(b) used for any commercial purpose; or
(c) sold to or purchased by any person.

16-6a-1606 Financial statements.
By no later than 15 days after the day on which the nonprofit corporation receives a written request of any member, a nonprofit corporation shall mail to the member the following that show in reasonable detail the assets and liabilities and results of the operations of the nonprofit corporation:
(1) the nonprofit corporation's most recent annual financial statements, if any; and
(2) the nonprofit corporation's most recently published financial statements, if any.

~~**16-6a-1607 Annual report for division.**~~
~~(1) Each domestic nonprofit corporation, and each foreign nonprofit corporation authorized to conduct affairs in this state, shall deliver to the division for filing an annual 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 report to each domestic nonprofit corporation and each foreign nonprofit corporation authorized to conduct affairs in this state.~~
~~(3) Information in the annual report shall be current as of the date the annual report is executed on behalf of the nonprofit corporation.~~
~~(4)~~
~~(a) The annual report of a domestic or foreign nonprofit corporation shall be delivered annually to the division no later than 60 days past the date the report was mailed by the division.~~
~~(b) Proof to the satisfaction of the division that the nonprofit corporation has mailed an annual report form is considered in compliance with this Subsection (4).~~
~~(5)~~
~~(a) If an annual report contains the information required by this section, the division shall file it.~~
~~(b) If an annual 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 report to it for correction.~~
~~(c) If an annual 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 report is considered to be timely filed.~~
~~(6) The fact that an individual's name is signed on an annual 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 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 report reflecting any change in the information contained in its annual report as last amended.~~

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 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;
(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.

16-6a-1609 Interrogatories by division.

(1)
(a) The division may give interrogatories reasonably necessary to ascertain whether a nonprofit corporation has complied with the provisions of this chapter applicable to the nonprofit corporation to:
(i) any domestic or foreign nonprofit corporation subject to the provisions of this chapter; and
(ii) to any officer or director of a nonprofit corporation described in Subsection (1)(a)(i).
(b) The interrogatories described in this Subsection (1) shall be answered within:
(i) 30 days after the mailing of the interrogatories; or
(ii) additional time as fixed by the division.
(c) The answers to the interrogatories shall be:
(i) full and complete; and
(ii) made in writing.
(d)
(i) If the interrogatories are directed to an individual, the interrogatories shall be answered by the individual.
(ii) If directed to a nonprofit corporation, the interrogatories shall be answered by:
(A) the chair of the board of directors of the nonprofit corporation;
(B) all of the nonprofit corporation's directors;
(C) one of the nonprofit corporation's officers; or
(D) any other person authorized to answer the interrogatories as the nonprofit corporation's agent.
(e)
(i) The division need not file any document to which the interrogatories relate until the interrogatories are answered as provided in this section.
(ii) Notwithstanding Subsection (1)(e)(i), the division need not file a document to which the interrogatory relates if the answers to the interrogatory disclose that the document is not in conformity with the provisions of

this chapter.
(f) The division shall certify to the attorney general, for such action as the attorney general considers appropriate, all interrogatories and answers to interrogatories that disclose a violation of this chapter.
(2)
(a) Interrogatories given by the division under Subsection (1), and the answers to interrogatories, may not be open to public inspection.
(b) The division may not disclose any facts or information obtained from the interrogatories or answers to the interrogatories, except:
(i) as the official duties of the division may require the facts or information to be made public; or
(ii) in the event the interrogatories or the answers to the interrogatories are required for evidence in any criminal proceedings or in any other action by this state.
(3) Each domestic or foreign nonprofit corporation that knowingly fails or refuses to answer truthfully and fully, within the time prescribed by Subsection (1), interrogatories given to the domestic or foreign nonprofit corporation by the division in accordance with Subsection (1) is guilty of a class C misdemeanor and, upon conviction, shall be punished by a fine of not more than $500.
(4) Each officer and director of a domestic or foreign nonprofit corporation who knowingly fails or refuses to answer truthfully and fully, within the time prescribed by Subsection (1), interrogatories given to the officer or director by the division in accordance with Subsection (1) is guilty of a class B misdemeanor and, upon conviction, shall be punished by a fine of not more than $1,000.
(5) The attorney general may enforce this section in an action brought in:
(a) the district court of the county in this state where the nonprofit corporation's principal office or registered office is located; or
(b) if the nonprofit corporation has no principal or registered office in this state, in the district court in and for Salt Lake County.

16-6a-1610 Scope of a member's right to inspect or receive copies.

Notwithstanding the other provisions of this part, unless otherwise provided in the bylaws, a right of a member to inspect or receive information from a nonprofit corporation that is created by this part applies only to a voting member of the nonprofit corporation.

Part 17
Transitional Provisions and Scope of Chapter

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;
(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 report with the division setting forth the information prescribed by Section ~~16-6a-1607~~13-1a-313. The annual 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~~13-1a-313.

16-6a-1702 Application to foreign nonprofit corporations.
(1) A foreign nonprofit corporation authorized to conduct affairs in this state on April 30, 2001, is subject to this chapter, but is not required to obtain a new certificate of authority to conduct affairs under this chapter.
(2) A foreign nonprofit corporation that is qualified to do business in this state under the provisions of Chapter 8, which provisions were repealed by Laws of Utah 1961, Chapter 28, shall be authorized to transact business in this state subject to all of the limitations, restrictions, liabilities, and duties prescribed in this chapter.
(3) This chapter shall apply to all foreign nonprofit corporations sole qualified to do business in this state with respect to mergers and consolidations.

16-6a-1703 Nonapplicability of chapter.
This chapter does not apply to:
(1) corporations sole, except with respect to mergers and consolidations; or
(2) domestic or foreign nonprofit corporations governed by Title 3, Chapter 1, General Provisions Relating to Agricultural Cooperative Associations.

16-6a-1704 Saving provisions.
(1)
(a) Except as provided in Subsection (2), the repeal of any statute by this act does not affect:
(i) the operation of the statute or any action taken under it before its repeal;
(ii) any ratification, right, remedy, privilege, obligation, or liability acquired, accrued, or incurred under the statute before its repeal;
(iii) any violation of the statute, or any penalty, forfeiture, or punishment incurred because of the violation of the statute before its repeal; or
(iv) any proceeding, reorganization, or dissolution commenced under the statute before its repeal.
(b) A proceeding, reorganization, or dissolution described in Subsection (1)(a)(iv) may be completed in accordance with the repealed statute as if the statute had not been repealed.
(2) If a penalty or punishment imposed for violation of a statute repealed by this act is reduced by this act, the penalty or punishment if not already imposed shall be imposed in accordance with this act.
(3) Section 16-6a-707 does not operate to permit a nonprofit corporation in existence prior to April 30, 2001, to take action by the written consent of fewer than all of the members entitled to vote with respect to the subject matter of the action, until the date a resolution providing otherwise is approved either:
(a) by a consent in writing:
(i) setting forth the proposed resolution; and
(ii) signed by all of the members entitled to vote with respect to the subject matter of the resolution; or
(b) at a duly convened meeting of members, by the vote of the same percentage of members of each voting group as would be required to include the resolution in an amendment to the nonprofit corporation's articles of incorporation.
(4) Indemnification for an act or omission of a director or officer of a nonprofit corporation if the act or omission occurs prior to April 30, 2001, is governed by Title 16, Chapter 6, Utah Nonprofit Corporation and Co-operative Association Act, in effect as of April 29, 2001.
(5) A nonprofit corporation is not required to amend the nonprofit corporation's articles of incorporation to state whether its members are voting members if:
(a) the nonprofit corporation was:
(i) formed prior to April 30, 2001;
(ii) formed under the laws of this state; and

(iii) existing on April 30, 2001; and
(b) the articles of incorporation of the nonprofit corporation states on April 30, 2001, that the nonprofit corporation has members.

16-6a-1705 Severability clause.

If any provision of this act, or the application of any provision to any person or circumstance, is held invalid, the remainder of this act is given effect without the invalid provision or application.

Chapter 7
Corporations Sole

16-7-1 Formation -- Purposes.

Corporations sole may be formed for acquiring, holding or disposing of church or religious society property for the benefit of religion, for works of charity and for public worship, in the manner hereinafter provided.

16-7-2 Articles of incorporation -- Execution -- Filing.

Any person who is the archbishop, bishop, president, trustee in trust, president of stake, president of congregation, overseer, presiding elder, or clergyman of any church or religious society who has been duly chosen, elected, or appointed in conformity with the constitution, canons, rites, regulations, or discipline of such church or religious society, and in whom is vested the legal title to its property, may make and subscribe articles of incorporation, acknowledge the same before some officer authorized to take acknowledgments, and file the original articles with the Division of Corporations and Commercial Code; he shall retain a copy of these articles in his possession.

16-7-3 Contents of articles of incorporation.

The articles of incorporation shall specify:
(1) The name of the corporation by which it shall be known.
(2) The object of the corporation.
(3) The estimated value of the property at the time of the making of articles of incorporation.
(4) The title of the person making such articles.

16-7-4 Certified copies of articles as evidence.

The articles of incorporation or a certified copy of those filed and recorded with the Division of Corporations and Commercial Code shall be evidence of the existence of such corporation.

16-7-5 Amendments of articles of incorporation.

(1) A corporation sole formed under this chapter may alter or amend its articles of incorporation.
(2) An amendment described in Subsection (1) shall:
  (a) be made by the corporation sole;
  (b) be executed by:
    (i) the person who executed the original articles of incorporation; or
    (ii) the successor in office to the person described in Subsection (2)(b)(i);
  (c) specify the name, title, and street address of the person described in Subsection (2)(b); and
  (d) be filed in the same manner as is provided for the filing of the original articles.
(3) A corporation sole altering or amending its articles of incorporation after May 3, 2004, shall comply with Subsection 16-7-15(1).

16-7-6 Powers of corporations sole.

Upon making and filing articles of incorporation as herein provided the person subscribing the same and his successor in office, by the name or title specified in the articles, shall thereafter be deemed and is hereby created a body politic and a corporation sole, with perpetual succession, and shall have power:
(1) To acquire and possess, by donation, gift, bequest, devise or purchase, and to hold and maintain, property, real, personal and mixed; and to grant, sell, convey, rent or otherwise dispose of the same as may be necessary to carry on or promote the objects of the corporation.
(2) To borrow money and to give written obligations therefor, and to secure the payment thereof by mortgage or other lien upon real or personal property, when necessary to promote such objects.
(3) To contract and be contracted with.
(4) To sue and be sued.
(5) To plead and be impleaded in all courts of justice.

(6) To have and use a common seal by which all deeds and acts of such corporation may be authenticated.

16-7-7 Right to act without authorization from members -- Sale of property.

Any corporation sole created under this chapter, and any such archbishop, bishop, president, trustee in trust, president of stake, president of congregation, overseer, presiding elder or clergyman of the state of Utah, who holds the title to trust property for the use and benefit of any church or religious society and who is not so incorporated, unless the articles of incorporation or deed under which such corporation or individual trustee holds such property provides otherwise, shall have power without any authority or authorization from the members of such church or religious society to mortgage, exchange, sell and convey the same; and any such corporation sole, or individual trustee residing within this state may hold title to property, real or personal, which is situated in any other state or jurisdiction; which holding shall be subject to the same conditions, limitations, powers and rights and with the same trusts, duties and obligations in regard to the property that like property is held for such purposes in this state.

16-7-8 Execution of corporate instruments -- Authority of agents -- Revocation of authority.

(1) All deeds and other instruments of writing shall be:

(a) made in the name of the corporation;

(b) signed by:

(i) the person representing the corporation in the official capacity designated in the articles of incorporation; or

(ii) a duly authorized agent or agents designated and named in a certificate filed by the corporation with the Division of Corporations and Commercial Code.

(2) The authority of an agent or agents designated pursuant to Subsection (1)(b)(ii) shall continue until revoked, notwithstanding the subsequent death, resignation, removal, incapacity, or incompetency of:

(a) the person who executed the original articles of incorporation; or

(b) the successor in office to the person described in Subsection (2)(a).

(3) A corporation sole designating an agent or agents to sign deeds and instruments of writing by certificate may revoke such authority by filing a notice of revocation of authority with the Division of Corporations and Commercial Code.

16-7-9 Succession in event of death, resignation, or removal of incumbent.

(1) In the event of the death or resignation of any such archbishop, bishop, president, trustee in trust, president of stake, president of congregation, overseer, presiding elder or clergyman, being at the time a corporation sole, or of his removal from office by the person or body having authority to remove him, his successor in office, as such corporation sole, shall be vested with the title to any and all property held by his predecessor as such corporation sole, with like power and authority over the same and subject to all the legal liabilities and obligations with reference thereto.

(2) A successor described in Subsection (1) shall file with the Division of Corporations and Commercial Code a certified copy or other adequate written proof of the successor's commission, certificate, or letter of election or appointment.

16-7-10 Death of bishop, trustee, not incorporated -- Succession to property.

In case of the death, resignation or removal of any such archbishop, bishop, president, trustee in trust, president of stake, president of congregation, overseer, presiding elder or clergyman who at the time of his death, resignation or removal was holding the title to trust property for the use or benefit of any church or religious society, and was not incorporated as a corporation sole, the title to any and all such property held by him, of every nature and kind, does not revert to the grantor nor vest in the heirs of such deceased person, but shall be deemed to be in abeyance after such death, resignation or removal until his successor is duly appointed to fill such vacancy, and upon the appointment of such successor the title to all the property held by his predecessor shall at once, without any other act or deed, vest in the person appointed to fill such vacancy.

~~**16-7-11 Fees for filing documents and issuing certificates.**~~

~~The division shall charge and collect a fee determined by it pursuant to Section 63J-1-504 for:~~
~~(1) filing articles of incorporation of a corporation sole and issuing a certificate of incorporation;~~
~~(2) filing articles of amendment and issuing a certificate of amendment;~~
~~(3) issuing each additional certificate of incorporation or amendment;~~
~~(4) filing a certificate of authorized agent and issuing the agent's certificate;~~
~~(5) filing a revocation of authority;~~
~~(6) furnishing a certified copy of any document, instrument, or paper relating to a corporation sole and affixing its seal;~~
~~(7) issuing a certificate of dissolution; and~~
~~(8) issuing a certificate of merger or consolidation.~~

16-7-12 Dissolution of corporation sole.

(1) A corporation sole may be dissolved and its affairs wound up voluntarily by filing with the Division of Corporations and Commercial Code articles of dissolution, fully executed and signed under penalty of perjury, by the chief officer of the corporation. If any corporation sole ceases to have assets, has failed to function, or desires to terminate its existence, the articles of dissolution may be filed by any officer of the corporation authorized to administer the affairs and property of the corporation.

(2) An original and a copy of the articles of dissolution shall be submitted to the Division of Corporations and Commercial Code. If it conforms to law, the division shall file it and issue a certificate of dissolution. After the issuance of this certificate, the corporation shall cease to carry on business, except for the purpose of adjusting and winding up its affairs.

(3) The articles of dissolution shall set forth:

(a) the name of the corporation;

(b) the reason for its dissolution or winding up;

(c) that dissolution of the corporation has been duly authorized by the organization governed by the corporation sole;

(d) the names and addresses of the persons who are to supervise the winding up of the affairs of the corporation;

(e) that all debts, obligations, and liabilities of the corporation sole have been paid and discharged or that adequate provision has been made therefor;

(f) that all the remaining property and assets of the corporation sole have been transferred, conveyed, or distributed in accordance with the purposes of Section 16-7-1; and

(g) that there are no suits pending against the corporation sole in any court, or that adequate provision has been made for the satisfaction of any judgment, order, or decree which may be entered against it in any pending suit.

(4) The Division of Corporations and Commercial Code may administratively dissolve a corporation sole that does not comply with Subsection 16-7-15(1) in accordance with the relevant procedures for administrative dissolution of a nonprofit corporation under Sections ~~16-6a-1411~~13-1a-702, ~~16-6a-1412~~13-1a-703, and ~~16-6a-1413~~13-1a-704.

16-7-13 Merger and consolidation.

(1) As long as the surviving corporation qualifies for tax exempt status under Internal Revenue Code Section 501(c)(3), any corporation organized under this chapter may merge with one or more domestic or foreign corporations organized or authorized to do business in this state under this title, or with one or more nonprofit domestic or foreign corporations organized or authorized to do business in this state under this title.

(2)

(a) Articles of merger or consolidation shall be adopted by the appropriate incorporator or the successor to an incorporator as described in Section 16-7-2. If there is no such incorporator or successor, the articles shall be signed by the officer or official authorized to administer the affairs and property of the corporation according to the practices and procedures of the church, denomination, or religious society.

(b) The articles of merger or consolidation shall be adopted by any merging or consolidating corporation

organized under Title 16, Chapter 6a, Utah Revised Nonprofit Corporation Act, as provided in Sections 16-6a-1101 and 16-6a-1102.

(3) The effect of a merger or consolidation under this section is the same as provided in Section 16-6a-1104.

16-7-14 Restatement of articles of incorporation.

(1) A corporation sole organized under this chapter may restate its articles of incorporation in the same manner allowed nonprofit corporations under Section 16-6a-1006.

(2)

(a) The restated articles shall be adopted on behalf of the corporation by the appropriate incorporator or the successor to an incorporator as described in Section 16-7-2.

(b) If there is no such incorporator or successor, the articles shall be signed by the officer or official authorized to administer the affairs and property of the corporation according to the practices and procedures of the church, denomination, or religious society.

(c) The restated articles described in this section shall specify the name, title, and street address of the person executing the restated articles.

(3) This chapter does not require the restated articles described in this section to specify a value of the property of the corporation sole.

(4) A corporation sole restating its articles of incorporation after May 3, 2004, shall comply with Subsection 16-7-15(1).

16-7-15 Official representative -- Registered office -- Registered agent.

(1)

(a) A corporation sole altering, amending, or restating its articles of incorporation on or after May 3, 2004 shall continuously maintain with the Division of Corporations and Commercial Code the name, title, and Utah street address of an official representative for the corporation sole.

(b) The official representative described in Subsection (1)(a) shall, on behalf of the corporation sole, receive communication, notices, or demands from:

(i) the Division of Corporations and Commercial Code; or

(ii) any other state or federal authority, agency, or official.

(c) If a corporation sole appoints a registered agent pursuant to Subsection (2), that registered agent is the official representative of the corporation sole for purposes of this Subsection (1).

(2)

(a) A corporation sole formed under this chapter may maintain a registered office and registered agent in Utah by complying with Title ~~16~~13, Chapter ~~17~~1a, Part 5, Registered Agent of Business~~Model Registered Agents Act~~.

(b) A corporation sole maintaining registered agent may change the registered agent by complying with the requirements of Title ~~16~~13, Chapter ~~17~~1a, ~~Model Registered Agents Act~~Part 5, Registered Agent of Business.

(c) A registered agent of a corporation sole may resign by complying with the requirements imposed on a registered agent under Title ~~16~~13, Chapter ~~17~~1a, ~~Model Registered Agents Act~~Part 5, Registered Agent of Business.

(d) A registered agent described in this Subsection (2) is the agent of the corporation sole for service of:

(i) process;

(ii) notice;

(iii) demand; or

(iv) any type required or permitted by law to be served on the corporation sole.

16-7-16 Prohibition on formation of corporation sole after May 3, 2004.

Notwithstanding any other provision of this chapter, a corporation sole may not be formed or incorporated under this chapter after May 3, 2004.

Chapter 10a
Utah Revised Business Corporation Act

Part 1
General Provisions

16-10a-101 Short title.

This chapter is known as the Utah Revised Business Corporation Act.

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:
(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 within the Utah Department of Commerce.
(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~~13-1a-303.
~~(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.
(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 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.
(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:
(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 on the matter are for that purpose a single voting group.

16-10a-103 Notice.

(1)

(a) Notice given under this chapter shall be in writing unless oral notice is reasonable under the circumstances.

(b) Notice by electronic transmission is written notice.

(2)

(a) Subject to compliance with any requirement that notice be in writing, notice may be communicated in person, by telephone, by any form of electronic transmission, or by mail or private carrier.

(b) If the forms of personal notice listed in Subsection (2)(a) are impracticable, notice may be communicated:

(i)

(A) by a newspaper of general circulation in the county, or similar subdivision, in which the corporation's principal office is located; and

(B) by publication in accordance with Section 45-1-101;

(ii) by radio, television, or other form of public broadcast communication in the county or subdivision; or

(iii) if the corporation has no office in this state, in the manner allowed by Subsection (2)(b)(i) or (ii) but in Salt Lake County.

(3)

(a) Written notice by a domestic or foreign corporation to its shareholders or directors, if in a comprehensible form, is effective as to each shareholder or director:

(i) when mailed, if addressed to the shareholder's or director's address shown in the corporation's current record of the shareholder or director; or

(ii) when electronically transmitted to the shareholder or director, in a manner and to an address provided by the shareholder or director in an unrevoked consent.

(b) Consent under Subsection (3)(a)(ii) is considered revoked if:

(i) the corporation is unable to deliver by electronic transmission two consecutive notices transmitted by the corporation based on that consent; and

(ii) the corporation's inability to deliver notice by electronic transmission under Subsection (3)(b)(i) is known by the:

(A) corporation's secretary;

(B) an assistant secretary or transfer agent of the corporation; or

(C) any other person responsible for providing notice.

(c) Notwithstanding Subsection (3)(b), a corporation's failure to treat consent under Subsection (3)(a) as revoked does not invalidate any meeting or other act.

(d) Delivery of a notice to shareholders may be excused in accordance with Subsection 16-10a-705(5).

(4) Written notice to a domestic or foreign corporation authorized to transact business in this state may be addressed to the corporation's:

(a) registered agent; or

(b) secretary at its principal office.

(5) Except as provided in Subsection (3), written notice, if in a comprehensible form, is effective at the earliest of the following:

(a) when received;

(b) five days after it is mailed; or

(c) on the date shown on the return receipt if sent by registered or certified mail, return receipt requested, and the receipt is signed by or on behalf of the addressee.

(6) Oral notice is effective when communicated if communicated in a comprehensible manner.

(7) Notice by publication is effective on the date of first publication.

(8)

(a) If this chapter prescribes notice requirements for particular circumstances, those requirements govern.

(b) If articles of incorporation or bylaws prescribe notice requirements, not inconsistent with this section or other provisions of this chapter, those requirements govern.

16-10a-104 Powers of the division.

The division has the power reasonably necessary to perform the duties required of the division under this chapter.

~~**16-10a-120 Filing requirements.**~~

~~(1) A document shall satisfy the requirements of this section, and of any other section of this chapter that adds to or varies these requirements, to be entitled to filing by the division.~~

~~(2) This chapter must require or permit filing the document with the division.~~

~~(3)~~

~~(a) The document shall contain the information required by this chapter.~~

~~(b) A document may contain information in addition to that required in Subsection (3)(a).~~

~~(4) The document shall be typewritten or machine printed.~~

~~(5)~~

~~(a) The document shall be in the English language.~~

~~(b) A corporate name need not be in English if written in English letters, Arabic or Roman numerals.~~

~~(c) The certificate of existence required of foreign corporations need not be in English if accompanied by a reasonably authenticated English translation.~~

~~(6) The document shall be executed, or shall be a true copy made by photographic, xerographic, electronic, or other process that provides similar copy accuracy of a document that has been executed:~~

~~(a) by the chairman of the board of directors of a domestic or foreign corporation, by all of its directors, or by one of its officers;~~

~~(b) if directors have not been selected or the corporation has not been formed, by an incorporator;~~

~~(c) if the corporation is in the hands of a receiver, trustee, or other court-appointed fiduciary, by that fiduciary;~~

~~(d) if the document is that of a registered agent, by the registered agent, if the person is an individual, or by a person authorized by the registered agent to execute the document, if the registered agent is an entity; or~~

~~(e) by an attorney in fact if the corporation retains the power of attorney with the corporation's records.~~

~~(7) The document shall state beneath or opposite the signature of the person executing the document the signer's name and the capacity in which the document is signed.~~

~~(8) The document may, but need not, contain:~~

(a) the corporate seal;
(b) an attestation by the secretary or an assistant secretary; or
(c) an acknowledgment, verification, or proof.
(9) The signature of each person signing the document, whether or not the document contains an acknowledgment, verification, or proof permitted by Subsection (8), constitutes the affirmation or acknowledgment of the person, under penalties of perjury, that the document is the person's act and deed or the act and deed of the entity on behalf of which the document is executed, and that the facts stated in the document are true.
(10) If the division has prescribed a mandatory form or cover sheet for the document under Section 16-10a-121, the document shall be in or on the prescribed form or shall have the required cover sheet.
(11) The document shall be delivered to the division for filing and shall be accompanied by one exact or conformed copy, except as provided in Section 16-10a-1510, the correct filing fee, and any franchise tax, license fee, or penalty required by this chapter or other law.
(12) Except with respect to a filing pursuant to Section 16-10a-1510, the document shall state, or be accompanied by a writing stating, the address to which the division may send a copy upon completion of the filing.

16-10a-121 Forms.
(1) The division may prescribe, and if so prescribed shall furnish on request, forms or cover sheets for documents required or permitted to be filed by this chapter as the division may determine to be appropriate.
(2) However:
(a) the use of any forms or cover sheets is not mandatory unless the division specifically requires their use; and
(b) no requirement that a form or cover sheet be used precludes in any way the inclusion in any document of any item which is not prohibited to be included by this chapter, nor does it require the inclusion with the filed document of any item which is not otherwise required by this chapter.

16-10a-122 Fees.
Unless otherwise provided by statute, the division shall charge and collect fees for services as provided in Section 63J-1-504.

16-10a-123 Effective time and date of filed documents.
(1) Except as provided in Subsections (2) and 16-10a-124(4), a document submitted to the division for filing under this chapter shall be considered effective at the time of filing on the date it is filed, as evidenced by the division's endorsement on the document as described in Subsection 16-10a-125(2).
(2) Unless otherwise provided in this chapter, a document, other than an application for a reserved or registered name, may specify conspicuously on its face a delayed effective time or date, or both an effective time and date, and if it does so, the document becomes effective as specified.
(a) If a delayed effective time but no date is specified, the document is effective on the date it is filed, as that date is specified in the division's time and date endorsement on the document, at the later of the time specified on the document as its effective time or the time specified in the time and date endorsement.
(b) If a delayed effective date but no time is specified, the document is effective at the close of business on that date.
(c) A delayed effective date for a document may not be later than the ninetieth day after the date it is filed. If a document specifies a delayed effective date that is later than the ninetieth day after the document is filed, the document is effective on the ninetieth day after it is filed.
(3) If a document specifies a delayed effective date pursuant to Subsection (2), the document may be prevented from becoming effective by delivering to the division, prior to the specified effective date of the document, a certificate of withdrawal, executed on behalf of the same domestic or foreign corporation originally submitting the document for filing, in the same manner as the document being withdrawn, stating:
(a) that the document has been revoked by appropriate corporate action or by court order or decree pursuant to Section 16-10a-1008 and is void; and

(b) in the case of a court order or decree pursuant to Section 16-10a-1008, that the court order or decree was entered by a court having jurisdiction of the proceeding for the reorganization of the corporation under a specified statute of the United States.

16-10a-124 Correcting filed documents.

(1) A domestic or foreign corporation may correct a document filed with the division if the document:

(a) contains an incorrect statement; or

(b) was defectively executed, attested, sealed, verified, or acknowledged.

(2) A document is corrected by delivering to the division for filing articles of correction that:

(a) describe the document, including its filing date, or have a copy of it attached to the articles of correction;

(b) specify the incorrect statement and the reason it is incorrect or the manner in which the execution, attestation, sealing, verification, or acknowledgement was defective; and

(c) correct the incorrect statement or defective execution, attestation, sealing, verification, or acknowledgement.

(3) Articles of correction may be executed by any person designated in Section 16-10a-120(6), or by any person who executed the document that is corrected.

(4) Articles of correction are effective on the effective date of the document they correct except as to persons relying on the uncorrected document and adversely affected by the correction. As to those persons, articles of correction are effective when filed.

16-10a-125 Filing duty of division.

(1) If a document delivered to the division for filing satisfies the requirements of Section 16-10a-120, the division shall file it.

(2) The division files a document by stamping or otherwise endorsing "Filed" together with the name of the division and the date and time of acceptance for filing on both the document and the accompanying copy. After filing a document, except as provided in Sections 16-10a-1510 and 16-10a-1608, the division shall deliver the accompanying copy, with the receipt for any filing fees, to the domestic or foreign corporation for which the filing is made, or its representative, at the address indicated on the filing, or at the address the division determines to be appropriate.

(3) If the division refuses to file a document, it shall return the document to the person requesting the filing within 10 days after the document was delivered to the division, together with a written notice providing a brief explanation of the reason for the refusal.

(4) The division's duty to file documents under this section is ministerial. Except as otherwise specifically provided in this chapter, the division's filing or refusal to file a document does not:

(a) affect the validity or invalidity of the document in whole or part;

(b) relate to the correctness or incorrectness of information contained in the document; or

(c) create a presumption that the document is valid or invalid or that information contained in the document is correct or incorrect.

16-10a-126 Appeal from division's refusal to file document.

(1) If the division refuses to file a document delivered to it for filing, the domestic or foreign corporation for which the filing was requested, or its representative, within 30 days after the effective date of the notice of refusal given by the division pursuant to Subsection 16-10a-125(3), may appeal the refusal to the district court of the county where the corporation's principal office is or will be located, or if there is none in this state, the county where its registered office is or will be located. The appeal is commenced by petitioning the court to compel the filing of the document and by attaching to the petition a copy of the document and the division's notice of refusal.

(2) The court may summarily order the division to file the document or take other action the court considers appropriate.

(3) The court's final decision may be appealed as in any other civil proceedings.

16-10a-127 Evidentiary effect of copy of filed document.

~~A certificate attached to a copy of a document filed by the division, or an endorsement, seal, or stamp placed on the copy, which certificate, endorsement, seal, or stamp bears the signature of the director of the division, or a facsimile of the director's signature, and the seal of the division, is conclusive evidence that the original document has been filed with the division.~~

~~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 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.~~

~~16-10a-129 Penalty for signing false documents.~~

~~(1) A person commits an offense if he signs a document knowing it to be false in any material respect, with intent that the document be delivered to the division for filing.~~

~~(2) An offense under this section is a class A misdemeanor punishable by a fine not to exceed $2,500.~~

Part 2
Incorporation

16-10a-201 Incorporators.

One or more persons may act as incorporators of a corporation by delivering to the division for filing articles meeting the requirements of Section 16-10a-202. An incorporator who is a natural person shall be at least 18 years old.

16-10a-202 Articles of incorporation.

(1) The articles of incorporation shall set forth:

(a) the purpose or purposes for which the corporation is organized;

(b) a corporate name for the corporation that satisfies the requirements of Sections ~~16-10a-401~~13-1a-401 and 13-1a-402;

(c) the number of shares the corporation is authorized to issue;

(d) the information required by Section 16-10a-601 with respect to each class of shares the corporation is authorized to issue;

(e) the information required by Subsection ~~16-17-203(1)~~13-1a-504; ~~and~~

(f) the name and address of each incorporator~~.~~; and

(g) the corporation's North American Industry Classification System (NAICS) code.

(2) The articles of incorporation may set forth:

(a) the names and addresses of the individuals who are to serve as the initial directors;

(b) provisions not inconsistent with law regarding:

(i) managing the business and regulating the affairs of the corporation;
(ii) defining, limiting, and regulating the powers of the corporation, its board of directors, and its shareholders;
(iii) a par value for authorized shares or classes of shares; and
(iv) the imposition of personal liability on shareholders for the debts of the corporation to a specified extent and upon specified conditions; and

(c) any provision that under this chapter is permitted to be in the articles of incorporation or required or permitted to be set forth in the bylaws including elective provisions which, to be effective, shall be included in the articles of incorporation, as provided in this chapter.

(3) It shall be sufficient under Subsection (1)(a) to state, either alone or with other purposes, that the purpose of the corporation is to engage in any lawful act or activity for which corporations may be organized under this chapter, and by such statement all lawful acts and activities shall be within the purposes of the corporation, except for express limitations, if any.

(4) The articles of incorporation need not set forth any of the corporate powers enumerated in this chapter.

(5) The articles of incorporation shall be signed by each incorporator and meet the filing requirements of Section ~~16-10a-120~~13-1a-301.

(6)

(a) If this chapter conditions any matter upon the presence of a provision in the bylaws, the condition is satisfied if the provision is present either in the articles of incorporation or the bylaws.

(b) If this chapter conditions any matter upon the absence of a provision in the bylaws, the condition is satisfied only if the provision is absent from both the articles of incorporation and the bylaws.

16-10a-203 Incorporation.

(1) A corporation is incorporated, and its corporate existence begins, when the articles of incorporation are filed by the division, unless a delayed effective date is specified pursuant to Subsection ~~16-10a-123(2)~~13-1a-303, in which case the incorporation is effective, and the corporate existence begins, on the delayed effective date, unless a certificate of withdrawal is filed prior to the delayed effective date.

(2) The filing of the articles of incorporation by the division is conclusive proof that all conditions precedent to incorporation have been satisfied, except in a proceeding by the state to cancel or revoke the incorporation or involuntarily dissolve the corporation.

16-10a-204 Liability for preincorporation transactions.

All persons purporting to act as or on behalf of a corporation, knowing there was no incorporation under this chapter, are jointly and severally liable for all liabilities created while so acting.

16-10a-205 Organization of the corporation.

(1) After incorporation:

(a) if initial directors are named in the articles of incorporation, the initial directors may hold an organizational meeting, at the call of a majority of the directors, to complete the organization of the corporation by appointing officers, adopting bylaws, and carrying on any other business brought before the meeting; or

(b) if initial directors are not named in the articles of incorporation, then until directors are elected, the incorporator or incorporators may hold an organizational meeting at the call of a majority of the incorporators to do whatever is necessary and proper to complete the organization of the corporation, including the election of directors and officers and the adoption and amendment of bylaws.

(2) Action required or permitted by this chapter to be taken by incorporators at an organizational meeting may be taken without a meeting if the action taken is evidenced by one or more written consents describing the action taken and signed by each incorporator.

(3) An organizational meeting may be held in or out of this state.

16-10a-206 Bylaws.

(1)

(a) The board of directors of a corporation may adopt initial bylaws for the corporation.
(b) If no directors have been elected the incorporators may adopt initial bylaws for the corporation.
(c) If neither the incorporators nor the board of directors have adopted initial bylaws, the shareholders may do so.
(2) The bylaws of a corporation may contain any provision for managing the business and regulating the affairs of the corporation that is not inconsistent with law or the articles of incorporation, including management and regulation of the corporation in the event of an emergency.

Part 3
Purposes and Powers

16-10a-301 Purposes.
(1) A corporation incorporated under this chapter and including in the corporation's articles of incorporation a statement that meets the requirements of Subsection 16-10a-202(3) may engage in any lawful business or activity except for express limitations set forth in the articles of incorporation.
(2) A corporation engaging in a business or an activity that is subject to regulation under another statute of this state may incorporate under this chapter only if permitted by, and subject to all limitations of, the other statute.

16-10a-302 General powers.
Unless its articles of incorporation provide otherwise, and except as restricted by the Utah Constitution, every corporation has perpetual duration and succession in its corporate name and has the same powers as an individual to do all things necessary or convenient to carry out its permitted and lawful purposes, activities, and affairs, including without limitation the power:
(1) to sue and be sued, complain and defend in the corporation's corporate name;
(2) to have a corporate seal, which may be altered at will, and to use the corporate seal, or a facsimile of the corporate seal, by impressing or affixing the corporate seal or in any other manner reproducing the corporate seal;
(3) to make and amend bylaws, not inconsistent with the corporation's articles of incorporation or with the laws of this state, for managing the business and regulating the affairs of the corporation;
(4) to purchase, receive, lease, or otherwise acquire, and own, hold, improve, use, and otherwise deal with, real or personal property, or any legal or equitable interest in property, wherever located;
(5) to sell, convey, mortgage, pledge, lease, exchange, and otherwise dispose of all or any part of the corporation's property and assets;
(6) to purchase, receive, subscribe for, or otherwise acquire, own, hold, vote, use, sell, mortgage, lend, pledge, or otherwise dispose of, and deal in and with shares or other interests in, or obligations of, any other entity;
(7) to make contracts and guarantees, incur liabilities, borrow money, issue the corporation's notes, bonds, and other obligations that may or may not be convertible into or include the option to purchase other securities of the corporation, and secure any of the corporation's obligations by mortgage or pledge of any of the corporation's property, assets, franchises, or income;
(8) to lend money, invest and reinvest the corporation's funds, and receive and hold real and personal property as security for repayment;
(9) to be a promoter, partner, member, associate, or manager of any partnership, joint venture, trust, or other entity;
(10) to conduct the corporation's business and activities, locate offices, and exercise the powers granted by this chapter within or without this state;
(11) to elect directors and appoint officers, employees, and agents of the corporation, define their duties, fix their compensation, and lend them money and credit;
(12) to pay pensions and establish pension plans, pension trusts, profit sharing plans, share bonus plans, share option plans, and benefit or incentive plans for any or all of the corporation's current or former directors, officers, employees, and agents;
(13) to operate, and to make donations, for the public welfare or for charitable, religious, scientific, or educational purposes;

(14) to transact any lawful business that will aid governmental policy;
(15) to make payments or donations, or do any other act, not inconsistent with law, that furthers the business and affairs of the corporation; and
(16) to establish rules governing the conduct of the business and affairs of the corporation in the event of an emergency.

16-10a-303 Ultra vires.
(1) Except as provided in Subsection (2), the validity of corporate action may not be challenged on the ground that the corporation lacks or lacked power to act.
(2) A corporation's power to act may be challenged:
(a) in a proceeding by a shareholder against the corporation to enjoin the act;
(b) in a proceeding by the corporation, directly, derivatively, or through a receiver, trustee, or other legal representative, against an incumbent or former director, officer, employee, or agent of the corporation; or
(c) in a proceeding by the attorney general under Section 16-10a-1430.
(3) In a shareholder's proceeding under Subsection (2)(a) to enjoin an unauthorized corporate act, the court may enjoin or set aside the act, if equitable and if all affected persons are parties to the proceeding, and may award damages for loss, other than anticipated profits, suffered by the corporation or another party because of enjoining the unauthorized act.

~~**Part 4**~~
~~**Name**~~

~~**16-10a-401 Corporate name.**~~
~~(1) The name of a corporation:~~
~~(a) except for the name of a depository institution as defined in Section 7-1-103, shall contain:~~
~~(i) the word:~~
~~(A) "corporation";~~
~~(B) "incorporated"; or~~
~~(C) "company";~~
~~(ii) the abbreviation:~~
~~(A) "corp.";~~
~~(B) "inc."; or~~
~~(C) "co."; or~~
~~(iii) words or abbreviations of like import to the words or abbreviations listed in Subsections (1)(a)(i) and (ii) in another language;~~
~~(b) may not contain:~~
~~(i) language stating or implying that the corporation is organized for a purpose other than that permitted by:~~
~~(A) Section 16-10a-301; and~~
~~(B) the corporation's articles of incorporation; or~~
~~(ii) for a corporation that changes the corporation's name or is incorporated in or authorized to do business in the state on or after May 4, 2022, the number sequence "911";~~
~~(c) without the written consent of the United States Olympic Committee, may not contain the words:~~
~~(i) "Olympic";~~
~~(ii) "Olympiad"; or~~
~~(iii) "Citius Altius Fortius"; and~~
~~(d) without the written consent of the Division of Consumer Protection issued in accordance with Section 13-34-114, may not contain the words:~~
~~(i) "university";~~
~~(ii) "college"; or~~
~~(iii) "institute" or "institution."~~
~~(2) Except as authorized by Subsections (3) and (4), the name of a corporation shall be distinguishable, as~~

defined in Subsection (5), upon the records of the division from:

(a) the name of any domestic corporation incorporated in or foreign corporation authorized to transact business in this state;

(b) the name of any domestic or foreign nonprofit corporation incorporated or authorized to transact business in this state;

(c) the name of any domestic or foreign limited liability company formed or authorized to transact business in this state;

(d) the name of any limited partnership formed or authorized to transact business in this state;

(e) any name reserved or registered with the division for a corporation, limited liability company, or general or limited partnership, under the laws of this state; and

(f) any business name, fictitious name, assumed name, trademark, or service mark registered by the division.

(3)

(a) A corporation may apply to the division for authorization to file the corporation's articles of incorporation under, or to register or reserve, a name that is not distinguishable upon the division's records from one or more of the names described in Subsection (2).

(b) The division shall approve the application filed under Subsection (3)(a) if:

(i) the other person whose name is not distinguishable from the name under which the applicant desires to file, or which the applicant desires to register or reserve:

(A) consents to the filing, registration, or reservation in writing; and

(B) submits an undertaking in a form satisfactory to the division to change the person's name to a name that is distinguishable from the name of the applicant; or

(ii) the applicant delivers to the division a certified copy of the final judgment of a court of competent jurisdiction establishing the applicant's right to make the requested filing in this state under the name applied for.

(4) A corporation may make a filing under the name, including the fictitious name, of another domestic or foreign corporation that is used or registered in this state if:

(a) the other corporation is incorporated or authorized to transact business in this state; and

(b) the filing corporation:

(i) has merged with the other corporation; or

(ii) has been formed by reorganization of the other corporation.

(5)

(a) A name is distinguishable from other names, trademarks, and service marks on the records of the division if the name:

(i) contains one or more different letters or numerals; or

(ii) has a different sequence of letters or numerals from the other names on the division's records.

(b) Differences which are not distinguishing are:

(i) the words or abbreviations of the words:

(A) "corporation";

(B) "company";

(C) "incorporated";

(D) "limited partnership";

(E) "L.P.";

(F) "limited";

(G) "limited liability company";

(H) "limited company";

(I) "L.C."; or

(J) "L.L.C.";

(ii) the presence or absence of the words or symbols of the words "the," "and," or "a";

(iii) differences in punctuation and special characters;

(iv) differences in capitalization;

(v) differences between singular and plural forms of words for a corporation:

(A) incorporated in or authorized to do business in this state on or after May 4, 1998; or

(B) that changes the corporation's name on or after May 4, 1998;

(vi) differences in whether the letters or numbers immediately follow each other or are separated by one or more spaces if:

(A) the sequence of letters or numbers is identical; and

(B) the corporation:

(I) is incorporated in or authorized to do business in this state on or after May 3, 1999; or

(II) changes the corporation's name on or after May 3, 1999; or

(vii) differences in abbreviations, for a corporation:

(A) incorporated in or authorized to do business in this state on or after May 1, 2000; or

(B) that changes the corporation's name on or after May 1, 2000.

(c) The director of the division has the power and authority reasonably necessary to interpret and efficiently administer this section and to perform the duties imposed on the division by this section.

(6) A name that implies that the corporation is an agency of this state or of any of the state's political subdivisions, if the corporation is not actually such a legally established agency or subdivision, may not be approved for filing by the division.

(7)

(a) The requirements of Subsection (1)(d) do not apply to a corporation incorporated in or authorized to do business in this state on or before May 4, 1998, until December 31, 1998.

(b) On or after January 1, 1999, any corporation incorporated in or authorized to do business in this state shall comply with the requirements of Subsection (1)(d).

16-10a-402 Reserved name.

(1) Any person may apply for the reservation of a name by delivering to the division for filing an application setting forth the name and address of the applicant and the name proposed to be reserved. If the division finds that the name applied for would be available for use as a corporate name under Section 16-10a-401, the division shall reserve the name for the applicant for a 120-day period. Any person which has in effect a reservation of a name permitted by this Subsection may renew the reservation by delivering to the division for filing prior to expiration of the reservation a renewal application for reservation, which complies with the requirements of this Subsection (1). When filed, the renewal application for reservation renews the reservation for a period of 120 days from the date of filing.

(2) The applicant for a reserved name may transfer the reservation to another person by delivering to the division a notice of the transfer signed by the applicant for which the name was reserved and specifying the reserved name, the name of the holder of the name, and the name and address of the transferee.

(3) A name reservation does not authorize the applicant to use the name until:

(a) the name is registered as a trade name under Section 42-2-5;

(b) articles of incorporation which bear the name are filed with the division; or

(c) an application for authority to transact business in this state under the name has been filed with the division pursuant to Part 15, Authority of Foreign Corporation to Transact Business.

16-10a-403 Corporate name -- Limited rights.

The authorization granted by the division to file articles of incorporation under a corporate name or to reserve a name does not:

(1) abrogate or limit the law governing unfair competition or unfair trade practices;

(2) derogate from the common law the principles of equity or the statutes of this state or of the United States with respect to the right to acquire and protect names and trademarks; or

(3) create an exclusive right in geographic or generic terms contained within a name.

Part 6
Shares and Distributions

16-10a-601 Authorized shares.

(1) The articles of incorporation shall prescribe the classes of shares and the number of shares of each class that

the corporation is authorized to issue. If more than one class of shares is authorized, the articles of incorporation shall prescribe a distinguishing designation for each class, and prior to the issuance of shares of a class the preferences, limitations, and relative rights of that class shall be described in the articles of incorporation. All shares of a class shall have preferences, limitations, and relative rights identical with those of other shares of the same class except to the extent otherwise permitted by this section and Section 16-10a-602.

(2) The articles of incorporation shall authorize:

(a) one or more classes of shares that together have unlimited voting rights; and

(b) one or more classes of shares, which may be the same class or classes as those with voting rights, that together are entitled to receive the net assets of the corporation upon dissolution.

(3) The articles of incorporation may authorize one or more classes of shares and one or more series of shares within any class that:

(a) have special, conditional, or limited voting rights, or no right to vote, except to the extent prohibited by this chapter;

(b) are redeemable or convertible as specified in the articles of incorporation:

(i) at the option of the corporation, the shareholder, or another person or upon the occurrence of a designated event;

(ii) for money, indebtedness, securities, or other property; or

(iii) in a designated amount or in an amount determined in accordance with a designated formula or by reference to extrinsic data or events;

(c) entitle the holders to distributions calculated in any manner, including dividends that may be cumulative, noncumulative, or partially cumulative; or

(d) have preference over any other class or series of shares with respect to distributions, including dividends and distributions upon the dissolution of the corporation.

(4) The description of the designations, preferences, limitations, and relative rights of share classes or series of shares in Subsection (3) is not exhaustive.

16-10a-602 Terms of class or series determined by board of directors.

(1) If the articles of incorporation so provide, the board of directors, without shareholder action but subject to any limitations and restrictions stated in the articles of incorporation, may amend the corporation's articles of incorporation pursuant to the authority granted to the board of directors by Subsection 16-10a-1002(1)(e) to do any of the following:

(a) designate in whole or in part, the preferences, limitations, and relative rights, within the limits set forth in Section 16-10a-601, of any class of shares before the issuance of any shares of that class;

(b) create one or more series within a class of shares, fix the number of shares of each such series, and designate, in whole or part, the preferences, limitations, and relative rights of the series, within the limits set forth in Section 16-10a-601, all before the issuance of any shares of that series;

(c) alter or revoke the preferences, limitations, and relative rights granted to or imposed upon any wholly unissued class of shares or any wholly unissued series of any class of shares; or

(d) increase or decrease the number of shares constituting any series, the number of shares of which was originally fixed by the board of directors, either before or after the issuance of shares of the series, provided that the number may not be decreased below the number of shares of the series then outstanding, or increased above the total number of authorized shares of the applicable class of shares available for designation as a part of the series.

(2) Each series of a class shall be given a distinguishing designation.

(3) All shares of a series shall have preferences, limitations, and relative rights identical with those of other shares of the same series and, except to the extent otherwise provided in the description of the series, with those of other series of the same class.

(4) Before issuing any shares of a class or series created under this section, or having preferences, limitations, or relative rights designated by the board of directors as provided in this section, and before any amendment to articles of incorporation contemplated by Subsection (1) shall be effective, the corporation shall deliver to the division for filing, in accordance with the procedure set forth in Section 16-10a-1006, articles of amendment

that set forth:
(a) the name of the corporation;
(b) the text of the amendment adopted by the board of directors pursuant to Subsection (1);
(c) the date the amendment was adopted by the board of directors;
(d) a statement that the amendment was duly adopted by the board of directors without shareholder action and that shareholder action was not required; and
(e) if the amendment alters or revokes the preferences, limitations, or relative rights granted to or imposed upon any wholly unissued class of shares or any wholly unissued series of any class of shares, a statement that none of the shares of any class or series of shares so affected has been issued.

16-10a-603 Issued and outstanding shares.
(1) A corporation may issue the number of shares of each class or series authorized by the articles of incorporation. Shares that are issued are outstanding shares until they are reacquired, redeemed, converted, or cancelled.
(2) The reacquisition, redemption, or conversion of outstanding shares is subject to the limitations of Subsection (3) and to Section 16-10a-640.
(3) At all times that shares of the corporation are outstanding, one or more shares that together have unlimited voting rights and one or more shares that together are entitled to receive the net assets of the corporation upon dissolution shall be outstanding.

16-10a-604 Fractional shares.
(1) A corporation may:
(a) issue fractions of a share or pay in money the value of fractions of a share;
(b) arrange for disposition of fractional shares by the shareholders; or
(c) issue scrip in registered or bearer form entitling the holder to receive a full share upon surrendering enough scrip to equal a full share.
(2) Each certificate representing scrip shall be conspicuously labeled "scrip" and shall contain the information required to be included on a share certificate by Subsections 16-10a-625(2) and (3) and Section 16-10a-627.
(3) The holder of a fractional share is entitled to exercise the rights of a shareholder, including the right to vote, to receive dividends, and to participate in the assets of the corporation upon liquidation. The holder of scrip is not entitled to any of these rights unless the scrip provides for them.
(4) The board of directors may authorize the issuance of scrip subject to any condition considered desirable, including:
(a) that the scrip will become void if not exchanged for full shares before a specified date; and
(b) that the shares for which the scrip is exchangeable may be sold and the proceeds paid to the scripholders.

16-10a-620 Subscriptions for shares.
(1) A subscription for shares entered into before incorporation is irrevocable for six months unless the subscription agreement provides a longer or shorter period or all the subscribers agree or the corporation consents to revocation of the subscription and provided the subscription is not considered revocable under the federal securities laws.
(2) The acceptance by the corporation of a subscription entered into before incorporation and the authorization of the issuance of shares pursuant thereto are subject to Section 16-10a-621.
(3) The board of directors may determine the payment terms of subscriptions for shares that were entered into before incorporation, unless the subscription agreement specifies them. A call for payment by the board of directors shall be uniform so far as practicable as to all shares of the same class or series, unless the subscription agreement specifies otherwise.
(4) Shares issued pursuant to subscriptions entered into before incorporation are fully paid and nonassessable when the corporation receives the consideration specified in the subscription agreement.
(5) If a subscriber defaults in payment of money or property under a subscription agreement entered into before incorporation, the corporation may collect the amount owed as any other debt. Alternatively, unless the subscription agreement provides otherwise, the corporation may rescind the agreement and may sell the shares

if the debt remains unpaid more than 20 days after the corporation sends written demand for payment to the subscriber.
(6) A subscription agreement entered into after incorporation is a contract between the subscriber and the corporation subject to Section 16-10a-621.

16-10a-621 Issuance of shares.
(1) The powers granted in this section to the board of directors may be reserved to the shareholders by the articles of incorporation.
(2) The board of directors may authorize the issuance of shares for consideration consisting of any tangible or intangible property or benefit to the corporation, including cash, promissory notes, services performed, contracts or arrangements for services to be performed, or other securities of the corporation. The terms and conditions of any tangible or intangible property or benefit to be provided in the future to the corporation, including contracts or arrangements for services to be performed, shall be set forth in writing. However, the failure to set forth the terms and conditions in writing does not affect the validity of the issuance of any shares issued for any consideration, or their status as fully paid and nonassessable shares.
(3) Before the corporation issues shares, the board of directors shall determine that the consideration received or to be received for the shares to be issued is adequate. The board of directors' determination regarding the adequacy of consideration for the issuance of shares is conclusive for the purpose of determining whether the shares are validly issued, fully paid, and nonassessable.
(4) When the corporation receives the consideration for which the board of directors authorized the issuance of shares, the shares issued therefor are fully paid and nonassessable.
(5) The corporation may place in escrow shares issued in consideration for contracts or arrangements for future services or benefits or in consideration for a promissory note, or make other arrangements to restrict the transfer of the shares issued for any such consideration, and may credit distributions in respect of the shares against their purchase price, until the services are performed, the note is paid, or the benefits are received. If specified future services are not performed, the note is not paid, or the benefits are not received, the shares escrowed or restricted and the distributions credited may be cancelled in whole or part.
(6) The board of directors may authorize a committee of the board of directors, or an officer of the corporation, to authorize or approve the issuance or sale, or contract for sale of shares, within limits specifically prescribed by the board of directors.

16-10a-622 Liability of shareholders.
(1) A purchaser from a corporation of shares issued by the corporation is not liable to the corporation or its creditors with respect to the shares except to pay or provide the consideration for which the issuance of the shares was authorized under Section 16-10a-621 or specified in the subscription agreement under Section 16-10a-620.
(2) Unless otherwise provided in the articles of incorporation, a shareholder or subscriber for shares of a corporation is not personally liable for the acts or debts of the corporation solely by reason of the ownership of the corporation's shares.
(3)
(a) A shareholder of a corporation, when acting solely in the capacity of a shareholder, has no fiduciary duty or other similar duty to any other shareholder of the corporation, including not having a duty of care, loyalty, or utmost good faith.
(b) This Subsection (3) applies to a corporation governed by this chapter, including a public corporation or a closely-held corporation.
(c) This Subsection (3) does not affect any of the following:
(i) liability of a shareholder who receives an improper dividend or distribution, as set forth in Section 16-10a-842;
(ii) liability for an act before incorporation, as set forth in Section 16-10a-204;
(iii) liability of a director or officer of a corporation for breach of a fiduciary duty or other similar duty to shareholders solely in the capacity as a director or officer, regardless of whether the director or officer is a shareholder of the corporation; or

(iv) liability of a director or officer of a corporation for an act, breach, or failure for which liability is set forth in:
(A) Section 16-10a-840;
(B) Section 16-10a-841; or
(C) Section 16-10a-842.

16-10a-623 Share dividends.
(1) Unless the articles of incorporation provide otherwise, shares may be issued pro rata and without consideration to the corporation's shareholders or, to the extent and in the manner provided for in the articles of incorporation, to the shareholders of one or more classes or series of shares. An issuance of shares under this subsection is a share dividend.
(2) Shares of one class or series may not be issued as a share dividend in respect of shares of another class or series unless:
(a) the articles of incorporation so authorize;
(b) a majority of the votes entitled to be cast by the outstanding shares of the class or series to be issued approve the issue; or
(c) there are no outstanding shares of the class or series to be issued.
(3) The bylaws or, in the absence of an applicable bylaw, the board of directors may fix a future date as the record date for determining shareholders entitled to a share dividend. If no future date is so fixed, the record date is the date the board of directors authorizes the share dividend.

16-10a-624 Share options and other rights.
(1) Subject to any provisions in its articles of incorporation, a corporation may create and issue, whether or not in connection with the issue and sale of any shares or other securities of the corporation, rights or options for the purchase of shares or assets of the corporation. The board of directors shall determine the terms upon which the rights or options are issued, their form and content, and the consideration for which the shares are to be issued.
(2) The terms and conditions of the options or rights may include restrictions or conditions that:
(a) preclude or limit the exercise, transfer, or receipt of the options or rights by any person owning or offering to acquire a specified number or percentage of the outstanding common shares or other securities of the corporation or any transferee of that person; or
(b) invalidate or void the options or rights.
(3) This section applies to all options and rights notwithstanding the date of grant.

16-10a-625 Form and content of certificates.
(1) Shares may but need not be represented by certificates. Unless this chapter or another applicable statute expressly provides otherwise, the rights and obligations of shareholders are not affected by whether or not their shares are represented by certificates.
(2) Each share certificate shall state on its face:
(a) the name of the issuing corporation and that it is organized under the laws of this state;
(b) the name of the person to whom the certificate is issued; and
(c) the number and class of shares and the designation of the series, if any, the certificate represents.
(3) If the issuing corporation is authorized to issue different classes of shares or different series within a class, the designations, preferences, limitations, and relative rights applicable to each class, the variations in preferences, limitations, and relative rights determined for each series, and the authority of the board of directors to determine variations for any existing or future class or series, shall be summarized on the front or back of each share certificate. Alternatively, each certificate may state conspicuously on its front or back that the corporation will furnish the shareholder this information on request in writing and without charge.
(4) Each share certificate:
(a) shall be signed by two officers designated in the bylaws or by the board of directors;
(b) may bear the corporate seal or its facsimile; and
(c) may contain any other information as the corporation considers necessary or appropriate.

(5) The signatures of the officers upon a certificate may be facsimiles if the certificate is countersigned by a transfer agent, or registered by a registrar, other than the corporation itself or an employee of the corporation.
(6) In case any officer who has signed or whose facsimile signature has been placed upon a certificate ceases to be an officer before the certificate is issued, the certificate may be issued by the corporation with the same effect as if the person were an officer at the date of its issue.

16-10a-626 Shares without certificates.
(1) Unless the articles of incorporation or bylaws provide otherwise, the board of directors of a corporation may authorize the issuance of some or all of the shares of any or all of its classes or series without certificates. The authorization does not affect shares already represented by certificates until they are surrendered to the corporation.
(2) Within a reasonable time after the issuance or transfer of shares without certificates, the corporation shall send the shareholder a written statement of the information required on certificates by Subsections 16-10a-625(2) and (3), and, if applicable, Section 16-10a-627.

16-10a-627 Restrictions on transfer or registration of shares or other securities.
(1) The articles of incorporation, the bylaws, an agreement among shareholders, or an agreement between one or more shareholders and the corporation may impose restrictions on the transfer or registration of transfer of shares of the corporation. A restriction does not affect shares issued before the restriction was adopted unless the holders of the shares are parties to the restriction agreement or voted in favor of the restriction or otherwise consented to the restriction.
(2) A restriction on the transfer or registration of transfer of shares is valid and enforceable against the holder or a transferee of the holder if the restriction is authorized by this section and its existence is noted conspicuously on the front or back of the certificate, or if the restriction is contained in the information statement required by Subsection 16-10a-626(2). Unless so noted, a restriction is not enforceable against a person without knowledge of the restriction.
(3) A restriction on the transfer or registration of transfer of shares is authorized:
(a) to maintain the corporation's status when it is dependent on the number or identity of its shareholders;
(b) to preserve entitlements, benefits, or exemptions under federal, state, or local laws; and
(c) for any other reasonable purpose.
(4) A restriction on the transfer or registration of transfer of shares may:
(a) obligate the shareholder first to offer to the corporation or other persons, separately, consecutively, or simultaneously, an opportunity to acquire the restricted shares;
(b) obligate the corporation or other persons, separately, consecutively, or simultaneously, to acquire the restricted shares;
(c) require, as a condition to a transfer or registration, that any one or more persons, including the corporation or any of its shareholders, approve the transfer or registration, if the requirement is not manifestly unreasonable; or
(d) prohibit the transfer or the registration of a transfer of the restricted shares to designated persons or classes of persons, if the prohibition is not manifestly unreasonable.
(5) The description of the restrictions on the transfer or registration of transfer of shares in Subsection (4) is not exhaustive.
(6) For purposes of this section, "shares" includes a security convertible into or carrying a right to subscribe for or acquire shares.

16-10a-628 Expense of issue.
A corporation may pay the expenses of selling or underwriting its shares, and of incorporating, organizing, or reorganizing the corporation from the consideration received for shares.

16-10a-630 Shareholders' preemptive rights.
(1) Subject to the provisions of Subsection 16-10a-1704(3), the shareholders of a corporation do not have a preemptive right to acquire the corporation's unissued shares except to the extent the articles of incorporation so

provide.
(2) A statement included in the articles of incorporation that "the corporation elects to have preemptive rights," or words of similar import, means that the following principles apply except to the extent the articles of incorporation expressly provide otherwise:
(a) Upon the decision of the board of directors to issue shares, the shareholders of the corporation have a preemptive right, subject to any uniform terms and conditions prescribed by the board of directors, to provide a fair and reasonable opportunity to exercise the right, to acquire a number of the shares proposed to be issued in an amount proportional to their percentage ownership of the corporation's outstanding shares.
(b) A shareholder may waive a preemptive right. A waiver evidenced by a writing is irrevocable even though it is not supported by consideration.
(c) There is no preemptive right with respect to:
(i) shares issued as compensation for services to directors, officers, agents, or employees of the corporation, its subsidiaries, or affiliates;
(ii) shares issued to satisfy conversion or option rights created to provide compensation for services to directors, officers, agents, or employees of the corporation, its subsidiaries, or affiliates;
(iii) shares issued within six months from the effective date of incorporation; or
(iv) shares sold otherwise than for cash.
(d) Holders of shares of any class without general voting rights but with preferential rights to distributions have no preemptive rights with respect to shares of any other class.
(e) Holders of shares of any class with general voting rights but without preferential rights to distributions have no preemptive rights with respect to shares of any class without general voting rights but with preferential rights to distributions unless the shares without general voting rights but with preferential rights are convertible into or carry a right to subscribe for or acquire shares with general voting rights or without preferential rights.
(f) Shares subject to preemptive rights that are not acquired by shareholders may be issued to any person for a period of one year after being offered to shareholders pursuant to the preemptive rights, at a consideration set by the board of directors that is not lower than the consideration set for the exercise of preemptive rights. An offer at a lower consideration or after the expiration of the one year period is subject to the shareholders' preemptive rights.
(3) For purposes of this section, "shares" includes a security convertible into or carrying a right to subscribe for or acquire shares.

16-10a-631 Corporation's acquisition of its own shares.
(1) A corporation may acquire its own shares and shares so acquired constitute authorized but unissued shares.
(2) If the articles of incorporation prohibit the reissuance of acquired shares:
(a) the number of authorized shares is reduced by the number of shares acquired by the corporation, effective upon amendment of the articles of incorporation; and
(b) as provided in Section 16-10a-1002, the board of directors may adopt an amendment to the articles of incorporation under Subsection (2)(a) without shareholder action in order to reduce the number of authorized shares by an amount equal to the number of shares acquired by the corporation.
(3) A corporation amending its articles of incorporation pursuant to Subsection (2) shall deliver to the division for filing articles of amendment setting forth:
(a) the name of the corporation;
(b) the reduction in the number of authorized shares, itemized by class and series;
(c) the total number of authorized shares, itemized by class and series, remaining after reduction of the shares; and
(d) a statement that the amendment was adopted by the board of directors without shareholder action and that shareholder action was not required.

16-10a-640 Distributions to shareholders.
(1) A board of directors may authorize and the corporation may make distributions to its shareholders subject to any restriction in the articles of incorporation and the limitations in Subsection (3).

(2) The bylaws or, in the absence of an applicable bylaw, the board of directors may fix a future date as the record date for determining shareholders entitled to a distribution, other than one involving a purchase, redemption, or other acquisition of the corporation's shares. If a record date is necessary but no future date is so fixed, the record date is the date the board of directors authorizes the distribution.
(3) No distribution may be made if, after giving it effect:
(a) the corporation would not be able to pay its debts as they become due in the usual course of business; or
(b) the corporation's total assets would be less than the sum of its total liabilities plus, unless the articles of incorporation permit otherwise, the amount that would be needed, if the corporation were to be dissolved at the time of the distribution, to satisfy the preferential rights upon dissolution of shareholders whose preferential rights are superior to those receiving the distribution.
(4) The board of directors may base a determination that a distribution is not prohibited under Subsection (3) either on financial statements prepared on the basis of accounting practices and principles that are reasonable in the circumstances, including consolidated financial statements, or on a fair valuation or other method that is reasonable in the circumstances.
(5) Except as provided in Subsection (7), the effect of a distribution under Subsection (3) is measured:
(a) in the case of distribution by purchase, redemption, or other acquisition of the corporation's shares, as of the earlier of:
(i) the date money or other property is transferred or debt is incurred by the corporation; or
(ii) the date the shareholder ceases to be a shareholder with respect to the acquired shares;
(b) in the case of any other distribution of indebtedness, as of the date the indebtedness is distributed; and
(c) in all other cases, as of:
(i) the date the distribution is authorized if the payment occurs within 120 days after the date of authorization; or
(ii) the date the payment is made if it occurs more than 120 days after the date of authorization.
(6) A corporation's indebtedness to a shareholder incurred by reason of a distribution made in accordance with this section, if the indebtedness is unsecured, is on a parity with the corporation's indebtedness to its general, unsecured creditors except to the extent subordinated by agreement.
(7) Indebtedness of a corporation, including indebtedness issued as a distribution, is not considered a liability for purposes of determinations under Subsection (3) if its terms provide that payment of principal and interest are made only if and to the extent that payment of a distribution to shareholders could then be made under this section. If the indebtedness is issued as a distribution, each payment of principal or interest on the indebtedness is treated as a distribution, the effect of which is measured on the date the payment is actually made.

16-10a-641 Unclaimed distributions.

If a corporation has mailed three successive distributions to a shareholder addressed to the shareholder's address shown on the corporation's current record of shareholders and the distributions have been returned as undeliverable, no further attempt to deliver distributions to the shareholder need be made until another address for the shareholder is made known to the corporation, at which time all distributions accumulated by reason of this section shall, except as otherwise provided by law, be mailed to the shareholder at the other address.

Part 7
Shareholders

16-10a-701 Annual meeting.
(1) A corporation shall hold a meeting of shareholders annually at a time stated in or fixed in accordance with the bylaws.
(2) Annual shareholders' meetings may be held in or out of this state at the place stated in or fixed in accordance with the bylaws. If no place is stated in or fixed in accordance with the bylaws, annual meetings shall be held at the corporation's principal office.
(3) The failure to hold an annual meeting at the time stated in or fixed in accordance with a corporation's bylaws does not affect the validity of any corporate action or work a forfeiture or dissolution of the corporation.

16-10a-702 Special meeting.

(1) A corporation shall hold a special meeting of shareholders:

(a) on call of its board of directors or the person or persons authorized by the bylaws to call a special meeting; or

(b) if the holders of shares representing at least 10% of all the votes entitled to be cast on any issue proposed to be considered at the proposed special meeting sign, date, and deliver to the corporation's secretary one or more written demands for the meeting, stating the purpose or purposes for which it is to be held.

(2) If not otherwise fixed under Sections 16-10a-703 or 16-10a-707, the record date for determining shareholders entitled to demand a special meeting pursuant to Subsection (1)(b) is the earliest date of any of the demands pursuant to which the meeting is called or the date that is 60 days prior to the date the first of the written demands pursuant to which the meeting is called is received by the corporation, whichever is later.

(3) Special shareholders' meetings may be held in or out of this state at the place stated in or fixed in accordance with the bylaws. If no place is stated or fixed in accordance with the bylaws, special meetings shall be held at the corporation's principal office.

(4) Only business within the purpose or purposes described in the meeting notice required by Subsection 16-10a-705(3) may be conducted at a special shareholders' meeting, unless notice of the meeting is waived by all shareholders pursuant to Section 16-10a-706.

16-10a-703 Court-ordered meeting.

(1) The district court of the county in this state where a corporation's principal office is located or, if it has no principal office in this state, the district court for Salt Lake County may summarily order a meeting of shareholders to be held:

(a) on application of any shareholder of the corporation entitled to participate in an annual meeting or any director of the corporation if an annual meeting was not held within 15 months after its last annual meeting, or if there has been no annual meeting, the date of incorporation; or

(b) on application of any person who participated in a call of or demand for a special meeting effective under Subsection 16-10a-702(1) if:

(i) notice of the special meeting was not given within 60 days after the date of the call or the date the last of the demands necessary to require the calling of the meeting was delivered to the corporation pursuant to Subsection 16-10a-702(1)(b), as the case may be; or

(ii) the special meeting was not held in accordance with the notice.

(2) The court may fix the time and place of the meeting, state whether or not it is an annual or special meeting, determine the shares entitled to participate in the meeting, specify a record date for determining shareholders entitled to notice of and to vote at the meeting, prescribe the form and content of the meeting notice, fix the quorum required for specific matters to be considered at the meeting, or direct that the votes represented at the meeting constitute a quorum for action on those matters, and enter other orders necessary or appropriate to accomplish the purpose or purposes of holding the meeting.

16-10a-704 Action without meeting.

(1)

(a) Unless otherwise provided in the articles of incorporation, and subject to the limitations of Subsection 16-10a-1704(4), any action that may be taken at an annual or special meeting of shareholders may be taken without a meeting and without prior notice, if one or more consents in writing, setting forth the action so taken are signed by the holders of outstanding shares having not less than the minimum number of votes that would be necessary to authorize or take the action at a meeting at which all shares entitled to vote on the action were present and voted.

(b) A shareholder shall deliver written consent under this section to the corporation by delivering the written consent to:

(i) the corporation's principal place of business; or

(ii) an officer or agent of the corporation having custody of the book in which a proceeding of a meeting of shareholders is recorded.

(c) A written consent under this section shall bear the date of signature of each shareholder who signs the

consent.

(d)

(i) Notwithstanding Subsection (1)(c), and unless otherwise provided by the bylaws, a shareholder may deliver a written consent under this section by an electronic transmission that provides the corporation with a complete copy of the written consent.

(ii) An electronic transmission consenting to an action under this section is considered to be written, signed, and dated for purposes of this section if the electronic transmission is delivered with information from which the corporation can determine:

(A) that the electronic transmission is transmitted by the shareholder, proxyholder, or other person authorized to act for the shareholder or proxyholder; and

(B) the date on which the electronic transmission is transmitted.

(iii) The date on which an electronic transmission is transmitted is considered the date on which a consent is signed.

(e) A consent signed pursuant to this section has the effect of a vote taken at a meeting and may be described as such in a document.

(2)

(a) Except as provided in Subsection (3), unless the written consents of all shareholders entitled to vote are obtained, written notice of shareholder approval of an action without a meeting shall be given at least 10 days before the consummation of the transaction, action, or event authorized by the shareholder action to:

(i) those shareholders entitled to vote who have not consented in writing; and

(ii) those shareholders not entitled to vote and to whom this chapter requires that notice of the proposed action be given.

(b) Notice under this Subsection (2) shall contain or be accompanied by the same material that, under this chapter, would have been required to be sent in a notice of meeting at which the proposed action would have been submitted to the shareholders for action.

(3)

(a) A transaction, action, or event authorized by shareholder action under this section may take effect in accordance with Subsection (5) notwithstanding that the written consents of all shareholders entitled to vote are not obtained if the articles of incorporation or bylaws of the corporation provide for notice under this Subsection (3).

(b) A corporation may provide in its articles of incorporation or bylaws that if the written consents of all shareholders entitled to vote are not obtained, the corporation shall give written notice of shareholder approval of an action without a meeting:

(i) not more than 10 days after the later of the day on which:

(A) the written consents sufficient to take the action are delivered to the corporation; or

(B) the tabulation of the written consents is completed in accordance with Subsection (1); and

(ii) to a shareholder who:

(A) would be entitled to notice of a meeting at which the action could be taken;

(B) would be entitled to vote if the action were taken at a meeting; and

(C) did not consent in writing to the action.

(c) Notice under this Subsection (3) shall contain or be accompanied by the same material that, under this chapter, would have been required to be sent in a notice of meeting at which the proposed action would have been submitted to the shareholders for action.

(d) The notice requirement in this Subsection (3) does not delay the effectiveness of an action taken by written consent in accordance with Subsection (5). Failure to comply with the notice requirement under this Subsection (3) by itself does not invalidate an action taken by written consent, except this Subsection (3)(d) does not limit judicial power to fashion an appropriate remedy in favor of a shareholder adversely affected by a failure to give notice within the time period required under Subsection (3)(b).

(4) The following may revoke a written consent under this section by a signed writing describing the action and stating that a shareholder's prior consent is revoked, if the writing is received by the corporation before the effectiveness of the action:

(a) the shareholder that gave the written consent;

(b) the proxyholder for the shareholder described in Subsection (4)(a);
(c) a transferee of the shares of the shareholder described in Subsection (4)(a);
(d) a personal representative of the shareholder described in Subsection (4)(a); or
(e) a proxyholder for a person described in this Subsection (4).

(5)
(a) An action taken pursuant to this section is not effective unless all written consents on which the corporation relies for taking the action pursuant to Subsection (1) are:
(i) received by the corporation by no later than 60 days after the date the earliest written consent is delivered to the corporation as provided in Subsection (1); and
(ii) not revoked pursuant to Subsection (4).

(b)
(i) Unless otherwise provided by this Subsection (5) and subject to Subsection (2), an action taken by the shareholders pursuant to this section is effective as of the date the last written consent necessary to effect the action is received by the corporation.
(ii) If all of the written consents necessary to effect an action specify a later date as the effective date of the action, the later date is the effective date of the action.
(iii) If the corporation receives written consents as contemplated by Subsection (1) signed by all shareholders entitled to vote with respect to an action, the effective date of the shareholder action may be any date that is specified in all the written consents as the effective date of the shareholder action.

(6) Notwithstanding Subsection (1), directors may not be elected by written consent except by unanimous written consent of all shares entitled to vote for the election of directors.
(7) If not otherwise determined under Sections 16-10a-703 or 16-10a-707, the record date for determining shareholders entitled to take action without a meeting or entitled to be given notice under Subsection (2) or (3) is the date the first shareholder delivers to the corporation a writing upon which the action is taken pursuant to Subsection (1).
(8) Action taken under this section has the same effect as action taken at a meeting of shareholders and may be so described in any document.

16-10a-705 Notice of meeting.
(1) A corporation shall give notice to shareholders of the date, time, and place of each annual and special shareholders' meeting no fewer than 10 nor more than 60 days before the meeting date. Unless this chapter or the articles of incorporation require otherwise, the corporation is required to give notice only to shareholders entitled to vote at the meeting.
(2) Unless this chapter or the articles of incorporation require otherwise, notice of an annual meeting need not include a description of the purpose or purposes for which the meeting is called.
(3) Notice of a special meeting shall include a description of the purpose or purposes for which the meeting is called.

(4)
(a) Subject to Subsection (4)(b), unless the bylaws require otherwise, if an annual or special shareholders' meeting is adjourned to a different date, time, or place, notice need not be given of the new date, time, or place if the new date, time, or place is announced at the meeting before adjournment.
(b) If the adjournment is for more than 30 days, or if after the adjournment a new record date for the adjourned meeting is or shall be fixed under Section 16-10a-707, notice of the adjourned meeting shall be given pursuant to the requirements of this section to shareholders of record who are entitled to vote at the meeting.

(5)
(a) Notwithstanding a requirement that notice be given under any provision of this chapter, the articles of incorporation, or bylaws of any corporation, notice is not required to be given to any shareholder to whom:
(i) a notice of two consecutive annual meetings, and all notices of meetings or of the taking of action by written consent without a meeting during the period between the two consecutive annual meetings, have been mailed, addressed to the shareholder at the shareholder's address as shown on the records of the corporation, and have been returned undeliverable; or

(ii) at least two payments, if sent by first class mail, of dividends or interest on securities during a 12 month period, have been mailed, addressed to the shareholder at the shareholder's address as shown on the records of the corporation, and have been returned undeliverable.

(b) Any action taken at a meeting held without notice to a shareholder to whom notice is excused under Subsection (5) has the same force and effect as if notice had been duly given. If a shareholder to whom notice is excused under Subsection (5) delivers to the corporation a written notice setting forth the shareholder's current address, or if another address for the shareholder is otherwise made known to the corporation, the requirement that notice be given to the shareholder is reinstated. In the event that the action taken by the corporation requires the filing of a certificate under any provision of this chapter, the certificate need not state that notice was not given to shareholders to whom notice was not required pursuant to this Subsection (5).

16-10a-706 Waiver of notice.

(1) A shareholder may waive any notice required by this chapter, the articles of incorporation, or the bylaws before or after the date and time stated in the notice as the date or time when any action will occur or has occurred. The waiver shall be in writing, be signed by the shareholder entitled to the notice, and be delivered to the corporation for inclusion in the minutes or filing with the corporate records.

(2) A shareholder's attendance at a meeting:

(a) waives objection to lack of notice or defective notice of the meeting, unless the shareholder at the beginning of the meeting objects to holding the meeting or transacting business at the meeting because of lack of notice or defective notice; and

(b) waives objection to consideration of a particular matter at the meeting that is not within the purposes described in the meeting notice, unless the shareholder objects to considering the matter when it is presented.

16-10a-707 Record date.

(1) The bylaws may fix or provide the manner of fixing the record date for one or more voting groups in order to determine the shareholders entitled to be given notice of a shareholders' meeting, to determine shareholders entitled to take action without a meeting, to demand a special meeting, to vote, or to take any other action. If the bylaws do not fix or provide for the manner of fixing a record date, the board of directors of the corporation may fix a future date as the record date.

(2) If not otherwise fixed under Section 16-10a-703 or Subsection (1), the record date for determining shareholders entitled to notice of and to vote at an annual or special shareholders' meeting is the close of business on the day before the first notice is delivered to shareholders.

(3) A record date fixed under this section may not be more than 70 days before the meeting or action requiring a determination of shareholders.

(4) A determination of shareholders entitled to notice of or to vote at a shareholders' meeting is effective for any adjournment of the meeting unless the board of directors fixes a new record date, which it shall do if the meeting is adjourned to a date more than 120 days after the date fixed for the original meeting.

(5) If a court orders a meeting adjourned to a date more than 120 days after the date fixed for the original meeting, it may provide that the original record date continues in effect or it may fix a new record date.

16-10a-708 Meetings by telecommunication.

Unless otherwise provided in the bylaws, any or all of the shareholders may participate in an annual or special meeting of shareholders by, or the meeting may be conducted through the use of, any means of communication by which all persons participating in the meeting can hear each other during the meeting. A shareholder participating in a meeting by this means is considered to be present in person at the meeting.

16-10a-720 Shareholders' list for meeting.

(1) After fixing a record date for a shareholders' meeting, a corporation shall prepare a list of the names of all its shareholders who are entitled to be given notice of the meeting. The list shall be arranged by voting group, and within each voting group by class or series of shares. The list shall be alphabetical within each class or series and shall show the address of, and the number of shares held by, each shareholder.

(2) The shareholders' list shall be available for inspection by any shareholder, beginning on the earlier of 10 days before the meeting for which the list was prepared or two business days after notice of the meeting is given and continuing through the meeting and any meeting adjournments, at the corporation's principal office or at a place identified in the meeting notice in the city where the meeting will be held. A shareholder or a shareholder's agent or attorney is entitled on written demand to the corporation and, subject to the requirements of Subsections 16-10a-1602(3) and (7), and the provisions of Subsections 16-10a-1603(2) and (3), to inspect and copy the list, during regular business hours and during the period it is available for inspection.
(3) The corporation shall make the shareholders' list available at the meeting, and any shareholder, or any shareholder's agent or attorney is entitled to inspect the list at any time during the meeting or any adjournment, for any purposes germane to the meeting.
(4) If the corporation refuses to allow a shareholder, or the shareholder's agent or attorney, to inspect the shareholders' list before or at the meeting, or to copy the list as permitted by Subsection (2), the district court of the county where a corporation's principal office is located, or, if it has none in this state, the district court for Salt Lake County, on application of the shareholder, may summarily order the inspection or copying at the corporation's expense and may postpone the meeting for which the list was prepared until the inspection or copying is complete.
(5) If a court orders inspection or copying of the shareholders' list pursuant to Subsection (4), unless the corporation proves that it refused inspection or copying of the list in good faith because it had a reasonable basis for doubt about the right of the shareholder or the shareholder's agent or attorney to inspect or copy the shareholders' list:
(a) the court shall also order the corporation to pay the shareholder's costs, including reasonable counsel fees, incurred to obtain the order;
(b) the court may order the corporation to pay the shareholder for any damages incurred; and
(c) the court may grant the shareholder any other remedy afforded by law.
(6) If a court orders inspection or copying of the shareholders' list pursuant to Subsection (4), the court may impose reasonable restrictions on the use or distribution of the list by the shareholder.
(7) Refusal or failure to prepare or make available the shareholders' list does not affect the validity of action taken at the meeting.

16-10a-721 Voting entitlement of shares.
(1) Except as otherwise provided in Subsections (2) and (4), in Section 61-6-10, or in the articles of incorporation, each outstanding share, regardless of class, is entitled to one vote, and each fractional share is entitled to a corresponding fractional vote, on each matter voted on at a shareholders' meeting. Only shares are entitled to vote.
(2) Except as otherwise ordered by a court of competent jurisdiction upon a finding that the purpose of this subsection would not be violated in the circumstances presented to the court, the shares of a corporation are not entitled to be voted or to be counted in determining the total number of outstanding shares eligible to be voted if they are owned, directly or indirectly, by a second corporation, domestic or foreign, and the first corporation owns, directly or indirectly, a majority of the shares entitled to vote for directors of the second corporation.
(3) Subsection (2) does not limit the power of a corporation to vote any shares, including its own shares, held by it in a fiduciary capacity.
(4) Redeemable shares are not entitled to be voted after notice of redemption is mailed to the holders and a sum sufficient to redeem the shares has been deposited with a bank, trust company, or other financial institution under an irrevocable obligation to pay the holders the redemption price on surrender of the shares.

16-10a-722 Proxies.
(1) A shareholder may vote his shares in person or by proxy.
(2) A shareholder, his agent, or attorney-in-fact, may appoint a proxy to vote or otherwise act for the shareholder by signing an appointment form or by an electronic transmission. An electronic transmission shall contain or be accompanied by information that indicates that the shareholder, the shareholder's agent, or the shareholder's attorney-in-fact authorized the transmission.
(3) An appointment of a proxy is effective when a signed appointment form or an electronic transmission of the

appointment is received by the inspector of election or the officer or agent of the corporation authorized to tabulate votes. An appointment is valid for 11 months unless a longer period is expressly provided in the appointment form.
(4) An appointment of a proxy is revocable unless the appointment form or electronic transmission states that it is irrevocable and the appointment is coupled with an interest. Appointments coupled with an interest include the appointment of any of the following persons or their designees:
(a) a pledgee;
(b) a person who purchased or agreed to purchase the shares;
(c) a creditor of the corporation who extended its credit under terms requiring the appointment;
(d) an employee of the corporation whose employment contract requires the appointment; or
(e) a party to a voting agreement created under Section 16-10a-731.
(5) The death or incapacity of the shareholder appointing a proxy does not affect the right of the corporation to accept the proxy's authority unless the appointment is not irrevocable and coupled with an interest, and notice of the death or incapacity is received by the secretary or other officer or agent authorized to tabulate votes before the proxy exercises the authority under the appointment.
(6) An appointment made irrevocable under Subsection (4) is revoked when the interest with which it is coupled is extinguished but the revocation does not affect the right of the corporation to accept the proxy's authority unless:
(a) the corporation had notice that the appointment was coupled with that interest and notice that the interest is extinguished is received by the secretary or other officer or agent authorized to tabulate votes before the proxy exercises the authority under the appointment; or
(b) other notice of the revocation of the appointment is received by the secretary or other officer or agent authorized to tabulate votes before the proxy exercises the authority under the appointment.
(7) The corporation is not required to recognize an appointment made irrevocable under Subsection (4) if it has received a writing revoking the appointment signed by the shareholder either personally or by the shareholder's attorney-in-fact, notwithstanding that the revocation may be a breach of an obligation of the shareholder to another person not to revoke the appointment. This provision does not affect any claim the other person may have against the shareholder with respect to the revocation.
(8) A transferee for value of shares subject to an irrevocable appointment may revoke the appointment if the transferee did not know of its existence when acquiring the shares and the existence of the irrevocable appointment was not noted conspicuously on the certificate representing the shares or on the information statement for shares without certificates.
(9) Subject to Section 16-10a-724 and to any express limitation on the proxy's authority stated in the appointment form or electronic transmission, a corporation is entitled to accept the proxy's vote or other action as that of the shareholder making the appointment.

16-10a-723 Shares held by nominees.
(1) A corporation may establish a procedure by which the beneficial owner of shares that are registered in the name of a nominee is recognized by the corporation as the shareholder. The extent of this recognition may be determined in the procedure.
(2) The procedure described in Subsection (1) may set forth:
(a) the types of nominees to which it applies;
(b) the rights or privileges that the corporation recognizes in a beneficial owner, which may include rights or privileges other than voting;
(c) the manner in which the procedure may be used by the nominee;
(d) the information that shall be provided by the nominee when the procedure is used;
(e) the period for which the nominee's use of the procedure is effective; and
(f) other aspects of the rights and duties created.

16-10a-724 Corporation's acceptance of votes.
(1) If the name signed on a vote, consent, waiver, proxy appointment, or proxy appointment revocation corresponds to the name of a shareholder, the corporation, if acting in good faith, is entitled to accept the vote,

consent, waiver, proxy appointment, or proxy appointment revocation and give it effect as the act of the shareholder.

(2) If the name signed on a vote, consent, waiver, proxy appointment, or proxy appointment revocation does not correspond to the name of a shareholder, the corporation, if acting in good faith, is nevertheless entitled to accept the vote, consent, waiver, proxy appointment, or proxy appointment revocation and give it effect as the act of the shareholder if:

(a) the shareholder is an entity and the name signed purports to be that of an officer or agent of the entity;

(b) the name signed purports to be that of an administrator, executor, guardian, or conservator representing the shareholder and, if the corporation requests, evidence of fiduciary status acceptable to the corporation has been presented with respect to the vote, consent, waiver, proxy appointment, or proxy appointment revocation;

(c) the name signed purports to be that of a receiver or trustee in bankruptcy of the shareholder and, if the corporation requests, evidence of this status acceptable to the corporation has been presented with respect to the vote, consent, waiver, proxy appointment, or proxy appointment revocation;

(d) the name signed purports to be that of a pledgee, beneficial owner, or attorney-in-fact of the shareholder and, if the corporation requests, evidence acceptable to the corporation of the signatory's authority to sign for the shareholder has been presented with respect to the vote, consent, waiver, proxy appointment, or proxy appointment revocation;

(e) two or more persons are the shareholder as cotenants or fiduciaries and the name signed purports to be the name of at least one of the cotenants or fiduciaries and the person signing appears to be acting on behalf of all cotenants or fiduciaries; or

(f) the acceptance of the vote, consent, waiver, proxy appointment, or proxy appointment revocation is otherwise proper under rules established by the corporation that are not inconsistent with the provisions of this section.

(3) If shares are registered in the names of two or more persons, whether fiduciaries, members of a partnership, cotenants, husband and wife as community property, voting trustees, persons entitled to vote under a shareholder voting agreement or otherwise, or if two or more persons, including proxyholders, have the same fiduciary relationship respecting the same shares, unless the secretary of the corporation or other officer or agent entitled to tabulate votes is given written notice to the contrary and is furnished with a copy of the instrument or order appointing them or creating the relationship wherein it is so provided, their acts with respect to voting shall have the following effect:

(a) if only one votes, the act binds all;

(b) if more than one vote, the act of the majority so voting binds all;

(c) if more than one vote, but the vote is evenly split on any particular matter, each faction may vote the securities in question proportionately;

(d) if the instrument so filed or the registration of the shares shows that any tenancy is held in unequal interests, a majority or even split for the purpose of this section shall be a majority or even split in interest.

(4) The corporation is entitled to reject a vote, consent, waiver, proxy appointment, or proxy appointment revocation if the secretary or other officer or agent authorized to tabulate votes, acting in good faith, has reasonable basis for doubt about the validity of the signature on it or about the signatory's authority to sign for the shareholder.

(5) The corporation and its officer or agent who accepts or rejects a vote, consent, waiver, proxy appointment, or proxy appointment revocation in good faith and in accordance with the standards of this section are not liable in damages to the shareholder for the consequences of the acceptance or rejection.

(6) Corporate action based on the acceptance or rejection of a vote, consent, waiver, proxy appointment, or proxy appointment revocation under this section is valid unless a court of competent jurisdiction determines otherwise.

16-10a-725 Quorum and voting requirements for voting groups.

(1) Shares entitled to vote as a separate voting group may take action on a matter at a meeting only if a quorum of those shares exists with respect to that matter. Unless the articles of incorporation or this chapter provide otherwise, a majority of the votes entitled to be cast on the matter by the voting group constitutes a quorum of

that voting group for action on that matter.
(2) Once a share is represented for any purpose at a meeting, including the purpose of determining that a quorum exists, it is deemed present for quorum purposes for the remainder of the meeting and for any adjournment of that meeting, unless a new record date is or shall be set for that adjourned meeting.
(3) If a quorum exists, action on a matter, other than the election of directors, by a voting group is approved if the votes cast within the voting group favoring the action exceed the votes cast within the voting group opposing the action, unless the articles of incorporation or this chapter requires a greater number of affirmative votes.
(4) The election of directors is governed by Section 16-10a-728.

16-10a-726 Action by single and multiple voting groups.
(1) If the articles of incorporation or this chapter provide for voting by a single voting group on a matter, action on that matter is taken when voted upon by that voting group as provided in Section 16-10a-725.
(2) If the articles of incorporation or this chapter provide for voting by two or more voting groups on a matter, action on that matter is taken only when voted upon by each of those voting groups counted separately as provided in Section 16-10a-725. One voting group may vote on a matter even though another voting group entitled to vote on the matter has not voted.

16-10a-727 Greater quorum or voting requirements.
(1) The articles of incorporation may provide for a greater quorum or voting requirement for shareholders, or voting groups of shareholders, than is provided for by this chapter.
(2) An amendment to the articles of incorporation that changes or deletes a greater quorum or voting requirement shall meet the same quorum requirement and be adopted by the same vote and voting groups required to take action under the quorum and voting requirements then in effect.

16-10a-728 Voting for directors -- Cumulative voting.
(1) At each election of directors, unless otherwise provided in the articles of incorporation or this chapter, every shareholder entitled to vote at the election has the right to cast, in person or by proxy, all of the votes to which the shareholder's shares are entitled for as many persons as there are directors to be elected and for whose election the shareholder has the right to vote.
(2) Unless otherwise provided in the articles of incorporation or this chapter, directors are elected by a plurality of the votes cast by the shares entitled to vote in the election, at a meeting of shareholders at which a quorum is present.
(3) Shareholders do not have a right to cumulate their votes for the election of directors unless the articles of incorporation so provide.
(4) A statement included in the articles of incorporation to the effect that all or a designated voting group of shareholders are entitled to cumulate their votes for directors, means that the shareholders designated are entitled to multiply the number of votes they are entitled to cast by the number of directors for whom they are entitled to vote and cast the product for a single candidate or distribute the product among two or more candidates.
(5) Shares entitled to vote cumulatively may be voted cumulatively at each election of directors unless the articles of incorporation provide alternative procedures for the exercise of the cumulative voting rights.

16-10a-730 Voting trusts.
(1) One or more shareholders may create a voting trust, conferring on a trustee the right to vote or otherwise act for them, by signing an agreement setting out the provisions of the trust, and transferring to the trustee the shares with respect to which the trustee is to act. When a voting trust agreement is signed, the trustee shall prepare a list of the names and addresses of all owners of beneficial interests in the trust, together with the number and class of shares each transferred to the trust, and promptly cause the corporation to receive copies of the list and agreement. Thereafter the trustee shall cause the corporation to receive changes to the list promptly as they occur and amendments to the agreement promptly as they are made.
(2) A voting trust becomes effective on the date the first shares subject to the trust are registered in the trustee's

name. A voting trust is valid for the period provided in the agreement, but not more than 10 years after its effective date unless extended under Subsection (3).
(3) All or some of the parties to a voting trust may extend the voting trust for additional terms of not more than 10 years each by signing an extension agreement and obtaining the trustee's written consent to the extension. An extension is valid for not more than 10 years from the date the first shareholder signs the extension agreement. The trustee shall deliver copies of the extension agreement and list of beneficial owners to the corporation's principal office. An extension agreement binds only those parties signing it.

16-10a-731 Voting agreements.
(1) Two or more persons, one or more of whom are shareholders, may provide for the manner in which the shareholders will vote their shares by signing an agreement for that purpose. A voting agreement created under this section is not subject to the provisions of Section 16-10a-730.
(2) A voting agreement created under this section may be specifically enforceable.

16-10a-732 Shareholder agreements.
(1) An agreement among the shareholders of a corporation that complies with this section is effective among the shareholders and the corporation even though it is inconsistent with one or more other provisions of this chapter in that it:
(a) eliminates the board of directors or restricts the discretion or powers of the board of directors;
(b) governs the authorization or making of distributions whether or not in proportion to ownership of shares, subject to the limitations in Section 16-10a-640;
(c) establishes who shall be directors or officers of the corporation, or their terms of office or manner of selection or removal;
(d) governs, in general or in regard to specific matters, the exercise or division of voting power by or between the shareholders and directors or by or among any of them, including use of weighted voting rights or director proxies;
(e) establishes the terms and conditions of any agreement for the transfer or use of property or the provision of services between the corporation and any shareholder, director, officer or employee of the corporation or among any of them;
(f) transfers to one or more shareholders or other persons all or part of the authority to exercise the corporate powers or to manage the business and affairs of the corporation, including the resolution of any issue about which there exists a deadlock among directors or shareholders;
(g) requires dissolution of the corporation at the request of one or more of the shareholders or upon the occurrence of a specified event or contingency; or
(h) otherwise governs the exercise of the corporate powers or the management of the business and affairs of the corporation or the relationship among the shareholders, the directors and the corporation, or among any of them, and is not contrary to public policy.
(2) An agreement authorized by this section shall be:
(a) set forth:
(i) in the articles of incorporation or bylaws and approved by all persons who are shareholders at the time of the agreement; or
(ii) in a written agreement that is signed by all persons who are shareholders at the time of the agreement and is made known to the corporation;
(b) subject to amendment only by all persons who are shareholders at the time of the amendment, unless the agreement provides otherwise; and
(c) valid for 10 years, unless the agreement provides otherwise.
(3) The existence of an agreement authorized by this section shall be noted conspicuously on the front or back of each certificate for outstanding shares or on the information statement required by Section 16-10a-626(2). If at the time of the agreement the corporation has shares outstanding represented by certificates, the corporation shall recall the outstanding certificates and issue substitute certificates that comply with this subsection. The failure to note the existence of the agreement on the certificate or information statement does not affect the validity of the agreement or any action taken pursuant to it. Any purchaser of shares who, at the time of

purchase, did not have knowledge of the existence of the agreement is entitled to rescission of the purchase. A purchaser is considered to have knowledge of the existence of the agreement if its existence is noted on the certificate or information statement for the shares in compliance with this subsection and, if the shares are not represented by a certificate, the information statement is delivered to the purchaser at or prior to the time of purchase of the shares. An action to enforce the right of rescission authorized by this subsection shall be commenced within the earlier of 90 days after discovery of the existence of the agreement or two years after the time of purchase of the shares.

(4) An agreement authorized by this section shall cease to be effective when shares of the corporation are listed on a national securities exchange or regularly traded in a market maintained by one or more members of a national or affiliated securities association. If the agreement ceases to be effective for any reason, the board of directors may, if the agreement is contained or referred to in the corporation's articles of incorporation or bylaws, adopt an amendment to the articles of incorporation or bylaws, without shareholder action, to delete the agreement and any references to it.

(5) An agreement authorized by this section that limits the discretion or powers of the board of directors shall relieve the directors of, and impose upon the person or persons in whom the discretion or powers are vested, liability for acts or omissions imposed by laws on directors to the extent that the discretion or powers of the directors are limited by the agreement.

(6) The existence or performance of an agreement authorized by this section may not be a ground for imposing personal liability on any shareholder for the acts or debts of the corporation even if the agreement or its performance treats the corporation as if it were a partnership or results in failure to observe the corporate formalities otherwise applicable to the matters governed by the agreement.

(7) Incorporators or subscribers for shares may act as shareholders with respect to an agreement authorized by this section if no shares have been issued when the agreement is made.

16-10a-740 Procedure in derivative proceedings.

(1) As used in this section:

(a) "derivative proceeding" means a civil suit in the right of:

(i) a domestic corporation; or

(ii) to the extent provided in Subsection (7), a foreign corporation; and

(b) "shareholder" includes a beneficial owner whose shares are held:

(i) in a voting trust; or

(ii) by a nominee on the beneficial owner's behalf.

(2) A shareholder may not commence or maintain a derivative proceeding unless the shareholder:

(a)

(i) was a shareholder of the corporation at the time of the act or omission complained of; or

(ii) became a shareholder through transfer by operation of law from one who was a shareholder at the time of the act or omission complained of; and

(b) fairly and adequately represents the interests of the corporation in enforcing the right of the corporation.

(3)

(a) A shareholder may not commence a derivative proceeding until:

(i) a written demand has been made upon the corporation to take suitable action; and

(ii) 90 days have expired from the date the demand described in Subsection (3)(a)(i) is made unless:

(A) the shareholder is notified before the 90 days have expired that the demand has been rejected by the corporation; or

(B) irreparable injury to the corporation would result by waiting for the expiration of the 90-day period.

(b) A complaint in a derivative proceeding shall be:

(i) verified; and

(ii) allege with particularity the demand made to obtain action by the board of directors.

(c) A derivative proceeding shall comply with the procedures of Utah Rules of Civil Procedure, Rule 23A.

(d) The court shall stay any derivative proceeding until the inquiry is completed and for such additional period as the court considers appropriate if:

(i) the corporation commences an inquiry into the allegations made in the demand or complaint; and

(ii) a person or group described in Subsection (4) is conducting an active review of the allegations in good faith.

(e) If a corporation proposes to dismiss a derivative proceeding pursuant to Subsection (4)(a), discovery by a shareholder following the filing of the derivative proceeding in accordance with this section:

(i) shall be limited to facts relating to:

(A) whether the person or group described in Subsection (4)(b) or (4)(f) is independent and disinterested;

(B) the good faith of the inquiry and review by the person or group described in Subsection (4)(b) or (4)(f); and

(C) the reasonableness of the procedures followed by the person or group described in Subsection (4)(b) or (4)(f) in conducting its review; and

(ii) may not extend to any facts or substantive matters with respect to the act, omission, or other matter that is the subject matter of the derivative proceeding.

(4)

(a) A derivative proceeding shall be dismissed by the court on motion by the corporation if a person or group specified in Subsections (4)(b) or (4)(f) determines in good faith after conducting a reasonable inquiry upon which its conclusions are based that the maintenance of the derivative proceeding is not in the best interests of the corporation.

(b) Unless a panel is appointed pursuant to Subsection (4)(f), the determination in Subsection (4)(a) shall be made by:

(i) a majority vote of independent directors present at a meeting of the board of directors if the independent directors constitute a quorum; or

(ii) a majority vote of a committee consisting of two or more independent directors appointed by a majority vote of independent directors present at a meeting of the board of directors, whether or not such independent directors appointing the committee constituted a quorum.

(c) None of the following shall by itself cause a director to be considered not independent for purposes of this section:

(i) the nomination or election of the director by persons:

(A) who are defendants in the derivative proceeding; or

(B) against whom action is demanded;

(ii) the naming of the director as:

(A) a defendant in the derivative proceeding; or

(B) a person against whom action is demanded; or

(iii) the approval by the director of the act being challenged in the derivative proceeding or demand if the act resulted in no personal benefit to the director.

(d) If a derivative proceeding is commenced after a determination has been made rejecting a demand by a shareholder, the complaint shall allege with particularity facts establishing either:

(i) that a majority of the board of directors did not consist of independent directors at the time the determination was made; or

(ii) that the requirements of Subsection (4)(a) have not been met.

(e)

(i) If a majority of the board of directors does not consist of independent directors at the time the determination is made rejecting a demand by a shareholder, the corporation has the burden of proving that the requirements of Subsection (4)(a) have been met.

(ii) If a majority of the board of directors consists of independent directors at the time the determination is made rejecting a demand by a shareholder, the plaintiff has the burden of proving that the requirements of Subsection (4)(a) have not been met.

(f)

(i) The court may appoint a panel of one or more independent persons upon motion by the corporation to make a determination whether the maintenance of the derivative proceeding is in the best interests of the corporation.

(ii) If the court appoints a panel under Subsection (4)(f)(i), the plaintiff has the burden of proving that the

requirements of Subsection (4)(a) have not been met.

(g) A person may appeal from an interlocutory order of a court that grants or denies a motion to dismiss brought pursuant to Subsection (4)(a).

(5)

(a) A derivative proceeding may not be discontinued or settled without the court's approval.

(b) If the court determines that a proposed discontinuance or settlement will substantially affect the interests of the corporation's shareholders or a class of shareholders, the court shall direct that notice be given to the shareholders affected.

(6) On termination of the derivative proceeding the court may order:

(a) the corporation to pay the plaintiff's reasonable expenses, including counsel fees, incurred in the proceeding, if it finds that the proceeding has resulted in a substantial benefit to the corporation;

(b) the plaintiff to pay any defendant's reasonable expenses, including counsel fees, incurred in defending the proceeding, if it finds that the proceeding was commenced or maintained:

(i) without reasonable cause; or

(ii) for an improper purpose; or

(c) a party to pay an opposing party's reasonable expenses, including counsel fees, incurred because of the filing of a pleading, motion, or other paper, if it finds that the pleading, motion, or other paper was:

(i)

(A) not well grounded in fact, after reasonable inquiry; or

(B) not warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law; and

(ii) interposed for an improper purpose, such as to:

(A) harass;

(B) cause unnecessary delay; or

(C) cause needless increase in the cost of litigation.

(7)

(a) In any derivative proceeding in the right of a foreign corporation, the matters covered by this section shall be governed by the laws of the jurisdiction of incorporation of the foreign corporation except for Subsections (3)(c), (3)(d), (5), and (6), which are procedural and not matters relating to the internal affairs of the foreign corporation.

(b) In the case of matters relating to a foreign corporation under Subsection (3)(c):

(i) references to a person or group described in Subsection (4) are considered to refer to a person or group entitled under the laws of the jurisdiction of incorporation of the foreign corporation to review and dispose of a derivative proceeding; and

(ii) the standard of review of a decision by the person or group to dismiss the derivative proceeding is to be governed by the laws of the jurisdiction of incorporation of the foreign corporation.

Part 8
Directors and Officers

16-10a-801 Requirement for and duties of board of directors.

(1) Except as provided in Section 16-10a-732, each corporation shall have a board of directors.

(2) All corporate powers shall be exercised by or under the authority of, and the business and affairs of the corporation managed under the direction of, its board of directors, subject to any limitation set forth in the articles of incorporation or in an agreement authorized under Section 16-10a-732.

16-10a-802 Qualifications of directors.

The articles of incorporation or bylaws may prescribe qualifications for directors, except a director shall be a natural person. A director need not be a resident of this state or a shareholder of the corporation unless the articles of incorporation or bylaws so prescribe.

16-10a-803 Number and election of directors.

(1)

(a) Except as provided in Subsection (1)(b), a corporation's board of directors shall consist of a minimum of three individuals.

(b)

(i) Before any shares are issued, a corporation's board of directors may consist of one or more individuals.

(ii) After shares are issued and for as long as a corporation has fewer than three shareholders entitled to vote for the election of directors, its board of directors may consist of a number of individuals equal to or greater than the number of those shareholders.

(c) The number of directors shall be specified in or fixed in accordance with the bylaws. Unless otherwise provided in the articles of incorporation, the number of initial directors stated in the articles of incorporation as originally filed with the division, if initial directors are so named in the articles of incorporation, shall be superseded by a provision in the bylaws specifying the number of authorized directors.

(d) The number of directors may be increased or decreased from time to time by amendment to the bylaws, but no decrease may have the effect of shortening the term of any incumbent director.

(e) In the absence of a provision in the bylaws or articles of incorporation fixing the number of individuals composing a board of directors, the number shall be the greater of:

(i) the number of directors then in office; or

(ii) the minimum number of directors permitted by this section.

(2) The bylaws may establish a variable range for the size of the board of directors by fixing a minimum and maximum number of directors. If a range is established, the number of directors may be fixed or changed from time to time within the range by the shareholders or the board of directors.

(3) Directors are elected at each annual meeting of the shareholders except as provided in Section 16-10a-806.

16-10a-804 Election of directors by certain classes of shareholders.

If the articles of incorporation authorize dividing the shares into classes or series, the articles of incorporation may also authorize the election of all or a specified number or portion of directors by the holders of one or more authorized classes or series of shares. A class or series of shares entitled to elect one or more directors is a separate voting group for purposes of the election of directors.

16-10a-805 Terms of directors generally.

(1) Except as provided in Section 16-10a-806, the terms of the initial directors of a corporation expire at the first shareholders' meeting at which directors are elected.

(2) The terms of all other directors expire at the next annual shareholders' meeting following their election:

(a) except as provided in:

(i) Section 16-10a-806; or

(ii) Section 16-10a-1023, if a bylaw electing to be governed by Section 16-10a-1023 applies; or

(b) unless a shorter term is specified in the articles of incorporation in the event a director nominee fails to receive a specified vote for election.

(3) A decrease in the number of directors does not shorten an incumbent director's term.

(4)

(a) A director elected to fill a vacancy created other than by an increase in the number of directors shall be elected for the unexpired term of the director's predecessor in office, or for any lesser period as may be prescribed by the board of directors.

(b) If a director is elected to fill a vacancy created by reason of an increase in the number of directors, then the term of the director so elected expires at the next shareholders' meeting at which directors are elected, unless the vacancy is filled by a vote of the shareholders, in which case the term shall expire on the later of:

(i) the next meeting of shareholders at which directors are elected; or

(ii) the term designated for the director at the time of the creation of the position being filled.

(5) Except as otherwise provided in the articles of incorporation, or Section 16-10a-1023, if a bylaw electing to be governed by Section 16-10a-1023 applies, despite the expiration of a director's term, the director continues to serve until the election and qualification of a successor or there is a decrease in the number of directors.

(6) A director whose term has ended may deliver to the division for filing a statement to that effect pursuant to Section 16-10a-1608.

16-10a-806 Staggered terms for directors.

The articles of incorporation may provide for staggering the terms of directors by dividing the total number of directors into two or three groups, with each group containing 1/2 or 1/3 of the total, as near as may be. In that event, the terms of directors in the first group expire at the first annual shareholders' meeting after their election, the terms of directors in the second group expire at the second annual shareholders' meeting after their election, and the terms of directors in the third group, if any, expire at the third annual shareholders' meeting after their election. Upon the expiration of the initial staggered terms directors shall be elected for terms of two years or three years, as the case may be, to succeed those whose terms expire.

16-10a-807 Resignation of directors.

(1) A director may resign at any time by giving a written notice of resignation to the board of directors, the board's chair, or the corporation's secretary.

(2)

(a) A resignation of a director is effective when the notice is received by the corporation unless the notice specifies a later effective date or an effective date determined by the happening of an event.

(b) A notice of resignation that is conditioned upon failing to receive a specified vote for election as a director may provide that it is irrevocable.

(3) A director who resigns may deliver to the division for filing a statement of the director's resignation pursuant to Section 16-10a-1608.

16-10a-808 Removal of directors by shareholders.

(1) The shareholders may remove one or more directors with or without cause unless the articles of incorporation provide that directors may be removed only for cause.

(2) If a director is elected by a voting group of shareholders, only the shareholders of that voting group may participate in the vote to remove him.

(3) If cumulative voting is in effect, a director may not be removed if the number of votes sufficient to elect the director under cumulative voting is voted against removal. If cumulative voting is not in effect, a director may be removed only if the number of votes cast to remove the director exceeds the number of votes cast against removal.

(4) A director may be removed by the shareholders only at a meeting called for the purpose of removing the director and the meeting notice shall state that the purpose, or one of the purposes, of the meeting is removal of the director.

(5) A director who is removed pursuant to this section may deliver to the division for filing a statement to that effect pursuant to Section 16-10a-1608.

16-10a-809 Removal of directors by judicial proceeding.

(1) The district court of the county in this state where a corporation's principal office is located or, if it has no principal office in this state, the district court for Salt Lake County may remove a director in a proceeding commenced either by the corporation or by its shareholders holding at least 10% of the outstanding shares of any class if the court finds that:

(a) the director engaged in fraudulent or dishonest conduct or gross abuse of authority or discretion with respect to the corporation; and

(b) removal is in the best interest of the corporation.

(2) The court that removes a director may bar the director from reelection for a period prescribed by the court.

(3) If shareholders commence a proceeding under Subsection (1), they shall make the corporation a party defendant.

(4) A director who is removed pursuant to this section may deliver to the division for filing a statement to that effect pursuant to Section 16-10a-1608.

16-10a-810 Vacancy on board.

(1) Unless the articles of incorporation provide otherwise, if a vacancy occurs on a board of directors, including a vacancy resulting from an increase in the number of directors:

(a) the shareholders may fill the vacancy;

(b) the board of directors may fill the vacancy; or

(c) if the directors remaining in office constitute fewer than a quorum of the board, they may fill the vacancy by the affirmative vote of a majority of all the directors remaining in office.

(2) Unless otherwise provided in the articles of incorporation, if the vacant office was held or is to be held by a director elected by a voting group of shareholders:

(a) if one or more of the other directors elected by the same voting group are serving, only they are entitled to vote to fill the vacancy if it is filled by the directors; and

(b) only the holders of shares of that voting group are entitled to vote to fill the vacancy if it is filled by the shareholders.

(3) A vacancy that will occur at a specific later date, by reason of a resignation effective at a later date under Section 16-10a-807 or otherwise, may be filled before the vacancy occurs, but the new director may not take office until the vacancy occurs.

16-10a-811 Compensation of directors.

Unless the articles of incorporation or bylaws provide otherwise, the board of directors may fix the compensation of directors.

16-10a-820 Meetings.

(1) The board of directors may hold regular or special meetings in or out of this state.

(2) Unless the articles of incorporation or bylaws provide otherwise, the board of directors may permit any or all directors to participate in a regular or special meeting by, or conduct the meeting through the use of, any means of communication by which all directors participating may hear each other during the meeting. A director participating in a meeting by this means is considered to be present in person at the meeting.

16-10a-821 Action without meeting.

(1) Unless the articles of incorporation, bylaws, or this chapter provide otherwise, action required or permitted by this chapter to be taken at a board of directors' meeting may be taken without a meeting if all members of the board consent to the action in writing.

(2)

(a) Action is taken under this section at the time the last director signs a writing describing the action taken, unless, prior to that time, any director has revoked a consent by a writing signed by the director and received by the secretary or any other person authorized by the bylaws or the board of directors to receive the revocation.

(b)

(i) Unless otherwise provided by the bylaws, a director may deliver a written consent under this section by an electronic transmission that provides the corporation with a complete copy of the written consent.

(ii) An electronic transmission consenting to an action under this section is considered to be written, signed, and dated for purposes of this section if the electronic transmission is delivered with information from which the corporation can determine:

(A) that the electronic transmission is transmitted by the director; and

(B) the date on which the electronic transmission is transmitted.

(iii) The date on which an electronic transmission is transmitted is considered the date on which a consent is signed.

(3) Action under this section is effective at the time it is taken under Subsection (2), unless the board of directors establishes a different effective date.

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

16-10a-822 Notice of meeting.
(1) Unless the articles of incorporation, bylaws, or this chapter provide otherwise, regular meetings of the board of directors may be held without notice of the date, time, place, or purposes of the meeting.
(2) Unless the articles of incorporation or bylaws provide for a longer or shorter period, special meetings of the board of directors shall be preceded by at least two days' notice of the date, time, and place of the meeting. The notice need not describe the purpose of the special meeting unless required by the articles of incorporation, bylaws, or this chapter.

16-10a-823 Waiver of notice.
(1) A director may waive any notice of a meeting before or after the date and time of the meeting stated in the notice. Except as provided by Subsection (2), the waiver shall be in writing and signed by the director entitled to the notice. The waiver shall be delivered to the corporation for filing with the corporate records, but delivery and filing are not conditions to its effectiveness.
(2) A director's attendance at or participation in a meeting waives any required notice to the director of the meeting unless the director at the beginning of the meeting, or promptly upon the director's arrival, objects to holding the meeting or transacting business at the meeting because of lack of notice or defective notice, and does not thereafter vote for or assent to action taken at the meeting.

16-10a-824 Quorum and voting.
(1) Unless the articles of incorporation or bylaws require a greater number, or, as permitted in Subsection (2), a lower number, a quorum of a board of directors consists of:
(a) a majority of the fixed number of directors if the corporation has a fixed board size; or
(b) a majority of the number of directors prescribed, or if no number is prescribed, of the number in office immediately before the meeting begins, if a range for the size of the board is established pursuant to Subsection 16-10a-803(2).
(2) The articles of incorporation or bylaws may authorize a quorum of a board of directors to consist of no fewer than 1/3 of the fixed or prescribed number of directors determined under Subsection (1).
(3) If a quorum is present when a vote is taken, the affirmative vote of a majority of directors present is the act of the board of directors unless the articles of incorporation, bylaws, or this chapter require the vote of a greater number of directors.
(4) A director who is present at a meeting of the board of directors when corporate action is taken is considered to have assented to the action taken at the meeting unless:
(a) the director objects at the beginning of the meeting, or promptly upon arrival, to holding the meeting or transacting business at the meeting and does not thereafter vote for or assent to any action taken at the meeting;
(b) the director contemporaneously requests his dissent or abstention as to any specific action to be entered into the minutes of the meeting; or
(c) the director causes written notice of a dissent or abstention as to any specific action to be received by the presiding officer of the meeting before adjournment of the meeting or by the corporation promptly after adjournment of the meeting.
(5) The right of dissent or abstention as to a specific action pursuant to Subsection (4) is not available to a director who votes in favor of the action taken.

16-10a-825 Committees.
(1) Unless the articles of incorporation or bylaws provide otherwise, a board of directors may create one or more committees and appoint members of the board of directors to serve on them. Each committee shall have two or more members, who serve at the pleasure of the board of directors.
(2) The creation of a committee and appointment of members to it shall be approved by the greater of:
(a) a majority of all the directors in office when the action is taken; or
(b) the number of directors required by the articles of incorporation or bylaws to take action under Section 16-10a-824.
(3) Sections 16-10a-820 through 16-10a-824, which govern meetings, action without meeting, notice, waiver of

notice, and quorum and voting requirements of the board of directors, apply to committees and their members as well.
(4) To the extent specified by the board of directors or in the articles of incorporation or bylaws, each committee may exercise the authority of the board of directors under Section 16-10a-801.
(5) The creation of, delegation of authority to, or action by a committee does not alone constitute compliance by a director with the standards of conduct described in Section 16-10a-840.

16-10a-830 Required officers.
(1) A corporation shall have the officers designated in its bylaws or by the board of directors in a manner not inconsistent with the bylaws. Any officer shall be a natural person.
(2) Officers may be appointed by the board of directors or in any other manner as the board of directors or bylaws may provide. A duly appointed officer may appoint one or more officers or assistant officers if authorized by the bylaws or the board of directors.
(3) The bylaws or the board of directors shall delegate to one of the officers responsibility for the preparation and maintenance of minutes of the directors' and shareholders' meetings and other records and information required to be kept by the corporation under Section 16-10a-1601 and for authenticating records of the corporation.
(4) The same individual may simultaneously hold more than one office in a corporation.

16-10a-831 Duties of officers.
Each officer has the authority and shall perform the duties set forth in the bylaws or, to the extent not inconsistent with the bylaws, the duties prescribed by the board of directors or by an officer authorized by the board of directors to prescribe the duties of other officers.

16-10a-832 Resignation and removal of officers.
(1) An officer may resign at any time by giving written notice of the resignation to the corporation.
(2) A resignation of an officer is effective when the notice is received by the corporation, unless the notice specifies a later effective date.
(3) If a resignation is made effective at a later date, the board of directors may permit the officer to remain in office until the effective date and may fill the pending vacancy before the effective date if the board of directors provides that the successor does not take office until the effective date, or the board of directors may remove the officer at any time prior to the effective date and may fill the resulting vacancy.
(4) Unless otherwise provided in the bylaws, the board of directors may remove any officer at any time with or without cause. The bylaws or the board of directors may make provision for the removal of officers by other officers or by the shareholders.
(5) An officer who resigns or is removed or whose appointment has expired may deliver to the division for filing a statement to that effect pursuant to Section 16-10a-1608.

16-10a-833 Contract rights with respect to officers.
(1) The appointment of an officer does not itself create contract rights.
(2) An officer's removal does not affect the officer's contract rights, if any, with the corporation. An officer's resignation does not affect the corporation's contract rights, if any, with the officer.

16-10a-840 General standards of conduct for directors and officers.
(1) Each director shall discharge the director's duties as a director, including duties as a member of a committee, and each officer with discretionary authority shall discharge the officer's duties under that authority:
(a) in good faith;
(b) with the care an ordinarily prudent person in a like position would exercise under similar circumstances; and
(c) in a manner the director or officer reasonably believes to be in the best interests of the corporation.
(2) In discharging the director's or officer's duties, a director or officer is entitled to rely on information, opinions, reports, or statements, including financial statements and other financial data, if prepared or presented

by:

(a) one or more officers or employees of the corporation, or of any other corporation of which at least 50% of the outstanding shares of stock entitling the holder of the shares to vote in the election of directors is owned directly or indirectly by the corporation, whom the director or officer reasonably believes to be reliable and competent in the matters presented;

(b) legal counsel, public accountants, or other persons as to matters the director or officer reasonably believes are within the person's professional or expert competence; or

(c) in the case of a director, a committee of the board of directors of which the director is not a member:

(i) if the committee is designated in accordance with the articles of incorporation or the bylaws;

(ii) if the information, opinion, report, or statement is within the committee's designated authority;

(iii) if the director reasonably believes the committee merits confidence; and

(iv) subject to Subsection (3), so long as in so relying the director is acting in good faith with the degree of care contemplated by Subsection (1)(b).

(3) A director or officer is not acting in good faith if the director or officer has knowledge concerning the matter in question that makes reliance otherwise permitted by Subsection (2) unwarranted.

(4) A director or officer is not liable to the corporation, its shareholders, or any conservator or receiver, or any assignee or successor-in-interest thereof, for any action taken, or any failure to take any action, as an officer or director, as the case may be, unless:

(a) the director or officer has breached or failed to perform the duties of the office in compliance with this section; and

(b) the breach or failure to perform constitutes gross negligence, willful misconduct, or intentional infliction of harm on the corporation or the shareholders.

(5)

(a) For purposes of this Subsection (5) and notwithstanding Section 16-10a-102, "control" means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of the corporation whether through the ownership of voting stock, by contract, or otherwise.

(b) In taking action, including action that may involve or relate to a change or potential change in the control of the corporation, the director is entitled to consider:

(i) both the long-term and the short-term interests of the corporation and the corporation's shareholders; and

(ii) the effects that the corporation's actions may have in the long-term or short-term on any of the following:

(A) the prospects for potential growth, development, productivity, and profitability of the corporation;

(B) the corporation's current employees;

(C) the corporation's retired employees and other beneficiaries receiving or entitled to receive retirement, welfare, or similar benefits from or pursuant to any plan sponsored, or agreement entered into, by the corporation;

(D) the corporation's customers and creditors; and

(E) the ability of the corporation to provide, as a going concern, goods, services, employment opportunities, employment benefits, and otherwise contribute to the communities in which the corporation does business.

(c) This Subsection (5) does not create any duty owed by a director to any person to consider or afford any particular weight to any factor listed in Subsection (5)(b) or abrogate any duty of the director, either statutory or recognized by common law or court decisions.

16-10a-841 Limitation of liability of directors.

(1) Without limiting the generality of Subsection 16-10a-840(4), if so provided in the articles of incorporation or in the bylaws or a resolution to the extent permitted in Subsection (3), a corporation may eliminate or limit the liability of a director to the corporation or to its shareholders for monetary damages for any action taken or any failure to take any action as a director, except liability for:

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

(b) an intentional infliction of harm on the corporation or the shareholders;

(c) a violation of Section 16-10a-842; or
(d) an intentional violation of criminal law.
(2) No provision authorized under this section may eliminate or limit the liability of a director for any act or omission occurring prior to the date when the provision becomes effective.
(3) Any provision authorized under this section to be included in the articles of incorporation may also be adopted in the bylaws or by resolution, but only if the provision is approved by the same percentage of shareholders of each voting group as would be required to approve an amendment to the articles of incorporation including the provision.
(4) Any foreign corporation authorized to transact business in this state, including any federally chartered depository institution authorized under federal law to transact business in this state, may adopt any provision authorized under this section.
(5) With respect to a corporation that is a depository institution regulated by the Department of Financial Institutions or by an agency of the federal government, any provision authorized under this section may include the elimination or limitation of the personal liability of a director or officer to the corporation's members or depositors.

16-10a-842 Liability of directors for unlawful distributions.
(1) A director who votes for or assents to a distribution made in violation of Section 16-10a-640 or the articles of incorporation is personally liable to the corporation for the amount of the distribution that exceeds what could have been distributed without violating Section 16-10a-640 or the articles of incorporation, if it is established that the director's duties were not performed in compliance with Section 16-10a-840. In any proceeding commenced under this section, a director has all of the defenses ordinarily available to a director.
(2) A director held liable under Subsection (1) for an unlawful distribution is entitled to contribution:
(a) from every other director who could be held liable under Subsection (1) for the unlawful distribution; and
(b) from each shareholder, who accepted the distribution knowing the distribution was made in violation of Section 16-10a-640 or the articles of incorporation, the amount of the contribution from each shareholder being the amount of the distribution to the shareholder multiplied by the percentage of the amount of distribution to all shareholders that exceeded what could have been distributed to shareholders without violating Section 16-10a-640 or the articles of incorporation.
(3) A proceeding under this section is barred unless it is commenced within two years after the date on which the effect of the distribution is measured under Subsection 16-10a-640(5) or (7).

16-10a-850 Definitions relating to conflicting interest transactions.
As used in Sections 16-10a-850 through 16-10a-853:
(1) "Conflicting interest" with respect to a corporation means the interest a director has respecting a transaction effected or proposed to be effected by the corporation or by any entity in which the corporation has a controlling interest if:
(a) whether or not the transaction is brought before the board of directors of the corporation for action, the director knows at the time of commitment that the director or a related person of the director is a party to the transaction or has a beneficial financial interest in or is so closely linked to, the transaction and the transaction is so financially significant to the director or a related person of the director that the interest would reasonably be expected to exert an influence on the director's judgment if the director were called upon to vote on the transaction; or
(b) the transaction is brought, or is of a character and significance to the corporation that it would in the normal course be brought, before the board of directors for action, and the director knows at the time of commitment that any of the following persons is either a party to the transaction or has a beneficial financial interest in, or is so closely linked to, the transaction and the transaction is so financially significant to the person that the interest would reasonably be expected to exert an influence on the director's judgment if the director were called upon to vote on the transaction:
(i) an entity, other than the corporation, of which the director is a director, general partner, agent, or employee or an entity to which the director owes a fiduciary duty, other than a fiduciary duty arising because the director is a director of the corporation;

(ii) an individual who is a general partner, principal, or employer of the director or who is a beneficiary of a fiduciary duty owed by the director, other than a fiduciary duty arising because the director is a director of the corporation; or

(iii) a person that controls one or more of the entities specified in Subsection (1)(b)(i) or an entity that is controlled by, or is under common control with, one or more of the entities or individuals specified in Subsection (1)(b)(i) or (1)(b)(ii).

(2) "Director's conflicting interest transaction" with respect to a corporation means a transaction effected or proposed to be effected by the corporation, or by any entity controlled by the corporation respecting which a director has a conflicting interest.

(3) "Qualified director" means, with respect to a director's conflicting interest transaction, any director who does not have either a conflicting interest respecting the transaction, or a familial, financial, professional, or employment relationship with a second director who does have a conflicting interest respecting the transaction, which relationship would, in the circumstances, reasonably be expected to exert an influence on the first director's judgment when voting on the transaction.

(4) "Required disclosure" means disclosure by the director who has a conflicting interest of:

(a) the existence and nature of the conflicting interest; and

(b) all facts known to the director respecting the subject matter of the transaction that an ordinarily prudent person would reasonably believe to be material to a judgment about whether or not to proceed with the transaction.

(5) "Time of commitment" respecting a transaction means the time when the transaction is consummated or, if made pursuant to contract, the time when the corporation or the entity controlled by the corporation becomes contractually obligated so that its unilateral withdrawal from the transaction would entail significant loss, liability, or other damage.

16-10a-851 Judicial action.

(1) A transaction effected or proposed to be effected by a corporation or by any entity controlled by the corporation that is not a director's conflicting interest transaction may not be enjoined, be set aside, or give rise to an award of damages or other sanctions, in a proceeding by a shareholder or by or in the right of the corporation, solely because a director, or any person with whom or which the director has a personal, economic, or other association, has an interest in the transaction.

(2) A director's conflicting interest transaction may not be enjoined, be set aside, or give rise to an award of damages or other sanctions, in a proceeding by a shareholder or by or in the right of the corporation, solely because the director, or any person with whom or which the director has a personal, economic, or other association, has an interest in the transaction, if:

(a) directors' action respecting the transaction was at any time taken in compliance with Section 16-10a-852;

(b) shareholders' action respecting the transaction was at any time taken in compliance with Section 16-10a-853; or

(c) the transaction, judged according to the circumstances at the time of commitment, is established to have been fair to the corporation.

16-10a-852 Directors' action.

(1) Directors' action respecting a transaction is taken for purposes of Subsection 16-10a-851(2)(a) if the transaction received the affirmative vote of a majority of those qualified directors on the board of directors or on a duly empowered committee of the board who voted on the transaction after either required disclosure to them, to the extent the information was not known by them, or compliance with Subsection (2), provided that action by a committee is effective under this subsection only if:

(a) all its members are qualified directors; and

(b) its members are either all of the qualified directors or are appointed by the affirmative vote of a majority of the qualified directors.

(2) If a director has a conflicting interest respecting a transaction, but neither the director nor a related person of the director is a party to the transaction, and if the director has a duty under law or professional canon, or a duty of confidentiality to another person, respecting information relating to the transaction so that the director may

not make the disclosure described in Section 16-10a-850(4)(b), then disclosure is sufficient for purposes of Subsection (1) if the director discloses to the directors voting on the transaction, before their vote, the existence and nature of the conflicting interest and informs them of the character and limitations imposed by that duty.
(3) A majority of the qualified directors on the board of directors or on the committee, as the case may be, constitutes a quorum for purposes of action that complies with this section. Directors' action that otherwise complies with this section is not affected by the presence or vote of a director who is not a qualified director.

16-10a-853 Shareholders' action.
(1) Shareholders' action respecting a transaction is effective for purposes of Subsection 16-10a-851(2)(b) if a quorum existed pursuant to Subsection (2) and a majority of the votes entitled to be cast by holders of qualified shares present in person or by proxy at the meeting were cast in favor of the transaction after notice to shareholders describing the director's conflicting interest transaction, provision of the information referred to in Subsection (3), and required disclosure to the shareholders who voted on the transaction, to the extent the information was not known by them.
(2) A majority of the votes entitled to be cast by the holders of all qualified shares constitutes a quorum for purposes of action that complies with this section. Subject to the provisions of Subsections (3) and (4), shareholders' action that otherwise complies with this section is not affected by the presence of holders of, or the voting of, shares that are not qualified shares.
(3) For purposes of compliance with Subsection (1), a director who has a conflicting interest respecting the transaction shall, before the shareholders vote, inform the secretary or other officer or agent of the corporation authorized to tabulate votes of the number and the identity of persons holding or controlling the vote, of all shares that the director knows are beneficially owned, or the voting of which is controlled, by the director or by a related person of the director, or both.
(4) If a shareholders' vote does not comply with Subsection (1) solely because of a failure of a director to comply with Subsection (3), and if the director establishes that the failure did not determine and was not intended by him to influence the outcome of the vote, the court may, with or without further proceedings under Subsection 16-10a-851(2)(c), take any action respecting the transaction and the director, and give any effect to the shareholders' vote, as it considers appropriate in the circumstances.

Part 9
Indemnification

16-10a-901 Definitions.
As used in Part 9, Indemnification:
(1) "Corporation" includes any domestic or foreign entity that is a predecessor of a corporation by reason of a merger or other transaction in which the predecessor's existence ceased upon consummation of the transaction.
(2) "Director" means an individual who is or was a director of a corporation or an individual who, while a director of a corporation, is or was serving at the corporation's request as a director, officer, partner, trustee, employee, fiduciary, or agent of another domestic or foreign corporation or other person or of an employee benefit plan. A director is considered to be serving an employee benefit plan at the corporation's request if his duties to the corporation also impose duties on, or otherwise involve services by, him to the plan or to participants in or beneficiaries of the plan. "Director" includes, unless the context requires otherwise, the estate or personal representative of a director.
(3) "Expenses" include counsel fees.
(4) "Liability" means the obligation incurred with respect to a proceeding to pay a judgment, settlement, penalty, fine (including an excise tax assessed with respect to an employee benefit plan), or reasonable expenses.
(5) "Officer," "employee," "fiduciary," and "agent" include any person who, while serving the indicated relationship to the corporation, is or was serving at the corporation's request as a director, officer, partner, trustee, employee, fiduciary, or agent of another domestic or foreign corporation or other person or of an employee benefit plan. An officer, employee, fiduciary, or agent is considered to be serving an employee benefit plan at the corporation's request if that person's duties to the corporation also impose duties on, or

otherwise involve services by, that person to the plan or participants in, or beneficiaries of the plan. Unless the context requires otherwise, such terms include the estates or personal representatives of such persons.
(6)
(a) "Official capacity" means:
(i) when used with respect to a director, the office of director in a corporation; and
(ii) when used with respect to a person other than a director, as contemplated in Section 16-10a-907, the office in a corporation held by the officer or the employment, fiduciary, or agency relationship undertaken by him on behalf of the corporation.
(b) "Official capacity" does not include service for any other foreign or domestic corporation, other person, or employee benefit plan.
(7) "Party" includes an individual who was, is, or is threatened to be made a named defendant or respondent in a proceeding.
(8) "Proceeding" means any threatened, pending, or completed action, suit, or proceeding, whether civil, criminal, administrative, or investigative and whether formal or informal.

16-10a-902 Authority to indemnify directors.
(1) Except as provided in Subsection (4), a corporation may indemnify an individual made a party to a proceeding because he is or was a director, against liability incurred in the proceeding if:
(a) his conduct was in good faith; and
(b) he reasonably believed that his conduct was in, or not opposed to, the corporation's best interests; and
(c) in the case of any criminal proceeding, he had no reasonable cause to believe his conduct was unlawful.
(2) A director's conduct with respect to any employee benefit plan for a purpose he reasonably believed to be in or not opposed to the interests of the participants in and beneficiaries of the plan is conduct that satisfies the requirement of Subsection (1)(b).
(3) The termination of a proceeding by judgment, order, settlement, conviction, or upon a plea of nolo contendere or its equivalent is not, of itself, determinative that the director did not meet the standard of conduct described in this section.
(4) A corporation may not indemnify a director under this section:
(a) in connection with a proceeding by or in the right of the corporation in which the director was adjudged liable to the corporation; or
(b) in connection with any other proceeding charging that the director derived an improper personal benefit, whether or not involving action in his official capacity, in which proceeding he was adjudged liable on the basis that he derived an improper personal benefit.
(5) Indemnification permitted under this section in connection with a proceeding by or in the right of the corporation is limited to reasonable expenses incurred in connection with the proceeding.

16-10a-903 Mandatory indemnification of directors.
Unless limited by its articles of incorporation, a corporation shall indemnify a director who was successful, on the merits or otherwise, in the defense of any proceeding, or in the defense of any claim, issue, or matter in the proceeding, to which he was a party because he is or was a director of the corporation, against reasonable expenses incurred by him in connection with the proceeding or claim with respect to which he has been successful.

16-10a-904 Advance of expenses for directors.
(1) A corporation may pay for or reimburse the reasonable expenses incurred by a director who is a party to a proceeding in advance of final disposition of the proceeding if:
(a) the director furnishes the corporation a written affirmation of his good faith belief that he has met the applicable standard of conduct described in Section 16-10a-902;
(b) the director furnishes to the corporation a written undertaking, executed personally or on his behalf, to repay the advance if it is ultimately determined that he did not meet the standard of conduct; and
(c) a determination is made that the facts then known to those making the determination would not preclude indemnification under this part.

(2) The undertaking required by Subsection (1)(b) shall be an unlimited general obligation of the director but need not be secured and may be accepted without reference to financial ability to make repayment.
(3) Determinations and authorizations of payments under this section shall be made in the manner specified in Section 16-10a-906.

16-10a-905 Court-ordered indemnification of directors.

Unless a corporation's articles of incorporation provide otherwise, a director of the corporation who is or was a party to a proceeding may apply for indemnification to the court conducting the proceeding or to another court of competent jurisdiction. On receipt of an application, the court, after giving any notice the court considers necessary, may order indemnification in the following manner:
(1) if the court determines that the director is entitled to mandatory indemnification under Section 16-10a-903, the court shall order indemnification, in which case the court shall also order the corporation to pay the director's reasonable expenses incurred to obtain court-ordered indemnification; and
(2) if the court determines that the director is fairly and reasonably entitled to indemnification in view of all the relevant circumstances, whether or not the director met the applicable standard of conduct set forth in Section 16-10a-902 or was adjudged liable as described in Subsection 16-10a-902(4), the court may order indemnification as the court determines to be proper, except that the indemnification with respect to any proceeding in which liability has been adjudged in the circumstances described in Subsection 16-10a-902(4) is limited to reasonable expenses incurred.

16-10a-906 Determination and authorization of indemnification of directors.
(1) A corporation may not indemnify a director under Section 16-10a-902 unless authorized and a determination has been made in the specific case that indemnification of the director is permissible in the circumstances because the director has met the applicable standard of conduct set forth in Section 16-10a-902. A corporation may not advance expenses to a director under Section 16-10a-904 unless authorized in the specific case after the written affirmation and undertaking required by Subsections 16-10a-904(1)(a) and (b) are received and the determination required by Subsection 16-10a-904(1)(c) has been made.
(2) The determinations required by Subsection (1) shall be made:
(a) by the board of directors by a majority vote of those present at a meeting at which a quorum is present, and only those directors not parties to the proceeding shall be counted in satisfying the quorum; or
(b) if a quorum cannot be obtained as contemplated in Subsection (2)(a), by a majority vote of a committee of the board of directors designated by the board of directors, which committee shall consist of two or more directors not parties to the proceeding, except that directors who are parties to the proceeding may participate in the designation of directors for the committee;
(c) by special legal counsel:
(i) selected by the board of directors or its committee in the manner prescribed in Subsection (2)(a) or (b); or
(ii) if a quorum of the board of directors cannot be obtained under Subsection (2)(a) and a committee cannot be designated under Subsection (2)(b), selected by a majority vote of the full board of directors, in which selection directors who are parties to the proceeding may participate; or
(d) by the shareholders, by a majority of the votes entitled to be cast by holders of qualified shares present in person or by proxy at a meeting.
(3) A majority of the votes entitled to be cast by the holders of all qualified shares constitutes a quorum for purposes of action that complies with this section. Shareholders' action that otherwise complies with this section is not affected by the presence of holders, or the voting, of shares that are not qualified shares.
(4) Unless authorization is required by the bylaws, authorization of indemnification and advance of expenses shall be made in the same manner as the determination that indemnification or advance of expenses is permissible. However, if the determination that indemnification or advance of expenses is permissible is made by special legal counsel, authorization of indemnification and advance of expenses shall be made by a body entitled under Subsection (2)(c) to select legal counsel.

16-10a-907 Indemnification of officers, employees, fiduciaries, and agents.

Unless a corporation's articles of incorporation provide otherwise:
(1) an officer of the corporation is entitled to mandatory indemnification under Section 16-10a-903, and is entitled to apply for court-ordered indemnification under Section 16-10a-905, in each case to the same extent as a director;
(2) the corporation may indemnify and advance expenses to an officer, employee, fiduciary, or agent of the corporation to the same extent as to a director; and
(3) a corporation may also indemnify and advance expenses to an officer, employee, fiduciary, or agent who is not a director to a greater extent, if not inconsistent with public policy, and if provided for by its articles of incorporation, bylaws, general or specific action of its board of directors, or contract.

16-10a-908 Insurance.

A corporation may purchase and maintain liability insurance on behalf of a person who is or was a director, officer, employee, fiduciary, or agent of the corporation, or who, while serving as a director, officer, employee, fiduciary, or agent of the corporation, is or was serving at the request of the corporation as a director, officer, partner, trustee, employee, fiduciary, or agent of another foreign or domestic corporation or other person, or of an employee benefit plan, against liability asserted against or incurred by him in that capacity or arising from his status as a director, officer, employee, fiduciary, or agent, whether or not the corporation would have power to indemnify him against the same liability under Section 16-10a-902, 16-10a-903, or 16-10a-907. Insurance may be procured from any insurance company designated by the board of directors, whether the insurance company is formed under the laws of this state or any other jurisdiction of the United States or elsewhere, including any insurance company in which the corporation has an equity or any other interest through stock ownership or otherwise.

16-10a-909 Limitations on indemnification of directors.

(1) A provision treating a corporation's indemnification of, or advance for expenses to, directors that is contained in its articles of incorporation or bylaws, in a resolution of its shareholders or board of directors, or in a contract (except an insurance policy) or otherwise, is valid only if and to the extent the provision is not inconsistent with this part. If the articles of incorporation limit indemnification or advance of expenses, indemnification and advance of expenses are valid only to the extent not inconsistent with the articles of incorporation.
(2) This part does not limit a corporation's power to pay or reimburse expenses incurred by a director in connection with the director's appearance as a witness in a proceeding at a time when the director has not been made a named defendant or respondent to the proceeding.

Part 10
Amendment of Articles of Incorporation and Bylaws

16-10a-1001 Authority to amend.

(1) A corporation may amend its articles of incorporation at any time to add or change a provision that is required or permitted in the articles of incorporation or to delete a provision not required in the articles of incorporation. Whether a provision is required or permitted in the articles of incorporation is determined as of the effective date of the amendment.
(2) A shareholder does not have a vested property right resulting from any provision in the articles of incorporation, including any provision relating to management, control, capital structure, purpose, duration of the corporation, or dividend entitlement.

16-10a-1002 Amendment by board of directors.

(1) Unless otherwise provided in the articles of incorporation, a corporation's board of directors may adopt, without shareholder action, one or more amendments to the corporation's articles of incorporation to:
(a) delete the names and addresses of incorporators or initial directors or both from the articles of incorporation;
(b) change the information required by Subsection ~~16-17-203(1)~~13-1a-504, but an amendment is not required

to change the information;
(c) change each issued and unissued authorized share of a class into a greater number of whole shares if the corporation has only shares of that class outstanding;
(d) change the corporate name by adding the word "corporation," "incorporated," or "company," or an abbreviation of these words, or by substituting any such word or abbreviation for a similar word or abbreviation in the name; or
(e) make any other change expressly permitted by this chapter to be made without shareholder action.
(2) The board of directors may adopt, without shareholder action, one or more amendments to the articles of incorporation to change the corporate name, if necessary, in connection with the reinstatement of a corporation pursuant to Section ~~16-10a-1422~~13-1a-703.

16-10a-1003 Amendment by board of directors and shareholders.
(1) A corporation's board of directors may propose one or more amendments to the articles of incorporation for submission to the shareholders.
(2) For an amendment to the articles of incorporation proposed pursuant to Subsection (1) to be adopted:
(a) the board of directors shall recommend the amendment to the shareholders unless the board determines that, because of conflicts of interest or other special circumstances, it should make no recommendation and communicates the basis for its determination to the shareholders with the amendment; and
(b) shareholders entitled to vote on the amendment shall approve the amendment as provided in Subsection (5).
(3) The board of directors may condition its submission of the proposed amendment on any basis.
(4) The corporation shall give notice, in accordance with Section 16-10a-705, of the shareholders' meeting at which the amendment will be voted upon, to each shareholder entitled to vote on the proposed amendment. The notice of the meeting shall state that one of the purposes of the meeting is to consider the proposed amendment and it shall contain or be accompanied by a copy or summary of the amendment.
(5) Unless this chapter, the articles of incorporation, the bylaws, if authorized by the articles of incorporation, or the board of directors acting pursuant to Subsection (3) require a greater vote or a vote by voting groups, the amendment to be adopted must be approved by:
(a) a majority of the votes entitled to be cast on the amendment by any voting group with respect to which the amendment would create dissenters' rights;
(b) a majority of the votes entitled to be cast on the amendment by any voting group with respect to which the amendment would materially and adversely affect rights in respect of the shares of the voting group because it:
(i) alters or abolishes a preferential right of the shares;
(ii) creates, alters, or abolishes a right in respect of redemption, including a provision respecting a sinking fund for the redemption or repurchase, of the shares;
(iii) alters or abolishes a preemptive right of the holder of the shares to acquire shares or other securities;
(iv) excludes or limits the right of the shares to vote on any matter, or to cumulate votes, other than a limitation by dilution through issuance of shares or other securities with similar voting rights; or
(v) reduces the number of shares owned by the shareholder to a fraction of a share or scrip if the fractional share or scrip so created is to be acquired for cash or the scrip is to be voided under Section 16-10a-604; and
(c) the votes required by Sections 16-10a-725 and 16-10a-726 by every other voting group entitled to vote on the amendment.
(6) If any amendment to the articles of incorporation would impose personal liability on shareholders for the debts of a corporation, it must be approved by all of the outstanding shares affected, regardless of limitations or restrictions on the voting rights of the shares.

16-10a-1004 Voting on amendments by voting groups.
(1) Except as otherwise provided in Subsection (5), the holders of the outstanding shares of a class are entitled to vote as a separate voting group, if shareholder voting is otherwise required by this chapter, on a proposed amendment if the amendment would:

(a) increase or decrease the aggregate number of authorized shares of the class;
(b) effect an exchange or reclassification of all or part of the shares of the class into shares of another class;
(c) effect an exchange or reclassification, or create the right of exchange, of all or part of the shares of another class into shares of the class;
(d) change the designation, rights, preferences, or limitations of all or part of the shares of the class;
(e) change the shares of all or part of the class into a different number of shares of the same class;
(f) create a new class of shares having rights or preferences with respect to distributions or to dissolution that are prior, superior, or substantially equal to the shares of the class;
(g) increase the rights, preferences, or number of authorized shares of any class that, after giving effect to the amendment, have rights or preferences with respect to distributions or to dissolution that are prior, superior, or substantially equal to the shares of the class;
(h) limit or deny an existing preemptive right of all or part of the shares of the class; or
(i) cancel or otherwise affect rights to distributions or dividends that have accumulated but not yet been declared on all or part of the shares of the class.

(2) Except as otherwise provided in Subsection (3), if a proposed amendment would affect a series of a class of shares in one or more of the ways described in Subsection (1), the shares of that series are entitled to vote as a separate voting group on the proposed amendment.

(3) If a proposed amendment that entitles two or more series of a class of shares to vote as separate voting groups under this section would affect those two or more series in the same or a substantially similar way, the shares of all the series so affected shall instead vote together as a single voting group on the proposed amendment.

(4) Except as otherwise provided in Subsection (5), a class or series of shares is entitled to the voting rights granted by this section although the articles of incorporation provide that the shares are nonvoting shares.

(5) Notwithstanding the rights granted by this section to holders of the outstanding shares of a class or series to vote as a separate voting group, the rights may be otherwise restricted if so provided in the original articles of incorporation, in any amendment thereto which created the class or series or which was adopted prior to the issuance of any shares of the class or series, or in any amendment thereto which was authorized by a resolution or resolutions adopted by the affirmative vote of the holders of a majority of the class or series.

16-10a-1005 Amendment before issuance of shares.

If a corporation has not yet issued shares, its board of directors or, if no board of directors has been appointed, its incorporators, may adopt any amendments to the corporation's articles of incorporation.

16-10a-1006 Articles of amendment.

A corporation amending its articles of incorporation shall deliver to the division for filing articles of amendment setting forth:

(1) the name of the corporation;

(2) the text of each amendment adopted;

(3) if an amendment provides for an exchange, reclassification, or cancellation of issued shares, provisions for implementing the amendment if not contained in the amendment itself;

(4) the date of each amendment's adoption;

(5) if an amendment was adopted by the incorporators or board of directors without shareholder action, a statement to that effect and that shareholder action was not required; and

(6) if an amendment was approved by the shareholders:

(a) the designation, number of outstanding shares, number of votes entitled to be cast by each voting group entitled to vote separately on the amendment, and number of votes of each voting group indisputably represented at the meeting; and

(b) either the total number of votes cast for and against the amendment by each voting group entitled to vote separately on the amendment or the total number of undisputed votes cast for the amendment by each voting group and a statement that the number of votes cast for the amendment by each voting group entitled to vote separately on the amendment was sufficient for approval by that voting group.

16-10a-1007 Restated articles of incorporation.
(1) A corporation's board of directors may restate its articles of incorporation at any time with or without shareholder action. A corporation's incorporators may restate its articles of incorporation at any time if the corporation has not issued shares and if no directors have been appointed.
(2) The restatement may include one or more amendments to the articles of incorporation. If the restatement includes an amendment requiring shareholder approval, it must be adopted as provided in Section 16-10a-1003.
(3) If the board of directors submits a restatement for shareholder action, the corporation shall give notice, in accordance with Section 16-10a-705, to each shareholder entitled to vote on the restatement, of the proposed shareholders' meeting at which the restatement will be voted upon. The notice shall state that the purpose, or one of the purposes, of the meeting is to consider the proposed restatement and the notice shall contain or be accompanied by a copy of the restatement that identifies any amendment or other change it would make in the articles of incorporation.
(4) A corporation restating its articles of incorporation shall deliver to the division for filing articles of restatement setting forth:
(a) the name of the corporation;
(b) the text of the restated articles of incorporation;
(c) if the restatement contains an amendment to the articles of incorporation, the information required to be set forth in articles of amendment by Section 16-10a-1006;
(d) if the restatement does not contain an amendment to the articles of incorporation, a statement to that effect; and
(e) if the restatement was adopted by the board of directors or incorporators without shareholder action, a statement as to how the restatement was adopted and that shareholder action was not required.
(5) Upon filing by the division or at any later effective date determined pursuant to Section ~~16-10a-123~~13-1a-303, restated articles of incorporation supersede the original articles of incorporation and all prior amendments to them.

16-10a-1008 Amendment pursuant to reorganization.
(1) A corporation's articles of incorporation may be amended without action by the board of directors or shareholders to carry out a plan or reorganization ordered or decreed by a court of competent jurisdiction under a statute of the United States if the articles of incorporation after amendment contain only provisions required or permitted by Section 16-10a-202.
(2) For an amendment to the articles of incorporation to be made pursuant to Subsection (1), the individual or individuals designated by the court shall deliver to the division for filing articles of amendment setting forth:
(a) the name of the corporation;
(b) the text of each amendment approved by the court;
(c) the date of the court's order or decree approving the articles of amendment;
(d) the title of the reorganization proceeding in which the order or decree was entered; and
(e) a statement that the court had jurisdiction of the proceeding under a specified statute of the United States.
(3) Shareholders of a corporation undergoing reorganization do not have dissenters' rights except as and to the extent provided in the reorganization plan.
(4) This section does not apply after entry of a final decree in the reorganization proceeding even though the court retains jurisdiction of the proceeding for limited purposes unrelated to consummation of the reorganization plan.

16-10a-1008.5 Conversion to a nonprofit corporation.
(1)
(a) A corporation may convert to a nonprofit corporation subject to Title 16, Chapter 6a, Utah Revised Nonprofit Corporation Act, by filing an amendment of its articles of incorporation pursuant to this section.
(b) The day on which a corporation files an amendment under this section, the corporation becomes a nonprofit corporation subject to Title 16, Chapter 6a, Utah Revised Nonprofit Corporation Act, except that, notwithstanding Section 16-6a-203, the existence of the nonprofit corporation is considered to commence on the day on which the converting corporation:

(i) commenced its existence under this chapter; or
(ii) otherwise was created, formed, incorporated, or came into being.
(2) The amendment of the articles of incorporation to convert to a nonprofit corporation shall:
(a) revise the statement of purposes of the corporation;
(b) delete:
(i) the authorization for shares; and
(ii) any provision relating to authorized or issued shares;
(c) if any shares have been issued, provide for:
(i) the cancellation of issued shares; or
(ii) the conversion of the shares to membership interests in the nonprofit corporation; and
(d) make such other changes as may be necessary or desired.
(3) If the corporation has issued shares, an amendment to convert to a nonprofit corporation shall be approved by all of the outstanding shares of all classes of shares regardless of limitations or restrictions on the voting rights of the shares.
(4) If an amendment pursuant to this section is included in a merger agreement, this section applies, except that any provision for the cancellation or conversion of shares shall be set forth in the merger agreement and not in the amendment of the articles of incorporation.
(5) The conversion of a corporation into a nonprofit corporation does not affect:
(a) an obligation or liability of the converting corporation incurred before its conversion to a nonprofit corporation; or
(b) the personal liability of any person incurred before the conversion.
(6)
(a)
(i) When a conversion is effective under this section, for purposes of the laws of this state, the things listed in Subsection (6)(a)(ii):
(A) vest in the nonprofit corporation to which the corporation converts;
(B) are the property of the nonprofit corporation; and
(C) are not considered transferred by the converting corporation to the nonprofit corporation by operation of this Subsection (6)(a).
(ii) This Subsection (6)(a) applies to the following of the converting corporation:
(A) its rights, privileges, and powers;
(B) its interests in property, whether real, personal, or mixed;
(C) debts due to the converting corporation;
(D) debts, liabilities, and duties of the converting corporation;
(E) rights and obligations under contract of the converting corporation; and
(F) other things and causes of action belonging to the converting corporation.
(b) The title to any real property vested by deed or otherwise in a corporation converting to a nonprofit corporation does not revert and is not in any way impaired by reason of this chapter or of the conversion.
(c) A right of a creditor or a lien on property of a converting corporation that is described in Subsection (6)(a) or (b) is preserved unimpaired.
(d) A debt, liability, or duty of a converting corporation:
(i) remains attached to the nonprofit corporation to which the corporation converts; and
(ii) may be enforced against the nonprofit corporation to the same extent as if the debts, liabilities, and duties had been incurred or contracted by the nonprofit corporation in its capacity as a nonprofit corporation.
(e) A converted corporation upon conversion to a nonprofit corporation pursuant to this section is considered the same entity as the nonprofit corporation.
(f) In connection with a conversion of a corporation to a nonprofit corporation under this section, the interests or rights in the corporation which is to be converted may be exchanged or converted into one or more of the following:
(i) cash, property, interests, or rights in the nonprofit corporation to which it is converted; or
(ii) cash, property or interests in, or rights in another entity.

(g) Unless otherwise agreed:
(i) a converting corporation is not required solely as a result of the conversion to:
(A) wind up its affairs;
(B) pay its liabilities; or
(C) distribute its assets; and
(ii) a conversion is not considered to constitute a dissolution of the corporation, but constitutes a continuation of the existence of the corporation in the form of a nonprofit corporation.

16-10a-1008.7 Conversion to or from a domestic limited liability company.
(1)
(a) A corporation may convert to a domestic limited liability company subject to Title 48, Chapter 3a, Utah Revised Uniform Limited Liability Company Act, as appropriate pursuant to Section 48-3a-1405 by complying with:
(i) this Subsection (1); and
(ii) Section 48-3a-1041.
(b) If a corporation converts to a domestic limited liability company in accordance with this Subsection (1), the articles of conversion shall:
(i) comply with Sections 48-3a-1045 and 48-3a-1046; and
(ii) if the corporation has issued shares, provide for:
(A) the cancellation of any issued share; or
(B) the conversion of any issued share to a membership interest in the domestic limited liability company.
(c) Before a statement of conversion, in accordance with Section 48-3a-1045, may be filed with the division, the conversion shall be approved:
(i) in the manner provided for the articles of incorporation or bylaws of the corporation; or
(ii) if the articles of incorporation or bylaws of the corporation do not provide the method for approval:
(A) if the corporation has issued shares, by all of the outstanding shares of all classes of shares of the corporation regardless of limitations or restrictions on the voting rights of the shares; or
(B) if the corporation has not issued shares, by a majority of:
(I) the directors in office at the time that the conversion is approved by the board of directors; or
(II) if directors have not been appointed or elected, the incorporators.
(2) A domestic limited liability company may convert to a corporation subject to this chapter by:
(a) filing articles of incorporation in accordance with this chapter; and
(b) complying with Section 48-3a-1041, as appropriate pursuant to Section 48-3a-1405.

16-10a-1009 Effect of amendment.
An amendment to articles of incorporation does not affect a cause of action existing against or in favor of the corporation, a proceeding to which the corporation is a party, or the existing rights of persons other than shareholders of the corporation. An amendment changing a corporation's name does not abate a proceeding brought by or against the corporation in its former name.

16-10a-1020 Amendment of bylaws by board of directors or shareholders.
(1) A corporation's board of directors may amend the corporation's bylaws at any time, except to the extent that the articles of incorporation, the bylaws, or this chapter reserve this power exclusively to the shareholders, in whole or part.
(2) A corporation's shareholders may amend the corporation's bylaws at any time, even though the bylaws may also be amended at any time by the board of directors.

16-10a-1021 Bylaw changing quorum or voting requirement for shareholders.
(1) If authorized by the articles of incorporation or this chapter, the shareholders may adopt, amend, or repeal a bylaw that fixes a greater quorum or voting requirement for shareholders, or voting groups of shareholders, than is required by this chapter. Such action is subject to the provisions of Part 7, Shareholders.

(2) A bylaw that fixes a greater quorum or voting requirement for shareholders under Subsection (1) may not be adopted, amended, or repealed by the board of directors.

16-10a-1022 Bylaw changing quorum or voting requirement for directors.

(1) A bylaw that fixes a greater quorum or voting requirement for the board of directors than is required by this chapter may be amended or repealed:

(a) if originally adopted by the shareholders, only by the shareholders, unless otherwise permitted as contemplated by Subsection (2); or

(b) if originally adopted by the board of directors, by the shareholders or unless otherwise provided in the articles of incorporation or bylaws, by the board of directors.

(2) A bylaw adopted or amended by the shareholders that fixes a greater quorum or voting requirement for the board of directors may provide that it may be amended or repealed only by a specified vote of either the shareholders or the board of directors.

(3) Action by the board of directors under Subsection (1)(b) to amend or repeal a bylaw that changes the quorum or voting requirement for the board of directors shall meet the same quorum requirement and be adopted by the same vote required to take action under the quorum and voting requirement then in effect or proposed to be adopted, whichever is greater.

16-10a-1023 Bylaw provisions relating to election of directors.

(1) A corporation that has shares listed on a national securities exchange or regularly traded in a market maintained by one or more members of a national or affiliated securities association may elect in its bylaws to be governed in the election of directors by Subsection (2) unless the articles of incorporation:

(a) specifically prohibit the adoption of a bylaw electing to be governed by this section;

(b) alter the vote required by Subsection 16-10a-728(2); or

(c) provide for cumulative voting.

(2) A corporation may elect to be governed in the election of directors as follows:

(a) Each vote entitled to be cast may be voted for or against up to that number of candidates that is equal to the number of directors to be elected, or the shareholder may indicate abstention, but without cumulating the votes.

(b) To be elected, a nominee shall receive a plurality of the votes cast by shareholders of shares entitled to vote in the election at a meeting at which a quorum is present.

(c) Notwithstanding Subsection (2)(b), a nominee who is elected but receives more votes against than for election shall serve as a director for a term that terminates on the earlier of:

(i) 90 days after the day on which the corporation certifies the voting results; or

(ii) the day on which a person is selected by the board of directors to fill the office held by the director, which selection constitutes the filling of a vacancy by the board for the purpose of Section 16-10a-810.

(d) Subject to Subsection (2)(e), a nominee who is elected but receives more votes against than for election may not serve as a director beyond the 90-day period allowed by Subsection (2)(c).

(e) The board of directors may select any qualified person to fill the office held by a director who receives more votes against than for election.

(3)

(a) Subsection (2) does not apply to an election of a director by a voting group if there are more candidates for election by the voting group than the number of directors to be elected, one or more of whom are properly proposed by shareholders.

(b) The determination of the number of candidates under Subsection (3)(a) is made:

(i) at the expiration of a time fixed by the articles of incorporation or bylaws for the advance notification of director candidates; or

(ii) if there is no provision under Subsection (3)(b)(i), at a time fixed by the board of directors not more than 14 days before notice is given of the meeting at which the election is to occur.

(4) A person may not be considered a candidate for the purpose of Subsection (3) if the board of directors determines before the notice of meeting is given that the person's candidacy does not create a bona fide election contest.

(5) A bylaw electing to be governed by this section may be repealed:
(a) by the shareholders if originally adopted by the shareholders, unless otherwise provided by the bylaws; or
(b) by the board of directors or the shareholders, if originally adopted by the board of directors.

Part 11
Merger and Share Exchange

16-10a-1101 Merger.
(1) A domestic corporation may merge into another entity if:
(a) the board of directors of the domestic corporation adopts and its shareholders, if required by Section 16-10a-1103, approve the plan of merger; and
(b) any other entity that plans to merge approves the plan of merger as provided by the statutes governing the entity.
(2) The plan of merger referred to in Subsection (1) shall set forth:
(a) the name of each entity planning to merge and the name of the surviving entity into which each other entity plans to merge;
(b) the terms and conditions of the merger;
(c) the manner and basis of converting the ownership interests in each entity, in whole or part, into:
(i) ownership interests, obligations, or other securities of the surviving entity or another entity; or
(ii) cash or other property; and
(d) any amendments to the articles of incorporation or organization of the surviving entity to be effected by the merger.
(3) The plan of merger may set forth other provisions relating to the merger.

16-10a-1102 Share exchange.
(1) A domestic corporation may acquire all of the outstanding shares of one or more classes or series of one or more domestic corporations if the board of directors of each corporation adopts a plan of share exchange and the shareholders of the corporation, if required by Section 16-10a-1103, approve the plan of share exchange.
(2) The plan of share exchange referred to in Subsection (1) shall set forth:
(a) the name of each corporation whose shares will be acquired and the name of the acquiring corporation;
(b) the terms and conditions of the share exchange; and
(c) the manner and basis of exchanging the shares to be acquired for shares, obligations, or other securities of the acquiring or any other corporation or for money or other property in whole or part.
(3) The plan of share exchange may set forth other provisions relating to the share exchange.
(4) This section does not limit the power of a corporation to acquire all or part of the shares of one or more classes or series of another corporation through a voluntary exchange of shares or otherwise.

16-10a-1103 Action on plan.
(1) After adopting a plan of merger or share exchange, the board of directors of each corporation party to the merger, and the board of directors of each corporation whose shares will be acquired in the share exchange, shall submit the plan of merger to its shareholders for approval, except as provided in:
(a) Subsection (7);
(b) Section 16-10a-1104; or
(c) the plan of share exchange.
(2) For a plan of merger or share exchange to be approved:
(a) the board of directors shall recommend the plan of merger or share exchange to the shareholders, unless the board of directors determines that because of conflict of interest or other special circumstances it should make no recommendation and communicates the basis for its determination to the shareholders with the plan; and
(b) the shareholders entitled to vote on the plan of merger or share exchange shall approve the plan as provided in Subsection (5).

(3) The board of directors may condition its submission of the proposed merger or share exchange on any basis.
(4) The corporation shall give notice of the shareholders' meeting in accordance with Section 16-10a-705 to each shareholder entitled to vote on the plan of merger or share exchange. The notice shall state that one of the purposes of the meeting is to consider the plan of merger or share exchange and contain or be accompanied by a copy or summary of the plan.
(5) Unless this chapter, the articles of incorporation, the initial bylaws, the amended bylaws, or the board of directors acting pursuant to Subsection (3) requires a greater vote, the plan of merger or share exchange to be authorized shall be approved by each voting group entitled to vote separately on the plan by a majority of all the votes entitled to be cast on the plan by that voting group.
(6) Separate voting by voting groups is required on a plan of:
(a) merger if the plan contains a provision that, if contained in an amendment to the articles of incorporation, would require action by one or more separate voting groups on the amendment under Section 16-10a-1004; and
(b) share exchange by each class or series of shares included in the share exchange, with each class or series constituting a separate voting group.
(7) Action by the shareholders of the surviving corporation on a plan of merger is not required if:
(a) the articles of incorporation of the surviving corporation will not differ, except for amendments enumerated in Section 16-10a-1002, from its articles of incorporation before the merger;
(b) each shareholder of the surviving corporation whose shares were outstanding immediately before the merger will hold the same number of shares, with identical designations, preferences, limitations, and relative rights, immediately after the merger;
(c) the number of voting shares outstanding immediately after the merger, plus the number of voting shares issuable as a result of the merger either by the conversion of securities issued pursuant to the merger or the exercise of rights and warrants issued pursuant to the merger, will not exceed by more than 20% the total number of voting shares of the surviving corporation outstanding immediately before the merger; and
(d) the number of participating shares outstanding immediately after the merger, plus the number of participating shares issuable as a result of the merger either by the conversion of securities issued pursuant to the merger or the exercise of rights and warrants issued pursuant to the merger, will not exceed by more than 20% the total number of participating shares outstanding immediately before the merger.
(8) As used in Subsection (7):
(a) "Participating shares" means shares that entitle their holders to participate without limitation in distributions.
(b) "Voting shares" means shares that entitle their holders to vote unconditionally in elections of directors.
(9) After a plan of merger or share exchange is approved, and at any time before the merger or share exchange becomes effective the merger or share exchange may be abandoned, subject to any contractual rights, without further shareholder action, in accordance with the procedure set forth in the plan of merger or share exchange or, if none is set forth, in the manner determined by the board of directors.
(10) If a merger or share exchange is abandoned after articles of merger or share exchange have been filed by the division pursuant to Section 16-10a-1105 specifying a delayed effective date, the merger or share exchange may be prevented from becoming effective by delivering to the division for filing prior to the specified effective time and date a statement of abandonment stating that by appropriate corporate action the merger or share exchange has been abandoned. The statement of abandonment shall be executed in the same manner as the articles of merger or share exchange.

16-10a-1104 Merger of parent and subsidiary.
(1) By complying with the provision of this section, a parent corporation owning at least 90% of the outstanding shares of each class of a subsidiary corporation may either merge the subsidiary into itself or merge itself into the subsidiary.
(2) The board of directors of the parent shall adopt and its shareholders, if required by Subsection (3), shall approve a plan of merger that sets forth:
(a) the names of the parent and subsidiary and the name of the surviving entity;
(b) the terms and conditions of the merger;

(c) the manner and basis of converting the shares of each corporation into shares, obligations, or other securities of the surviving or any other corporation or into money or other property in whole or part;
(d) any amendments to the articles of incorporation of the surviving corporation to be effected by the merger; and
(e) any other provisions relating to the merger as may be determined to be necessary or desirable.
(3) A vote of the shareholders of the subsidiary is not required with respect to the merger. If the subsidiary will be the surviving corporation, the approval of the shareholders of the parent shall be sought in the manner provided in Subsections 16-10a-1103(1) through (6). If the parent will be the surviving corporation, no vote of its shareholders is required if all of the provisions of Subsection 16-10a-1103(7) are met with respect to the merger. If all the provisions are not met, the approval of the shareholders of the parent shall be sought in the manner provided in Subsections 16-10a-1103(1) through (6).
(4) The parent shall mail a copy or summary of the plan of merger to each shareholder of the subsidiary (other than the parent) who does not waive this mailing requirement in writing.
(5) The effective date of the merger may not be earlier than the date on which all shareholders of the subsidiary waived the mailing requirement of Subsection (4) or 10 days after the date the parent mailed a copy or summary of the plan of merger to each shareholder of the subsidiary who did not waive the mailing requirement.

16-10a-1105 Articles of merger or share exchange.
(1) After a plan of merger or share exchange is approved by the shareholders, or adopted by the board of directors if shareholder approval is not required, the surviving or acquiring corporation shall deliver to the division for filing articles of merger or share exchange setting forth:
(a) the plan of merger or share exchange;
(b) if shareholder approval was not required, a statement to that effect;
(c) if approval of the shareholders of one or more corporations party to the merger or share exchange was required:
(i) the designation and number of outstanding shares, and number of votes entitled to be cast by each voting group entitled to vote separately on the plan as to each corporation; and
(ii) either the total number of votes cast for and against the plan by each voting group entitled to vote separately on the plan or the total number of undisputed votes cast for the plan separately by each voting group and a statement that the number of votes cast for the plan by each voting group entitled to vote separately was sufficient for approval by that voting group; and
(d) if the merger is being effected pursuant to Section 16-10a-1104:
(i) a statement that immediately prior to the merger the parent owned at least 90% of the outstanding shares of each class of the subsidiary; and
(ii) the effective date of the merger and a statement that the effective date complies with Subsection 16-10a-1104(5).
(2) A merger or share exchange takes effect upon the effective date of the articles of merger or share exchange, which may not be prior to the date of filing.

16-10a-1106 Effect of merger or share exchange.
(1) When a merger takes effect:
(a) Every other corporation party to the merger merges into the surviving corporation and the separate existence of every corporation except the surviving corporation ceases.
(b) The title to all real estate and other property owned by each corporation party to the merger is transferred to and vested in the surviving corporation without reversion or impairment. The transfer to and vesting in the surviving corporation occurs by operation of law. No consent or approval of any other person is required in connection with the transfer or vesting unless consent or approval is specifically required in the event of merger by law or by express provision in any contract, agreement, decree, order, or other instrument to which any of the corporations so merged is a party or by which it is bound.
(c) The surviving corporation has all liabilities of each corporation party to the merger.
(d) A proceeding pending against any corporation party to the merger may be continued as if the merger did not occur, or the surviving corporation may be substituted in the proceeding for the corporation whose

existence ceased.

(e) The articles of incorporation of the surviving corporation are amended to the extent provided in the plan of merger.

(f) The shares of each corporation party to the merger, which are to be converted into shares, obligations, or other securities of the surviving or any other corporation or into money or other property, are converted, and the former holders of the shares are entitled only to the rights provided in the articles of merger or to their rights under Part 13, Dissenters' Rights.

(2) When a share exchange takes effect, the shares of each acquired corporation are exchanged as provided in the plan, and the former holders of the shares are entitled only to the exchange rights provided in the articles of share exchange or to their rights under Part 13, Dissenters' Rights.

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

(1) A domestic corporation may merge with a foreign entity or enter into a share exchange with a foreign corporation if:

(a) in a merger, the merger is permitted by the law of the state or country under whose law the foreign entity is incorporated or organized and the foreign entity complies with that law in effecting the merger;

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

(c) the foreign corporation complies with Section 16-10a-1105 if it is the surviving corporation of the merger or the acquiring corporation of the share exchange, and provides, in addition to the information required by Section 16-10a-1105, the address of its principal office; and

(d) the domestic corporation complies with:

(i) the applicable provisions of Sections 16-10a-1101 through 16-10a-1104; and

(ii) if it is the surviving corporation of the merger, Section 16-10a-1105.

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

(a) agree that service of process in a proceeding to enforce the rights of shareholders of each domestic corporation that is a party to the merger who exercise appraisal rights may be made in the manner provided in Section ~~16-17-301~~13-1a-511;

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

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

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

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

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

(c) five days after mailing.

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

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

Part 12
Sale of Property

16-10a-1201 Sale or mortgage of property without shareholder approval.

(1) A corporation may, on the terms and conditions and for the consideration determined by the board of directors:

(a) sell, lease, exchange, or otherwise dispose of all, or substantially all, of its property in the usual and regular course of business or in a transaction not requiring shareholder approval as provided in Section 16-10a-1202;

(b) mortgage, pledge, dedicate to the repayment of indebtedness, whether with or without recourse, or otherwise encumber any or all of its property whether or not in the usual and regular course of business; or
(c) transfer any or all of its property to a corporation all the shares of which are owned by the corporation.
(2) Unless otherwise provided in the articles of incorporation, approval by the shareholders of a transaction described in Subsection (1) is not required.

16-10a-1202 Sale of property requiring shareholder approval.
(1) A corporation may sell, lease, exchange, or otherwise dispose of all, or substantially all, of its property, with or without the good will, otherwise than in the usual and regular course of business, on the terms and conditions and for the consideration determined by the board of directors, if the board of directors proposes and the shareholders approve the transaction. A sale, lease, exchange, or other disposition of all, or substantially all, of the property of a corporation, with or without the good will, other than in the usual and regular course of business and other than pursuant to a court order, in connection with its dissolution is subject to the requirements of this section, but a sale, lease, exchange, or other disposition of all, or substantially all, of the property of a corporation, with or without the good will, that is pursuant to a court order is not subject to the requirements of this section.
(2) If a corporation is entitled to vote or otherwise consent, other than in the usual and regular course of its business, with respect to the sale, lease, exchange, or other disposition of all, or substantially all, of the property, with or without the good will, of another entity which it controls, and if the shares or other interests held by the corporation in the other entity constitute all, or substantially all, of the property of the corporation, then the corporation shall consent to the transaction only if the board of directors proposes and the shareholders approve the consent.
(3) For a transaction described in Subsection (1) or a consent described in Subsection (2) to be authorized:
(a) the board of directors shall recommend the transaction or the consent to the shareholders unless the board of directors determines that because of conflict of interest or other special circumstances it should make no recommendation and communicates the basis for its determination to the shareholders with the submission of the proposed transaction; and
(b) the shareholders entitled to vote on the transaction or the consent shall approve the transaction or the consent as provided in Subsections (5) and (6).
(4) The board of directors may condition the effectiveness of the transaction or the consent on any basis.
(5) The corporation shall give notice in accordance with Section 16-10a-705 to each shareholder entitled to vote on the transaction described in Subsection (1) or the consent described in Subsection (2), of the shareholders' meeting at which the transaction or the consent will be voted upon. The notice shall:
(a) state that the purpose, or one of the purposes, of the meeting is to consider:
(i) in the case of action pursuant to Subsection (1), the sale, lease, exchange, or other disposition of all, or substantially all, of the property of the corporation; or
(ii) in the case of action pursuant to Subsection (2), the corporation's consent to the sale, lease, exchange, or other disposition of all, or substantially all, of the property of another entity, which shall be identified in the notice, the shares or other interests of which held by the corporation constitute all, or substantially all, of the property of the corporation; and
(b) contain or be accompanied by a description of the transaction, in the case of action pursuant to Subsection (1), or by a description of the transaction underlying the consent, in the case of action pursuant to Subsection (2).
(6) Unless this chapter, the articles of incorporation, the initial bylaws or the bylaws as amended pursuant to Section 16-10a-1021, or the board of directors acting pursuant to Subsection (4) requires a greater vote, the transaction described in Subsection (1) or the consent described in Subsection (2) shall be approved by each voting group entitled to vote on the transaction or the consent by a majority of all the votes entitled to be cast on the transaction or the consent by that voting group.
(7) After a transaction described in Subsection (1) or a consent described in Subsection (2) is authorized, the transaction may be abandoned or the consent withheld or revoked by the corporation's board of directors subject to any contractual rights or other limitation on the abandonment, withholding, or revocation, without further shareholder action.

(8) A transaction that constitutes a distribution is governed by Section 16-10a-640 and not by this section.

Part 13
Dissenters' Rights

16-10a-1301 Definitions.

For purposes of Part 13, Dissenters' Rights:

(1) "Beneficial shareholder" means the person who is a beneficial owner of shares held in a voting trust or by a nominee as the record shareholder.

(2) "Corporation" means the issuer of the shares held by a dissenter before the corporate action, or the surviving or acquiring corporation by merger or share exchange of that issuer.

(3) "Dissenter" means a shareholder who is entitled to dissent from corporate action under Section 16-10a-1302 and who exercises that right when and in the manner required by Sections 16-10a-1320 through 16-10a-1328.

(4) "Fair value" with respect to a dissenter's shares, means the value of the shares immediately before the effectuation of the corporate action to which the dissenter objects, excluding any appreciation or depreciation in anticipation of the corporate action.

(5) "Interest" means interest from the effective date of the corporate action until the date of payment, at the statutory rate set forth in Section 15-1-1, compounded annually.

(6) "Record shareholder" means the person in whose name shares are registered in the records of a corporation or the beneficial owner of shares that are registered in the name of a nominee to the extent the beneficial owner is recognized by the corporation as the shareholder as provided in Section 16-10a-723.

(7) "Shareholder" means the record shareholder or the beneficial shareholder.

16-10a-1302 Right to dissent.

(1) A shareholder, whether or not entitled to vote, is entitled to dissent from, and obtain payment of the fair value of shares held by him in the event of, any of the following corporate actions:

(a) consummation of a plan of merger to which the corporation is a party if:

(i) shareholder approval is required for the merger by Section 16-10a-1103 or the articles of incorporation; or

(ii) the corporation is a subsidiary that is merged with its parent under Section 16-10a-1104;

(b) consummation of a plan of share exchange to which the corporation is a party as the corporation whose shares will be acquired;

(c) consummation of a sale, lease, exchange, or other disposition of all, or substantially all, of the property of the corporation for which a shareholder vote is required under Subsection 16-10a-1202(1), but not including a sale for cash pursuant to a plan by which all or substantially all of the net proceeds of the sale will be distributed to the shareholders within one year after the date of sale; and

(d) consummation of a sale, lease, exchange, or other disposition of all, or substantially all, of the property of an entity controlled by the corporation if the shareholders of the corporation were entitled to vote upon the consent of the corporation to the disposition pursuant to Subsection 16-10a-1202(2).

(2) A shareholder is entitled to dissent and obtain payment of the fair value of his shares in the event of any other corporate action to the extent the articles of incorporation, bylaws, or a resolution of the board of directors so provides.

(3) Notwithstanding the other provisions of this part, except to the extent otherwise provided in the articles of incorporation, bylaws, or a resolution of the board of directors, and subject to the limitations set forth in Subsection (4), a shareholder is not entitled to dissent and obtain payment under Subsection (1) of the fair value of the shares of any class or series of shares which either were listed on a national securities exchange registered under the federal Securities Exchange Act of 1934, as amended, or on the National Market System of the National Association of Securities Dealers Automated Quotation System, or were held of record by more than 2,000 shareholders, at the time of:

(a) the record date fixed under Section 16-10a-707 to determine the shareholders entitled to receive notice of the shareholders' meeting at which the corporate action is submitted to a vote;

(b) the record date fixed under Section 16-10a-704 to determine shareholders entitled to sign writings

consenting to the proposed corporate action; or

(c) the effective date of the corporate action if the corporate action is authorized other than by a vote of shareholders.

(4) The limitation set forth in Subsection (3) does not apply if the shareholder will receive for his shares, pursuant to the corporate action, anything except:

(a) shares of the corporation surviving the consummation of the plan of merger or share exchange;

(b) shares of a corporation which at the effective date of the plan of merger or share exchange either will be listed on a national securities exchange registered under the federal Securities Exchange Act of 1934, as amended, or on the National Market System of the National Association of Securities Dealers Automated Quotation System, or will be held of record by more than 2,000 shareholders;

(c) cash in lieu of fractional shares; or

(d) any combination of the shares described in Subsection (4), or cash in lieu of fractional shares.

(5) A shareholder entitled to dissent and obtain payment for his shares under this part may not challenge the corporate action creating the entitlement unless the action is unlawful or fraudulent with respect to him or to the corporation.

16-10a-1303 Dissent by nominees and beneficial owners.

(1) A record shareholder may assert dissenters' rights as to fewer than all the shares registered in his name only if the shareholder dissents with respect to all shares beneficially owned by any one person and causes the corporation to receive written notice which states the dissent and the name and address of each person on whose behalf dissenters' rights are being asserted. The rights of a partial dissenter under this subsection are determined as if the shares as to which the shareholder dissents and the other shares held of record by him were registered in the names of different shareholders.

(2) A beneficial shareholder may assert dissenters' rights as to shares held on his behalf only if:

(a) the beneficial shareholder causes the corporation to receive the record shareholder's written consent to the dissent not later than the time the beneficial shareholder asserts dissenters' rights; and

(b) the beneficial shareholder dissents with respect to all shares of which he is the beneficial shareholder.

(3) The corporation may require that, when a record shareholder dissents with respect to the shares held by any one or more beneficial shareholders, each beneficial shareholder shall certify to the corporation that both he and the record shareholders of all shares owned beneficially by him have asserted, or will timely assert, dissenters' rights as to all the shares unlimited on the ability to exercise dissenters' rights. The certification requirement shall be stated in the dissenters' notice given pursuant to Section 16-10a-1322.

16-10a-1320 Notice of dissenters' rights.

(1) If a proposed corporate action creating dissenters' rights under Section 16-10a-1302 is submitted to a vote at a shareholders' meeting, the meeting notice shall be sent to all shareholders of the corporation as of the applicable record date, whether or not they are entitled to vote at the meeting. The notice shall state that shareholders are or may be entitled to assert dissenters' rights under this part. The notice shall be accompanied by a copy of this part and the materials, if any, that under this chapter are required to be given the shareholders entitled to vote on the proposed action at the meeting. Failure to give notice as required by this subsection does not affect any action taken at the shareholders' meeting for which the notice was to have been given.

(2) If a proposed corporate action creating dissenters' rights under Section 16-10a-1302 is authorized without a meeting of shareholders pursuant to Section 16-10a-704, any written or oral solicitation of a shareholder to execute a written consent to the action contemplated by Section 16-10a-704 shall be accompanied or preceded by a written notice stating that shareholders are or may be entitled to assert dissenters' rights under this part, by a copy of this part, and by the materials, if any, that under this chapter would have been required to be given to shareholders entitled to vote on the proposed action if the proposed action were submitted to a vote at a shareholders' meeting. Failure to give written notice as provided by this subsection does not affect any action taken pursuant to Section 16-10a-704 for which the notice was to have been given.

16-10a-1321 Demand for payment -- Eligibility and notice of intent.

(1) If a proposed corporate action creating dissenters' rights under Section 16-10a-1302 is submitted to a vote at

a shareholders' meeting, a shareholder who wishes to assert dissenters' rights:
(a) shall cause the corporation to receive, before the vote is taken, written notice of his intent to demand payment for shares if the proposed action is effectuated; and
(b) may not vote any of his shares in favor of the proposed action.
(2) If a proposed corporate action creating dissenters' rights under Section 16-10a-1302 is authorized without a meeting of shareholders pursuant to Section 16-10a-704, a shareholder who wishes to assert dissenters' rights may not execute a writing consenting to the proposed corporate action.
(3) In order to be entitled to payment for shares under this part, unless otherwise provided in the articles of incorporation, bylaws, or a resolution adopted by the board of directors, a shareholder shall have been a shareholder with respect to the shares for which payment is demanded as of the date the proposed corporate action creating dissenters' rights under Section 16-10a-1302 is approved by the shareholders, if shareholder approval is required, or as of the effective date of the corporate action if the corporate action is authorized other than by a vote of shareholders.
(4) A shareholder who does not satisfy the requirements of Subsections (1) through (3) is not entitled to payment for shares under this part.

16-10a-1322 Dissenters' notice.
(1) If proposed corporate action creating dissenters' rights under Section 16-10a-1302 is authorized, the corporation shall give a written dissenters' notice to all shareholders who are entitled to demand payment for their shares under this part.
(2) The dissenters' notice required by Subsection (1) shall be sent no later than 10 days after the effective date of the corporate action creating dissenters' rights under Section 16-10a-1302, and shall:
(a) state that the corporate action was authorized and the effective date or proposed effective date of the corporate action;
(b) state an address at which the corporation will receive payment demands and an address at which certificates for certificated shares shall be deposited;
(c) inform holders of uncertificated shares to what extent transfer of the shares will be restricted after the payment demand is received;
(d) supply a form for demanding payment, which form requests a dissenter to state an address to which payment is to be made;
(e) set a date by which the corporation must receive the payment demand and by which certificates for certificated shares must be deposited at the address indicated in the dissenters' notice, which dates may not be fewer than 30 nor more than 70 days after the date the dissenters' notice required by Subsection (1) is given;
(f) state the requirement contemplated by Subsection 16-10a-1303(3), if the requirement is imposed; and
(g) be accompanied by a copy of this part.

16-10a-1323 Procedure to demand payment.
(1) A shareholder who is given a dissenters' notice described in Section 16-10a-1322, who meets the requirements of Section 16-10a-1321, and wishes to assert dissenters' rights shall, in accordance with the terms of the dissenters' notice:
(a) cause the corporation to receive a payment demand, which may be the payment demand form contemplated in Subsection 16-10a-1322(2)(d), duly completed, or may be stated in another writing;
(b) deposit certificates for his certificated shares in accordance with the terms of the dissenters' notice; and
(c) if required by the corporation in the dissenters' notice described in Section 16-10a-1322, as contemplated by Section 16-10a-1327, certify in writing, in or with the payment demand, whether or not he or the person on whose behalf he asserts dissenters' rights acquired beneficial ownership of the shares before the date of the first announcement to news media or to shareholders of the terms of the proposed corporate action creating dissenters' rights under Section 16-10a-1302.
(2) A shareholder who demands payment in accordance with Subsection (1) retains all rights of a shareholder except the right to transfer the shares until the effective date of the proposed corporate action giving rise to the exercise of dissenters' rights and has only the right to receive payment for the shares after the effective date of the corporate action.

(3) A shareholder who does not demand payment and deposit share certificates as required, by the date or dates set in the dissenters' notice, is not entitled to payment for shares under this part.

16-10a-1324 Uncertificated shares.
(1) Upon receipt of a demand for payment under Section 16-10a-1323 from a shareholder holding uncertificated shares, and in lieu of the deposit of certificates representing the shares, the corporation may restrict the transfer of the shares until the proposed corporate action is taken or the restrictions are released under Section 16-10a-1326.
(2) In all other respects, the provisions of Section 16-10a-1323 apply to shareholders who own uncertificated shares.

16-10a-1325 Payment.
(1) Except as provided in Section 16-10a-1327, upon the later of the effective date of the corporate action creating dissenters' rights under Section 16-10a-1302, and receipt by the corporation of each payment demand pursuant to Section 16-10a-1323, the corporation shall pay the amount the corporation estimates to be the fair value of the dissenter's shares, plus interest to each dissenter who has complied with Section 16-10a-1323, and who meets the requirements of Section 16-10a-1321, and who has not yet received payment.
(2) Each payment made pursuant to Subsection (1) shall be accompanied by:
(a)
(i)
(A) the corporation's balance sheet as of the end of its most recent fiscal year, or if not available, a fiscal year ending not more than 16 months before the date of payment;
(B) an income statement for that year;
(C) a statement of changes in shareholders' equity for that year and a statement of cash flow for that year, if the corporation customarily provides such statements to shareholders; and
(D) the latest available interim financial statements, if any;
(ii) the balance sheet and statements referred to in Subsection (2)(a)(i) shall be audited if the corporation customarily provides audited financial statements to shareholders;
(b) a statement of the corporation's estimate of the fair value of the shares and the amount of interest payable with respect to the shares;
(c) a statement of the dissenter's right to demand payment under Section 16-10a-1328; and
(d) a copy of this part.

16-10a-1326 Failure to take action.
(1) If the effective date of the corporate action creating dissenters' rights under Section 16-10a-1302 does not occur within 60 days after the date set by the corporation as the date by which the corporation must receive payment demands as provided in Section 16-10a-1322, the corporation shall return all deposited certificates and release the transfer restrictions imposed on uncertificated shares, and all shareholders who submitted a demand for payment pursuant to Section 16-10a-1323 shall thereafter have all rights of a shareholder as if no demand for payment had been made.
(2) If the effective date of the corporate action creating dissenters' rights under Section 16-10a-1302 occurs more than 60 days after the date set by the corporation as the date by which the corporation must receive payment demands as provided in Section 16-10a-1322, then the corporation shall send a new dissenters' notice, as provided in Section 16-10a-1322, and the provisions of Sections 16-10a-1323 through 16-10a-1328 shall again be applicable.

16-10a-1327 Special provisions relating to shares acquired after announcement of proposed corporate action.
(1) A corporation may, with the dissenters' notice given pursuant to Section 16-10a-1322, state the date of the first announcement to news media or to shareholders of the terms of the proposed corporate action creating dissenters' rights under Section 16-10a-1302 and state that a shareholder who asserts dissenters' rights must certify in writing, in or with the payment demand, whether or not he or the person on whose behalf he asserts

dissenters' rights acquired beneficial ownership of the shares before that date. With respect to any dissenter who does not certify in writing, in or with the payment demand that he or the person on whose behalf the dissenters' rights are being asserted, acquired beneficial ownership of the shares before that date, the corporation may, in lieu of making the payment provided in Section 16-10a-1325, offer to make payment if the dissenter agrees to accept it in full satisfaction of his demand.
(2) An offer to make payment under Subsection (1) shall include or be accompanied by the information required by Subsection 16-10a-1325(2).

16-10a-1328 Procedure for shareholder dissatisfied with payment or offer.
(1) A dissenter who has not accepted an offer made by a corporation under Section 16-10a-1327 may notify the corporation in writing of his own estimate of the fair value of his shares and demand payment of the estimated amount, plus interest, less any payment made under Section 16-10a-1325, if:
(a) the dissenter believes that the amount paid under Section 16-10a-1325 or offered under Section 16-10a-1327 is less than the fair value of the shares;
(b) the corporation fails to make payment under Section 16-10a-1325 within 60 days after the date set by the corporation as the date by which it must receive the payment demand; or
(c) the corporation, having failed to take the proposed corporate action creating dissenters' rights, does not return the deposited certificates or release the transfer restrictions imposed on uncertificated shares as required by Section 16-10a-1326.
(2) A dissenter waives the right to demand payment under this section unless he causes the corporation to receive the notice required by Subsection (1) within 30 days after the corporation made or offered payment for his shares.

16-10a-1330 Judicial appraisal of shares -- Court action.
(1) If a demand for payment under Section 16-10a-1328 remains unresolved, the corporation shall commence a proceeding within 60 days after receiving the payment demand contemplated by Section 16-10a-1328, and petition the court to determine the fair value of the shares and the amount of interest. If the corporation does not commence the proceeding within the 60-day period, it shall pay each dissenter whose demand remains unresolved the amount demanded.
(2) The corporation shall commence the proceeding described in Subsection (1) in the district court of the county in this state where the corporation's principal office, or if it has no principal office in this state, Salt Lake County. If the corporation is a foreign corporation, it shall commence the proceeding in the county in this state where the principal office of the domestic corporation merged with, or whose shares were acquired by, the foreign corporation was located, or, if the domestic corporation did not have its principal office in this state at the time of the transaction, in Salt Lake County.
(3) The corporation shall make all dissenters who have satisfied the requirements of Sections 16-10a-1321, 16-10a-1323, and 16-10a-1328, whether or not they are residents of this state whose demands remain unresolved, parties to the proceeding commenced under Subsection (2) as an action against their shares. All such dissenters who are named as parties shall be served with a copy of the petition. Service on each dissenter may be by registered or certified mail to the address stated in his payment demand made pursuant to Section 16-10a-1328. If no address is stated in the payment demand, service may be made at the address stated in the payment demand given pursuant to Section 16-10a-1323. If no address is stated in the payment demand, service may be made at the address shown on the corporation's current record of shareholders for the record shareholder holding the dissenter's shares. Service may also be made otherwise as provided by law.
(4) The jurisdiction of the court in which the proceeding is commenced under Subsection (2) is plenary and exclusive. The court may appoint one or more persons as appraisers to receive evidence and recommend decision on the question of fair value. The appraisers have the powers described in the order appointing them, or in any amendment to it. The dissenters are entitled to the same discovery rights as parties in other civil proceedings.
(5) Each dissenter made a party to the proceeding commenced under Subsection (2) is entitled to judgment:
(a) for the amount, if any, by which the court finds that the fair value of his shares, plus interest, exceeds the amount paid by the corporation pursuant to Section 16-10a-1325; or

(b) for the fair value, plus interest, of the dissenter's after-acquired shares for which the corporation elected to withhold payment under Section 16-10a-1327.

16-10a-1331 Court costs and counsel fees.

(1) The court in an appraisal proceeding commenced under Section 16-10a-1330 shall determine all costs of the proceeding, including the reasonable compensation and expenses of appraisers appointed by the court. The court shall assess the costs against the corporation, except that the court may assess costs against all or some of the dissenters, in amounts the court finds equitable, to the extent the court finds that the dissenters acted arbitrarily, vexatiously, or not in good faith in demanding payment under Section 16-10a-1328.

(2) The court may also assess the fees and expenses of counsel and experts for the respective parties, in amounts the court finds equitable:

(a) against the corporation and in favor of any or all dissenters if the court finds the corporation did not substantially comply with the requirements of Sections 16-10a-1320 through 16-10a-1328; or

(b) against either the corporation or one or more dissenters, in favor of any other party, if the court finds that the party against whom the fees and expenses are assessed acted arbitrarily, vexatiously, or not in good faith with respect to the rights provided by this part.

(3) If the court finds that the services of counsel for any dissenter were of substantial benefit to other dissenters similarly situated, and that the fees for those services should not be assessed against the corporation, the court may award to those counsel reasonable fees to be paid out of the amounts awarded the dissenters who were benefited.

Part 14
Dissolution

16-10a-1401 Authorization of dissolution prior to issuance of shares.

If a corporation has not yet issued shares, a majority of its directors, or if no directors have been elected or if elected directors are no longer serving, a majority of its incorporators may authorize the dissolution of the corporation.

16-10a-1402 Authorization of dissolution after issuance of shares.

(1) After shares have been issued, dissolution of a corporation may be authorized in the manner provided in Subsection (2).

(2) For a proposal to dissolve the corporation to be authorized:

(a) the board of directors must recommend dissolution to the shareholders unless the board of directors determines that because of a conflict of interest or other special circumstances it should make no recommendation and communicates the basis for its determination to the shareholders; and

(b) the shareholders entitled to vote on the proposal must approve the proposal to dissolve as provided in Subsection (5).

(3) The board of directors may condition the effectiveness of the dissolution on any basis.

(4) The corporation shall give notice in accordance with Section 16-10a-705 to each shareholder entitled to vote on the proposal to dissolve, of the proposed shareholders' meeting at which the proposal to dissolve will be voted upon. The notice shall state that the purpose or one of the purposes of the meeting is to consider the proposal to dissolve the corporation.

(5) The proposal to dissolve must be approved by each voting group entitled to vote separately on the proposal, by a majority of all the votes entitled to be cast on the proposal by that voting group, unless a greater vote is required by the articles of incorporation, the initial bylaws or the bylaws amended pursuant to Section 16-10a-1021, or the board of directors acting pursuant to Subsection (3).

16-10a-1403 Articles of dissolution.

(1) At any time after dissolution is authorized, the corporation may dissolve by delivering to the division for filing articles of dissolution setting forth:

(a) the name of the corporation;

(b) the address of the corporation's principal office or, if none is to be maintained, a statement that the corporation will not maintain a principal office, and, if different from the address of the principal office or if no principal office is to be maintained, the address to which service of process may be mailed pursuant to Section 16-10a-1409;
(c) the date dissolution was authorized;
(d) if dissolution was authorized by the directors or the incorporators pursuant to Section 16-10a-1401, a statement to that effect;
(e) if dissolution was approved by the shareholders pursuant to Section 16-10a-1402:
(i) the number of votes entitled to be cast on the proposal to dissolve by each voting group entitled to vote separately thereon; and
(ii) either the total number of votes cast for and against dissolution by each voting group or the total number of undisputed votes cast for dissolution by each voting group and a statement that the number cast for dissolution was sufficient for approval; and
(f) any additional information the division determines is necessary or appropriate.
(2) A corporation is dissolved upon the effective date of its articles of dissolution.

16-10a-1404 Revocation of dissolution.
(1) A corporation may revoke its dissolution within 120 days after the effective date of the dissolution.
(2) Revocation of dissolution shall be authorized in the same manner as the dissolution was authorized unless, in the case of authorization pursuant to Section 16-10a-1402, that authorization permitted revocation by action of the board of directors alone, in which event the board of directors may revoke the dissolution without shareholder action.
(3) After the revocation of dissolution is authorized, the corporation may revoke the dissolution by delivering to the division for filing articles of revocation of dissolution, together with a copy of its articles of dissolution, that set forth:
(a) the name of the corporation;
(b) the effective date of the dissolution that was revoked;
(c) the date that the revocation of dissolution was authorized;
(d) if pursuant to Subsection (2) the corporation's board of directors or incorporators revoked the dissolution authorized under Section 16-10a-1401, a statement to that effect;
(e) if pursuant to Subsection (2) the corporation's board of directors revoked a dissolution approved by the shareholders, a statement that the revocation was permitted by action by the board of directors alone pursuant to that authorization; and
(f) if the revocation of dissolution was approved pursuant to Subsection (2) by the shareholders, the information required by Subsection 16-10a-1403(1)(e).
(4) Revocation of dissolution is effective as provided in Subsection ~~16-10a-123(1)~~13-1a-303. A provision may not be made for a delayed effective date for revocation pursuant to Subsection ~~16-10a-123(2)~~13-1a-303.
(5) When the revocation of dissolution is effective, it relates back to and takes effect as of the effective date of the dissolution and the corporation may carry on its business as if dissolution had never occurred.

16-10a-1405 Effect of dissolution.
(1) A dissolved corporation continues its corporate existence but may not carry on any business except that appropriate to wind up and liquidate its business and affairs, including:
(a) collecting its assets;
(b) disposing of its properties that will not be distributed in kind to its shareholders;
(c) discharging or making provision for discharging its liabilities;
(d) distributing its remaining property among its shareholders according to their interests; and
(e) doing every other act necessary to wind up and liquidate its business and affairs.
(2) Dissolution of a corporation does not:
(a) transfer title to the corporation's property;
(b) prevent transfer of its shares or securities, although the authorization to dissolve may provide for closing the corporation's share transfer records;

(c) subject its directors or officers to standards of conduct different from those prescribed in Part 8, Directors and Officers;
(d) change:
(i) quorum or voting requirements for its board of directors or shareholders;
(ii) provisions for selection, resignation, or removal of its directors or officers or both; or
(iii) provisions for amending its bylaws or its articles of incorporation;
(e) prevent commencement of a proceeding by or against the corporation in its corporate name;
(f) abate or suspend a proceeding pending by or against the corporation on the effective date of dissolution; or
(g) terminate the authority of the registered agent of the corporation.

16-10a-1406 Disposition of known claims by notification.
(1) A dissolved corporation may dispose of the known claims against it by following the procedures described in this section.
(2) A dissolved corporation electing to dispose of known claims pursuant to this section may give written notice of the dissolution to known claimants at any time after the effective date of the dissolution. The written notice shall:
(a) describe the information that must be included in a claim;
(b) provide an address to which written notice of any claim must be given to the corporation;
(c) state the deadline, which may not be fewer than 120 days after the effective date of the notice, by which the dissolved corporation must receive the claim; and
(d) state that unless sooner barred by any other state statute limiting actions, the claim will be barred if not received by the deadline.
(3) Unless sooner barred by any other statute limiting actions, a claim against the dissolved corporation is barred if:
(a) a claimant was given notice under Subsection (2) and the claim is not received by the dissolved corporation by the deadline; or
(b) the dissolved corporation delivers to the claimant written notice of rejection of the claim within 90 days after receipt of the claim and the claimant whose claim was rejected by the dissolved corporation does not commence a proceeding to enforce the claim within 90 days after the effective date of the rejection notice.
(4) Claims which are not rejected by the dissolved corporation in writing within 90 days after receipt of the claim by the dissolved corporation shall be considered accepted.
(5) The failure of the dissolved corporation to give notice to any known claimant pursuant to Subsection (2) does not affect the disposition under this section of any claim held by any other known claimant.
(6) For purposes of this section, “claim” does not include a contingent liability or a claim based on an event occurring after the effective date of dissolution.

16-10a-1407 Disposition of claims by publication -- Disposition in absence of publication.
(1) A dissolved corporation may publish notice of its dissolution and request that persons with claims against the corporation present them in accordance with the notice.
(2) The notice contemplated in Subsection (1) shall:
(a) be published:
(i) one time in a newspaper of general circulation in the county where the dissolved corporation’s principal office is or was located or, if it has no principal office in this state, in Salt Lake County; and
(ii) as required in Section 45-1-101;
(b) describe the information that must be included in a claim and provide an address at which any claim must be given to the corporation; and
(c) state that unless sooner barred by any other statute limiting actions, the claim will be barred if an action to enforce the claim is not commenced within five years after the publication of the notice.
(3) If the dissolved corporation publishes a newspaper or website notice in accordance with Subsection (2), then unless sooner barred under Section 16-10a-1406 or under any other statute limiting actions, the claim of any claimant against the dissolved corporation is barred unless the claimant commences an action to enforce the claim against the dissolved corporation within five years after the publication date of the notice.

(4)

(a) For purposes of this section, "claim" means any claim, including claims of this state, whether known, due or to become due, absolute or contingent, liquidated or unliquidated, founded on contract, tort, or other legal basis, or otherwise.

(b) For purposes of this section, an action to enforce a claim includes any civil action, and any arbitration under any agreement for binding arbitration between the dissolved corporation and the claimant.

(5) If a dissolved corporation does not publish a newspaper notice in accordance with Subsection (2), then unless sooner barred under Section 16-10a-1406 or under any other statute limiting actions, the claim of any claimant against the dissolved corporation is barred unless the claimant commences an action to enforce the claim against the dissolved corporation within seven years after the date the corporation was dissolved.

16-10a-1408 Enforcement of claims against dissolved corporations.

A claim may be enforced:

(1) under Section 16-10a-1406 or 16-10a-1407 against the dissolved corporation, to the extent of its undistributed assets; or

(2) against a shareholder of the dissolved corporation, if the assets have been distributed in liquidation; but a shareholder's total liability for all claims under this section may not exceed the total value of assets distributed to him, as that value is determined at the time of distribution. Any shareholder required to return any portion of the value of assets received by him in liquidation shall be entitled to contribution from all other shareholders. The contributions shall be in accordance with the shareholders' respective rights and interests and may not exceed the value of the assets received in liquidation.

16-10a-1409 Service on dissolved corporation.

(1) A dissolved corporation shall either:

(a) maintain a registered agent in this state to accept service of process on its behalf; or

(b) be deemed to have authorized service of process on it by registered or certified mail, return receipt requested, to the address of its principal office, if any, as set forth in its articles of dissolution or as last changed by notice delivered to the division for filing or to the address for service of process that is stated in its articles of dissolution or as last changed by notice delivered to the division for filing.

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

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

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

(c) five days after mailing.

(3) Subsection (1) does not prescribe the only means, or necessarily the required means, of service on a dissolved corporation.

~~**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 report to the 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.~~

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

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

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

~~(b) the grounds for dissolving the corporation.~~

~~(2)~~

~~(a) If the corporation 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 by Subsection (1), the division shall administratively dissolve the corporation.~~

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

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

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

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

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

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

~~(f) Notwithstanding Subsection (2)(e), the name of the corporation that is dissolved 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 Assumed Name.~~

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

~~(3)~~

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

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

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

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

~~(4) The administrative dissolution of a corporation 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 registered agent of the corporation, if the notice is required to be mailed to the registered agent; or~~

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

~~16-10a-1422 Reinstatement following dissolution.~~

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

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

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

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

~~(d) the corporate name under which the corporation is being reinstated;~~

~~(e) that the name stated in Subsection (1)(d) satisfies the requirements of Section 16-10a-401;~~

~~(f) that the corporation has paid all fees or penalties imposed under this chapter or other applicable state law;~~

~~(g) that the corporation:~~

~~(i) has paid any taxes, fees, or penalties owed to the State Tax Commission; or~~

~~(ii) is current on a payment plan with the State Tax Commission for any taxes, fees, or penalties owed to the State Tax Commission;~~

~~(h) the address of the corporation's registered office in this state;~~

~~(i) the name of the corporation's registered agent at the office stated in Subsection (1)(h); and~~
~~(j) any additional information the division determines to be necessary or appropriate.~~
~~(2) The corporation shall include in or with the application for reinstatement:~~
~~(a) the written consent to appointment by the designated registered agent; and~~
~~(b) a certificate from the State Tax Commission that states that the corporation:~~
~~(i) has paid any taxes, fees, or penalties owed to the State Tax Commission; or~~
~~(ii) is current on a payment plan with the State Tax Commission for any taxes, fees, or penalties owed to the State Tax Commission.~~
~~(3) If the division determines that the application for reinstatement contains the information required by Subsections (1) and (2) and that the information is correct, the division shall revoke the administrative dissolution. The division shall mail to the corporation in the manner provided in Subsection 16-10a-1421(5) written notice of:~~
~~(a) the revocation; and~~
~~(b) the effective date of the revocation.~~
~~(4) When the reinstatement is effective, it relates back to the effective date of the administrative dissolution. Upon reinstatement:~~
~~(a) an act of the corporation during the period of dissolution is effective and enforceable as if the administrative dissolution had never occurred; and~~
~~(b) the corporation may carry on its business, under the name stated pursuant to Subsection (1)(d), as if the administrative dissolution had never occurred.~~

~~16-10a-1423 Appeal from denial of reinstatement.~~

~~If the division denies a corporation's application for reinstatement under Section 16-10a-1422 following administrative dissolution, the division shall mail to the corporation in the manner provided in Subsection 16-10a-1421(5) written notice:~~
~~(1) setting forth the reasons for denying the application; and~~
~~(2) stating that the corporation has the right to appeal the division's determination to the executive director of the Department of Commerce in accordance with Title 63G, Chapter 4, Administrative Procedures Act.~~

16-10a-1430 Grounds for judicial dissolution.

(1) A corporation may be dissolved in a proceeding by the attorney general or the division director if it is established that:
(a) the corporation obtained its articles of incorporation through fraud; or
(b) the corporation has continued to exceed or abuse the authority conferred upon it by law.
(2) A corporation may be dissolved in a proceeding by a shareholder if it is established that:
(a) the directors are deadlocked in the management of the corporate affairs, the shareholders are unable to break the deadlock, irreparable injury to the corporation is threatened or being suffered, or the business and affairs of the corporation can no longer be conducted to the advantage of the shareholders generally, because of the deadlock;
(b) the directors or those in control of the corporation have acted, are acting, or will act in a manner that is illegal, oppressive, or fraudulent;
(c) the shareholders are deadlocked in voting power and have failed, for a period that includes at least two consecutive annual meeting dates, to elect successors to directors whose terms have expired or would have expired upon the election of their successors; or
(d) the corporate assets are being misapplied or wasted.
(3) A corporation may be dissolved in a proceeding by a creditor if it is established that:
(a) the creditor's claim has been reduced to judgment, the execution on the judgment has been returned unsatisfied, and the corporation is insolvent; or
(b) the corporation is insolvent and the corporation has admitted in writing that the creditor's claim is due and owing.
(4) A corporation may be dissolved in a proceeding by the corporation to have its voluntary dissolution continued under court supervision.

16-10a-1431 Procedure for judicial dissolution.
(1) A proceeding by the attorney general or director of the division to dissolve a corporation shall be brought in either the district court of the county in this state in which the principal office of the corporation is situated or the district court of Salt Lake County. A proceeding brought by any other party named in Section 16-10a-1430 shall be brought in the district court of the county in this state where the corporation's principal office is located or, if it has no principal office in this state, in the district court of Salt Lake County.
(2) It is not necessary to make shareholders parties to a proceeding to dissolve a corporation unless relief is sought against them individually.
(3) A court in a proceeding brought to dissolve a corporation may issue injunctions, appoint a receiver or custodian pendente lite with all powers and duties the court directs, take other action required to preserve the corporate assets wherever located, and carry on the business of the corporation until a full hearing can be held.

16-10a-1432 Receivership or custodianship.
(1) A court in a judicial proceeding brought to dissolve a corporation may appoint one or more receivers to wind up and liquidate, or one or more custodians to manage, the business and affairs of the corporation. The court shall hold a hearing, after giving notice to all parties to the proceeding and any interested persons designated by the court, before appointing a receiver or custodian. The court appointing a receiver or custodian has exclusive jurisdiction over the corporation and all of its property wherever located.
(2) The court may appoint an individual or a domestic or foreign corporation authorized to transact business in this state as a receiver or custodian. The court may require the receiver or custodian to post bond, with or without sureties, in an amount the court directs.
(3) The court shall describe the powers and duties of the receiver or custodian in its appointing order, which may be amended from time to time. Among other powers:
(a) the receiver:
(i) may dispose of all or any part of the assets of the corporation wherever located, at a public or private sale, if authorized by the court; and
(ii) may sue and defend in its own name as receiver of the corporation in all courts of this state; or
(b) the custodian may exercise all of the powers of the corporation, through or in place of its board of directors or officers, to the extent necessary to manage the affairs of the corporation in the best interests of its shareholders and creditors.
(4) The court during a receivership may redesignate the receiver a custodian, and during a custodianship may redesignate the custodian a receiver, if doing so is in the best interests of the corporation, its shareholders, and its creditors.
(5) The court from time to time during the receivership or custodianship may order compensation paid and expense disbursements or reimbursements made to the receiver or custodian and the custodian's or receiver's counsel from the assets of the corporation or proceeds from the sale of the assets.

16-10a-1433 Decree of dissolution.
(1) If after a hearing the court determines that one or more grounds for judicial dissolution described in Section 16-10a-1430 exist, it may enter a decree dissolving the corporation and specifying the effective date of the dissolution. The clerk of the court shall deliver a certified copy of the decree to the division for filing.
(2) After entering the decree of dissolution, the court shall direct the winding up and liquidation of the corporation's business and affairs in accordance with Section 16-10a-1405 and the giving of notice to its registered agent, or to the division if it has no registered agent, and to claimants in accordance with Sections 16-10a-1406 and 16-10a-1407.
(3) The court's order may be appealed as in other civil proceedings.

16-10a-1434 Election to purchase in lieu of dissolution.
(1) In a proceeding under Subsection 16-10a-1430(2) to dissolve a corporation that has no shares listed on a national securities exchange or regularly traded in a market maintained by one or more members of a national or affiliated securities association, the corporation may elect, or if it fails to elect, one or more shareholders may

elect to purchase all shares of the corporation owned by the petitioning shareholder, at the fair value of the shares, determined as provided in this section. An election pursuant to this section is irrevocable unless the court determines that it is equitable to set aside or modify the election.

(2)

(a) An election to purchase pursuant to this section may be filed with the court at any time within 90 days after the filing of the petition under Subsection 16-10a-1430(2) or at any later time as the court in its discretion may allow. If the corporation files an election with the court within the 90-day period, or at any later time allowed by the court, to purchase all shares of the corporation owned by the petitioning shareholder, the corporation shall purchase the shares in the manner provided in this section.

(b) If the corporation does not file an election with the court within the time period, but an election to purchase all shares of the corporation owned by the petitioning shareholder is filed by one or more shareholders within the time period, the corporation shall, within 10 days after the later of:

(i) the end of the time period allowed for the filing of elections to purchase under this section; or

(ii) notification from the court of an election by shareholders to purchase all shares of the corporation owned by the petitioning shareholder as provided in this section, give written notice of the election to purchase to all shareholders of the corporation, other than the petitioning shareholder. The notice shall state the name and number of shares owned by the petitioning shareholder and the name and number of shares owned by each electing shareholder. The notice shall advise any recipients who have not participated in the election of their right to join in the election to purchase shares in accordance with this section, and of the date by which any notice of intent to participate must be filed with the court.

(c) Shareholders who wish to participate in the purchase of shares from the petitioning shareholder shall file notice of their intention to join in the purchase by the electing shareholders, no later than 30 days after the effective date of the corporation's notice of their right to join in the election to purchase.

(d) All shareholders who have filed with the court an election or notice of their intention to participate in the election to purchase the shares of the corporation owned by the petitioning shareholder thereby become irrevocably obligated to participate in the purchase of shares from the petitioning shareholders upon the terms and conditions of this section, unless the court otherwise directs.

(e) After an election has been filed by the corporation or one or more shareholders, the proceedings under Subsection 16-10a-1430(2) may not be discontinued or settled, nor may the petitioning shareholder sell or otherwise dispose of any shares of the corporation, unless the court determines that it would be equitable to the corporation and the shareholders, other than the petitioning shareholders, to permit any discontinuance, settlement, sale, or other disposition.

(3) If, within 60 days after the earlier of:

(a) the corporation's filing of an election to purchase all shares of the corporation owned by the petitioning shareholder; or

(b) the corporation's mailing of a notice to its shareholders of the filing of an election by the shareholders to purchase all shares of the corporation owned by the petitioning shareholder, the petitioning shareholder and electing corporation or shareholders reach agreement as to the fair value and terms of purchase of the petitioning shareholder's shares, the court shall enter an order directing the purchase of petitioner's shares, upon the terms and conditions agreed to by the parties.

(4) If the parties are unable to reach an agreement as provided for in Subsection (3), upon application of any party the court shall stay the proceedings under Subsection 16-10a-1430(2) and determine the fair value of the petitioning shareholder's shares as of the day before the date on which the petition under Subsection 16-10a-1430(2) was filed or as of any other date the court determines to be appropriate under the circumstances and based on the factors the court determines to be appropriate.

(5)

(a) Upon determining the fair value of the shares of the corporation owned by the petitioning shareholder, the court shall enter an order directing the purchase of the shares upon terms and conditions the court determines to be appropriate. The terms and conditions may include payment of the purchase price in installments, where necessary in the interests of equity, provision for security to assure payment of the purchase price and any additional costs, fees, and expenses awarded by the court, and an allocation of shares among shareholders if the shares are to be purchased by shareholders.

(b) In allocating the petitioning shareholders' shares among holders of different classes of shares, the court shall attempt to preserve the existing distribution of voting rights among holders of different share classes to the extent practicable. The court may direct that holders of a specific class or classes may not participate in the purchase. The court may not require any electing shareholder to purchase more of the shares of the corporation owned by the petitioning shareholder than the number of shares that the purchasing shareholder may have set forth in his election or notice of intent to participate filed with the court as the maximum number of shares he is willing to purchase.

(c) Interest may be allowed at the rate and from the date determined by the court to be equitable. However, if the court finds that the refusal of the petitioning shareholder to accept an offer of payment was arbitrary or otherwise not in good faith, interest may not be allowed.

(d) If the court finds that the petitioning shareholder had probable grounds for relief under Subsection 16-10a-1430(2)(b) or (d), it may award to the petitioning shareholder reasonable fees and expenses of counsel and experts employed by the petitioning shareholder.

(6) Upon entry of an order under Subsection (3) or (5), the court shall dismiss the petition to dissolve the corporation under Section 16-10a-1430, and the petitioning shareholder shall no longer have any rights or status as a shareholder of the corporation, except the right to receive the amounts awarded to him by the court. The award is enforceable in the same manner as any other judgment.

(7)

(a) The purchase ordered pursuant to Subsection (5) shall be made within 10 days after the date the order becomes final, unless before that time the corporation files with the court a notice of its intention to adopt articles of dissolution pursuant to Sections 16-10a-1402 and 16-10a-1403. The articles of dissolution must then be adopted and filed within 50 days after notice.

(b) Upon filing of the articles of dissolution, the corporation is dissolved in accordance with the provisions of Sections 16-10a-1405 through 16-10a-1408, and the order entered pursuant to Subsection (5) is no longer of any force or effect. However, the court may award the petitioning shareholder reasonable fees and expenses in accordance with the provisions of Subsection (5)(d). The petitioning shareholder may continue to pursue any claims previously asserted on behalf of the corporation.

(8) Any payment by the corporation pursuant to an order under Subsection (3) or (5), other than an award of fees and expenses pursuant to Subsection (5)(d), is subject to the provisions of Section 16-10a-640.

16-10a-1440 Deposit with state treasurer.

Assets of a dissolved corporation that should be transferred to a creditor, claimant, or shareholder of the corporation who cannot be found or who is not competent to receive them shall be reduced to cash and deposited with the state treasurer in accordance with Title 67, Chapter 4a, Revised Uniform Unclaimed Property Act.

Part 15
Authority of Foreign Corporation to Transact Business

~~**16-10a-1501 Authority to transact business required.**~~

~~(1) A foreign corporation may not transact business in this state until its application for authority to transact business is filed by the division. This applies to foreign corporations that conduct a business governed by other statutes of this state only to the extent this part is not inconsistent with those other statutes.~~

~~(2) The following, nonexhaustive list of activities does not constitute "transacting business" within the meaning of Subsection (1):~~

~~(a) maintaining, defending, or settling in its own behalf any legal proceeding;~~

~~(b) holding meetings of the board of directors, shareholders, or otherwise carrying on activities concerning internal corporate affairs;~~

~~(c) maintaining bank accounts;~~

~~(d) maintaining offices or agencies for the transfer, exchange, and registration of its own securities or maintaining trustees or depositories with respect to those securities;~~

~~(e) selling through independent contractors;~~

(f) soliciting or obtaining orders, whether by mail or through employees or agents or otherwise, if the orders require acceptance outside this state before they become contracts;
(g) creating as borrower or lender or acquiring indebtedness, mortgages, or security interests in real or personal property;
(h) securing or collecting debts in its own behalf or enforcing mortgages or security interests in property securing such debts;
(i) owning, without more, real or personal property;
(j) conducting an isolated transaction that is completed within 30 days and that is not one in the course of repeated transactions of a like nature;
(k) transacting business in interstate commerce;
(l) acquiring, in transactions outside this state or in interstate commerce, of conditional sales contracts or of debts secured by mortgages or liens on real or personal property in this state, collecting or adjusting of principal or interest payments on the contracts, mortgages, or liens, enforcing or adjusting any rights provided for in conditional sales contracts or securing the described debts, taking any actions necessary to preserve and protect the interest of the conditional vendor in the property covered by a conditional sales contract or the interest of the mortgagee or holder of the lien in such security, or any combination of such transactions; and
(m) any other activities not considered to constitute transacting business in this state in the discretion of the division.
(3) Nothing in this section limits or affects the right to subject a foreign corporation which does not, or is not required to, have authority to transact business in this state to the jurisdiction of the courts of this state or to serve upon any foreign corporation any process, notice, or demand required or permitted by law to be served upon a corporation pursuant to any applicable provision of law or pursuant to any applicable rules of civil procedure.

16-10a-1502 Consequences of transacting business without authority.
(1) A foreign corporation transacting business in this state without authority, or anyone in its behalf, may not maintain a proceeding in any court in this state until an application for authority to transact business is filed with the division.
(2) The successor to a foreign corporation that transacted business in this state without authority and the assignee of a cause of action arising out of that business may not maintain a proceeding based on that cause of action in any court in this state until an application for authority to transact business is filed on behalf of the foreign corporation or its successor.
(3) A court may stay a proceeding commenced by a foreign corporation, its successor, or assignee until it determines whether the foreign corporation, its successor, or assignee is required to file an application for authority to transact business. If it so determines, the court may further stay the proceeding until the required application for authority to transact business has been filed by the division.
(4) A foreign corporation that transacts business in this state without authority is subject to a civil penalty, payable to this state, of $100 for each day in which it transacts business in this state without authority. However, the penalty may not exceed a total of $5,000 for each year. Each officer of a foreign corporation who authorizes, directs, or participates in the transaction of business in this state without authority and each agent of a foreign corporation who transacts business in this state on behalf of a foreign corporation that is not authorized is subject to a civil penalty, payable to this state, not exceeding $1,000.
(5) The civil penalties set forth in Subsection (4) may be recovered in an action brought in an appropriate court in Salt Lake County or in any other county in this state in which the corporation has a registered, principal, or business office or in which it has transacted business. Upon a finding by the court that a foreign corporation or any of its officers or agents have transacted business in this state in violation of this part, the court shall issue, in addition to or instead of a civil penalty, an injunction restraining the further transaction of the business of the foreign corporation and the further exercise of any corporate rights and privileges in this state. Upon issuance of the injunction, the foreign corporation shall be enjoined from transacting business in this state until all civil penalties have been paid, plus any interest and court costs assessed by the court, and until the foreign corporation has otherwise complied with the provisions of this part.
(6) Notwithstanding Subsections (1) and (2), the failure of a foreign corporation to have authority to transact

business in this state does not impair the validity of its corporate acts, nor does the failure prevent the corporation from defending any proceeding in this state.

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

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

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

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

(c) its date of incorporation and period of its corporate duration;

(d) the street address of its principal office;

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

(f) the names and usual business addresses of its current directors and officers;

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

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

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

(3)

(a) The division may permit a tribal corporation to apply for authority to transact business in this state in the same manner as a foreign corporation incorporated in another state.

(b) If a tribal corporation elects to apply for authority to transact business in this state, for purposes of this chapter, the tribal corporation shall be treated in the same manner as a foreign corporation incorporated under the laws of another state.

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

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

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

(b) the period of its duration;

(c) the state or country of its incorporation; or

(d) any of the information required by Subsection 16-17-203(1).

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

16-10a-1505 Effect of filing an application for authority to transact business.

(1) Filing an application for authority to transact business authorizes the foreign corporation to transact business in this state subject, however, to the right of the state to revoke the certificate as provided in this part.

(2) A foreign corporation authorized to transact business in this state has the same rights and privileges as, but no greater rights or privileges than, a domestic corporation of like character. Except as otherwise provided by this chapter, a foreign corporation authorized to transact business in this state is subject to the same duties, restrictions, penalties, and liabilities now or later imposed on a domestic corporation of like character.

(3) This chapter does not authorize this state to regulate the organization or internal affairs of a foreign corporation authorized to transact business in this state.

16-10a-1506 Corporate name and assumed corporate name of foreign corporation.

(1) Except as provided in Subsection (2), if the corporate name of a foreign corporation does not satisfy the requirements of Section 16-10a-401, which applies to domestic corporations, the foreign corporation, in order to obtain authority to transact business in this state, shall assume for use in this state a name that satisfies the requirements of Section 16-10a-401.

(2) A foreign corporation may obtain authority to transact business in this state with a name that does not meet the requirements of Subsection (1) because it is not distinguishable as required under Subsection 16-10a-401(2), if the foreign corporation delivers to the division for filing either:

(a) a written consent to the foreign corporation's use of the name, given and signed by the other person entitled to the use of the name together with a written undertaking by the other person, in a form satisfactory to the division, to change its name to a name that is distinguishable from the name of the applicant; or

(b) a certified copy of a final judgment of a court of competent jurisdiction establishing the prior right of the foreign corporation to use the requested name in this state.

(3) A foreign corporation may use in this state the name, including the fictitious name, of another domestic or foreign corporation that is used or registered in this state if the other corporation is incorporated or authorized to transact business in this state and the foreign corporation:

(a) has merged with the other corporation; or

(b) has been formed by reorganization of the other corporation.

(4) If a foreign corporation authorized to transact business in this state, whether under its corporate name or an assumed corporate name, changes its corporate name to one that does not satisfy the requirements of Subsections (1) through (3), or the requirements of Section 16-10a-401, it may not transact business in this state under the changed name but shall use an assumed corporate name that does meet the requirements of this section and shall deliver to the division for filing an amended application for authority to transact business pursuant to Section 16-10a-1504.

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

(1) A foreign corporation may register its corporate name as provided in this section if the name would be available for use as a corporate name for a domestic corporation under Section 16-10a-401. If the foreign corporation's corporate name would not be available for such use, then the foreign corporation may register its corporate name modified by the addition of any of the following words or abbreviations, if the modified name would be available for use under Section 16-10a-401: "corporation," "incorporated," "company," "corp.," "inc.," or "co."

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

(a) setting forth its corporate name, the name to be registered which shall meet the requirements of Section 16-10a-401 that apply to domestic corporations, the state or country and date of incorporation, and a brief description of the nature of the business in which it is engaged; and

(b) accompanied by a certificate of existence, or a document of similar import from the state or country of incorporation as evidence that the foreign corporation is in existence or has authority to transact business under the laws of the state or country in which it is organized.

(3) The name is registered for the applicant upon the effective date of the application, and the initial registration is effective until the end of the calendar year in which it became effective.

(4) A foreign corporation that has in effect a registration of its corporate name as permitted by Subsection (1) may renew the registration for the following year by delivering to the division for filing a renewal application for registration, which complies with the requirements of Subsection (2), between October 1 and December 31 of the preceding year. When filed, the renewal application for registration renews the registration for the following calendar year.

(5) A foreign corporation that has in effect registration of its corporate name may apply for authority to transact business in this state under the registered name in accordance with the procedure set forth in this part or it may assign the registration to another foreign corporation by delivering to the division for filing an assignment of the registration that states the registered name, the name of the assigning foreign corporation, and the name of the assignee, concurrently with the delivery to the division for filing of the assignee's application for registration of the name. The assignee's application shall meet the requirements of this part.

(6)

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

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

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

16-10a-1510 Resignation of registered agent of foreign corporation.

(1) The registered agent of a foreign corporation authorized to transact business in this state may resign the agency appointment by delivering to the division for filing a statement of resignation, which shall be signed by the resigning registered agent and accompanied by two exact or conformed copies of the statement of resignation. The statement of resignation may include a statement that the registered office is also discontinued. The statement of resignation filed by the registered agent shall include a declaration that notice of the resignation has been given to the corporation.

(2) After filing the statement of resignation, the division shall deliver one copy of the resignation to the registered office of the foreign corporation and the other copy to its principal office.

(3) The agency appointment terminates, and the registered office discontinues if so provided, on the 31st day after the filing date of the statement of resignation.

16-10a-1511 Service on foreign corporation.

(1) Except as provided in Subsection (3), the division may serve a foreign corporation by first-class, postage-prepaid United States mail.

(2) The registered agent of a foreign corporation authorized to transact business in this state is the foreign corporation's agent for service of process, notice, or demand required or permitted by law to be served on the foreign corporation.

(3)

(a) If a foreign corporation authorized to transact business in this state has no registered agent or if the registered agent cannot with reasonable diligence be served, the foreign corporation may be served by mail that is:

(i) registered or certified;

(ii) return receipt requested; and

(iii) addressed to the foreign corporation at its principal office.

(b) Service is perfected under this Subsection (3) at the earliest of:

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

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

(iii) five days after mailing.

(4) This section does not prescribe the only means, or necessarily the required means, of serving a foreign corporation authorized to transact business in this state.

16-10a-1520 Withdrawal of foreign corporation.

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

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

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

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

(c) the address of its principal office, or if none is to be maintained, a statement that the corporation will not maintain a principal office, and if different from the address of the principal office or if no principal office is to be maintained, the address to which service of process may be mailed pursuant to Section 16-10a-1521;

(d) that the corporation is not transacting business in this state and that it surrenders its authority to transact business in this state;

(e) whether its registered agent will continue to be authorized to accept service on its behalf in any

proceeding based on a cause of action arising during the time it was authorized to transact business in this state; and

(f) any additional information that the division determines is necessary or appropriate to determine whether the corporation is entitled to withdraw, and to determine and assess any unpaid taxes, fees, and penalties payable by it as prescribed by this chapter.

(3) A foreign corporation's application for withdrawal may not be filed by the division until all outstanding fees and state tax obligations have been paid and the division has received a tax clearance certificate from the State Tax Commission.

16-10a-1521 Service on withdrawn foreign corporation.

(1) A foreign corporation that has withdrawn from this state pursuant to Section 16-10a-1520 shall either:

(a) maintain a registered agent in this state to accept service on its behalf in any proceeding based on a cause of action arising during the time it was authorized to transact business in this state, in which case the continued authority of the registered agent shall be specified in the application for withdrawal; or

(b) be considered to have authorized service of process on it in connection with any cause of action 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 last changed by notice delivered to the division for filing; or

(ii) the address for service of process that is stated in its application for withdrawal or as last changed by notice delivered to the division for filing.

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

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

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

(c) five days after mailing.

(3) Subsection (1) does not prescribe the only means, or necessarily the required means, of serving a withdrawn foreign corporation.

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 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.

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

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

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

(b) the grounds for revocation.

(2)

(a) If the foreign corporation does not correct each ground for revocation or demonstrate to the reasonable satisfaction of the division that each ground determined by the division does not exist, within 60 days after mailing the notice under Subsection (1), the division shall revoke the foreign corporation's authority to

~~transact business in this state.~~

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

~~(i) revocation; and~~

~~(ii) the effective date of the revocation.~~

~~(c) The division shall mail a copy of the notice to:~~

~~(i) the last registered agent of the foreign corporation; or~~

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

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

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

~~(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 registered agent of the foreign corporation, if the notice is required to be mailed to the registered agent; or~~

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

~~16-10a-1532 Appeal from revocation.~~

~~(1) A foreign corporation may appeal the division's revocation of its authority to transact business in this state to the district court of the county in this state where the last registered or principal office of the corporation was located or in Salt Lake County, within 30 days after the notice of revocation is mailed under Section 16-10a-1531. The foreign corporation appeals by petitioning the court to set aside the revocation and attaching to the petition copies of the corporation's application for authority to transact business, and any amended applications, each as filed with the division, and the division's notice of revocation.~~

~~(2) The court may summarily order the division to reinstate the authority of the foreign corporation to transact business in this state or it may take any other action it considers appropriate.~~

~~(3) The court's final decision may be appealed as in other civil proceedings.~~

16-10a-1533 Domestication of foreign corporations.

(1)

(a) Any foreign corporation may become a domestic corporation by delivering to the division for filing articles of domestication meeting the requirements of Subsection (2) if the board of directors of the corporation adopts, and its shareholders approve, the domestication.

(b) The adoption and approval of the domestication shall be in accordance with the consent requirements of Section 16-10a-1003 for amending articles of incorporation.

(2)

(a) The articles of domestication shall meet the requirements applicable to articles of incorporation set forth in Sections ~~16-10a-120~~13-1a-301 and 16-10a-202, except that:

(i) the articles of domestication need not name, or be signed by, the incorporators of the foreign corporation; and

(ii) any reference to the corporation's registered office, registered agent, or directors shall be to the registered office and agent in Utah, and the directors then in office at the time of filing the articles of domestication.

(b) The articles of domestication shall set forth:

(i) the date on which and jurisdiction where the corporation was first formed, incorporated, or otherwise came into being;

(ii) the name of the corporation immediately prior to the filing of the articles of domestication;

(iii) any jurisdiction that constituted the seat, location of incorporation, principal place of business, or central administration of the corporation immediately prior to the filing of the articles of domestication;

and
(iv) a statement that the articles of domestication were adopted by the corporation's board of directors and approved by its shareholders.
(3)
(a) Upon the filing of articles of domestication with the division, the corporation shall be domesticated in this state, shall thereafter be subject to all of the provisions of this chapter, and shall continue as if it had been incorporated under this chapter.
(b) Notwithstanding any other provisions of this chapter, the existence of the corporation shall be considered to have commenced on the date the corporation commenced its existence in the jurisdiction in which the corporation was first formed, incorporated, or otherwise came into being.
(4) The articles of domestication, upon filing with the division, shall become the articles of incorporation of the corporation, and shall be subject to amendments or restatement the same as any other articles of incorporation under this chapter.
(5) The domestication of any corporation in this state may not be considered to affect any obligation or liability of the corporation incurred prior to its domestication.
(6) The filing of the articles of domestication does not affect the choice of law applicable to the corporation, except that from the date the articles of domestication are filed, the law of Utah, including the provisions of this chapter, shall apply to the corporation to the same extent as if the corporation had been incorporated as a corporation of this state on that date.

16-10a-1533.5 Transfer to another state.
(1) A domestic corporation may transfer to or domesticate in a jurisdiction other than this state if:
(a) that jurisdiction permits the transfer to or domestication of the corporation in the jurisdiction; and
(b) the transfer is approved by the shareholders as provided in the corporation's bylaws or, if the bylaws do not so provide, by all of the shareholders.
(2)
(a) A domestic corporation transfers to or domesticates in a jurisdiction other than this state by delivering to the division for filing articles of transfer meeting the requirements of Subsection (2)(b).
(b) Articles of transfer shall state:
(i) the name of the corporation;
(ii) the date of filing of the corporation's original articles of incorporation with the division;
(iii) the jurisdiction to which the corporation is to be transferred or in which it is to be domesticated;
(iv) the future effective date, which shall be a date certain, of the transfer or domestication if it is not to be effective upon the filing of the articles of transfer;
(v) that the transfer or domestication has been approved by the shareholders;
(vi) that the existence of the corporation as a domestic corporation of this state shall cease when the articles of transfer become effective;
(vii) the agreement of the corporation that it may be served with process in this state in any proceeding for enforcement of any obligation of the corporation arising while it was a corporation under the laws of this state; and
(viii) if the corporation does not apply for authority to transact business in this state as a foreign corporation pursuant to Section 16-10a-1503, the address to which a copy of service of process may be made under Subsection (2)(b)(vii).
(3) When the articles of transfer are filed with the division, or upon the future, delayed effective date of the articles of transfer, and after payment to the division of the fees prescribed under this chapter, the corporation shall cease to exist as a domestic corporation of this state. Thereafter, a certificate of the division as to the transfer is prima facie evidence of the transfer or domestication by the corporation out of this state.
(4) Transfer or domestication of a corporation out of this state in accordance with this section and the resulting cessation of its existence as a domestic corporation of this state may not be considered to affect:
(a) an obligation or liability of the corporation incurred before the transfer or domestication or the personal liability of any person incurred before the transfer or domestication, including, any taxes owing to this state; or

(b) the choice of law applicable to the corporation with respect to matters arising before the transfer or domestication.

Part 16
Records, Information, and Reports

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 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 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.

16-10a-1602 Inspection of records by shareholders and directors.
(1) A shareholder or director of a corporation is entitled to inspect and copy, during regular business hours at the corporation's principal office, any of the records of the corporation described in Subsection 16-10a-1601(5) if he gives the corporation written notice of the demand at least five business days before the date on which he wishes to inspect and copy.
(2) In addition to the rights set forth in Subsection (1), a shareholder or director of a corporation is entitled to inspect and copy, during regular business hours at a reasonable location specified by the corporation, any of the following records of the corporation if the shareholder or director meets the requirements of Subsection (3) and gives the corporation written notice of the demand at least five business days before the date on which he wishes to inspect and copy:
(a) excerpts from:
(i) minutes of any meeting, records of any action taken by the board of directors, or by a committee of the board of directors while acting on behalf of the corporation in place of the board of directors;
(ii) minutes of any meeting of the shareholders;
(iii) records of any action taken by the shareholders without a meeting; and
(iv) waivers of notices of any meeting of the shareholders, of any meeting of the board of directors, or of any meeting of a committee of the board of directors;
(b) accounting records of the corporation; and
(c) the record of shareholders described in Subsection 16-10a-1601(3).
(3) A shareholder or director is entitled to inspect and copy records as described in Subsection (2) only if:

(a) the demand is made in good faith and for a proper purpose;
(b) the shareholder or director describes with reasonable particularity his purpose and the records he desires to inspect; and
(c) the records are directly connected with his purpose.
(4) For purposes of this section:
(a) "proper purpose" means a purpose reasonably related to the demanding shareholder's or director's interest as a shareholder or director; and
(b) "shareholder" includes a beneficial owner whose shares are held in a voting trust and any other beneficial owner who establishes beneficial ownership.
(5) The right of inspection granted by this section may not be abolished by a corporation's articles of incorporation or bylaws.
(6) This section does not affect:
(a) the right of a shareholder or director to inspect records under Section 16-10a-720 or, if the shareholder or director is in litigation with the corporation, to the same extent as any other litigant; or
(b) the power of a court, independent of this chapter, to compel the production of corporate records for examination.
(7) A shareholder or director may not use any information obtained through the inspection or copying of records permitted by Subsection (2) for any purposes other than those set forth in a demand made under Subsection (3).

16-10a-1603 Scope of inspection right.
(1) A shareholder's or director's agent or attorney has the same inspection and copying rights as the shareholder or director represented by the agent or attorney.
(2) The right to copy records under Section 16-10a-1602 includes, if reasonable, the right to receive copies made by photographic, xerographic, or other means.
(3) Except as provided in Section 16-10a-1606, the corporation may impose a reasonable charge, payable in advance, covering the costs of labor and material, for copies of any documents to be provided to the shareholder or director. The charge may not exceed the estimated cost of production or reproduction of the records.
(4) The corporation may comply with a shareholder's or director's demand to inspect the record of shareholders under Subsection 16-10a-1602(2)(c) by providing him with a list of the corporation's shareholders that complies with Subsection 16-10a-1601(3) and was compiled no earlier than the date of the shareholder's or director's demand.

16-10a-1604 Court-ordered inspection.
(1) If a corporation does not allow a shareholder or director, or the shareholder's or director's agent or attorney, who complies with Subsection 16-10a-1602(1) to inspect or copy any records required by that subsection to be available for inspection, the district court of the county in this state in which the corporation's principal office is located, or in Salt Lake County if it has no principal office in this state, may summarily order inspection and copying of the records demanded at the corporation's expense, on application of the shareholder or director denied access to the records.
(2) If a corporation does not within a reasonable time allow a shareholder or director, or the shareholder's or director's agent or attorney, who complies with Subsections 16-10a-1602(2) and (3), to inspect and copy any records which he is entitled to inspect or copy by this part, then upon application of the shareholder or director denied access to the records, the district court of the county in this state where the corporation's principal office is located or, if it has no principal office in this state, the district court for Salt Lake County, may summarily order the inspection or copying of the records demanded. The court shall dispose of an application under this subsection on an expedited basis.
(3) If a court orders inspection or copying of records demanded, it shall also order the corporation to pay the shareholder's or director's costs incurred to obtain the order, including reasonable counsel fees, unless the corporation proves that it refused inspection in good faith because it had a reasonable basis for doubt about the right of the shareholder or director, or the shareholder's or director's agent or attorney, to inspect the records demanded.
(4) If a court orders inspection or copying of records demanded, it may:

(a) impose reasonable restrictions on the use or distribution of the records by the demanding shareholder or director;
(b) order the corporation to pay the shareholder or director for any damages incurred as a result of the corporation's denial if the court determines that the corporation did not act in good faith in refusing to allow the inspection or copying;
(c) if inspection or copying is ordered pursuant to Subsection (2), order the corporation to pay the expenses of inspection and copying if the court determines that the corporation did not act in good faith in refusing to allow the inspection or copying; and
(d) grant the shareholder or director any other available legal remedy.

16-10a-1605 Financial statements.

Upon the written request of any shareholder, a corporation shall mail to him its most recent annual or quarterly financial statements showing in reasonable detail its assets and liabilities and the results of its operations.

16-10a-1606 Information respecting shares.

Upon the written request of any shareholder, a corporation at its own expense shall mail to him the information specified by Subsection 16-10a-625(3), whether or not the information is also contained or summarized on any share certificate of the shareholder. The corporation may comply with this section by mailing articles of incorporation including the designations, preferences, limitations, and relative rights applicable to each class and series of shares and the authority of the board of directors to determine variations for any existing or future class or series.

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

~~(1) Each domestic corporation, and each foreign corporation authorized to transact business in this state, shall deliver to the division for filing an annual 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;~~
~~(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 report to each domestic corporation and each foreign corporation authorized to transact business in this state.~~
~~(3) Information in the annual report shall be current as of the date the annual report is executed on behalf of the corporation.~~
~~(4) The annual report of a domestic or foreign corporation shall be delivered annually to the division no later than the end of the second calendar month following the calendar month in which the report form is mailed by the division. Proof to the satisfaction of the division that the corporation has mailed an annual report form is considered in compliance with this subsection.~~
~~(5) If an annual 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 report to it for correction. If the 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 report is considered to be timely filed.~~
~~(6) The fact that an individual's name is signed on an annual 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 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 report filed.~~
~~(8) A domestic or foreign corporation may, but may not be required to, deliver to the division for filing an amendment to its annual report reflecting any change in the information contained in its annual report as last~~

~~amended.~~

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

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

(a) his name;

(b) the domestic or foreign corporation's name;

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

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

Part 17
Transitional Provisions

16-10a-1701 Application to existing domestic corporations.

Except as otherwise provided in Section 16-10a-1704, this chapter applies to all domestic corporations in existence on July 1, 1992, that were incorporated under any general statute of this state providing for incorporation of corporations for profit, and to actions taken by the directors, officers, and shareholders of such corporations after July 1, 1992.

16-10a-1702 Application to foreign corporations.

A foreign corporation authorized to transact business in this state on July 1, 1992, is subject to this chapter, but is not required to obtain a new certificate of authority to transact business under this chapter.

~~**16-10a-1703 Publication.**~~

~~(1) The division shall annually publish copies of this chapter, together with applicable annotations and commentary, for sale and distribution to the public.~~

~~(2) The division may charge a reasonable amount for copies of the chapter sold or distributed.~~

~~(3) The proceeds from all sales and distributions shall be deposited into the Commerce Service Account created by Section 13-1-2, and may be appropriated to the division for use in defraying past or future production, publication, republication, or distribution costs.~~

16-10a-1704 Saving provisions.

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

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

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

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

(d) any proceeding, reorganization, or dissolution commenced under the statute before its repeal, and any proceeding, reorganization, or dissolution may be completed in accordance with the repealed statute as if the statute had not been repealed.

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

(3) The provisions of Subsection 16-10a-630(1) may not operate to deny preemptive rights to shareholders who, immediately prior to July 1, 1992, were entitled to preemptive rights by reason of the failure of the articles of incorporation of the corporation of which they are shareholders to deny preemptive rights, and the corporation shall be treated for all purposes as if its articles of incorporation included the statement "the corporation elects to have preemptive rights," until the date a resolution providing otherwise is approved by the same percentage of shareholders of each voting group as would be required to include the resolution in an amendment to the

corporation's articles of incorporation. Any preemptive rights existing by virtue of Subsection (3) are subject to the terms and provisions of Subsection 16-10a-630(2).
(4) The provisions of Section 16-10a-704 may not operate to permit a corporation in existence prior to July 1, 1992, to take action by the written consent of fewer than all of the shareholders entitled to vote with respect to the subject matter of the action, until the date a resolution providing otherwise is approved either:
(a) by a consent in writing, setting forth the proposed resolution, signed by all of the shareholders entitled to vote with respect to the subject matter of the resolution; or
(b) at a duly convened meeting of shareholders, by the vote of the same percentage of shareholders of each voting group as would be required to include the resolution in an amendment to the corporation's articles of incorporation.

16-10a-1705 Severability clause.

If any provision of this act, or the application of any provision to any person or circumstance, is held invalid, the remainder of this act is given effect without the invalid provision or application.

Part 18
Business Combinations

16-10a-1801 Title.

This part is known as "Business Combinations."

16-10a-1802 Definitions.

As used in this part:
(1) "Affiliate" means the same as that term is defined in Section 16-10a-102.
(2) "Announcement date," when used in reference to a business combination, means the date of the first public announcement of the final, definitive proposal for the business combination.
(3) "Associate," when used to indicate a relationship with a person, means:
(a) a corporation or organization of which the person is an officer or partner or is, directly or indirectly, the beneficial owner of 10% or more of any class of voting stock;
(b) a trust or other estate in which the person has a substantial beneficial interest or as to which the person serves as trustee or in a similar fiduciary capacity; and
(c) a relative or spouse of the person, or any relative of the spouse, who has the same home as the person.
(4) "Beneficial owner," when used with respect to stock, means a person:
(a) that, individually or with or through any of its affiliates or associates, beneficially owns the stock, directly or indirectly;
(b) that, individually or with or through any of its affiliates or associates, has:
(i) the right to acquire the stock:
(A) whether the right is exercisable immediately or only after the passage of time, pursuant to an agreement, arrangement, or understanding, whether or not in writing; or
(B) upon the exercise of conversion rights, exchange rights, warrants, or options, or otherwise, except that a person may not be considered the beneficial owner of stock tendered pursuant to a tender or exchange offer made by the person or an affiliate or associate of the person until the tendered stock is accepted for purchase or exchange; or
(ii) the right to vote the stock pursuant to an agreement, arrangement, or understanding, whether or not in writing, except that a person may not be considered the beneficial owner of any stock under this Subsection (4)(b)(ii) if the agreement, arrangement, or understanding to vote the stock arises solely from a revocable proxy or consent given in response to a proxy or consent solicitation made in accordance with the applicable regulations under the Exchange Act and is not then reportable on a Schedule 13D under the Exchange Act, or any comparable or successor report; or
(c) that has an agreement, arrangement, or understanding, whether or not in writing, for the purpose of acquiring, holding, voting, except voting pursuant to a revocable proxy or consent as described in Subsection (4)(b)(ii), or disposing of the stock with any other person that beneficially owns, or whose affiliates or

associates beneficially own, directly or indirectly, the stock.

(5) "Business combination," when used in reference to any domestic corporation and an interested shareholder of the corporation, means:

(a) a merger or consolidation of the corporation or any subsidiary of the corporation with:

(i) the interested shareholder; or

(ii) any other corporation, whether or not that corporation is an interested shareholder of the corporation, that is, or after the merger or consolidation would be, an affiliate or associate of the interested shareholder;

(b) any sale, lease, exchange, mortgage, pledge, transfer, or other disposition, in one transaction or a series of transactions, to or with the interested shareholder or any affiliate or associate of the interested shareholder of assets of the corporation or any subsidiary of the corporation:

(i) having an aggregate market value equal to 10% or more of the aggregate market value of all the assets, determined on a consolidated basis, of the corporation;

(ii) having an aggregate market value equal to 10% or more of the aggregate market value of all the outstanding stock of the corporation; or

(iii) representing 10% or more of the earning power or net income, determined on a consolidated basis, of the corporation;

(c) the issuance or transfer by the corporation or any subsidiary of the corporation, in one transaction or a series of transactions, of any stock of the corporation or any subsidiary of the corporation that has an aggregate market value equal to 5% or more of the aggregate market value of all the outstanding stock of the corporation to the interested shareholder or any affiliate or associate of the interested shareholder except pursuant to the exercise of warrants or rights to purchase stock offered, or a dividend or distribution paid or made, pro rata to all shareholders of the corporation;

(d) the adoption of any plan or proposal for the liquidation or dissolution of the corporation proposed by, or pursuant to any agreement, arrangement, or understanding, whether or not in writing, with, the interested shareholder or any affiliate or associate of the interested shareholder;

(e) any reclassification of securities, including a stock split, stock dividend, or other distribution of stock in respect of stock, or any reverse stock split, or recapitalization of the corporation, or any merger or consolidation of the corporation with any subsidiary of the corporation, or any other transaction, whether or not with, into, or otherwise involving the interested shareholder:

(i) proposed by, or pursuant to any agreement, arrangement, or understanding, whether or not in writing, with, the interested shareholder or any affiliate or associate of the interested shareholder; and

(ii) that has the effect, directly or indirectly, of increasing the proportionate share of the outstanding shares of any class or series of voting stock or securities convertible into voting stock of the corporation or any subsidiary of the corporation that is directly or indirectly owned by the interested shareholder or any affiliate or associate of the interested shareholder, except as a result of immaterial changes due to fractional share adjustments; or

(f) a receipt by the interested shareholder or an affiliate or associate of the interested shareholder of the benefit, directly or indirectly, except proportionately as a shareholder of the corporation, of a loan, advance, guarantee, pledge, or other financial assistance or any tax credit or other tax advantage provided by or through the corporation.

(6) "Common stock" means stock other than preferred stock.

(7) "Consummation date," with respect to a business combination, means:

(a) the date of consummation of the business combination; or

(b) in the case of a business combination as to which a shareholder vote is taken, the later of:

(i) the business day before the vote; or

(ii) 20 days before the date of consummation of the business combination.

(8)

(a) "Control," including the terms "controlling," "controlled by," and "under common control with," means the same as that term is defined in Section 16-10a-102.

(b) A person's beneficial ownership of 10% or more of a corporation's outstanding voting stock creates a presumption that the person has control of the corporation.

(c) Notwithstanding the other provisions of this Subsection (8), a person may not be considered to have

control of a corporation if the person holds voting stock, in good faith and not for the purpose of circumventing this part, as an agent, bank, broker, nominee, custodian, or trustee for one or more beneficial owners that do not individually or as a group have control of the corporation.

(9) "Exchange Act" means the Securities Exchange Act of 1934, 15 U.S.C. Sec. 78a et seq. as amended.

(10)

(a) "Interested shareholder," when used in reference to a domestic corporation, means a person, other than the corporation or a subsidiary of the corporation, that:

(i) is the beneficial owner, directly or indirectly, of 20% or more of the outstanding voting stock of the corporation; or

(ii) is an affiliate or associate of the corporation and at any time within the five-year period immediately before the date in question was the beneficial owner, directly or indirectly, of 20% or more of the then outstanding voting stock of the corporation.

(b) For the purpose of determining whether a person is an interested shareholder, the number of shares of voting stock of the corporation considered to be outstanding shall include shares considered to be beneficially owned by the person through application of Subsection (4), but may not include any other unissued shares of voting stock of the corporation that may be issuable pursuant to any agreement, arrangement, or understanding, or upon exercise of conversion rights, warrants, or options, or otherwise.

(11) "Market value," when used in reference to stock or property of a domestic corporation, means:

(a) in the case of stock:

(i) the highest closing sale price during the 30-day period immediately preceding the date in question of a share of the stock on the composite tape for New York stock exchange-listed stocks;

(ii) if the stock is not quoted on the composite tape or listed on the exchange described in Subsection (11)(a)(i), the highest closing sale price during the 30-day period immediately preceding the date in question on the principal United States securities exchange registered under the Exchange Act on which the stock is listed; or

(iii) if no quotation is available under Subsection (11)(a)(i) or (ii), the fair market value on the date in question of a share of the stock as determined by the board of directors of the corporation in good faith; and

(b) in the case of property other than cash or stock, the fair market value of the property on the date in question as determined by the board of directors of the corporation in good faith.

(12) "Preferred stock" means a class or series of stock of a domestic corporation that under the bylaws or articles of incorporation of the corporation:

(a) is entitled to receive payment of dividends before any payment of dividends on some other class or series of stock; or

(b) is entitled in the event of a voluntary liquidation, dissolution, or winding up of the corporation to receive payment or distribution of a preferential amount before a payment or distribution is received by some other class or series of stock.

(13) "Stock" means:

(a) a stock or similar security, a certificate of interest, any participation in a profit sharing agreement, a voting trust certificate, or a certificate of deposit for stock;

(b) a security convertible, with or without consideration, into stock;

(c) a warrant, call, or other option or privilege of buying stock without being bound to do so; or

(d) any other security carrying a right to acquire, subscribe to, or purchase stock.

(14) "Stock acquisition date," with respect to a person and a domestic corporation, means the date that the person first becomes an interested shareholder of the corporation.

(15) "Subsidiary" of a person means any other corporation of which a majority of the voting stock is owned, directly or indirectly, by the person.

(16) "Voting stock" means shares of capital stock of a corporation entitled to vote generally in the election of directors.

16-10a-1803 Business combinations.

(1) Notwithstanding anything to the contrary in this chapter, except Section 16-10a-1804, a domestic

corporation may not engage in a business combination with an interested shareholder of the corporation for a period of five years following the interested shareholder's stock acquisition date unless the business combination or the purchase of stock made by the interested shareholder on the interested shareholder's stock acquisition date is approved by the board of directors of the corporation before the interested shareholder's stock acquisition date.

(2)

(a) If a good faith proposal is made in writing to the board of directors of the corporation regarding a business combination, the board of directors shall respond in writing, within 30 days or such shorter period, if any, as may be required by the Exchange Act, setting forth the board of directors' reasons for the board of directors' decision regarding the proposal.

(b) If a good faith proposal to purchase stock is made in writing to the board of directors of the corporation, unless the board of directors responds affirmatively in writing within 30 days or such shorter period, if any, as may be required by the Exchange Act, the board of directors is considered to have disapproved the proposal.

(3) Notwithstanding anything to the contrary in this chapter, except Subsection (2) and Section 16-10a-1804, a domestic corporation may not engage at any time in any business combination with an interested shareholder of the corporation other than a business combination specified in Subsection (4), (5), or (6).

(4) A domestic corporation may engage in a business combination with an interested shareholder of the corporation if:

(a) the business combination is approved by the board of directors of the corporation before the interested shareholder's stock acquisition date; or

(b) the purchase of stock made by the interested shareholder on the interested shareholder's stock acquisition date is approved by the board of directors of the corporation before the interested shareholder's stock acquisition date.

(5) A domestic corporation may engage in a business combination with an interested shareholder of the corporation if the business combination is approved by the affirmative vote of the holders of a majority of the outstanding voting stock not beneficially owned by the interested shareholder or an affiliate or associate of the interested shareholder at a meeting called for that purpose no earlier than five years after the interested shareholder's stock acquisition date.

(6) A domestic corporation may engage in a business combination with an interested shareholder of the corporation if the business combination meets all of the following conditions:

(a) the aggregate amount of the cash and the market value as of the consummation date of consideration, other than cash to be received per share by holders of outstanding shares of common stock of the corporation in the business combination, is at least equal to the higher of the following:

(i) the sum of:

(A) the highest per share price paid by the interested shareholder at a time when the interested shareholder was the beneficial owner, directly or indirectly, of 5% or more of the outstanding voting stock of the corporation, for any shares of common stock of the same class or series acquired by the interested shareholder within the five-year period immediately before the announcement date with respect to the business combination, or within the five-year period immediately before, or in, the transaction in which the interested shareholder became an interested shareholder, whichever is higher; and

(B) interest compounded annually from the earliest date on which the highest per share acquisition price was paid through the consummation date at the rate for one-year United States treasury obligations from time to time in effect, less the aggregate amount of any cash dividends paid, and the market value of any dividends paid other than in cash, per share of common stock since the earliest date, up to the amount of the interest; and

(ii) the sum of:

(A) the higher of the market value per share of common stock on the announcement date with respect to the business combination or on the interested shareholder's stock acquisition date; and

(B) interest compounded annually from the acquisition date through the consummation date at the rate for one-year United States treasury obligations from time to time in effect, less the aggregate amount of

any cash dividends paid, and the market value of any dividends paid other than in cash, per share of common stock since the acquisition date, up to the amount of the interest;

(b) the aggregate amount of the cash and the market value as of the consummation date of consideration other than cash to be received per share by holders of outstanding shares of any class or series of stock, other than common stock, of the corporation is at least equal to the highest of the following, whether or not the interested shareholder has previously acquired any shares of the class or series of stock:

(i) the sum of:

(A) the higher of the highest per share price paid by the interested shareholder at a time when the interested shareholder was the beneficial owner, directly or indirectly, of 5% or more of the outstanding voting stock of the corporation, for any shares of the class or series of stock acquired by the interested shareholder within the five-year period immediately before the announcement date with respect to the business combination, or within the five-year period immediately before, or in, the transaction in which the interested shareholder became an interested shareholder, whichever is higher; and

(B) interest compounded annually from the earliest date on which the highest per share acquisition price was paid through the consummation date at the rate for one-year United States treasury obligations from time to time in effect, less the aggregate amount of any cash dividends paid, and the market value of any dividends paid other than in cash, per share of the class or series of stock since the earliest date, up to the amount of the interest;

(ii) the sum of:

(A) the highest preferential amount per share to which the holders of shares of the class or series of stock are entitled in the event of a voluntary liquidation, dissolution, or winding up of the corporation; and

(B) the aggregate amount of any dividends declared or due as to which the holders are entitled before payment of dividends on some other class or series of stock, unless the aggregate amount of the dividends is included in the preferential amount; and

(iii) the sum of:

(A) the market value per share of the class or series of stock on the announcement date with respect to the business combination or on the interested shareholder's stock acquisition date, whichever is higher; and

(B) interest compounded annually from the acquisition date through the consummation date at the rate for one-year United States treasury obligations from time to time in effect, less the aggregate amount of any cash dividends paid, and the market value of any dividends paid other than in cash, per share of the class or series of stock since the acquisition date, up to the amount of the interest;

(c) the consideration to be received by holders of a particular class or series of outstanding stock, including common stock of the corporation, in the business combination is in cash or in the same form as the interested shareholder has used to acquire the largest number of shares of the class or series of stock previously acquired by the interested shareholder, and the consideration shall be distributed promptly;

(d) the holders of all outstanding shares of stock of the corporation not beneficially owned by the interested shareholder immediately before the consummation of the business combination are entitled to receive in the business combination cash or other consideration for the shares in compliance with Subsections (6)(a), (b), and (c); and

(e) after the interested shareholder's stock acquisition date and before the consummation date with respect to the business combination, the interested shareholder has not become the beneficial owner of any additional shares of voting stock of the corporation except:

(i) as part of the transaction that resulted in the interested shareholder becoming an interested shareholder;

(ii) by virtue of proportionate stock splits, stock dividends, or other distributions of stock in respect of stock not constituting a business combination under Subsection 16-10a-1802(5)(e);

(iii) through a business combination meeting the conditions of Subsection (5); or

(iv) through purchase by the interested shareholder at any price that, if the price is paid in an otherwise permissible business combination the announcement date and consummation date of which were the date of the purchase, would have satisfied the requirements of Subsections (4) and (5) and this Subsection (6).

16-10a-1804 Scope of part.

This part does not apply to:

(1) a business combination of a domestic corporation that does not have a class of voting stock registered with the Securities and Exchange Commission pursuant to Exchange Act, Sec. 12, 15 U.S.C. Sec. 78l, unless the articles of incorporation provide otherwise;

(2) a business combination of a domestic corporation whose articles of incorporation are amended to provide that the domestic corporation is subject to this part that:

(a) did not have a class of voting stock registered with the Securities and Exchange Commission pursuant to Exchange Act, Sec. 12, 15 U.S.C. Sec. 78l, on the effective date of the amendment; and

(b) is a business combination with an interested shareholder whose stock acquisition date is before the effective date of the amendment;

(3) a business combination of a domestic corporation:

(a) the original articles of incorporation of which contain a provision expressly electing not to be governed by this part;

(b) that adopts an amendment to the corporation's bylaws before December 31, 2017, expressly electing not to be governed by this part; or

(c) that adopts an amendment to the corporation's bylaws, approved by the affirmative vote of a majority of votes of the outstanding voting stock of the corporation, excluding the voting stock of interested shareholders and the interested shareholders' affiliates and associates, expressly electing not to be governed by this part, provided that the amendment to the bylaws:

(i) may not be effective until 18 months after the vote of the corporation's shareholders; and

(ii) may not apply to a business combination of the corporation with an interested shareholder whose stock acquisition date is on or before the effective date of the amendment;

(4) a domestic corporation in the mineral extractive industry, including exploration, development, sand and gravel, mining, smelting, or refining of mineral properties;

(5) any business combination of a domestic corporation with an interested shareholder of the corporation that became an interested shareholder inadvertently, if the interested shareholder:

(a) as soon as practicable, divests itself of a sufficient amount of the voting stock of the corporation so that it no longer is the beneficial owner, directly or indirectly, of 20% or more of the outstanding voting stock of the corporation; and

(b) would not at any time within the five-year period preceding the announcement date with respect to the business combination have been an interested shareholder but for the inadvertent acquisition; or

(6) any business combination with an interested shareholder who was the beneficial owner, directly or indirectly, of 5% or more of the outstanding voting stock of the corporation on May 9, 2017, and remained so to the interested shareholder's stock acquisition date.

Part 19
Oppressive Conduct in a Closely Held Corporation

16-10a-1901 Definition.

As used in this part:

(1) "Oppressive conduct" means a continuing course of conduct, a significant action, or a series of actions that substantially interferes with the interests of a shareholder as a shareholder.

(2) "Oppressive conduct" may include:

(a) termination of a shareholder's employment; or

(b) limitations on a shareholder's employment benefits to the extent that the limitations interfere with distributions or other shareholder interests disproportionately as to the affected shareholder.

(3) "Oppressive conduct" does not include an action allowed by an agreement, the corporation's articles of incorporation, the corporation's bylaws, or a consistently applied written corporate policy or procedure.

16-10a-1902 Shareholder cause of action -- Relief.

(1) A shareholder of a closely held corporation who is injured by oppressive conduct may bring a private cause

of action against the closely held corporation.

(2)

(a) If a court finds that oppressive conduct toward the shareholder occurred, the court shall order one or more persons described in Subsection (2)(b) to purchase the injured shareholder's shares in the closely held corporation at fair value.

(b) A court may order that any of the following purchase the shares of the shareholder as described in Subsection (2)(a):

(i) the closely held corporation;

(ii) an officer of the closely held corporation;

(iii) a director of the closely held corporation; or

(iv) a shareholder of the closely held corporation that is responsible for the oppressive conduct.

Chapter 10b
Benefit Corporation Act

Part 1
General Provisions

16-10b-101 Title.

This chapter is known as the "Benefit Corporation Act."

16-10b-102 Application and effect of chapter.

(1) This chapter applies to a benefit corporation organized under this chapter.

(2) The existence of a provision of this chapter does not of itself create an implication that a contrary or different rule of law is applicable to a business corporation that is not a benefit corporation. This chapter does not affect a statute or rule of law that is applicable to a business corporation that is not a benefit corporation.

(3)

(a) Except as otherwise provided in this chapter, Chapter 10a, Utah Revised Business Corporation Act, is applicable to a benefit corporation.

(b) A benefit corporation may be subject simultaneously to this chapter and other chapters of this title, including Chapter 11, Professional Corporation Act.

(c) This chapter controls over Chapter 10a, Utah Revised Business Corporation Act, and Chapter 11, Professional Corporation Act, or other laws.

(4) The articles of incorporation or bylaws of a benefit corporation may not limit, be inconsistent with, or supersede a provision of this chapter.

16-10b-103 Definitions.

As used in this chapter:

(1) "Annual benefit report" means a report required under Section 16-10b-401.

(2) "Benefit corporation" means a business corporation:

(a) that elects to become subject to this chapter; and

(b) the status of which as a benefit corporation has not been terminated.

(3) "Benefit director" means the director designated as the benefit director of a benefit corporation under Section 16-10b-302.

(4) "Benefit enforcement proceeding" means a proceeding in a court of competent jurisdiction for:

(a) failure of a benefit corporation to pursue or create general public benefit or a specific public benefit purpose set forth in its articles of incorporation; or

(b) a violation of an obligation, duty, or standard of conduct under this chapter.

(5) "Benefit officer" means the individual designated as the benefit officer of a benefit corporation under Section 16-10b-304.

(6) "Business corporation" means a corporation formed under Chapter 10a, Utah Revised Business Corporation Act, or Chapter 11, Professional Corporation Act.

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

(8) "Executive officer" means:

(a) a benefit corporation's president;

(b) a vice president of the benefit corporation in charge of a principal business unit, division, or function; or

(c) any other officer who performs a policy-making function for the benefit corporation.

(9) "General public benefit" means a material positive impact on society and the environment:

(a) taken as a whole;

(b) assessed against a third-party standard; and

(c) from the business of a benefit corporation.

(10) "Immediate family" means a parent, spouse, surviving spouse, child, or sibling of a person.

(11)

(a) "Independent" means having no material relationship with a benefit corporation or a subsidiary of the benefit corporation.

(b) Serving as a benefit director or benefit officer does not make an individual not independent.

(c) A material relationship between an individual and a benefit corporation or any of its subsidiaries will be conclusively presumed to exist if one or more of the following apply:

(i) the individual is, or has been within the last three years, an employee other than a benefit officer of the benefit corporation or a subsidiary of the benefit corporation;

(ii) an immediate family member of the individual is, or has been within the last three years, an executive officer other than a benefit officer of the benefit corporation or a subsidiary of the benefit corporation; or

(iii) there is beneficial or record ownership of 5% or more of the outstanding shares of the benefit corporation, calculated as if all outstanding rights to acquire equity interests in the benefit corporation had been exercised, by:

(A) the individual; or

(B) an entity of which the individual is a director, an officer, or a manager, or in which the individual owns beneficially or of record 5% or more of the outstanding equity interests, calculated as if all outstanding rights to acquire equity interests in the entity had been exercised.

(12) "Minimum status vote" means:

(a) in the case of a business corporation, in addition to any other required approval or vote, the satisfaction of the following conditions:

(i) the shareholders of every class or series may vote as a separate voting group on the corporate action regardless of a limitation stated in the articles of incorporation or bylaws on the voting rights of a class or series; and

(ii) the corporate action is required to be approved by vote of the shareholders of each class or series entitled to cast at least two-thirds of the votes that all shareholders of the class or series are entitled to cast on the action; or

(b) in the case of a domestic entity other than a business corporation, in addition to any other required approval, vote, or consent, the satisfaction of the following conditions:

(i) the holders of every class or series of equity interest in the entity that are entitled to receive a distribution of any kind from the entity may vote on or consent to the action regardless of any otherwise applicable limitation on the voting or consent rights of a class or series; and

(ii) the action must be approved by vote or consent of the holders described in Subsection (12)(b)(i) entitled to cast at least two-thirds of the votes or consents that all of those holders are entitled to cast on the action.

(13) "Publicly traded corporation" means a business corporation that has shares listed on a national securities exchange or traded in a market maintained by one or more members of a national securities association.

(14) "Specific public benefit" includes:

(a) providing low-income or underserved individuals or communities with beneficial products or services;

(b) promoting economic opportunity for individuals or communities beyond the creation of jobs in the normal course of business;

(c) protecting or restoring the environment;

(d) improving human health;

(e) promoting the arts, sciences, or advancement of knowledge;

(f) increasing the flow of capital to entities with a purpose to benefit society or the environment; and

(g) conferring any other particular benefit on society or the environment.

(15) "Subsidiary" means, in relation to a person, an entity in which the person owns beneficially or of record 50% or more of the outstanding equity interests, calculated as if all outstanding rights to acquire equity interests in the entity had been exercised.

(16) "Third-party standard" means a recognized standard for defining, reporting, and assessing corporate social and environmental performance that:

(a) assesses the effect of the business and its operations upon the interests listed in Subsections 16-10b-301(1)(a)(ii), (iii), (iv), and (v);

(b) is developed by an entity that is not controlled by the benefit corporation;

(c) is developed by an entity that both:
(i) has access to necessary expertise to assess overall corporate social and environmental performance; and
(ii) uses a balanced multistakeholder approach to develop the standard, including a reasonable public comment period; or
(d) makes the following information publicly available:
(i) about the standard:
(A) the criteria considered when measuring the overall social and environmental performance of a business; and
(B) the relative weightings, if any, of those criteria; and
(ii) about the development and revision of the standard:
(A) the identity of the directors, officers, material owners, and the governing body of the entity that developed and controls revisions to the standard;
(B) the process by which revisions to the standard and changes to the membership of the governing body are made; or
(C) an accounting of the revenue and sources of financial support for the entity, with sufficient detail to disclose a relationship that could reasonably be considered to present a potential conflict of interest.

16-10b-104 Incorporation of benefit corporation.

A person shall incorporate a benefit corporation in accordance with Chapter 10a, Part 2, Incorporation, but its articles of incorporation shall also state that it is a benefit corporation.

16-10b-105 Election of benefit corporation status.

(1) A business corporation may become a benefit corporation under this chapter by amending its articles of incorporation so that the articles of incorporation contain, in addition to the requirements of Section 16-10a-202, a statement that the corporation is a benefit corporation. To be effective, the amendment must be adopted by at least the minimum status vote.
(2)
(a) Except as provided in Subsection (2)(b), if a domestic entity that is not a benefit corporation is a party to a merger or the exchanging entity in a share exchange and the surviving entity in the merger or share exchange is to be a benefit corporation, the plan of merger or share exchange must be approved by the domestic entity by at least the minimum status vote.
(b) Subsection (2)(a) does not apply in the case of a corporation that is a party to a merger if the shareholders of the corporation are not entitled to vote on the merger pursuant to Section 16-10a-1104.

16-10b-106 Termination of benefit corporation status.

(1) A benefit corporation may terminate its status as a benefit corporation and cease to be subject to this chapter by amending its articles of incorporation to delete the provision required by Section 16-10b-104 or 16-10b-105 to be stated in the articles of incorporation of a benefit corporation. To be effective, the amendment must be adopted by at least the minimum status vote.
(2)
(a) Except as provided in Subsection (2)(b), if a plan of merger or share exchange would have the effect of terminating the status of a business corporation as a benefit corporation, the plan must be adopted by at least the minimum status vote to be effective.
(b) Subsection (2)(a) does not apply in the case of a corporation that is a party to a merger if the shareholders of the corporation are not entitled to vote on the merger pursuant to Section 16-10a-1104.
(3) A sale, lease, exchange, or other disposition of all or substantially all of the assets of a benefit corporation, unless the transaction is in the usual and regular course of business, is not effective unless the transaction is approved by at least the minimum status vote.

Part 2
Corporate Purposes

16-10b-201 Corporate purposes.
(1) A benefit corporation shall have a purpose of creating general public benefit. This purpose is in addition to its purpose under Section 16-10a-301.
(2) The articles of incorporation of a benefit corporation may identify one or more specific public benefits that it is the purpose of the benefit corporation to create in addition to its purposes under Section 16-10a-301 and Subsection (1). The identification of a specific public benefit under this Subsection (2) does not limit the purpose of a benefit corporation to create general public benefit under Subsection (1).
(3) The creation of general public benefit and a specific public benefit under Subsections (1) and (2) is considered in the best interests of the benefit corporation.
(4) A benefit corporation may amend its articles of incorporation to add, amend, or delete the identification of a specific public benefit that it is the purpose of the benefit corporation to create. To be effective, the amendment must be adopted by at least the minimum status vote.
(5) A professional corporation that is a benefit corporation does not violate Section 16-11-6 by having the purpose to create general public benefit or a specific public benefit.

Part 3
Accountability

16-10b-301 Standard of conduct for directors.
(1) Subject to Subsection (2), the board of directors, committees of the board of directors, and individual directors of a benefit corporation, in discharging the duties of their respective positions and in considering the best interests of the benefit corporation:
(a) shall consider the effects of an action or inaction upon:
(i) the shareholders of the benefit corporation;
(ii) the employees and workforce of the benefit corporation, its subsidiaries, and its suppliers;
(iii) the interests of customers as beneficiaries of the general public benefit or specific public benefit purposes of the benefit corporation;
(iv) community and societal factors, including those of each community in which offices or facilities of the benefit corporation, its subsidiaries, or its suppliers are located;
(v) the local and global environment;
(vi) the short-term and long-term interests of the benefit corporation, including benefits that may accrue to the benefit corporation from its long-term plans and the possibility that these interests may be best served by the continued independence of the benefit corporation; and
(vii) the ability of the benefit corporation to accomplish its general public benefit purpose and a specific public benefit purpose; and
(b) may consider other pertinent factors or the interests of any other group that they consider appropriate.
(2)
(a) Subject to Subsection (2)(b), in discharging the duties of their respective positions and in considering the best interests of the benefit corporation, the board of directors, committees of the board of directors, and individual directors of a benefit corporation need not give priority to a particular interest or factor referred to in Subsection (1) over any other interest or factor.
(b) Subsection (2)(a) does not apply if the benefit corporation has stated in its articles of incorporation its intention to give priority to certain interests or factors related to its accomplishment of its general public benefit purpose or of a specific public benefit purpose identified in its articles of incorporation.
(3) The consideration of interests and factors in the manner required by Subsections (1) and (2) does not constitute a violation of Section 16-10a-840.
(4) Except as provided in the articles of incorporation or bylaws, a director is not personally liable for monetary damages for:
(a) an action or inaction in the course of performing the duties of a director under Subsections (1) and (2) if the director performed the duties of office in compliance with Section 16-10a-840 and this section; or
(b) failure of the benefit corporation to pursue or create general public benefit or specific public benefit.
(5) A director does not have a duty to a person that is a beneficiary of the general public benefit purpose or a

specific public benefit purpose of a benefit corporation arising from the status of the person as a beneficiary.

16-10b-302 Benefit director.

(1) The board of directors of a benefit corporation that is a publicly traded corporation shall, and the board of directors of any other benefit corporation may, include a director, who:

(a) is designated the benefit director; and

(b) shall have, in addition to the powers, duties, rights, and immunities of the other directors of the benefit corporation, the powers, duties, rights, and immunities provided in this chapter.

(2)

(a) A benefit director shall be elected, and may be removed, in the manner provided by Sections 16-10a-801 through 16-10a-810.

(b) Except as provided in Subsection (6), the benefit director shall be an individual who is independent.

(c) The benefit director may serve as the benefit officer at the same time as serving as the benefit director.

(d) The articles of incorporation or bylaws of a benefit corporation may prescribe additional qualifications of the benefit director not inconsistent with this Subsection (2).

(3) The benefit director shall prepare, and the benefit corporation shall include in the annual benefit report to shareholders required by Section 16-10b-401, the opinion of the benefit director on all of the following:

(a) whether the benefit corporation acted in accordance with its general public benefit purpose and any specific public benefit purpose in all material respects during the period covered by the report;

(b) whether the directors and officers complied with Subsections 16-10b-301(1) and 16-10b-303(1), respectively; and

(c) if, in the opinion of the benefit director, the benefit corporation or its directors or officers failed to act or comply in the manner described in Subsections (3)(a) and (b), a description of the ways in which the benefit corporation or its directors or officers failed to act or comply.

(4) The act or inaction of an individual in the capacity of a benefit director shall constitute for all purposes an act or inaction of that individual in the capacity of a director of the benefit corporation.

(5) Regardless of whether the articles of incorporation or bylaws of a benefit corporation include a provision eliminating or limiting the personal liability of directors authorized by Section 16-10a-841, a benefit director may not be personally liable for an act or omission in the capacity of a benefit director unless the act or omission constitutes self-dealing, willful misconduct, or a knowing violation of law.

(6) The benefit director of a professional corporation does not need to be independent.

16-10b-303 Standard of conduct for officers.

(1) An officer of a benefit corporation shall consider the interests and factors described in Subsection 16-10b-301(1) in the manner provided in Subsections 16-10b-301(1) and (2) if:

(a) the officer has discretion to act with respect to a matter; and

(b) it reasonably appears to the officer that the matter may have a material effect on the creation by the benefit corporation of general public benefit or a specific public benefit identified in the articles of incorporation of the benefit corporation.

(2) The consideration of interests and factors in the manner described in Subsection (1) may not constitute a violation of Section 16-10a-831 or 16-10a-840.

(3) Except as provided in the articles of incorporation or bylaws of a benefit corporation, an officer is not personally liable for monetary damages for:

(a) an action or inaction as an officer in the course of performing the duties of an officer under Subsection (1) if the officer performed the duties of the position in compliance with Section 16-10a-831 or 16-10a-840 and this section; or

(b) failure of the benefit corporation to pursue or create general public benefit or specific public benefit.

(4) An officer does not have a duty to a person that is a beneficiary of the general public benefit purpose or a specific public benefit purpose of a benefit corporation arising from the status of the person as a beneficiary.

16-10b-304 Benefit officer.

(1) A benefit corporation may have an officer designated as the benefit officer.

(2) A benefit officer has:
(a) the powers and duties relating to the purpose of the corporation to create general public benefit or specific public benefit provided:
(i) by the bylaws; or
(ii) absent controlling provisions in the bylaws, by resolutions or orders of the board of directors; and
(b) the duty to prepare the benefit report required by Section 16-10b-401.

16-10b-305 Right of action.
(1) Except in a benefit enforcement proceeding, a person may not bring an action or assert a claim against a benefit corporation or its directors or officers with respect to:
(a) failure to pursue or create general public benefit or a specific public benefit set forth in its articles of incorporation; or
(b) violation of an obligation, duty, or standard of conduct under this chapter.
(2) A benefit corporation may not be liable for monetary damages under this chapter for a failure of the benefit corporation to pursue or create general public benefit or a specific public benefit.
(3)
(a) A benefit enforcement proceeding may be commenced or maintained only:
(i) directly by the benefit corporation; or
(ii) derivatively by:
(A) a person or group of persons that owns beneficially or of record at least 2% of the total number of shares of a class or series outstanding at the time of the act or omission complained of;
(B) a director;
(C) a person or group of persons that own beneficially or of record 5% or more of the outstanding equity interests in an entity of which the benefit corporation is a subsidiary at the time of the act or omission complained of; or
(D) other persons as specified in the articles of incorporation or bylaws of the benefit corporation.
(b) A benefit corporation may provide in its articles of incorporation a greater degree of ownership by a person or group of persons than those listed under Subsection (3)(a) to bring a derivative action.
(4) For purposes of this section, a person is the beneficial owner of shares or equity interests if the shares or equity interests are held in a voting trust or by a nominee on behalf of the beneficial owner.

Part 4
Transparency

16-10b-401 Preparation of annual benefit report.
(1) A benefit corporation shall prepare an annual benefit report that includes all of the following:
(a) a narrative description of:
(i) the ways in which the benefit corporation pursued general public benefit during the year and the extent to which general public benefit was created;
(ii)
(A) the ways in which the benefit corporation pursued a specific public benefit that the articles of incorporation state it is the purpose of the benefit corporation to create; and
(B) the extent to which that specific public benefit was created; and
(iii) circumstances that have hindered the creation by the benefit corporation of general public benefit or specific public benefit;
(b) an assessment of the overall social and environmental performance of the benefit corporation against a third-party standard:
(i) applied consistently with the application of that third-party standard in prior benefit reports; or
(ii) accompanied by an explanation of the reasons for an inconsistent application;
(c) the name of the benefit director and the benefit officer, if any, and the address to which correspondence to each of them may be directed;
(d) the statement of the benefit director described in Subsection 16-10b-302(3);

(e) an identification of the third-party standard that will be used to prepare the next benefit report of the benefit corporation and a discussion of:

(i) the process and rationale for selecting that third-party standard and, if it is different from the previous third-party standard used by the benefit corporation, the reasons for the change; and

(ii) any connection between the organization that established the third-party standard, or its directors, officers, or a holder of 5% or more of the governance interests in the organization, and the benefit corporation or its directors, officers, or a holder of 5% or more of the outstanding shares of the benefit corporation, including a financial or governance relationship that might materially affect the credibility of the use of the third-party standard; and

(f) if the benefit corporation has dispensed with, or restricted the discretion or powers of, the board of directors, a description of the persons that exercise the powers, duties, and rights and who have the immunities of the board of directors.

(2) If, during the year covered by a benefit report, a benefit director resigns, refuses to stand for reelection to the position of benefit director, or is removed from the position of benefit director, and the benefit director furnishes the benefit corporation with written correspondence concerning the circumstances surrounding the resignation, refusal, or removal, the benefit report shall include that correspondence as an exhibit.

(3) Neither the benefit report nor the assessment of the performance of the benefit corporation in the benefit report required by Subsection (1)(b) needs to be audited or certified by a third party.

16-10b-402 Availability of annual benefit report.

(1) A benefit corporation shall send its annual benefit report required by Section 16-10b-401 to each shareholder on the earlier of:

(a) 120 days following the end of the fiscal year of the benefit corporation; or

(b) the same time that the benefit corporation delivers another annual report to its shareholders.

(2) A benefit corporation shall post all of its annual benefit reports on the public portion of its Internet website, if any, but financial or proprietary information included in the annual benefit reports may be omitted from the annual benefit reports as posted.

(3) If a benefit corporation does not have an Internet website, the benefit corporation shall provide a copy of its most recent annual benefit report, without charge, to a person that requests a copy, but financial or proprietary information included in the annual benefit report may be omitted from the copy of the benefit report provided.

(4)

(a) At the same time that the benefit corporation files its annual report with the division in accordance with Section ~~16-10a-1607~~13-1a-313, the benefit corporation shall deliver the most recent copy of the annual benefit report to the division for filing, but financial or proprietary information included in the annual benefit report may be omitted from the annual benefit report as delivered to the division.

(b) The division shall charge a fee established by the division in accordance with Section 63J-1-504 for filing an annual benefit report.

(c) The benefit corporation shall file the annual benefit report in addition to the annual report required by Section ~~16-10a-1607~~13-1a-313.

Chapter 11
Professional Corporation Act

16-11-1 Short title.

This act shall be known and may be cited as the "Professional Corporation Act."

16-11-2 Definitions.

As used in this chapter:

~~(1) "Filed" means the division has received and approved, as to form, a document submitted under this chapter, and has marked on the face of the document a stamp or seal indicating the time of day and date of approval, the name of the division, the division director's signature and division seal, or facsimiles of the signature or seal.~~

(2) "Professional corporation" means a corporation organized under this chapter.

(3) "Professional service" means the personal service rendered by:

(a) a physician, surgeon, or doctor of medicine holding a license under Title 58, Chapter 67, Utah Medical Practice Act, and any subsequent laws regulating the practice of medicine;

(b) a doctor of dentistry holding a license under Title 58, Chapter 69, Dentist and Dental Hygienist Practice Act, and any subsequent laws regulating the practice of dentistry;

(c) an osteopathic physician or surgeon holding a license under Title 58, Chapter 68, Utah Osteopathic Medical Practice Act, and any subsequent laws regulating the practice of osteopathy;

(d) a physician assistant holding a license under Title 58, Chapter 70a, Utah Physician Assistant Act, and any subsequent laws regulating the practice as a physician assistant;

(e) a chiropractor holding a license under Title 58, Chapter 73, Chiropractic Physician Practice Act, and any subsequent laws regulating the practice of chiropractics;

(f) a podiatric physician holding a license under Title 58, Chapter 5a, Podiatric Physician Licensing Act, and any subsequent laws regulating the practice of podiatry;

(g) an optometrist holding a license under Title 58, Chapter 16a, Utah Optometry Practice Act, and any subsequent laws regulating the practice of optometry;

(h) a veterinarian holding a license under Title 58, Chapter 28, Veterinary Practice Act, and any subsequent laws regulating the practice of veterinary medicine;

(i) an architect holding a license under Title 58, Chapter 3a, Architects Licensing Act, and any subsequent laws regulating the practice of architecture;

(j) a public accountant holding a license under Title 58, Chapter 26a, Certified Public Accountant Licensing Act, and any subsequent laws regulating the practice of public accounting;

(k) a naturopath holding a license under Title 58, Chapter 71, Naturopathic Physician Practice Act, and any subsequent laws regulating the practice of naturopathy;

(l) a pharmacist holding a license under Title 58, Chapter 17b, Pharmacy Practice Act, and any subsequent laws regulating the practice of pharmacy;

(m) an attorney granted the authority to practice law by:

(i) the Utah Supreme Court; or

(ii) the Supreme Court, other court, agency, instrumentality, or regulating board that licenses or regulates the authority to practice law in any state or territory of the United States other than Utah;

(n) a professional engineer registered under Title 58, Chapter 22, Professional Engineers and Professional Land Surveyors Licensing Act;

(o) a principal broker, associate broker, or sales agent holding a license under Title 61, Chapter 2f, Real Estate Licensing and Practices Act, and any subsequent laws regulating the selling, exchanging, purchasing, renting, or leasing of real estate;

(p) a psychologist holding a license under Title 58, Chapter 61, Psychologist Licensing Act, and any subsequent laws regulating the practice of psychology;

(q) a clinical or certified social worker holding a license under Title 58, Chapter 60, Part 2, Social Worker Licensing Act, and any subsequent laws regulating the practice of social work;

(r) a physical therapist holding a license under Title 58, Chapter 24b, Physical Therapy Practice Act, and any subsequent laws regulating the practice of physical therapy;

(s) a nurse licensed under Title 58, Chapter 31b, Nurse Practice Act, or Title 58, Chapter 44a, Nurse Midwife Practice Act;
(t) a landscape architect licensed under Title 58, Chapter 53, Landscape Architects Licensing Act, and any subsequent laws regulating landscape architects; or
(u) an individual licensed, certified, or registered under Title 61, Chapter 2g, Real Estate Appraiser Licensing and Certification Act, and any subsequent laws regulating the practice of appraising real estate.
(4) "Regulating board" means the board that is charged with the licensing and regulation of the practice of the profession which the professional corporation is organized to render. The definitions of Title 16, Chapter 10a, Utah Revised Business Corporation Act, apply to this chapter unless the context clearly indicates that a different meaning is intended.

16-11-3 Purpose of act.

This act shall be so construed as to effectuate its general purpose of making available to professional persons the benefits of the corporate form for the business aspects of their practices while preserving the established professional aspects of the personal relationship between the professional person and those he serves.

16-11-4 Incorporators -- Articles of incorporation.

(1) One or more individuals, each of whom is licensed to render a professional service, may incorporate a professional corporation by filing articles of incorporation with the Division of Corporations and Commercial Code.
(2) Articles of incorporation under Subsection (1) shall meet the requirements of Title 16, Chapter 10a, Utah Revised Business Corporation Act, and in addition thereto contain the following:
(a) the profession to be practiced through the professional corporation;
(b) the names and street or mailing addresses of all of the original shareholders, directors, and officers of the professional corporation; and
(c) the number of shareholder members of the board of directors may be less than the number of shareholders, except if a corporation has only one shareholder, the board may consist of that shareholder.

16-11-5 Application of Utah Revised Business Corporation Act -- Conflicts.

The provisions of Title 16, Chapter 10a, Utah Revised Business Corporation Act, shall be applicable to professional corporations, and they shall enjoy the powers and privileges and be subject to the duties, restrictions and liabilities of other corporations, except where inconsistent with this act. This act shall take precedence in the event of any conflict with provisions of Title 16, Chapter 10a, Utah Revised Business Corporation Act or other laws.

16-11-6 Purpose of professional corporation -- Power to own property and invest funds.

(1) A professional corporation may be organized pursuant to the provisions of this chapter only for the purpose of rendering one specific type of professional service and services ancillary to the specific type of professional service and may not engage in any business other than rendering the professional service that it was organized to render and services ancillary to the specific type of professional service.
(2) Notwithstanding Subsection (1), a professional corporation may:
(a) own real and personal property necessary or appropriate for rendering the type of professional service it was organized to render;
(b) invest its funds in real estate, mortgages, stocks, bonds, and any other type of investments; and
(c) if a benefit corporation, have as a purpose creating a general public benefit and a specific public benefit as provided in Chapter 10b, Benefit Corporation Act.

16-11-7 Issuance of shares of capital stock -- Restrictions.

(1) A professional corporation may issue the shares of its capital stock and a shareholder may voluntarily transfer shares of capital stock in a professional corporation only to:
(a) persons who are duly licensed to render the same specific professional services as those for which the

corporation was organized; or

(b) persons other than those meeting the requirements of Subsection (1)(a) to the extent and in the proportions allowed by the applicable licensing act for the profession for which the corporation is organized.

(2) Any shares issued in violation of this section are void.

16-11-8 Officer, director, or shareholder shall be licensed professional -- Nonlicensed person as secretary or treasurer.

(1)

(a) Except as provided in Subsection (1)(b), a person may not be an officer, director, or shareholder of a professional corporation unless that person is:

(i) an individual licensed to render the same specific professional services as those for which the corporation is organized; or

(ii) qualified to be an officer, director, or shareholder under the applicable licensing act for the profession for which the corporation is organized.

(b) Notwithstanding Subsection (1)(a), a nonlicensed person may serve as secretary or treasurer of the professional corporation.

(2) For purposes of Subsection (1), professional services are considered the same specific professional services as those for which the corporation is organized if:

(a) the corporation is organized to provide services described in:

(i)Title 58, Chapter 67, Utah Medical Practice Act; or

(ii)Title 58, Chapter 68, Utah Osteopathic Medical Practice Act; and

(b) the officer, director, or shareholder is licensed under either of the chapters listed in Subsection (2)(a).

16-11-9 Licensed persons to render professional services.

A professional corporation may render professional services only through its officers, employees and agents who are duly licensed to render such professional services.

16-11-10 Laws as to professional relationships not altered.

This act does not alter any law applicable to the relationship between a person rendering professional services and a person receiving such services, including liability arising out of such professional services.

16-11-11 Authority of regulating boards not restricted or limited.

Nothing in this act shall restrict or limit in any manner the authority and duty of the regulating board for the licensing of individual persons rendering professional services or the practice of the profession which is within the jurisdiction of such regulating board, notwithstanding that such person is an officer, director, shareholder or employee of a professional corporation and rendering such professional services or engaging in the practice of such profession through such professional corporation.

16-11-12 Prohibited acts of professional corporations.

No professional corporation may do any act which is prohibited to be done by individual persons licensed to practice the profession which the professional corporation is organized to render.

16-11-13 Purchase or redemption of shares of disqualified shareholder.

(1) The articles of incorporation may provide for the purchase or redemption of the shares of any shareholder upon the failure to qualify or disqualification of that shareholder, or the same may be provided in the bylaws or by private agreement. In the absence of such a provision in the articles of incorporation, the bylaws, or by private agreement, the professional corporation shall purchase the shares of a shareholder who is not qualified to own shares in the corporation within 90 days after the failure to qualify or disqualification of the shareholder.

(2) The price for shares purchased under this section shall be their reasonable fair value as of the date of failure to qualify or disqualification of the shareholder.

(3) If the corporation fails to purchase shares as required by Subsection (1), any disqualified shareholder or personal representative of a disqualified shareholder may bring an action in the district court of the county in

which the principal office or place of practice of the professional corporation is located for the enforcement of this section. The court shall have power to award the plaintiff the reasonable fair value of his shares, or within its jurisdiction, may order the liquidation of the corporation. Further, if the plaintiff is successful in the action, he shall be entitled to recover a reasonable attorney's fee and costs.
(4) The professional corporation shall repurchase shares as required by this section without regard to restrictions upon the repurchase of shares provided by Title 16, Chapter 10a, Utah Revised Business Corporation Act.

16-11-14 Annual certificate -- Filing -- Contents -- Filing fee.

~~During the month of the anniversary date of incorporation, e~~Each professional corporation shall file with the division an annual report as specified by Section ~~16-10a-1607~~13-1a-313, giving the names and residence addresses of all shareholders of the professional corporation ~~as of its anniversary date of incorporation next preceding~~, and 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.

16-11-15 Incorporation under Utah Revised Business Corporation Act permitted -- Existing corporations may come under Professional Corporation Act.

This act does not preclude incorporation by professional persons under Title 16, Chapter 10a, Utah Revised Business Corporation Act, where such persons would be permitted to organize a corporation and perform professional services by means of such corporation in the absence of this act. This act does not apply to any corporation organized by such persons prior to the passage of this act, but any such persons or any such corporation may bring themselves and such corporation within the provisions of this act by amending the articles of incorporation in such a manner as to be consistent with all of the provisions of this act and by affirmatively stating in the amended articles of incorporation that the shareholders have elected to bring the corporation within the provisions of this act.

~~**16-11-16 Corporate name.**~~
~~(1) The name of each professional corporation as set forth in the professional corporation's articles of incorporation:~~
~~(a) shall contain the terms:~~
~~(i) "professional corporation"; or~~
~~(ii) "P.C.";~~
~~(b) may not contain the words:~~
~~(i) "incorporated"; or~~
~~(ii) "inc.";~~
~~(c) may not contain:~~
~~(i) language stating or implying that the professional corporation is organized for a purpose other than that permitted by:~~
~~(A) Section 16-11-6; and~~
~~(B) the professional corporation's articles of incorporation; or~~
~~(ii) for a professional corporation that changes the professional corporation's name or is incorporated in or authorized to do business in the state on or after May 4, 2022, the number sequence "911";~~
~~(d) without the written consent of the United States Olympic Committee, may not contain the words:~~
~~(i) "Olympic";~~
~~(ii) "Olympiad"; or~~
~~(iii) "Citius Altius Fortius"; and~~
~~(e) without the written consent of the Division of Consumer Protection in accordance with Section 13-34-114, may not contain the words:~~
~~(i) "university";~~
~~(ii) "college"; or~~
~~(iii) "institute" or "institution."~~
~~(2) The professional corporation may not imply by any word in the name that the professional corporation is an~~

~~agency of the state or of any of the state's political subdivisions.~~

~~(3) A person, other than a professional corporation formed or registered under this chapter, may not use in the person's name in this state any of the terms:~~

~~(a) "professional corporation"; or~~

~~(b) "P.C."~~

~~(4) Except as authorized by Subsection (5), the name of the professional corporation shall be distinguishable, as defined in Subsection (6), upon the records of the division from:~~

~~(a) the name of any domestic corporation incorporated in or foreign corporation authorized to transact business in this state;~~

~~(b) the name of any domestic or foreign nonprofit corporation incorporated or authorized to transact business in this state;~~

~~(c) the name of any domestic or foreign limited liability company formed or authorized to transact business in this state;~~

~~(d) the name of any limited partnership formed or authorized to transact business in this state;~~

~~(e) any name reserved or registered with the division for a corporation, limited liability company, or general or limited partnership, under the laws of this state; and~~

~~(f) any business name, fictitious name, assumed name, trademark, or service mark registered by the division.~~

~~(5)~~

~~(a) A professional corporation may apply to the division for authorization to file the professional corporation's articles of incorporation under, or to register or reserve, a name that is not distinguishable upon the division's records from one or more of the names described in Subsection (4).~~

~~(b) The division shall approve the application filed under Subsection (5)(a) if:~~

~~(i) the other person whose name is not distinguishable from the name under which the applicant desires to file, or which the applicant desires to register or reserve:~~

~~(A) consents to the filing, registration, or reservation in writing; and~~

~~(B) submits an undertaking in a form satisfactory to the division to change the person's name to a name that is distinguishable from the name of the applicant; or~~

~~(ii) the applicant delivers to the division a certified copy of the final judgment of a court of competent jurisdiction establishing the applicant's right to make the requested filing in this state under the name applied for.~~

~~(6)~~

~~(a) A name is distinguishable from other names, trademarks, and service marks registered with the division if the name:~~

~~(i) contains one or more different letters or numerals from other names upon the division's records; or~~

~~(ii) has a different sequence of letter or numerals from the other names on the division's records.~~

~~(b) The following differences are not distinguishable:~~

~~(i) the words or abbreviations of the words:~~

~~(A) "corporation";~~

~~(B) "incorporated";~~

~~(C) "company";~~

~~(D) "limited partnership";~~

~~(E) "limited";~~

~~(F) "L.P.";~~

~~(G) "limited liability company";~~

~~(H) "limited company";~~

~~(I) "L.C."; or~~

~~(J) "L.L.C.";~~

~~(ii) the presence or absence of the words or symbols of the words "the," "and," "a," or "plus";~~

~~(iii) differences in punctuation and special characters;~~

~~(iv) differences in capitalization; or~~

~~(v) differences in abbreviations.~~

~~(7) The director of the division shall have the power and authority reasonably necessary to interpret and~~

~~efficiently administer this section and to perform the duties imposed upon the division by this section.~~

Chapter 15
Utah Business Trust Registration Act

16-15-101 Title.

This act is known as the "Utah Business Trust Registration Act."

16-15-102 Definition of business trust.

As used in this chapter:

(1) "Beneficiary" means a person holding a certificate representing a beneficial interest in the trust estate and assets.

(2) "Business trust" has the same meaning as in Section 7-5-1.

(3) "Division" means the Division of Corporations and Commercial Code within the Utah Department of Commerce.

(4) "Person" means an individual, general partnership, limited liability partnership, limited partnership, limited liability company, limited association, domestic or foreign trust, estate, association, or corporation.

16-15-103 Name.

~~(1) The words "business trust" shall be the last words of the name of every business trust registered under this chapter. The name of a business trust registered under this chapter shall be distinguishable, as provided in Subsection 16-10a-401(5), on the records of the division from any corporation, partnership, or limited liability company, and from any business name, or trademark of record with the division.~~

~~(2)~~ A person who participates in the omission of the words "business trust" in the commercial use of the name of the business trust, or knowingly acquiesces in the omission is liable for any indebtedness, damage, or liability resulting from the omission.

16-15-104 Registration required -- Certificate of registration.

(1) A business trust shall register with the division before doing business in the state.

(2) The certificate of registration of a business trust shall set forth:

(a) the name of the business trust;

(b) the period of its duration;

(c) the business purpose for which the business trust is organized;

(d) the information required by Subsection ~~16-17-203(1)~~13-1a-504; and

(e) the name, signature, and street address of all trustees of the business trust.

16-15-105 Filing of certificate -- Fees.

(1) A business trust is registered when ~~two copies of the~~a certificate of registration ~~are~~ is filed with the division. ~~The documents to be filed shall be true copies made by photographic, xerographic, electronic, or other process that provides similar copy accuracy of a document that has been properly executed.~~

~~(2) The division shall endorse the original and one copy of a certificate of registration and:~~

~~(a) file the original in the division office; and~~

~~(b) return the copy to the trustee or the trustee's representative.~~

(~~3~~2) The division may charge a fee in accordance with Section 63J-1-504 for the filing.

16-15-106 Powers.

(1) A business trust registered under this chapter may in its trust name:

(a) sue;

(b) subject to the limitations in the declaration of trust, acquire title, lease, mortgage, convey or otherwise deal with real and personal property, or any interest in real and personal property.

(2)

(a) A business trust may not maintain any action, suit, or proceeding in this state unless the business trust is registered under this chapter.

(b) A business trust may be sued whether or not the business trust is registered under this chapter.

16-15-107 Expiration of filing -- Notice.
(1) A filing under this chapter shall be effective for a period of three years from the date of filing plus the notice period provided in Subsection (2).
(2)
(a) If no new filing is made by or on behalf of the trust who made the original filing within three years of the date of filing, the division shall send a notice by regular mail, postage prepaid, to the address shown for the registered office in the filing indicating that it will expire 30 days after the division mailed the notice.
(b) If no new filing is made within 30 days after the date of the division mailing the notice, the business trust's registration expires.
(3) If the registration of a business trust has expired or has been canceled for failure to maintain a registered agent, the business trust may not conduct business in this state until it has newly registered with the division under this chapter.
(4) The division may charge a fee in accordance with Section 63J-1-504 for the renewal of a registration.

16-15-108 When amendments are required.
(1) An amended certificate shall be filed with the division not later than 30 days after any change in:
(a) any person acting as a trustee of the trust, or the address of any trustee;
(b) the registered agent of the trust;
(c) the registered office of the business trust; or
(d) in any information required to be filed with the division under this chapter.
(2) The amended certificate shall be signed by each trustee of the business trust and filed in the same manner as a certificate of registration under Section 16-15-105.
(3) The division may charge a fee in accordance with Section 63J-1-504 for amending a certificate of registration.

16-15-109 Registered agent.
(1) A business trust shall continuously maintain an agent in this state for service of process on the business trust in accordance with Title 13, Chapter 1a, Part 5, Registered Agent of Business.
~~(2) The agent of the business trust shall be a person residing or authorized to do business in this state.~~
(~~3~~2) If a business trust fails to maintain a registered agent in this state, the division may cancel the business trust's registration.
~~(4)~~
~~(a) The registered agent of a business trust may resign by filing an original and one copy of a signed written notice of resignation with the division. The division shall mail a copy of the notice of resignation to the registered office of the business trust at the street address in the business trust's certificate of registration.~~
~~(b) The appointment of the registered agent ends 30 days after the division receives notice of the resignation.~~
~~(5) Service may be effected on a business trust in the same manner prescribed for a corporation in Sections 16-10a-1511 and 16-10a-1521.~~

16-15-110 Trustee and beneficiary governed by declaration of trust -- Common law.
(1) A trustee or beneficiary of a business trust shall be governed by all the provisions of the declaration of trust of the business trust.
(2) This chapter neither affects nor alters in any way the rights, powers, and obligations, of a trustee or beneficiary of a business trust under common law.

Chapter 16
Uniform Limited Cooperative Association Act

Part 1
General Provisions

16-16-101 Title.

This chapter is known as the "Uniform Limited Cooperative Association Act."

16-16-102 Definitions.

In this chapter:

(1) "Articles of organization" means the articles of organization of a limited cooperative association required by Section 16-16-302. The term includes the articles as amended or restated.

(2) "Board of directors" means the board of directors of a limited cooperative association.

(3) "Bylaws" means the bylaws of a limited cooperative association. The term includes the bylaws as amended or restated.

~~(4) "Certificate of authority" means a certificate issued by the division for a foreign cooperative to transact business in this state.~~

(5) "Contribution," except as used in Subsection 16-16-1008(3), means a benefit that a person provides to a limited cooperative association to become or remain a member or in the person's capacity as a member.

(6) "Cooperative" means a limited cooperative association or an entity organized under any cooperative law of any jurisdiction.

(7) "Designated office" means the office that a limited cooperative association or a foreign cooperative is required to designate and maintain under Subsection 16-16-117(1)(a).

(8) "Director" means a director of a limited cooperative association.

(9) "Distribution," except as used in Subsection 16-16-1007(5), means a transfer of money or other property from a limited cooperative association to a member because of the member's financial rights or to a transferee of a member's financial rights.

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

(11) "Entity" means a person other than an individual.

(12) "Financial rights" means the right to participate in allocations and distributions as provided in Part 10, Contributions, Allocations, and Distributions, and Part 12, Dissolution, but does not include rights or obligations under a marketing contract governed by Part 7, Marketing Contracts.

(13) "Foreign cooperative" means an entity organized in a jurisdiction other than this state under a law similar to this chapter.

(14) "Governance rights" means the right to participate in governance of a limited cooperative association.

(15) "Investor member" means a member that has made a contribution to a limited cooperative association and:

(a) is not required by the organic rules to conduct patronage with the association in the member's capacity as an investor member in order to receive the member's interest; or

(b) is not permitted by the organic rules to conduct patronage with the association in the member's capacity as an investor member in order to receive the member's interest.

(16) "Limited cooperative association" means an association organized under this chapter.

(17) "Member" means a person that is admitted as a patron member or investor member, or both, in a limited cooperative association. The term does not include a person that has dissociated as a member.

(18) "Member's interest" means the interest of a patron member or investor member under Section 16-16-601.

(19) "Members meeting" means an annual members meeting or special meeting of members.

(20) "Organic law" means the statute providing for the creation of an entity or principally governing its internal affairs.

(21) "Organic rules" means the articles of organization and bylaws of a limited cooperative association.

(22) "Organizer" means an individual who signs the initial articles of organization.

(23) "Patron member" means a member that has made a contribution to a limited cooperative association and:

(a) is required by the organic rules to conduct patronage with the association in the member's capacity as a

patron member in order to receive the member's interest; or

(b) is permitted by the organic rules to conduct patronage with the association in the member's capacity as a patron member in order to receive the member's interest.

(24) "Patronage" means business transactions between a limited cooperative association and a person which entitle the person to receive financial rights based on the value or quantity of business done between the association and the person.

(25) "Person" means an individual, corporation, business trust, cooperative, estate, trust, partnership, limited partnership, limited liability company, limited cooperative association, joint venture, association, public corporation, government or governmental subdivision, agency, or instrumentality, or any other legal or commercial entity.

(26) "Principal office" means the principal executive office of a limited cooperative association or foreign cooperative, whether or not in this state.

(27) "Record," used as a noun, means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

(28) "Required information" means the information a limited cooperative association is required to maintain under Section 16-16-114.

(29) "Sign" means, with present intent to authenticate or adopt a record:

(a) to execute or adopt a tangible symbol; or

(b) to attach to or logically associate with the record an electronic symbol, sound, or process.

(30) "State" means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States.

(31) "Transfer" includes an assignment, conveyance, deed, bill of sale, lease, mortgage, security interest, encumbrance, gift, and transfer by operation of law.

(32) "Voting group" means any combination of one or more voting members in one or more districts or classes that under the organic rules or this chapter are entitled to vote and can be counted together collectively on a matter at a members meeting.

(33) "Voting member" means a member that, under the organic law or organic rules, has a right to vote on matters subject to vote by members under the organic law or organic rules.

(34) "Voting power" means the total current power of members to vote on a particular matter for which a vote may or is to be taken.

16-16-103 Limited cooperative association subject to amendment or repeal of chapter.

A limited cooperative association governed by this chapter is subject to any amendment or repeal of this chapter.

16-16-104 Nature of limited cooperative association.

(1) A limited cooperative association organized under this chapter is an autonomous, unincorporated association of persons united to meet their mutual interests through a jointly owned enterprise primarily controlled by those persons, which permits combining:

(a) ownership, financing, and receipt of benefits by the members for whose interests the association is formed; and

(b) separate investments in the association by members who may receive returns on their investments and a share of control.

(2) The fact that a limited cooperative association does not have one or more of the characteristics described in Subsection (1) does not alone prevent the association from being formed under and governed by this chapter nor does it alone provide a basis for an action against the association.

16-16-105 Purpose and duration of limited cooperative association.

(1) A limited cooperative association is an entity distinct from its members.

(2) A limited cooperative association may be organized for any lawful purpose, whether or not for profit, except for the operation of a financial institution as defined in Section 7-1-103.

(3) Unless the articles of organization state a term for a limited cooperative association's existence, the

association has perpetual duration.

16-16-106 Powers.

A limited cooperative association may sue and be sued in its own name and do all things necessary or convenient to carry on its activities. An association may maintain an action against a member for harm caused to the association by the member's violation of a duty to the association or of the organic law or organic rules.

16-16-107 Governing law.

The law of this state governs:

(1) the internal affairs of a limited cooperative association; and

(2) the liability of a member as member and a director as director for the debts, obligations, or other liabilities of a limited cooperative association.

16-16-108 Supplemental principles of law.

Unless displaced by particular provisions of this chapter, the principles of law and equity supplement this chapter.

16-16-109 Requirements of other laws.

(1) This chapter does not alter or amend any law that governs the licensing and regulation of an individual or entity in carrying on a specific business or profession even if that law permits the business or profession to be conducted by a limited cooperative association, a foreign cooperative, or its members.

(2) A limited cooperative association may not conduct an activity that, under law of this state other than this chapter, may be conducted only by an entity that meets specific requirements for the internal affairs of that entity unless the organic rules of the association conform to those requirements.

16-16-110 Relation to restraint of trade and antitrust laws.

To the extent a limited cooperative association or activities conducted by the association in this state meet the material requirements for other cooperatives entitled to an exemption from or immunity under any provision of the restraint of trade or antitrust laws of this state, the association and its activities are entitled to the exemption or immunity. This section does not create any new exemption or immunity for an association or affect any exemption or immunity provided to a cooperative organized under any other law.

~~**16-16-111 Name.**~~

~~(1) Use of the term "cooperative" or its abbreviation under this chapter is not a violation of the provisions restricting the use of the term under any other law of this state.~~

~~(2)~~

~~(a) Notwithstanding Section 48-2e-108, as appropriate pursuant to Section 48-2e-1205, the name of a limited cooperative association shall contain:~~

~~(i) the words "limited cooperative association" or "limited cooperative"; or~~

~~(ii) the abbreviation "L.C.A." or "LCA".~~

~~(b) "Cooperative" may be abbreviated as "Co-op" or "Coop".~~

~~(c) "Association" may be abbreviated as "Assoc." or "Assn."~~

~~(d) "Limited" may be abbreviated as "Ltd."~~

~~(e)~~

~~(i) Use of the term "cooperative" or its abbreviation as permitted by this chapter is not a violation of the provisions restricting the use of the term under any other law of this state.~~

~~(ii) A limited cooperative association or a member may enforce the restrictions on the use of the term "cooperative" under this chapter and any other law of this state.~~

~~(iii) A limited cooperative association or a member may enforce the restrictions on the use of the term "cooperative" under any other law of this state.~~

~~(3) Except as otherwise provided in Subsection (4), a limited cooperative association may use only a name that is available. A name is available if it is distinguishable in the records of the division from:~~

~~(a) the name of any entity organized or authorized to transact business in this state;~~
~~(b) a name reserved under Section 16-16-112; and~~
~~(c) an alternative name approved for a foreign cooperative authorized to transact business in this state.~~
~~(4) A limited cooperative association may apply to the division for authorization to use a name that is not available. The division shall authorize use of the name if:~~
~~(a) the person with ownership rights to use the name consents in a record to the use and applies in a form satisfactory to the division to change the name used or reserved to a name that is distinguishable upon the records of the division from the name applied for; or~~
~~(b) the applicant delivers to the division a certified copy of the final judgment of a court establishing the applicant's right to use the name in this state.~~

~~16-16-112 Reservation of name.~~
~~(1) A person may reserve the exclusive use of the name of a limited cooperative association, including a fictitious name for a foreign cooperative whose name is not available under Section 16-16-111, by delivering an application to the division for filing. The application shall set forth the name and address of the applicant and the name proposed to be reserved. If the division finds that the name applied for is available under Section 16-16-111, the division shall reserve the name for the applicant's exclusive use for a nonrenewable period of 120 days.~~
~~(2) A person that has reserved a name for a limited cooperative association may transfer the reservation to another person by delivering to the division a signed notice of the transfer which states the name, street address, and, if different, the mailing address of the transferee. If the person is an organizer of the association and the name of the association is the same as the reserved name, the delivery of articles of organization for filing by the division is a transfer by the person to the association.~~

16-16-113 Effect of organic rules.
(1) The relations between a limited cooperative association and its members are consensual. Unless required, limited, or prohibited by this chapter, the organic rules may provide for any matter concerning the relations among the members of the association and between the members and the association, the activities of the association, and the conduct of its activities.
(2) The matters referred to in Subsections (2)(a) through (i) may be varied only in the articles of organization. The articles may:
(a) state a term of existence for the association under Subsection 16-16-105(3);
(b) limit or eliminate the acceptance of new or additional members by the initial board of directors under Subsection 16-16-303(2);
(c) vary the limitations on the obligations and liability of members for association obligations under Section 16-16-504;
(d) require a notice of an annual members meeting to state a purpose of the meeting under Subsection 16-16-508(2);
(e) vary the board of directors meeting quorum under Subsection 16-16-815(1);
(f) vary the matters the board of directors may consider in making a decision under Section 16-16-820;
(g) specify causes of dissolution under Subsection 16-16-1202(1);
(h) delegate amendment of the bylaws to the board of directors pursuant to Subsection 16-16-405(6);
(i) provide for member approval of asset dispositions under Section 16-16-1501; and
(j) provide for any matters that may be contained in the organic rules, including those under Subsection (3).
(3) The matters referred to in Subsections (3)(a) through (y) may be varied only in the organic rules. The organic rules may:
(a) require more information to be maintained under Section 16-16-114 or provided to members under Subsection 16-16-505(11);
(b) provide restrictions on transactions between a member and an association under Section 16-16-115;
(c) provide for the percentage and manner of voting on amendments to the organic rules by district, class, or voting group under Subsection 16-16-404(1);
(d) provide for the percentage vote required to amend the bylaws concerning the admission of new members

under Subsection 16-16-405(5)(e);
(e) provide for terms and conditions to become a member under Section 16-16-502;
(f) restrict the manner of conducting members meetings under Subsections 16-16-506(3) and 16-16-507(5);
(g) designate the presiding officer of members meetings under Subsections 16-16-506(5) and 16-16-507(7);
(h) require a statement of purposes in the annual meeting notice under Subsection 16-16-508(2);
(i) increase quorum requirements for members meetings under Section 16-16-510 and board of directors meetings under Section 16-16-815;
(j) allocate voting power among members, including patron members and investor members, and provide for the manner of member voting and action as permitted by Sections 16-16-511 through 16-16-517;
(k) authorize investor members and expand or restrict the transferability of members' interests to the extent provided in Sections 16-16-602 through 16-16-604;
(l) provide for enforcement of a marketing contract under Subsection 16-16-704(1);
(m) provide for qualification, election, terms, removal, filling vacancies, and member approval for compensation of directors in accordance with Sections 16-16-803 through 16-16-805, 16-16-807, 16-16-809, and 16-16-810;
(n) restrict the manner of conducting board meetings and taking action without a meeting under Sections 16-16-811 and 16-16-812;
(o) provide for frequency, location, notice and waivers of notice for board meetings under Sections 16-16-813 and 16-16-814;
(p) increase the percentage of votes necessary for board action under Subsection 16-16-816(2);
(q) provide for the creation of committees of the board of directors and matters related to the committees in accordance with Section 16-16-817;
(r) provide for officers and their appointment, designation, and authority under Section 16-16-822;
(s) provide for forms and values of contributions under Section 16-16-1002;
(t) provide for remedies for failure to make a contribution under Subsection 16-16-1003(2);
(u) provide for the allocation of profits and losses of the association, distributions, and the redemption or repurchase of distributed property other than money in accordance with Sections 16-16-1004 through 16-16-1007;
(v) specify when a member's dissociation is wrongful and the liability incurred by the dissociating member for damage to the association under Subsections 16-16-1101(2) and (3);
(w) provide the personal representative, or other legal representative of, a deceased member or a member adjudged incompetent with additional rights under Section 16-16-1103;
(x) increase the percentage of votes required for board of director approval of:
(i) a resolution to dissolve under Subsection 16-16-1205(1)(a);
(ii) a proposed amendment to the organic rules under Subsection 16-16-402(1)(a);
(iii) a plan of conversion under Subsection 16-16-1603(1);
(iv) a plan of merger under Subsection 16-16-1607(1); and
(v) a proposed disposition of assets under Subsection 16-16-1503(1); and
(y) vary the percentage of votes required for members' approval of:
(i) a resolution to dissolve under Section 16-16-1205;
(ii) an amendment to the organic rules under Section 16-16-405;
(iii) a plan of conversion under Section 16-16-1603;
(iv) a plan of merger under Section 16-16-1608; and
(v) a disposition of assets under Section 16-16-1504.
(4) The organic rules shall address members' contributions pursuant to Section 16-16-1001.

16-16-114 Required information.
(1) Subject to Subsection (2), a limited cooperative association shall maintain in a record available at its principal office:
(a) a list containing the name, last known street address and, if different, mailing address, and term of office of each director and officer;
(b) the initial articles of organization and all amendments to and restatements of the articles, together with a

signed copy of any power of attorney under which any article, amendment, or restatement has been signed;
(c) the initial bylaws and all amendments to and restatements of the bylaws;
(d) all filed articles of merger and statements of conversion;
(e) all financial statements of the association for the six most recent years;
(f) the six most recent annual reports delivered by the association to the division;
(g) the minutes of members meetings for the six most recent years;
(h) evidence of all actions taken by members without a meeting for the six most recent years;
(i) a list containing:
(i) the name, in alphabetical order, and last known street address and, if different, mailing address of each patron member and each investor member; and
(ii) if the association has districts or classes of members, information from which each current member in a district or class may be identified;
(j) the federal income tax returns, any state and local income tax returns, and any tax reports of the association for the six most recent years;
(k) accounting records maintained by the association in the ordinary course of its operations for the six most recent years;
(l) the minutes of directors meetings for the six most recent years;
(m) evidence of all actions taken by directors without a meeting for the six most recent years;
(n) the amount of money contributed and agreed to be contributed by each member;
(o) a description and statement of the agreed value of contributions other than money made and agreed to be made by each member;
(p) the times at which, or events on the happening of which, any additional contribution is to be made by each member;
(q) for each member, a description and statement of the member's interest or information from which the description and statement can be derived; and
(r) all communications concerning the association made in a record to all members, or to all members in a district or class, for the six most recent years.
(2) If a limited cooperative association has existed for less than the period for which records are required to be maintained under Subsection (1), the period records shall be kept is the period of the association's existence.
(3) The organic rules may require that more information be maintained.

16-16-115 Business transactions of member with limited cooperative association.

Subject to Sections 16-16-818 and 16-16-819 and except as otherwise provided in the organic rules or a specific contract relating to a transaction, a member may lend money to and transact other business with a limited cooperative association in the same manner as a person that is not a member.

16-16-116 Dual capacity.

A person may have both a patron member's interest and an investor member's interest. When such person acts as a patron member, the person is subject to this chapter and the organic rules governing patron members. When such person acts as an investor member, the person is subject to this chapter and the organic rules governing investor members.

16-16-117 Designated office and agent for service of process.

~~(1)~~ In accordance with Title 13, Chapter 1a, Part 5 Registered Agent of Business, ~~A~~a limited cooperative association, or a foreign cooperative that ~~has a certificate of authority~~is registered under ~~Section 16-16-1404~~Title 13, Chapter 1a, Part 6 Foreign Entities, shall designate and continuously maintain in this state:

(a) an office, as its designated office, which need not be a place of the association's or foreign cooperative's activity in this state; and

(b) an agent for service of process at the designated office.

~~(2) An agent for service of process of a limited cooperative association or foreign cooperative shall be an individual who is a resident of this state or an entity that is authorized to do business in this state.~~

16-16-118 Change of designated office or agent for service of process.
(1) Except as otherwise provided in Subsection 16-16-207(5), to change its designated office, its agent for service of process, or the street address or, if different, mailing address of its principal office, a limited cooperative association shall deliver to the division for filing a statement of change containing:
(a) the name of the limited cooperative association;
(b) the street address and, if different, mailing address of its designated office;
(c) if the designated office is to be changed, the street address and, if different, mailing address of the new designated office;
(d) the name of its agent for service of process; and
(e) if the agent for service of process is to be changed, the name of the new agent.
(2) Except as otherwise provided in Subsection 16-16-207(5), to change its agent for service of process, the address of its designated office, or the street address or, if different, mailing address of its principal office, a foreign cooperative shall deliver to the division for filing a statement of change containing:
(a) the name of the foreign cooperative;
(b) the name, street address and, if different, mailing address of its designated office;
(c) if the current agent for service of process or an address of the designated office is to be changed, the new information;
(d) the street address and, if different, mailing address of its principal office; and
(e) if the street address or, if different, the mailing address of its principal office is to be changed, the street address and, if different, the mailing address of the new principal office.
(3) Except as otherwise provided in Section 16-16-204, a statement of change is effective when filed by the division.

~~**16-16-119 Resignation of agent for service of process.**~~
~~(1) To resign as an agent for service of process of a limited cooperative association or foreign cooperative, the agent shall deliver to the division for filing a statement of resignation containing the name of the agent and the name of the association or foreign cooperative.~~
~~(2) After receiving a statement of resignation under Subsection (1), the division shall file it and mail or otherwise provide or deliver a copy to the limited cooperative association or foreign cooperative at its principal office.~~
~~(3) An agency for service of process of a limited cooperative association or foreign cooperative terminates on the earlier of:~~
~~(a) the 31st day after the division files a statement of resignation under Subsection (2); or~~
~~(b) when a record designating a new agent for service of process is delivered to the division for filing on behalf of the association or foreign cooperative and becomes effective.~~

~~**16-16-120 Service of process.**~~
~~(1) An agent for service of process appointed by a limited cooperative association or foreign cooperative is an agent of the association or foreign cooperative for service of process, notice, or a demand required or permitted by law to be served upon the association or foreign cooperative.~~
~~(2) If a limited cooperative association or foreign cooperative does not appoint or maintain an agent for service of process in this state or the agent for service of process cannot with reasonable diligence be found at the address of the designated office on file with the division, the division is an agent of the association or foreign cooperative upon which process, notice, or a demand may be served.~~
~~(3) Service of process, notice, or a demand on the division as agent of a limited cooperative association or foreign cooperative may be made by delivering to the division two copies of the process, notice, or demand. The division shall forward one copy by registered or certified mail, return receipt requested, to the association or foreign cooperative at its principal office.~~
~~(4) Service is effected under Subsection (3) on the earliest of:~~
~~(a) the date the limited cooperative association or foreign cooperative receives the process, notice, or demand;~~
~~(b) the date shown on the return receipt, if signed on behalf of the association or foreign cooperative; or~~

(c) five days after the process, notice, or demand is deposited by the division for delivery by the United States Postal Service, if mailed postage prepaid to the address of the principal office on file with the division.

(5) The division shall keep a record of each process, notice, and demand served pursuant to this section and record the time of, and the action taken regarding, the service.

(6) This section does not affect the right to serve process, notice, or a demand in any other manner provided by law.

Part 2
Filing and Annual Reports

16-16-201 Signing of records delivered for filing to division.

(1) A record delivered to the division for filing pursuant to this chapter shall be signed as follows:

(a) The initial articles of organization shall be signed by at least one organizer.

(b) A statement of cancellation under Subsection 16-16-302(4) shall be signed by at least one organizer.

(c) Except as otherwise provided in Subsection (1)(d), a record signed on behalf of an existing limited cooperative association shall be signed by an officer.

(d) A record filed on behalf of a dissolved association shall be signed by a person winding up activities under Section 16-16-1206 or a person appointed under Section 16-16-1206 to wind up those activities.

(e) Any other record shall be signed by the person on whose behalf the record is delivered to the division.

(2) Any record to be signed under this chapter may be signed by an authorized agent.

16-16-202 Signing and filing of records pursuant to judicial order.

(1) If a person required by this chapter to sign or deliver a record to the division for filing does not do so, the district court, upon petition of an aggrieved person, may order:

(a) the person to sign the record and deliver it to the division for filing; or

(b) delivery of the unsigned record to the division for filing.

(2) An aggrieved person under Subsection (1), other than the limited cooperative association or foreign cooperative to which the record pertains, shall make the association or foreign cooperative a party to the action brought to obtain the order.

(3) An unsigned record filed pursuant to this section is effective.

16-16-203 Delivery to and filing of records by division -- Effective time and date.

(1) A record authorized or required by this chapter to be delivered to the division for filing shall be captioned to describe the record's purpose, be in a medium and format permitted by the division, and be delivered to the division. If the filing fees have been paid, and unless the division determines that the record does not comply with the filing requirements of this chapter, the division shall file the record.

(2) The division, upon request and payment of the required fee, shall furnish a certified copy of any record filed by the division under this chapter to the person making the request.

(3) Except as otherwise provided in Sections 16-16-118 and 16-16-204, a record delivered to the division for filing under this chapter may specify an effective time and a delayed effective date that may include an effective time on that date. Except as otherwise provided in Sections 16-16-118 and 16-16-204, a record filed by the division under this chapter is effective:

(a) if the record does not specify an effective time and does not specify a delayed effective date, on the date and at the time the record is filed as evidenced by the division's endorsement of the date and time on the record;

(b) if the record specifies an effective time but not a delayed effective date, on the date the record is filed at the time specified in the record;

(c) if the record specifies a delayed effective date but not an effective time, at 12:01 a.m. on the earlier of:

(i) the specified date; or

(ii) the 90th day after the record is filed; or

(d) if the record specifies an effective time and a delayed effective date, at the specified time on the earlier of:

(i) the specified date; or

(ii) the 90th day after the record is filed.

16-16-204 Correcting filed record.

(1) A limited cooperative association or foreign cooperative may deliver to the division for filing a statement of correction to correct a record previously delivered by the association or foreign cooperative to the division and filed by the division if, at the time of filing, the record contained inaccurate information or was defectively signed.

(2) A statement of correction may not state a delayed effective date and shall:

(a) describe the record to be corrected, including its filing date, or have attached a copy of the record as filed;

(b) specify the inaccurate information and the reason it is inaccurate or the manner in which the signing was defective; and

(c) correct the inaccurate information or defective signature.

(3) When filed by the division, a statement of correction is effective:

(a) when filed as to persons relying on the inaccurate information or defective signature before its correction and adversely affected by the correction; and

(b) as to all other persons, retroactively as of the effective date and time of the record the statement corrects.

16-16-205 Liability for inaccurate information in filed record.

If a record delivered to the division for filing under this chapter and filed by the division contains inaccurate information, a person that suffers a loss by reliance on the information may recover damages for the loss from a person that signed the record or caused another to sign it on the person's behalf and knew at the time the record was signed that the information was inaccurate.

16-16-206 Certificate of existence or authorization.

(1) The division, upon request and payment of the required fee, shall furnish any person that requests it a certificate of existence for a limited cooperative association if the records filed in the office of the division show that the division has filed the association's articles of organization, that the association is registered with the division, and that the division has not filed a statement of termination.

(2) The division, upon request and payment of the required fee, shall furnish to any person that requests it a certificate of authority for a foreign cooperative if the records filed in the office of the division show that the division has filed the foreign cooperative's certificate of authority, has not revoked nor has reason to revoke the certificate of authority, and has not filed a notice of cancellation.

(3) Subject to any exceptions stated in the certificate, a certificate of existence or authority issued by the division establishes conclusively that the limited cooperative association or foreign cooperative is registered with the division or is authorized to transact business in this state.

16-16-207 Annual report for division.

(1) A limited cooperative association or foreign cooperative authorized to transact business in this state shall deliver to the division for filing an annual 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 report shall be current as of the date the report is delivered to the division.

(3) The first annual 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 report shall be delivered to the division during the month in which falls the anniversary of the limited cooperative association's organization or the foreign cooperative's authorization to transact business.

~~(4) If an annual 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 report for correction. If the 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 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 information in the annual report is considered a statement of change.~~
~~(6) If a limited cooperative association fails to deliver an annual 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 report under this section, the division may revoke the certificate of authority of the cooperative.~~

~~16-16-208 Filing fees.~~

~~The filing fee for records filed under this part by the division shall be established by the division in accordance with Section 63J-1-504.~~

Part 3
Formation and Initial Articles of Organization of Limited Cooperative Association

16-16-301 Organizers.

A limited cooperative association shall be organized by one or more organizers.

16-16-302 Formation of limited cooperative association -- Articles of organization.

(1) To form a limited cooperative association, an organizer of the association shall deliver articles of organization to the division for filing. The articles shall state:
(a) the name of the association;
(b) the purposes for which the association is formed;
(c) the street address and, if different, mailing address of the association's initial designated office and the name of the association's initial agent for service of process at the designated office;
(d) the street address and, if different, mailing address of the initial principal office;
(e) the name and street address and, if different, mailing address of each organizer; ~~and~~
(f) the term for which the association is to exist if other than perpetual~~.~~; and
(g) the association's North American Industry Classification (NAICS) code.
(2) Subject to Subsection 16-16-113(1), articles of organization may contain any other provisions in addition to those required by Subsection (1).
(3) A limited cooperative association is formed after articles of organization that substantially comply with Subsection (1) are delivered to the division, are filed, and become effective under Subsection ~~16-16-203(3)~~13-1a-303.
(4) If articles of organization filed by the division state a delayed effective date, a limited cooperative association is not formed if, before the articles take effect, an organizer signs and delivers to the division for filing a statement of cancellation.

16-16-303 Organization of limited cooperative association.

(1) After a limited cooperative association is formed:
(a) if initial directors are named in the articles of organization, the initial directors shall hold an organizational meeting to adopt initial bylaws and carry on any other business necessary or proper to complete the organization of the association; or
(b) if initial directors are not named in the articles of organization, the organizers shall designate the initial directors and call a meeting of the initial directors to adopt initial bylaws and carry on any other business necessary or proper to complete the organization of the association.
(2) Unless the articles of organization otherwise provide, the initial directors may cause the limited cooperative association to accept members, including those necessary for the association to begin business.

(3) Initial directors need not be members.
(4) An initial director serves until a successor is elected and qualified at a members meeting or the director is removed, resigns, is adjudged incompetent, or dies.

16-16-304 Bylaws.
(1) Bylaws shall be in a record and, if not stated in the articles of organization, shall include:
(a) a statement of the capital structure of the limited cooperative association, including:
(i) the classes or other types of members' interests and relative rights, preferences, and restrictions granted to or imposed upon each class or other type of member's interest; and
(ii) the rights to share in profits or distributions of the association;
(b) a statement of the method for admission of members;
(c) a statement designating voting and other governance rights, including which members have voting power and any restriction on voting power;
(d) a statement that a member's interest is transferable if it is to be transferable and a statement of the conditions upon which it may be transferred;
(e) a statement concerning the manner in which profits and losses are allocated and distributions are made among patron members and, if investor members are authorized, the manner in which profits and losses are allocated and how distributions are made among investor members and between patron members and investor members;
(f) a statement concerning:
(i) whether persons that are not members but conduct business with the association may be permitted to share in allocations of profits and losses and receive distributions; and
(ii) the manner in which profits and losses are allocated and distributions are made with respect to those persons; and
(g) a statement of the number and terms of directors or the method by which the number and terms are determined.
(2) Subject to Subsection 16-16-113(3) and the articles of organization, bylaws may contain any other provision for managing and regulating the affairs of the association.
(3) In addition to amendments permitted under Part 4, Amendment of Organic Rules of Limited Cooperative Association, the initial board of directors may amend the bylaws by a majority vote of the directors at any time before the admission of members.

Part 4
Amendment of Organic Rules of Limited Cooperative Association

16-16-401 Authority to amend organic rules.
(1) A limited cooperative association may amend its organic rules under this part for any lawful purpose. In addition, the initial board of directors may amend the bylaws of an association under Section 16-16-304.
(2) Unless the organic rules otherwise provide, a member does not have a vested property right resulting from any provision in the organic rules, including a provision relating to the management, control, capital structure, distribution, entitlement, purpose, or duration of the limited cooperative association.

16-16-402 Notice and action on amendment of organic rules.
(1) Except as provided in Subsections 16-16-401(1) and 16-16-405(6), the organic rules of a limited cooperative association may be amended only at a members meeting. An amendment may be proposed by either:
(a) a majority of the board of directors, or a greater percentage if required by the organic rules; or
(b) one or more petitions signed by at least 10% of the patron members or at least 10% of the investor members.
(2) The board of directors shall call a members meeting to consider an amendment proposed pursuant to Subsection (1). The meeting shall be held not later than 90 days following the proposal of the amendment by the board or receipt of a petition. The board shall mail or otherwise transmit or deliver in a record to each member:
(a) the proposed amendment, or a summary of the proposed amendment and a statement of the manner in which

a copy of the amendment in a record may be reasonably obtained by a member;
(b) a recommendation that the members approve the amendment, or if the board determines that because of conflict of interest or other special circumstances it should not make a favorable recommendation, the basis for that determination;
(c) a statement of any condition of the board's submission of the amendment to the members; and
(d) notice of the meeting at which the proposed amendment will be considered, which shall be given in the same manner as notice for a special meeting of members.

16-16-403 Change to amendment of organic rules at meeting.
(1) A substantive change to a proposed amendment of the organic rules may not be made at the members meeting at which a vote on the amendment occurs.
(2) A nonsubstantive change to a proposed amendment of the organic rules may be made at the members meeting at which the vote on the amendment occurs and need not be separately voted upon by the board of directors.
(3) A vote to adopt a nonsubstantive change to a proposed amendment to the organic rules shall be by the same percentage of votes required to pass a proposed amendment.

16-16-404 Voting by district, class, or voting group.
(1) This section applies if the organic rules provide for voting by district or class, or if there is one or more identifiable voting groups that a proposed amendment to the organic rules would affect differently from other members with respect to matters identified in Subsections 16-16-405(5)(a) through (e). Approval of the amendment requires the same percentage of votes of the members of that district, class, or voting group required in Sections 16-16-405 and 16-16-514.
(2) If a proposed amendment to the organic rules would affect members in two or more districts or classes entitled to vote separately under Subsection (1) in the same or a substantially similar way, the districts or classes affected shall vote as a single voting group unless the organic rules otherwise provide for separate voting.

16-16-405 Approval of amendment.
(1) Subject to Section 16-16-404 and Subsections (3) and (4), an amendment to the articles of organization shall be approved by:
(a) at least two-thirds of the voting power of members present at a members meeting called under Section 16-16-402; and
(b) if the limited cooperative association has investor members, at least a majority of the votes cast by patron members, unless the organic rules require a greater percentage vote by patron members.
(2) Subject to Section 16-16-404 and Subsections (3), (4), (5), and (6), an amendment to the bylaws shall be approved by:
(a) at least a majority vote of the voting power of all members present at a members meeting called under Section 16-16-402, unless the organic rules require a greater percentage; and
(b) if a limited cooperative association has investor members, a majority of the votes cast by patron members, unless the organic rules require a larger affirmative vote by patron members.
(3) The organic rules may require that the percentage of votes under Subsection (1)(a) or (2)(a) be:
(a) a different percentage that is not less than a majority of members voting at the meeting;
(b) measured against the voting power of all members; or
(c) a combination of Subsections (3)(a) and (b).
(4) Consent in a record by a member shall be delivered to a limited cooperative association before delivery of an amendment to the articles of organization or restated articles of organization for filing pursuant to Section 16-16-407, if as a result of the amendment the member will have:
(a) personal liability for an obligation of the association; or
(b) an obligation or liability for an additional contribution.
(5) The vote required to amend bylaws shall satisfy the requirements of Subsection (1) if the proposed amendment modifies:
(a) the equity capital structure of the limited cooperative association, including the rights of the association's

members to share in profits or distributions, or the relative rights, preferences, and restrictions granted to or imposed upon one or more districts, classes, or voting groups of similarly situated members;
(b) the transferability of a member's interest;
(c) the manner or method of allocation of profits or losses among members;
(d) the quorum for a meeting and the rights of voting and governance; or
(e) unless otherwise provided in the organic rules, the terms for admission of new members.
(6) Except for the matters described in Subsection (5), the articles of organization may delegate amendment of all or a part of the bylaws to the board of directors without requiring member approval.
(7) If the articles of organization delegate amendment of bylaws to the board of directors, the board shall provide a description of any amendment of the bylaws made by the board to the members in a record not later than 30 days after the amendment, but the description may be provided at the next annual members meeting if the meeting is held within the 30-day period.

16-16-406 Restated articles of organization.

A limited cooperative association, by the affirmative vote of a majority of the board of directors taken at a meeting for which the purpose is stated in the notice of the meeting, may adopt restated articles of organization that contain the original articles as previously amended. Restated articles may contain amendments if the restated articles are adopted in the same manner and with the same vote as required for amendments to the articles under Subsection 16-16-405(1). Upon filing, restated articles supersede the existing articles and all amendments.

16-16-407 Amendment or restatement of articles of organization -- Filing.
(1) To amend its articles of organization, a limited cooperative association shall deliver to the division for filing an amendment of the articles, or restated articles of organization or articles of conversion or merger pursuant to Part 16, Conversion and Merger, which contain one or more amendments of the articles of organization, stating:
(a) the name of the association;
(b) the date of filing of the association's initial articles; and
(c) the changes the amendment makes to the articles as most recently amended or restated.
(2) Before the beginning of the initial meeting of the board of directors, an organizer who knows that information in the filed articles of organization was inaccurate when the articles were filed or has become inaccurate due to changed circumstances shall promptly:
(a) cause the articles to be amended; or
(b) if appropriate, deliver an amendment to the division for filing pursuant to Section ~~16-16-203~~13-1a-303.
(3) If restated articles of organization are adopted, the restated articles may be delivered to the division for filing in the same manner as an amendment.
(4) Upon filing, an amendment of the articles of organization or other record containing an amendment of the articles which has been properly adopted by the members is effective as provided in Subsection ~~16-16-203(3)~~13-1a-303.

Part 5
Members

16-16-501 Members.

To begin business, a limited cooperative association shall have at least two patron members unless the sole member is a cooperative.

16-16-502 Becoming a member.

A person becomes a member:
(1) as provided in the organic rules;
(2) as the result of a merger or conversion under Part 16, Conversion and Merger; or
(3) with the consent of all the members.

16-16-503 No power as member to bind association.

A member, solely by reason of being a member, may not act for or bind the limited cooperative association.

16-16-504 No liability as member for association's obligations.

Unless the articles of organization otherwise provide, a debt, obligation, or other liability of a limited cooperative association is solely that of the association and is not the debt, obligation, or liability of a member solely by reason of being a member.

16-16-505 Right of member and former member to information.

(1) Not later than 10 business days after receipt of a demand made in a record, a limited cooperative association shall permit a member to obtain, inspect, and copy in the association's principal office required information listed in Subsections 16-16-114(1)(a) through (h) during regular business hours. A member need not have any particular purpose for seeking the information. The association is not required to provide the same information listed in Subsections 16-16-114(1)(b) through (h) to the same member more than once during a six-month period.

(2) On demand made in a record received by the limited cooperative association, a member may obtain, inspect, and copy in the association's principal office required information listed in Subsections 16-16-114(1)(i), (j), (l), (m), (p), and (r) during regular business hours, if:

(a) the member seeks the information in good faith and for a proper purpose reasonably related to the member's interest;

(b) the demand includes a description with reasonable particularity of the information sought and the purpose for seeking the information;

(c) the information sought is directly connected to the member's purpose; and

(d) the demand is reasonable.

(3) Not later than 10 business days after receipt of a demand pursuant to Subsection (2), a limited cooperative association shall provide, in a record, the following information to the member that made the demand:

(a) if the association agrees to provide the demanded information:

(i) what information the association will provide in response to the demand; and

(ii) a reasonable time and place at which the association will provide the information; or

(b) if the association declines to provide some or all of the demanded information, the association's reasons for declining.

(4) A person dissociated as a member may obtain, inspect, and copy information available to a member under Subsection (1) or (2) by delivering a demand in a record to the limited cooperative association in the same manner and subject to the same conditions applicable to a member under Subsection (2) if:

(a) the information pertains to the period during which the person was a member in the association; and

(b) the person seeks the information in good faith.

(5) A limited cooperative association shall respond to a demand made pursuant to Subsection (4) in the manner provided in Subsection (3).

(6) Not later than 10 business days after receipt by a limited cooperative association of a demand made by a member in a record, but not more often than once in a six-month period, the association shall deliver to the member a record stating the information with respect to the member required by Subsection 16-16-114(1)(q).

(7) A limited cooperative association may impose reasonable restrictions, including nondisclosure restrictions, on the use of information obtained under this section. In a dispute concerning the reasonableness of a restriction under this Subsection (7), the association has the burden of proving reasonableness.

(8) A limited cooperative association may charge a person that makes a demand under this section reasonable costs of copying, limited to the costs of labor and material.

(9) A person that may obtain information under this section may obtain the information through an attorney or other agent. A restriction imposed on the person under Subsection (7) or by the organic rules applies to the attorney or other agent.

(10) The rights stated in this section do not extend to a person as transferee.

(11) The organic rules may require a limited cooperative association to provide more information than required

by this section and may establish conditions and procedures for providing the information.

16-16-506 Annual meeting of members.
(1) Members shall meet annually at a time provided in the organic rules or set by the board of directors not inconsistent with the organic rules.
(2) An annual members meeting may be held inside or outside this state at the place stated in the organic rules or selected by the board of directors not inconsistent with the organic rules.
(3) Unless the organic rules otherwise provide, members may attend or conduct an annual members meeting through any means of communication if all members attending the meeting can communicate with each other during the meeting.
(4) The board of directors shall report, or cause to be reported, at the association's annual members meeting the association's business and financial condition as of the close of the most recent fiscal year.
(5) Unless the organic rules otherwise provide, the board of directors shall designate the presiding officer of the association's annual members meeting.
(6) Failure to hold an annual members meeting does not affect the validity of any action by the limited cooperative association.

16-16-507 Special meeting of members.
(1) A special meeting of members may be called only:
(a) as provided in the organic rules;
(b) by a majority vote of the board of directors on a proposal stating the purpose of the meeting;
(c) by demand in a record signed by members holding at least 20% of the voting power of the persons in any district or class entitled to vote on the matter that is the purpose of the meeting stated in the demand; or
(d) by demand in a record signed by members holding at least 10% of the total voting power of all the persons entitled to vote on the matter that is the purpose of the meeting stated in the demand.
(2) A demand under Subsection (1)(c) or (d) shall be submitted to the officer of the limited cooperative association charged with keeping its records.
(3) Any voting member may withdraw its demand under Subsection (1)(c) or (d) before receipt by the limited cooperative association of demands sufficient to require a special meeting of members.
(4) A special meeting of members may be held inside or outside this state at the place stated in the organic rules or selected by the board of directors not inconsistent with the organic rules.
(5) Unless the organic rules otherwise provide, members may attend or conduct a special meeting of members through the use of any means of communication if all members attending the meeting can communicate with each other during the meeting.
(6) Only business within the purpose or purposes stated in the notice of a special meeting of members may be conducted at the meeting.
(7) Unless the organic rules otherwise provide, the presiding officer of a special meeting of members shall be designated by the board of directors.

16-16-508 Notice of members meeting.
(1) A limited cooperative association shall notify each member of the time, date, and place of a members meeting at least 15 and not more than 60 days before the meeting.
(2) Unless the articles of organization otherwise provide, notice of an annual members meeting need not include any purpose of the meeting.
(3) Notice of a special meeting of members shall include each purpose of the meeting as contained in the demand under Subsection 16-16-507(1)(c) or (d) or as voted upon by the board of directors under Subsection 16-16-507(1)(b).
(4) Notice of a members meeting shall be given in a record unless oral notice is reasonable under the circumstances.

16-16-509 Waiver of members meeting notice.
(1) A member may waive notice of a members meeting before, during, or after the meeting.

(2) A member's participation in a members meeting is a waiver of notice of that meeting unless the member objects to the meeting at the beginning of the meeting or promptly upon the member's arrival at the meeting and does not thereafter vote for or assent to action taken at the meeting.

16-16-510 Quorum of members.

Unless the organic rules otherwise require a greater number of members or percentage of the voting power, the voting member or members present at a members meeting constitute a quorum.

16-16-511 Voting by patron members.

Except as provided by Subsection 16-16-512(1), each patron member has one vote. The organic rules may allocate voting power among patron members as provided in Subsection 16-16-512(1).

16-16-512 Determination of voting power of patron member.

(1) The organic rules may allocate voting power among patron members on the basis of one or a combination of the following:
(a) one member, one vote;
(b) use or patronage;
(c) equity; or
(d) if a patron member is a cooperative, the number of its patron members.
(2) The organic rules may provide for the allocation of patron member voting power by districts or class, or any combination thereof.

16-16-513 Voting by investor members.

If the organic rules provide for investor members, each investor member has one vote, unless the organic rules otherwise provide. The organic rules may provide for the allocation of investor member voting power by class, classes, or any combination of classes.

16-16-514 Voting requirements for members.

(1) If a limited cooperative association has both patron and investor members, the following rules apply:
(a) the total voting power of all patron members may not be less than a majority of the entire voting power entitled to vote; and
(b) action on any matter is approved only upon the affirmative vote of at least a majority of:
(i) all members voting at the meeting unless more than a majority is required by this chapter or the organic rules; and
(ii) votes cast by patron members unless the organic rules require a larger affirmative vote by patron members.
(2) The organic rules may provide for the percentage of the affirmative votes that must be cast by investor members to approve the matter.

16-16-515 Manner of voting.

(1) Unless the organic rules otherwise provide, voting by a proxy at a members meeting is prohibited. This Subsection (1) does not prohibit delegate voting based on district or class.
(2) If voting by a proxy is permitted, a patron member may appoint only another patron member as a proxy and, if investor members are permitted, an investor member may appoint only another investor member as a proxy.
(3) The organic rules may provide for the manner of and provisions governing the appointment of a proxy.
(4) The organic rules may provide for voting on any question by ballot delivered by mail or voting by other means on questions that are subject to vote by members.

16-16-516 Action without a meeting.

(1) Unless the organic rules require that action be taken only at a members meeting, any action that may be taken by the members may be taken without a meeting if each member entitled to vote on the action consents in a record to the action.
(2) Consent under Subsection (1) may be withdrawn by a member in a record at any time before the limited

cooperative association receives a consent from each member entitled to vote.
(3) Consent to any action may specify the effective date or time of the action.

16-16-517 Districts and delegates -- Classes of members.
(1) The organic rules may provide for the formation of geographic districts of patron members and:
(a) for the conduct of patron member meetings by districts and the election of directors at the meetings; or
(b) that districts may elect district delegates to represent and vote for the district at members meetings.
(2) A delegate elected under Subsection (1)(b) has one vote unless voting power is otherwise allocated by the organic rules.
(3) The organic rules may provide for the establishment of classes of members, for the preferences, rights, and limitations of the classes, and:
(a) for the conduct of members meetings by classes and the election of directors at the meetings; or
(b) that classes may elect class delegates to represent and vote for the class in members meetings.
(4) A delegate elected under Subsection (3)(b) has one vote unless voting power is otherwise allocated by the organic rules.

Part 6
Member's Interest in Limited Cooperative Association

16-16-601 Member's interest.
A member's interest:
(1) is personal property;
(2) consists of:
(a) governance rights;
(b) financial rights; and
(c) the right or obligation, if any, to do business with the limited cooperative association; and
(3) may be in certificated or uncertificated form.

16-16-602 Patron and investor members' interests.
(1) Unless the organic rules establish investor members' interests, a member's interest is a patron member's interest.
(2) Unless the organic rules otherwise provide, if a limited cooperative association has investor members, while a person is a member of the association, the person:
(a) if admitted as a patron member, remains a patron member;
(b) if admitted as an investor member, remains an investor member; and
(c) if admitted as a patron member and investor member, remains a patron and investor member if not dissociated in one of the capacities.

16-16-603 Transferability of member's interest.
(1) The provisions of this chapter relating to the transferability of a member's interest are subject to Title 70A, Uniform Commercial Code.
(2) Unless the organic rules otherwise provide, a member's interest other than financial rights is not transferable.
(3) Unless a transfer is restricted or prohibited by the organic rules, a member may transfer the member's financial rights in the limited cooperative association.
(4) The terms of any restriction on transferability of financial rights shall be:
(a) set forth in the organic rules and the member records of the association; and
(b) conspicuously noted on any certificates evidencing a member's interest.
(5) A transferee of a member's financial rights, to the extent the rights are transferred, has the right to share in the allocation of profits or losses and to receive the distributions to the member transferring the interest to the same extent as the transferring member.
(6) A transferee of a member's financial rights does not become a member upon transfer of the rights unless the

transferee is admitted as a member by the limited cooperative association.
(7) A limited cooperative association need not give effect to a transfer under this section until the association has notice of the transfer.
(8) A transfer of a member's financial rights in violation of a restriction on transfer contained in the organic rules is ineffective as to a person having notice of the restriction at the time of transfer.

16-16-604 Security interest and set-off.
(1) A member or transferee may create an enforceable security interest in its financial rights in a limited cooperative association.
(2) Unless the organic rules otherwise provide, a member may not create an enforceable security interest in the member's governance rights in a limited cooperative association.
(3) The organic rules may provide that a limited cooperative association has a security interest in the financial rights of a member to secure payment of any indebtedness or other obligation of the member to the association. A security interest provided for in the organic rules is enforceable under, and governed by, Title 70A, Chapter 9a, Uniform Commercial Code - Secured Transactions.
(4) Unless the organic rules otherwise provide, a member may not compel the limited cooperative association to offset financial rights against any indebtedness or obligation owed to the association.

16-16-605 Charging orders for judgment creditor of member or transferee.
(1) On application by a judgment creditor of a member or transferee, a court may enter a charging order against the financial rights of the judgment debtor for the unsatisfied amount of the judgment. A charging order issued under this Subsection (1) constitutes a lien on the judgment debtor's financial rights and requires the limited cooperative association to pay over to the creditor or receiver, to the extent necessary to satisfy the judgment, any distribution that would otherwise be paid to the judgment debtor.
(2) To the extent necessary to effectuate the collection of distributions pursuant to a charging order under Subsection (1), the court may:
(a) appoint a receiver of the share of the distributions due or to become due to the judgment debtor under the judgment debtor's financial rights, with the power to make all inquiries the judgment debtor might have made; and
(b) make all other orders that the circumstances of the case may require to give effect to the charging order.
(3) Upon a showing that distributions under a charging order will not pay the judgment debt within a reasonable time, the court may foreclose the lien and order the sale of the financial rights. The purchaser at the foreclosure sale obtains only the financial rights that are subject to the charging order, does not thereby become a member, and is subject to Section 16-16-603.
(4) At any time before a sale pursuant to a foreclosure, a member or transferee whose financial rights are subject to a charging order under Subsection (1) may extinguish the charging order by satisfying the judgment and filing a certified copy of the satisfaction with the court that issued the charging order.
(5) At any time before sale pursuant to a foreclosure, the limited cooperative association or one or more members whose financial rights are not subject to the charging order may pay to the judgment creditor the full amount due under the judgment and succeed to the rights of the judgment creditor, including the charging order. Unless the organic rules otherwise provide, the association may act under this Subsection (5) only with the consent of all members whose financial rights are not subject to the charging order.
(6) This chapter does not deprive any member or transferee of the benefit of any exemption laws applicable to the member's or transferee's financial rights.
(7) This section provides the exclusive remedy by which a judgment creditor of a member or transferee may satisfy the judgment from the member's or transferee's financial rights.

Part 7
Marketing Contracts

16-16-701 Authority.
In this part, "marketing contract" means a contract between a limited cooperative association and

another person, that need not be a patron member:
(1) requiring the other person to sell, or deliver for sale or marketing on the person's behalf, a specified part of the person's products, commodities, or goods exclusively to or through the association or any facilities furnished by the association; or
(2) authorizing the association to act for the person in any manner with respect to the products, commodities, or goods.

16-16-702 Marketing contracts.
(1) If a marketing contract provides for the sale of products, commodities, or goods to a limited cooperative association, the sale transfers title to the association upon delivery or at any other specific time expressly provided by the contract.
(2) A marketing contract may:
(a) authorize a limited cooperative association to create an enforceable security interest in the products, commodities, or goods delivered; and
(b) allow the association to sell the products, commodities, or goods delivered and pay the sales price on a pooled or other basis after deducting selling costs, processing costs, overhead, expenses, and other charges.
(3) Some or all of the provisions of a marketing contract between a patron member and a limited cooperative association may be contained in the organic rules.

16-16-703 Duration of marketing contract.
The initial duration of a marketing contract may not exceed 10 years, but the contract may be self-renewing for additional periods not exceeding five years each. Unless the contract provides for another manner or time for termination, either party may terminate the contract by giving notice in a record at least 90 days before the end of the current term.

16-16-704 Remedies for breach of contract.
(1) Damages to be paid to a limited cooperative association for breach or anticipatory repudiation of a marketing contract may be liquidated, but only at an amount or under a formula that is reasonable in light of the actual or anticipated harm caused by the breach or repudiation. A provision that so provides is not a penalty.
(2) Upon a breach of a marketing contract, whether by anticipatory repudiation or otherwise, a limited cooperative association may seek:
(a) an injunction to prevent further breach; and
(b) specific performance.
(3) The remedies in this section are in addition to any other remedies available to an association under law other than this chapter.

Part 8
Directors and Officers

16-16-801 Board of directors.
(1) A limited cooperative association shall have a board of directors of at least three individuals, unless the association has fewer than three members. If the association has fewer than three members, the number of directors may not be fewer than the number of members.
(2) The affairs of a limited cooperative association shall be managed by, or under the direction of, the board of directors. The board may adopt policies and procedures that do not conflict with the organic rules or this chapter.
(3) An individual is not an agent for a limited cooperative association solely by being a director.

16-16-802 No liability as director for limited cooperative association's obligations.
A debt, obligation, or other liability of a limited cooperative association is solely that of the association and is not a debt, obligation, or liability of a director solely by reason of being a director. An individual is not personally liable, directly or indirectly, for an obligation of an association solely by reason of being a director.

16-16-803 Qualifications of directors.
(1) Unless the organic rules otherwise provide, and subject to Subsection (3), each director of a limited cooperative association shall be an individual who is a member of the association or an individual who is designated by a member that is not an individual for purposes of qualifying and serving as a director. Initial directors need not be members.
(2) Unless the organic rules otherwise provide, a director may be an officer or employee of the limited cooperative association.
(3) If the organic rules provide for nonmember directors, the number of nonmember directors may not exceed:
(a) one, if there are two through four directors;
(b) two, if there are five through eight directors; or
(c) 1/3 of the total number of directors if there are at least nine directors.
(4) The organic rules may provide qualifications for directors in addition to those in this section.

16-16-804 Election of directors and composition of board.
(1) Unless the organic rules require a greater number:
(a) the number of directors that shall be patron members may not be fewer than:
(i) one, if there are two or three directors;
(ii) two, if there are four or five directors;
(iii) three, if there are six through eight directors; or
(iv) 1/3 of the directors if there are at least nine directors; and
(b) a majority of the board of directors shall be elected exclusively by patron members.
(2) Unless the organic rules otherwise provide, if a limited cooperative association has investor members, the directors who are not elected exclusively by patron members are elected by the investor members.
(3) Subject to Subsection (1), the organic rules may provide for the election of all or a specified number of directors by one or more districts or classes of members.
(4) Subject to Subsection (1), the organic rules may provide for the nomination or election of directors by districts or classes, directly or by district delegates.
(5) If a class of members consists of a single member, the organic rules may provide for the member to appoint a director or directors.
(6) Unless the organic rules otherwise provide, cumulative voting for directors is prohibited.
(7) Except as otherwise provided by the organic rules, Subsection (5), or Sections 16-16-303, 16-16-516, 16-16-517, and 16-16-809, member directors shall be elected at an annual members meeting.

16-16-805 Term of director.
(1) Unless the organic rules otherwise provide, and subject to Subsections (3) and (4) and Subsection 16-16-303(3), the term of a director expires at the annual members meeting following the director's election or appointment. The term of a director may not exceed three years.
(2) Unless the organic rules otherwise provide, a director may be reelected.
(3) Except as otherwise provided in Subsection (4), a director continues to serve until a successor director is elected or appointed and qualifies or the director is removed, resigns, is adjudged incompetent, or dies.
(4) Unless the organic rules otherwise provide, a director does not serve the remainder of the director's term if the director ceases to qualify to be a director.

16-16-806 Resignation of director.
A director may resign at any time by giving notice in a record to the limited cooperative association. Unless the notice states a later effective date, a resignation is effective when the notice is received by the association.

16-16-807 Removal of director.
Unless the organic rules otherwise provide, the following rules apply:
(1) Members may remove a director with or without cause.

(2) A member or members holding at least 10% of the total voting power entitled to be voted in the election of a director may demand removal of the director by one or more signed petitions submitted to the officer of the limited cooperative association charged with keeping its records.
(3) Upon receipt of a petition for removal of a director, an officer of the association or the board of directors shall:
(a) call a special meeting of members to be held not later than 90 days after receipt of the petition by the association; and
(b) mail or otherwise transmit or deliver in a record to the members entitled to vote on the removal, and to the director to be removed, notice of the meeting which complies with Section 16-16-508.
(4) A director is removed if the votes in favor of removal are equal to or greater than the votes required to elect the director.

16-16-808 Suspension of director by board.
(1) A board of directors may suspend a director if, considering the director's course of conduct and the inadequacy of other available remedies, immediate suspension is necessary for the best interests of the association and the director is engaging, or has engaged, in:
(a) fraudulent conduct with respect to the association or its members;
(b) gross abuse of the position of director;
(c) intentional or reckless infliction of harm on the association; or
(d) any other behavior, act, or omission as provided by the organic rules.
(2) A suspension under Subsection (1) is effective for 30 days unless the board of directors calls and gives notice of a special meeting of members for removal of the director before the end of the 30-day period in which case the suspension is effective until adjournment of the meeting or the director is removed.

16-16-809 Vacancy on board.
(1) Unless the organic rules otherwise provide, a vacancy on the board of directors shall be filled:
(a) within a reasonable time by majority vote of the remaining directors until the next annual members meeting or a special meeting of members called to fill the vacancy; and
(b) for the unexpired term by members at the next annual members meeting or a special meeting of members called to fill the vacancy.
(2) Unless the organic rules otherwise provide, if a vacating director was elected or appointed by a class of members or a district:
(a) the new director shall be of that class or district; and
(b) the selection of the director for the unexpired term shall be conducted in the same manner as would the selection for that position without a vacancy.
(3) If a member appointed a vacating director, the organic rules may provide for that member to appoint a director to fill the vacancy.

16-16-810 Remuneration of directors.
Unless the organic rules otherwise provide, the board of directors may set the remuneration of directors and of nondirector committee members appointed under Subsection 16-16-817(1).

16-16-811 Meetings.
(1) A board of directors shall meet at least annually and may hold meetings inside or outside this state.
(2) Unless the organic rules otherwise provide, a board of directors may permit directors to attend or conduct board meetings through the use of any means of communication, if all directors attending the meeting can communicate with each other during the meeting.

16-16-812 Action without meeting.
(1) Unless prohibited by the organic rules, any action that may be taken by a board of directors may be taken without a meeting if each director consents in a record to the action.
(2) Consent under Subsection (1) may be withdrawn by a director in a record at any time before the limited

cooperative association receives consent from all directors.
(3) A record of consent for any action under Subsection (1) may specify the effective date or time of the action.

16-16-813 Meetings and notice.
(1) Unless the organic rules otherwise provide, a board of directors may establish a time, date, and place for regular board meetings, and notice of the time, date, place, or purpose of those meetings is not required.
(2) Unless the organic rules otherwise provide, notice of the time, date, and place of a special meeting of a board of directors shall be given to all directors at least three days before the meeting, the notice shall contain a statement of the purpose of the meeting, and the meeting is limited to the matters contained in the statement.

16-16-814 Waiver of notice of meeting.
(1) Unless the organic rules otherwise provide, a director may waive any required notice of a meeting of the board of directors in a record before, during, or after the meeting.
(2) Unless the organic rules otherwise provide, a director's participation in a meeting is a waiver of notice of that meeting unless:
(a) the director objects to the meeting at the beginning of the meeting or promptly upon the director's arrival at the meeting and does not thereafter vote in favor of or otherwise assent to the action taken at the meeting; or
(b) the director promptly objects upon the introduction of any matter for which notice under Section 16-16-813 has not been given and does not thereafter vote in favor of or otherwise assent to the action taken on the matter.

16-16-815 Quorum.
(1) Unless the articles of organization provide for a greater number, a majority of the total number of directors specified by the organic rules constitutes a quorum for a meeting of the directors.
(2) If a quorum of the board of directors is present at the beginning of a meeting, any action taken by the directors present is valid even if withdrawal of directors originally present results in the number of directors being fewer than the number required for a quorum.
(3) A director present at a meeting but objecting to notice under Subsection 16-16-814(2)(a) or (b) does not count toward a quorum.

16-16-816 Voting.
(1) Each director shall have one vote for purposes of decisions made by the board of directors.
(2) Unless the organic rules otherwise provide, the affirmative vote of a majority of directors present at a meeting is required for action by the board of directors.

16-16-817 Committees.
(1) Unless the organic rules otherwise provide, a board of directors may create one or more committees and appoint one or more individuals to serve on a committee.
(2) Unless the organic rules otherwise provide, an individual appointed to serve on a committee of a limited cooperative association need not be a director or member.
(3) An individual who is not a director and is serving on a committee has the same rights, duties, and obligations as a director serving on the committee.
(4) Unless the organic rules otherwise provide, each committee of a limited cooperative association may exercise the powers delegated to it by the board of directors, but a committee may not:
(a) approve allocations or distributions except according to a formula or method prescribed by the board of directors;
(b) approve or propose to members action requiring approval of members; or
(c) fill vacancies on the board of directors or any of its committees.

16-16-818 Standards of conduct and liability.
Except as otherwise provided in Section 16-16-820:
(1) the discharge of the duties of a director or member of a committee of the board of directors is governed by the law applicable to directors of entities organized under Title 3, Uniform Agricultural Cooperative

Association Act; and
(2) the liability of a director or member of a committee of the board of directors is governed by the law applicable to directors of entities organized under Title 3, Uniform Agricultural Cooperative Association Act.

16-16-819 Conflict of interest.
(1) The law applicable to conflicts of interest between a director of an entity organized under Title 3, Uniform Agricultural Cooperative Association Act, governs conflicts of interest between a limited cooperative association and a director or member of a committee of the board of directors.
(2) A director does not have a conflict of interest under this chapter or the organic rules solely because the director's conduct relating to the duties of the director may further the director's own interest.

16-16-820 Other considerations of directors.
Unless the articles of organization otherwise provide, in considering the best interests of a limited cooperative association, a director of the association in discharging the duties of director, in conjunction with considering the long and short term interest of the association and its patron members, may consider:
(1) the interest of employees, customers, and suppliers of the association;
(2) the interest of the community in which the association operates; and
(3) other cooperative principles and values that may be applied in the context of the decision.

16-16-821 Right of director or committee member to information.
A director or a member of a committee appointed under Section 16-16-817 may obtain, inspect, and copy all information regarding the state of activities and financial condition of the limited cooperative association and other information regarding the activities of the association if the information is reasonably related to the performance of the director's duties as director or the committee member's duties as a member of the committee. Information obtained in accordance with this section may not be used in any manner that would violate any duty of or to the association.

16-16-822 Appointment and authority of officers.
(1) A limited cooperative association has the officers:
(a) provided in the organic rules; or
(b) established by the board of directors in a manner not inconsistent with the organic rules.
(2) The organic rules may designate or, if the rules do not designate, the board of directors shall designate, one of the association's officers for preparing all records required by Section 16-16-114 and for the authentication of records.
(3) Unless the organic rules otherwise provide, the board of directors shall appoint the officers of the limited cooperative association.
(4) Officers of a limited cooperative association shall perform the duties the organic rules prescribe or as authorized by the board of directors not in a manner inconsistent with the organic rules.
(5) The election or appointment of an officer of a limited cooperative association does not of itself create a contract between the association and the officer.
(6) Unless the organic rules otherwise provide, an individual may simultaneously hold more than one office in a limited cooperative association.

16-16-823 Resignation and removal of officers.
(1) The board of directors may remove an officer at any time with or without cause.
(2) An officer of a limited cooperative association may resign at any time by giving notice in a record to the association. Unless the notice specifies a later time, the resignation is effective when the notice is given.

Part 9
Indemnification

16-16-901 Indemnification.

(1) Indemnification of an individual who has incurred liability or is a party, or is threatened to be made a party, to litigation because of the performance of a duty to, or activity on behalf of, a limited cooperative association is governed by Title 3, Uniform Agricultural Cooperative Association Act.
(2) A limited cooperative association may purchase and maintain insurance on behalf of any individual against liability asserted against or incurred by the individual to the same extent and subject to the same conditions as provided by Title 3, Uniform Agricultural Cooperative Association Act.

Part 10
Contributions, Allocations, and Distributions

16-16-1001 Members' contributions.

The organic rules shall establish the amount, manner, or method of determining any contribution requirements for members or shall authorize the board of directors to establish the amount, manner, or other method of determining any contribution requirements for members.

16-16-1002 Contribution and valuation.

(1) Unless the organic rules otherwise provide, the contributions of a member to a limited cooperative association may consist of tangible or intangible property or other benefit to the association, including money, labor or other services performed or to be performed, promissory notes, other agreements to contribute money or property, and contracts to be performed.
(2) The receipt and acceptance of contributions and the valuation of contributions shall be reflected in a limited cooperative association's records.
(3) Unless the organic rules otherwise provide, the board of directors shall determine the value of a member's contributions received or to be received and the determination by the board of directors of valuation is conclusive for purposes of determining whether the member's contribution obligation has been met.

16-16-1003 Contribution agreements.

(1) Except as otherwise provided in the agreement, the following rules apply to an agreement made by a person before formation of a limited cooperative association to make a contribution to the association:
(a) The agreement is irrevocable for six months after the agreement is signed by the person unless all parties to the agreement consent to the revocation.
(b) If a person does not make a required contribution:
(i) the person is obligated, at the option of the association, once formed, to contribute money equal to the value of that part of the contribution that has not been made, and the obligation may be enforced as a debt to the association; or
(ii) the association, once formed, may rescind the agreement if the debt remains unpaid more than 20 days after the association demands payment from the person, and upon rescission the person has no further rights or obligations with respect to the association.
(2) Unless the organic rules or an agreement to make a contribution to a limited cooperative association otherwise provide, if a person does not make a required contribution to an association, the person or the person's estate is obligated, at the option of the association, to contribute money equal to the value of the part of the contribution which has not been made.

16-16-1004 Allocations of profits and losses.

(1) The organic rules may provide for allocating profits of a limited cooperative association among members, among persons that are not members but conduct business with the association, to an unallocated account, or to any combination thereof. Unless the organic rules otherwise provide, losses of the association shall be allocated in the same proportion as profits.
(2) Unless the organic rules otherwise provide, all profits and losses of a limited cooperative association shall be allocated to patron members.
(3) If a limited cooperative association has investor members, the organic rules may not reduce the allocation to patron members to less than 50% of profits. For purposes of this Subsection (3), the following rules apply:

(a) Amounts paid or due on contracts for the delivery to the association by patron members of products, goods, or services are not considered amounts allocated to patron members.
(b) Amounts paid, due, or allocated to investor members as a stated fixed return on equity are not considered amounts allocated to investor members.
(4) Unless prohibited by the organic rules, in determining the profits for allocation under Subsections (1), (2), and (3), the board of directors may first deduct and set aside a part of the profits to create or accumulate:
(a) an unallocated capital reserve; and
(b) reasonable unallocated reserves for specific purposes, including expansion and replacement of capital assets; education, training, cooperative development; creation and distribution of information concerning principles of cooperation; and community responsibility.
(5) Subject to Subsections (2) and (6) and the organic rules, the board of directors shall allocate the amount remaining after any deduction or setting aside of profits for unallocated reserves under Subsection (4):
(a) to patron members in the ratio of each member's patronage to the total patronage of all patron members during the period for which allocations are to be made; and
(b) to investor members, if any, in the ratio of each investor member's contributions to the total contributions of all investor members.
(6) For purposes of allocation of profits and losses or specific items of profits or losses of a limited cooperative association to members, the organic rules may establish allocation units or methods based on separate classes of members or, for patron members, on class, function, division, district, department, allocation units, pooling arrangements, members' contributions, or other equitable methods.

16-16-1005 Distributions.
(1) Unless the organic rules otherwise provide and subject to Section 16-16-1007, the board of directors may authorize, and the limited cooperative association may make, distributions to members.
(2) Unless the organic rules otherwise provide, distributions to members may be made in any form, including money, capital credits, allocated patronage equities, revolving fund certificates, and the limited cooperative association's own or other securities.

16-16-1006 Redemption or repurchase.
Property distributed to a member by a limited cooperative association, other than money, may be redeemed or repurchased as provided in the organic rules but a redemption or repurchase may not be made without authorization by the board of directors. The board may withhold authorization for any reason in its sole discretion. A redemption or repurchase is treated as a distribution for purposes of Section 16-16-1007.

16-16-1007 Limitations on distributions.
(1) A limited cooperative association may not make a distribution if, after the distribution:
(a) the association would not be able to pay its debts as they become due in the ordinary course of the association's activities; or
(b) the association's assets would be less than the sum of its total liabilities.
(2) A limited cooperative association may base a determination that a distribution is not prohibited under Subsection (1) on financial statements prepared on the basis of accounting practices and principles that are reasonable in the circumstances or on a fair valuation or other method that is reasonable in the circumstances.
(3) Except as otherwise provided in Subsection (4), the effect of a distribution allowed under Subsection (2) is measured:
(a) in the case of distribution by purchase, redemption, or other acquisition of financial rights in the limited cooperative association, as of the date money or other property is transferred or debt is incurred by the association; and
(b) in all other cases, as of the date:
(i) the distribution is authorized, if the payment occurs not later than 120 days after that date; or
(ii) the payment is made, if payment occurs more than 120 days after the distribution is authorized.
(4) If indebtedness is issued as a distribution, each payment of principal or interest on the indebtedness is treated as a distribution, the effect of which is measured on the date the payment is made.

(5) For purposes of this section, "distribution" does not include reasonable amounts paid to a member in the ordinary course of business as payment or compensation for commodities, goods, past or present services, or reasonable payments made in the ordinary course of business under a bona fide retirement or other benefits program.

16-16-1008 Liability for improper distributions -- Limitation of action.
(1) A director who consents to a distribution that violates Section 16-16-1007 is personally liable to the limited cooperative association for the amount of the distribution which exceeds the amount that could have been distributed without the violation if it is established that in consenting to the distribution the director failed to comply with Section 16-16-818 or 16-16-819.
(2) A member or transferee of financial rights which received a distribution knowing that the distribution was made in violation of Section 16-16-1007 is personally liable to the limited cooperative association to the extent the distribution exceeded the amount that could have been properly paid.
(3) A director against whom an action is commenced under Subsection (1) may:
(a) implead in the action any other director who is liable under Subsection (1) and compel contribution from the person; and
(b) implead in the action any person that is liable under Subsection (2) and compel contribution from the person in the amount the person received as described in Subsection (2).
(4) An action under this section is barred if it is commenced later than two years after the distribution.

16-16-1009 Alternative distribution of unclaimed property, distributions, redemptions, or payments.
A limited cooperative association may distribute unclaimed property, distributions, redemptions, or payments by complying with Section 3-1-11.

Part 11
Dissociation

16-16-1101 Member's dissociation.
(1) A person has the power to dissociate as a member at any time, rightfully or wrongfully, by express will.
(2) Unless the organic rules otherwise provide, a member's dissociation from a limited cooperative association is wrongful only if the dissociation:
(a) breaches an express provision of the organic rules; or
(b) occurs before the termination of the limited cooperative association and:
(i) the person is expelled as a member under Subsection (4)(c) or (d); or
(ii) in the case of a person that is not an individual, trust other than a business trust, or estate, the person is expelled or otherwise dissociated as a member because it dissolved or terminated in bad faith.
(3) Unless the organic rules otherwise provide, a person that wrongfully dissociates as a member is liable to the limited cooperative association for damages caused by the dissociation. The liability is in addition to any other debt, obligation, or liability of the person to the association.
(4) A member is dissociated from the limited cooperative association as a member when:
(a) the association receives notice in a record of the member's express will to dissociate as a member, or if the member specifies in the notice an effective date later than the date the association received notice, on that later date;
(b) an event stated in the organic rules as causing the member's dissociation as a member occurs;
(c) the member is expelled as a member under the organic rules;
(d) the member is expelled as a member by the board of directors because:
(i) it is unlawful to carry on the association's activities with the member as a member;
(ii) there has been a transfer of all the member's financial rights in the association, other than:
(A) a creation or perfection of a security interest; or
(B) a charging order in effect under Section 16-16-505 which has not been foreclosed;
(iii) the member is a limited liability company, association, or partnership, it has been dissolved, and its business is being wound up;

(iv) the member is a corporation or cooperative and:
(A) the member filed a certificate of dissolution or the equivalent, or the jurisdiction of formation revoked the association's charter or right to conduct business;
(B) the association sends a notice to the member that it will be expelled as a member for a reason described in Subsection (4)(d)(iv)(A); and
(C) not later than 90 days after the notice was sent under Subsection (4)(d)(iv)(B), the member did not revoke the member's certificate of dissolution or the equivalent, or the jurisdiction of formation did not reinstate the association's charter or right to conduct business; or
(v) the member is an individual and is adjudged incompetent;
(e) in the case of a member who is an individual, the individual dies;
(f) in the case of a member that is a trust or is acting as a member by virtue of being a trustee of a trust, all the trust's financial rights in the association are distributed;
(g) in the case of a member that is an estate, the estate's entire financial interest in the association is distributed;
(h) in the case of a member that is not an individual, partnership, limited liability company, cooperative, corporation, trust, or estate, the member is terminated; or
(i) the association's participation in a merger if, under the plan of merger as approved under Part 16, Conversion and Merger, the member ceases to be a member.

16-16-1102 Effect of dissociation as member.
(1) Upon a member's dissociation:
(a) subject to Section 16-16-1103, the person has no further rights as a member; and
(b) subject to Section 16-16-1103 and Part 16, Conversion and Merger, any financial rights owned by the person in the person's capacity as a member immediately before dissociation are owned by the person as a transferee.
(2) A person's dissociation as a member does not of itself discharge the person from any debt, obligation, or liability to the limited cooperative association which the person incurred under the organic rules, by contract, or by other means while a member.

16-16-1103 Power of estate of member.
Unless the organic rules provide for greater rights, if a member is dissociated because of death, dies, or is expelled by reason of being adjudged incompetent, the member's personal representative or other legal representative may exercise the rights of a transferee of the member's financial rights and, for purposes of settling the estate of a deceased member, may exercise the informational rights of a current member to obtain information under Section 16-16-505.

Part 12
Dissolution

16-16-1201 Dissolution and winding up.
A limited cooperative association is dissolved only as provided in this part and upon dissolution winds up in accordance with this part.

16-16-1202 Nonjudicial dissolution.
Except as otherwise provided in Sections 16-16-1203 and 16-16-1211, a limited cooperative association is dissolved and its activities shall be wound up:
(1) upon the occurrence of an event or at a time specified in the articles of organization;
(2) upon the action of the association's organizers, board of directors, or members under Section 16-16-1204 or 16-16-1205; or
(3) 90 days after the dissociation of a member, which results in the association having one patron member and no other members, unless the association:
(a) has a sole member that is a cooperative; or
(b) not later than the end of the 90-day period, admits at least one member in accordance with the organic rules

and has at least two members, at least one of which is a patron member.

16-16-1203 Judicial dissolution.

The district court may dissolve a limited cooperative association or order any action that under the circumstances is appropriate and equitable:
(1) in a proceeding initiated by the attorney general, if:
(a) the association obtained its articles of organization through fraud; or
(b) the association has continued to exceed or abuse the authority conferred upon it by law; or
(2) in a proceeding initiated by a member, if:
(a) the directors are deadlocked in the management of the association's affairs, the members are unable to break the deadlock, and irreparable injury to the association is occurring or is threatened because of the deadlock;
(b) the directors or those in control of the association have acted, are acting, or will act in a manner that is illegal, oppressive, or fraudulent;
(c) the members are deadlocked in voting power and have failed to elect successors to directors whose terms have expired for two consecutive periods during which annual members meetings were held or were to be held; or
(d) the assets of the association are being misapplied or wasted.

16-16-1204 Voluntary dissolution before commencement of activity.

A majority of the organizers or initial directors of a limited cooperative association that has not yet begun business activity or the conduct of its affairs may dissolve the association.

16-16-1205 Voluntary dissolution by the board and members.

(1) Except as otherwise provided in Section 16-16-1204, for a limited cooperative association to voluntarily dissolve:
(a) a resolution to dissolve shall be approved by a majority vote of the board of directors unless a greater percentage is required by the organic rules;
(b) the board of directors shall call a members meeting to consider the resolution, to be held not later than 90 days after adoption of the resolution; and
(c) the board of directors shall mail or otherwise transmit or deliver to each member in a record that complies with Section 16-16-508:
(i) the resolution required by Subsection (1)(a);
(ii) a recommendation that the members vote in favor of the resolution or, if the board determines that because of conflict of interest or other special circumstances it should not make a favorable recommendation, the basis of that determination; and
(iii) notice of the members meeting, which shall be given in the same manner as notice of a special meeting of members.
(2) Subject to Subsection (3), a resolution to dissolve shall be approved by:
(a) at least two-thirds of the voting power of members present at a members meeting called under Subsection (1)(b); and
(b) if the limited cooperative association has investor members, at least a majority of the votes cast by patron members, unless the organic rules require a greater percentage.
(3) The organic rules may require that the percentage of votes under Subsection (2)(a) is:
(a) a different percentage that is not less than a majority of members voting at the meeting;
(b) measured against the voting power of all members; or
(c) a combination of Subsections (3)(a) and (b).

16-16-1206 Winding up.

(1) A limited cooperative association continues after dissolution only for purposes of winding up its activities.
(2) In winding up a limited cooperative association's activities, the board of directors shall cause the association to:
(a) discharge its liabilities, settle and close its activities, and marshal and distribute its assets;

(b) preserve the association or its property as a going concern for no more than a reasonable time;
(c) prosecute and defend actions and proceedings;
(d) transfer association property; and
(e) perform other necessary acts.
(3) After dissolution and upon application of a limited cooperative association, a member, or a holder of financial rights, the district court may order judicial supervision of the winding up of the association, including the appointment of a person to wind up the association's activities, if:
(a) after a reasonable time, the association has not wound up its activities; or
(b) the applicant establishes other good cause.
(4) If a person is appointed pursuant to Subsection (3) to wind up the activities of a limited cooperative association, the association shall promptly deliver to the division for filing an amendment to the articles of organization to reflect the appointment.

16-16-1207 Distribution of assets in winding up limited cooperative association.
(1) In winding up a limited cooperative association's business, the association shall apply its assets to discharge its obligations to creditors, including members that are creditors. The association shall apply any remaining assets to pay in money the net amount distributable to members in accordance with their right to distributions under Subsection (2).
(2) Unless the organic rules otherwise provide, in this Subsection (2) "financial interests" means the amounts recorded in the names of members in the records of a limited cooperative association at the time a distribution is made, including amounts paid to become a member, amounts allocated but not distributed to members, and amounts of distributions authorized but not yet paid to members. Unless the organic rules otherwise provide, each member is entitled to a distribution from the association of any remaining assets in the proportion of the member's financial interests to the total financial interests of the members after all other obligations are satisfied.

16-16-1208 Known claims against dissolved limited cooperative association.
(1) Subject to Subsection (4), a dissolved limited cooperative association may dispose of the known claims against it by following the procedure in Subsections (2) and (3).
(2) A dissolved limited cooperative association may notify its known claimants of the dissolution in a record. The notice shall:
(a) specify that a claim be in a record;
(b) specify the information required to be included in the claim;
(c) provide an address to which the claim shall be sent;
(d) state the deadline for receipt of the claim, which may not be less than 120 days after the date the notice is received by the claimant; and
(e) state that the claim will be barred if not received by the deadline.
(3) A claim against a dissolved limited cooperative association is barred if the requirements of Subsection (2) are met, and:
(a) the association is not notified of the claimant's claim, in a record, by the deadline specified in the notice under Subsection (2)(d);
(b) in the case of a claim that is timely received but rejected by the association, the claimant does not commence an action to enforce the claim against the association not later than 90 days after receipt of the notice of the rejection; or
(c) if a claim is timely received but is neither accepted nor rejected by the association not later than 120 days after the deadline for receipt of claims, the claimant does not commence an action to enforce the claim against the association:
(i) after the 120-day period; and
(ii) not later than 90 days after the 120-day period.
(4) This section does not apply to a claim based on an event occurring after the date of dissolution or a liability that is contingent on that date.

16-16-1209 Other claims against dissolved limited cooperative association.
(1) A dissolved limited cooperative association may publish notice of its dissolution and request persons having claims against the association to present them in accordance with the notice.
(2) A notice under Subsection (1) shall:
(a) be published:
(i) at least once in a newspaper of general circulation in the county in which the dissolved limited cooperative association's principal office is located or, if the association does not have a principal office in this state, in the county in which the association's designated office is or was last located; and
(ii) as required in Section 45-1-101;
(b) describe the information required to be contained in a claim and provide an address to which the claim is to be sent; and
(c) state that a claim against the association is barred unless an action to enforce the claim is commenced not later than three years after publication of the notice.
(3) If a dissolved limited cooperative association publishes a notice in accordance with Subsection (2), the claim of each of the following claimants is barred unless the claimant commences an action to enforce the claim not later than three years after the first publication date of the notice:
(a) a claimant that is entitled to but did not receive notice in a record under Section 16-16-1208; and
(b) a claimant whose claim is contingent or based on an event occurring after the effective date of dissolution.
(4) A claim not barred under this section may be enforced:
(a) against a dissolved limited cooperative association, to the extent of its undistributed assets; or
(b) if the association's assets have been distributed in connection with winding up the association's activities against a member or holder of financial rights to the extent of that person's proportionate share of the claim or the association's assets distributed to the person in connection with the winding up, whichever is less. The person's total liability for all claims under this Subsection (4) may not exceed the total amount of assets distributed to the person as part of the winding up of the association.

16-16-1210 Court proceeding.
(1) Upon application by a dissolved limited cooperative association that has published a notice under Section 16-16-1209, the district court in the county where the association's principal office is located or, if the association does not have a principal office in this state where its designated office in this state is located, may determine the amount and form of security to be provided for payment of claims against the association that are contingent, have not been made known to the association, or are based on an event occurring after the effective date of dissolution but that, based on the facts known to the association, are reasonably anticipated to arise after the effective date of dissolution.
(2) Not later than 10 days after filing an application under Subsection (1), a dissolved limited cooperative association shall give notice of the proceeding to each known claimant holding a contingent claim.
(3) The court may appoint a representative in a proceeding brought under this section to represent all claimants whose identities are unknown. The dissolved limited cooperative association shall pay reasonable fees and expenses of the representative, including all reasonable attorney and expert witness fees.
(4) Provision by the dissolved limited cooperative association for security in the amount and the form ordered by the court satisfies the association's obligations with respect to claims that are contingent, have not been made known to the association, or are based on an event occurring after the effective date of dissolution, and the claims may not be enforced against a member that received a distribution.

~~**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 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.~~

~~16-16-1212 Reinstatement following administrative dissolution.~~
~~(1) A limited cooperative association that has been dissolved administratively may apply to the division for reinstatement not later than two years after the effective date of dissolution. The application shall be delivered to the division for filing and state:~~
~~(a) the name of the association and the effective date of its administrative dissolution;~~
~~(b) that the grounds for dissolution either did not exist or have been eliminated; and~~
~~(c) that the association's name satisfies the requirements of Section 16-16-111.~~
~~(2) If the division determines that an application contains the information required by Subsection (1) and that the information is correct, the division shall:~~
~~(a) prepare a declaration of reinstatement;~~
~~(b) file the original of the declaration; and~~
~~(c) serve a copy of the declaration on the association.~~
~~(3) When reinstatement under this section becomes effective, it relates back to and takes effect as of the effective date of the administrative dissolution, and the limited cooperative association may resume or continue its activities as if the administrative dissolution had not occurred.~~

~~16-16-1213 Denial of reinstatement -- Appeal.~~
~~(1) If the division denies a limited cooperative association's application for reinstatement following administrative dissolution, the division shall prepare and file a notice that explains the reason for denial and serve the association with a copy of the notice.~~
~~(2) Not later than 30 days after service of a notice of denial of reinstatement by the division, a limited cooperative association may appeal the denial by petitioning the district court to set aside the dissolution. The petition shall be served on the division and contain a copy of the division's declaration of dissolution, the association's application for reinstatement, and the division's notice of denial.~~
~~(3) The court may summarily order the division to reinstate the dissolved cooperative association or may take other action the court considers appropriate.~~

16-16-1214 Statement of dissolution.
(1) A limited cooperative association that has dissolved or is about to dissolve may deliver to the division for filing a statement of dissolution that states:
(a) the name of the association;
(b) the date the association dissolved or will dissolve; and
(c) any other information the association considers relevant.
(2) A person has notice of a limited cooperative association's dissolution on the later of:
(a) 90 days after a statement of dissolution is filed; or
(b) the effective date stated in the statement of dissolution.

16-16-1215 Statement of termination.
(1) A dissolved limited cooperative association that has completed winding up may deliver to the division for filing a statement of termination that states:
(a) the name of the association;
(b) the date of filing of its initial articles of organization; and

(c) that the association is terminated.
(2) The filing of a statement of termination does not itself terminate the limited cooperative association.

Part 13
Action by Member

16-16-1301 Derivative action.

A member may maintain a derivative action to enforce a right of a limited cooperative association if:
(1) the member demands that the association bring an action to enforce the right; and
(2) any of the following occur:
(a) the association does not, not later than 90 days after the member makes the demand, agree to bring the action;
(b) the association notifies the member that it has rejected the demand;
(c) irreparable harm to the association would result by waiting 90 days after the member makes the demand; or
(d) the association agrees to bring an action demanded and fails to bring the action within a reasonable time.

16-16-1302 Proper plaintiff.

(1) A derivative action to enforce a right of a limited cooperative association may be maintained only by a person that:
(a) is a member or a dissociated member at the time the action is commenced and:
(i) was a member when the conduct giving rise to the action occurred; or
(ii) whose status as a member devolved upon the person by operation of law or the organic rules from a person that was a member at the time of the conduct; and
(b) adequately represents the interests of the association.
(2) If the sole plaintiff in a derivative action dies while the action is pending, the court may permit another member who meets the requirements of Subsection (1) to be substituted as plaintiff.

16-16-1303 Pleading.

In a derivative action to enforce a right of a limited cooperative association, the complaint shall state:
(1) the date and content of the plaintiff's demand under Subsection 16-16-1301(1) and the association's response;
(2) if 90 days have not expired since the demand, how irreparable harm to the association would result by waiting for the expiration of 90 days; and
(3) if the association agreed to bring an action demanded, that the action has not been brought within a reasonable time.

16-16-1304 Approval for discontinuance or settlement.

A derivative action to enforce a right of a limited cooperative association may not be discontinued or settled without the court's approval.

16-16-1305 Proceeds and expenses.

(1) Except as otherwise provided in Subsection (2):
(a) any proceeds or other benefits of a derivative action to enforce a right of a limited cooperative association, whether by judgment, compromise, or settlement, belong to the association and not to the plaintiff; and
(b) if the plaintiff in the derivative action receives any proceeds, the plaintiff shall immediately remit them to the association.
(2) If a derivative action to enforce a right of a limited cooperative association is successful in whole or in part, the court may award the plaintiff reasonable expenses, including reasonable attorney fees and costs, from the recovery of the association.

Part 14
Foreign Cooperatives

16-16-1401 Governing law.

(1) The law of the state or other jurisdiction under which a foreign cooperative is organized governs relations among the members of the foreign cooperative and between the members and the foreign cooperative.

(2) A foreign cooperative may not be denied a certificate of authority because of any difference between the law of the jurisdiction under which the foreign cooperative is organized and the law of this state.

(3) A certificate of authority does not authorize a foreign cooperative to engage in any activity or exercise any power that a limited cooperative association may not engage in or exercise in this state.

16-16-1402 Application for certificate of authority.

(1) A foreign cooperative may apply for a certificate of authority by delivering an application to the division for filing. The application shall state:

(a) the name of the foreign cooperative and, if the name does not comply with Section 16-16-111, an alternative name adopted pursuant to Section 16-16-1405;

(b) the name of the state or other jurisdiction under whose law the foreign cooperative is organized;

(c) the street address and, if different, mailing address of the principal office and, if the law of the jurisdiction under which the foreign cooperative is organized requires the foreign cooperative to maintain another office in that jurisdiction, the street address and, if different, mailing address of the required office;

(d) the street address and, if different, mailing address of the foreign cooperative's designated office in this state, and the name of the foreign cooperative's agent for service of process at the designated office; and

(e) the name, street address and, if different, mailing address of each of the foreign cooperative's current directors and officers.

(2) A foreign cooperative shall deliver with a completed application under Subsection (1) a certificate of existence or a similar record signed by the division or other official having custody of the foreign cooperative's publicly filed records in the state or other jurisdiction under whose law the foreign cooperative is organized.

16-16-1403 Activities not constituting transacting business.

(1) Activities of a foreign cooperative which do not constitute transacting business in this state under this part include:

(a) maintaining, defending, and settling an action or proceeding;

(b) holding meetings of the foreign cooperative's members or directors or carrying on any other activity concerning the foreign cooperative's internal affairs;

(c) maintaining accounts in financial institutions;

(d) maintaining offices or agencies for the transfer, exchange, and registration of the foreign cooperative's own securities or maintaining trustees or depositories with respect to those securities;

(e) selling through independent contractors;

(f) soliciting or obtaining orders, whether by mail or electronic means, through employees, agents, or otherwise, if the orders require acceptance outside this state before they become contracts;

(g) creating or acquiring indebtedness, mortgages, or security interests in real or personal property;

(h) securing or collecting debts or enforcing mortgages or other security interests in property securing the debts, and holding, protecting, and maintaining property so acquired;

(i) conducting an isolated transaction that is completed within 30 days and is not one in the course of similar transactions; and

(j) transacting business in interstate commerce.

(2) For purposes of this part, the ownership in this state of income-producing real property or tangible personal property, other than property excluded under Subsection (1), constitutes transacting business in this state.

(3) This section does not apply in determining the contacts or activities that may subject a foreign cooperative to service of process, taxation, or regulation under law of this state other than this chapter.

16-16-1404 Issuance of certificate of authority.

Unless the division determines that an application for a certificate of authority does not comply with the filing requirements of this chapter, the division, upon payment by the foreign cooperative of all filing fees, shall

~~file the application, issue a certificate of authority, and send a copy of the filed certificate, together with a receipt for the fees, to the foreign cooperative or its representative.~~

~~16-16-1405 Noncomplying name of foreign cooperative.~~

~~(1) A foreign cooperative whose name does not comply with Section 16-16-111 may not obtain a certificate of authority until it adopts, for the purpose of transacting business in this state, an alternative name that complies with Section 16-16-111. A foreign cooperative that adopts an alternative name under this Subsection (1) and then obtains a certificate of authority with that name need not also comply with Section 42-2-5. After obtaining a certificate of authority with an alternative name, a foreign cooperative's business in this state shall be transacted under that name unless the foreign cooperative is authorized under Section 42-2-5 to transact business in this state under another name.~~

~~(2) If a foreign cooperative authorized to transact business in this state changes its name to one that does not comply with Section 16-16-111, it may not thereafter transact business in this state until it complies with Subsection (1) and obtains an amended certificate of authority.~~

~~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:~~

~~(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 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.~~

~~16-16-1407 Cancellation of certificate of authority -- Effect of failure to have certificate.~~

~~(1) To cancel its certificate of authority, a foreign cooperative shall deliver to the division for filing a notice of cancellation. The certificate is canceled when the notice becomes effective under Section 16-16-203.~~

~~(2) A foreign cooperative transacting business in this state may not maintain an action or proceeding in this state unless it has a certificate of authority.~~

~~(3) The failure of a foreign cooperative to have a certificate of authority does not impair the validity of a contract or act of the foreign cooperative or prevent the foreign cooperative from defending an action or proceeding in this state.~~

~~(4) A member of a foreign cooperative is not liable for the obligations of the foreign cooperative solely by reason of the foreign cooperative's having transacted business in this state without a certificate of authority.~~

~~(5) If a foreign cooperative transacts business in this state without a certificate of authority or cancels its certificate, it appoints the division as its agent for service of process for an action arising out of the transaction of business in this state.~~

16-16-1408 Action by attorney general.

The attorney general may maintain an action to restrain a foreign cooperative from transacting business in this state in violation of ~~this part~~Title 13, Chapter 1a, Part 6 Foreign Entities.

Part 15
Disposition of Assets

16-16-1501 Disposition of assets not requiring member approval.

Unless the articles of organization otherwise provide, member approval under Section 16-16-1502 is not required for a limited cooperative association to:

(1) sell, lease, exchange, license, or otherwise dispose of all or any part of the assets of the association in the usual and regular course of business; or

(2) mortgage, pledge, dedicate to the repayment of indebtedness, or encumber in any way all or any part of the assets of the association whether or not in the usual and regular course of business.

16-16-1502 Member approval of other disposition of assets.

A sale, lease, exchange, license, or other disposition of assets of a limited cooperative association, other than a disposition described in Section 16-16-1501, requires approval of the association's members under Sections 16-16-1503 and 16-16-1504 if the disposition leaves the association without significant continuing business activity.

16-16-1503 Notice and action on disposition of assets.

For a limited cooperative association to dispose of assets under Section 16-16-1502:

(1) a majority of the board of directors, or a greater percentage if required by the organic rules, shall approve the proposed disposition; and

(2) the board of directors shall call a members meeting to consider the proposed disposition, hold the meeting not later than 90 days after approval of the proposed disposition by the board, and mail or otherwise transmit or deliver in a record to each member:

(a) the terms of the proposed disposition;

(b) a recommendation that the members approve the disposition, or if the board determines that because of conflict of interest or other special circumstances it should not make a favorable recommendation, the basis for that determination;

(c) a statement of any condition of the board's submission of the proposed disposition to the members; and

(d) notice of the meeting at which the proposed disposition will be considered, which shall be given in the same manner as notice of a special meeting of members.

16-16-1504 Disposition of assets.

(1) Subject to Subsection (2), a disposition of assets under Section 16-16-1502 shall be approved by:

(a) at least two-thirds of the voting power of members present at a members meeting called under Subsection 16-16-1503(2); and

(b) if the limited cooperative association has investor members, at least a majority of the votes cast by patron members, unless the organic rules require a greater percentage vote by patron members.

(2) The organic rules may require that the percentage of votes under Subsection (1)(a) is:

(a) a different percentage that is not less than a majority of members voting at the meeting;

(b) measured against the voting power of all members; or

(c) a combination of Subsections (2)(a) and (b).

(3) Subject to any contractual obligations, after a disposition of assets is approved and at any time before the consummation of the disposition, a limited cooperative association may approve an amendment to the contract for disposition or the resolution authorizing the disposition or approve abandonment of the disposition:

(a) as provided in the contract or the resolution; and

(b) except as prohibited by the resolution, with the same affirmative vote of the board of directors and of the members as was required to approve the disposition.

(4) The voting requirements for districts, classes, or voting groups under Section 16-16-404 apply to approval of a disposition of assets under this part.

Part 16

Conversion and Merger

16-16-1601 Definitions.

In this part:

(1) "Constituent entity" means an entity that is a party to a merger.

(2) "Constituent limited cooperative association" means a limited cooperative association that is a party to a merger.

(3) "Converted entity" means the organization into which a converting entity converts pursuant to Sections 16-16-1602 through 16-16-1605.

(4) "Converting entity" means an entity that converts into another entity pursuant to Sections 16-16-1602 through 16-16-1605.

(5) "Converting limited cooperative association" means a converting entity that is a limited cooperative association.

(6) "Organizational documents" means articles of incorporation, bylaws, articles of organization, operating agreements, partnership agreements, or other documents serving a similar function in the creation and governance of an entity.

(7) "Personal liability" means personal liability for a debt, liability, or other obligation of an entity imposed, by operation of law or otherwise, on a person that co-owns or has an interest in the entity:

(a) by the entity's organic law solely because of the person co-owning or having an interest in the entity; or

(b) by the entity's organizational documents under a provision of the entity's organic law authorizing those documents to make one or more specified persons liable for all or specified parts of the entity's debts, liabilities, and other obligations solely because the person co-owns or has an interest in the entity.

(8) "Surviving entity" means an entity into which one or more other entities are merged, whether the entity existed before the merger or is created by the merger.

16-16-1602 Conversion.

(1) An entity that is not a limited cooperative association may convert to a limited cooperative association and a limited cooperative association may convert to an entity that is not a limited cooperative association pursuant to this section, Sections 16-16-1603 through 16-16-1605, and a plan of conversion, if:

(a) the other entity's organic law authorizes the conversion;

(b) the conversion is not prohibited by the law of the jurisdiction that enacted the other entity's organic law; and

(c) the other entity complies with its organic law in effecting the conversion.

(2) A plan of conversion shall be in a record and shall include:

(a) the name and form of the entity before conversion;

(b) the name and form of the entity after conversion;

(c) the terms and conditions of the conversion, including the manner and basis for converting interests in the converting entity into any combination of money, interests in the converted entity, and other consideration; and

(d) the organizational documents of the proposed converted entity.

16-16-1603 Action on plan of conversion by converting limited cooperative association.

(1) For a limited cooperative association to convert to another entity, a plan of conversion shall be approved by a majority of the board of directors, or a greater percentage if required by the organic rules, and the board of directors shall call a members meeting to consider the plan of conversion, hold the meeting not later than 90 days after approval of the plan by the board, and mail or otherwise transmit or deliver in a record to each member:

(a) the plan, or a summary of the plan and a statement of the manner in which a copy of the plan in a record may be reasonably obtained by a member;

(b) a recommendation that the members approve the plan of conversion, or if the board determines that because of a conflict of interest or other circumstances it should not make a favorable recommendation, the basis for that determination;

(c) a statement of any condition of the board's submission of the plan of conversion to the members; and

(d) notice of the meeting at which the plan of conversion will be considered, which shall be given in the same

manner as notice of a special meeting of members.
(2) Subject to Subsections (3) and (4), a plan of conversion shall be approved by:
(a) at least two-thirds of the voting power of members present at a members meeting called under Subsection (1); and
(b) if the limited cooperative association has investor members, at least a majority of the votes cast by patron members, unless the organic rules require a greater percentage vote by patron members.
(3) The organic rules may require that the percentage of votes under Subsection (2)(a) is:
(a) a different percentage that is not less than a majority of members voting at the meeting;
(b) measured against the voting power of all members; or
(c) a combination of Subsections (3)(a) and (b).
(4) The vote required to approve a plan of conversion may not be less than the vote required for the members of the limited cooperative association to amend the articles of organization.
(5) Consent in a record to a plan of conversion by a member shall be delivered to the limited cooperative association before delivery of articles of conversion for filing if as a result of the conversion the member will have:
(a) personal liability for an obligation of the association; or
(b) an obligation or liability for an additional contribution.
(6) Subject to Subsection (5) and any contractual rights, after a conversion is approved and at any time before the effective date of the conversion, a converting limited cooperative association may amend a plan of conversion or abandon the planned conversion:
(a) as provided in the plan; and
(b) except as prohibited by the plan, by the same affirmative vote of the board of directors and of the members as was required to approve the plan.
(7) The voting requirements for districts, classes, or voting groups under Section 16-16-404 apply to approval of a conversion under this part.

16-16-1604 Filings required for conversion -- Effective date.
(1) After a plan of conversion is approved:
(a) a converting limited cooperative association shall deliver to the division for filing articles of conversion, which shall include:
(i) a statement that the limited cooperative association has been converted into another entity;
(ii) the name and form of the converted entity and the jurisdiction of its governing statute;
(iii) the date the conversion is effective under the governing statute of the converted entity;
(iv) a statement that the conversion was approved as required by this chapter;
(v) a statement that the conversion was approved as required by the governing statute of the converted entity; and
(vi) if the converted entity is an entity organized in a jurisdiction other than this state and is not authorized to transact business in this state, the street address and, if different, mailing address of an office which the division may use for purposes of Section 16-16-120; and
(b) if the converting entity is not a converting limited cooperative association, the converting entity shall deliver to the division for filing articles of organization, which shall include, in addition to the information required by Section 16-16-302:
(i) a statement that the association was converted from another entity;
(ii) the name and form of the converting entity and the jurisdiction of its governing statute; and
(iii) a statement that the conversion was approved in a manner that complied with the converting entity's governing statute.
(2) A conversion becomes effective:
(a) if the converted entity is a limited cooperative association, when the articles of conversion take effect pursuant to S~~ubs~~ection ~~16-16-203(3)~~13-1a-303; or
(b) if the converted entity is not a limited cooperative association, as provided by the governing statute of the converted entity.

16-16-1605 Effect of conversion.
(1) An entity that has been converted pursuant to this part is for all purposes the same entity that existed before the conversion and is not a new entity but, after conversion, is organized under the organic law of the converted entity and is subject to that law and other law as it applies to the converted entity.
(2) When a conversion takes effect under this part:
(a) all property owned by the converting entity remains vested in the converted entity;
(b) all debts, liabilities, and other obligations of the converting entity continue as obligations of the converted entity;
(c) an action or proceeding pending by or against the converting entity may be continued as if the conversion had not occurred;
(d) except as prohibited by other law, all the rights, privileges, immunities, powers, and purposes of the converting entity remain vested in the converted entity;
(e) except as otherwise provided in the plan of conversion, the terms and conditions of the plan of conversion take effect; and
(f) except as otherwise provided in the plan of conversion, the conversion does not dissolve a converting limited cooperative association for purposes of Part 12, Dissolution.
(3) A converted entity that is an entity organized under the laws of a jurisdiction other than this state consents to the jurisdiction of the courts of this state to enforce any obligation owed by the converting limited cooperative association if, before the conversion, the converting limited cooperative association was subject to suit in this state on the obligation. ~~A converted entity that is an entity organized under the laws of a jurisdiction other than this state and not authorized to transact business in this state appoints the division as its agent for service of process for purposes of enforcing an obligation under this Subsection (3). Service on the division under this Subsection (3) is made in the same manner and with the same consequences as under Subsections 16-16-120(3) and (4).~~

16-16-1606 Merger.
(1) One or more limited cooperative associations may merge with one or more other entities pursuant to this part and a plan of merger if:
(a) the governing statute of each of the other entities authorizes the merger;
(b) the merger is not prohibited by the law of a jurisdiction that enacted any of those governing statutes; and
(c) each of the other entities complies with its governing statute in effecting the merger.
(2) A plan of merger shall be in a record and shall include:
(a) the name and form of each constituent entity;
(b) the name and form of the surviving entity and, if the surviving entity is to be created by the merger, a statement to that effect;
(c) the terms and conditions of the merger, including the manner and basis for converting the interests in each constituent entity into any combination of money, interests in the surviving entity, and other consideration;
(d) if the surviving entity is to be created by the merger, the surviving entity's organizational documents;
(e) if the surviving entity is not to be created by the merger, any amendments to be made by the merger to the surviving entity's organizational documents; and
(f) if a member of a constituent limited cooperative association will have personal liability with respect to a surviving entity, the identity of the member by descriptive class or other reasonable manner.

16-16-1607 Notice and action on plan of merger by constituent limited cooperative association.
(1) For a limited cooperative association to merge with another entity, a plan of merger shall be approved by a majority vote of the board of directors or a greater percentage if required by the association's organic rules.
(2) The board of directors shall call a members meeting to consider a plan of merger approved by the board, hold the meeting not later than 90 days after approval of the plan by the board, and mail or otherwise transmit or deliver in a record to each member:
(a) the plan of merger, or a summary of the plan and a statement of the manner in which a copy of the plan in a record may be reasonably obtained by a member;
(b) a recommendation that the members approve the plan of merger, or if the board determines that because of

conflict of interest or other special circumstances it should not make a favorable recommendation, the basis for that determination;
(c) a statement of any condition of the board's submission of the plan of merger to the members; and
(d) notice of the meeting at which the plan of merger will be considered, which shall be given in the same manner as notice of a special meeting of members.

16-16-1608 Approval or abandonment of merger by members.
(1) Subject to Subsections (2) and (3), a plan of merger shall be approved by:
(a) at least two-thirds of the voting power of members present at a members meeting called under Subsection 16-16-1607(2); and
(b) if the limited cooperative association has investor members, at least a majority of the votes cast by patron members, unless the organic rules require a greater percentage vote by patron members.
(2) The organic rules may provide that the percentage of votes under Subsection (1)(a) is:
(a) a different percentage that is not less than a majority of members voting at the meeting;
(b) measured against the voting power of all members; or
(c) a combination of Subsections (2)(a) and (b).
(3) The vote required to approve a plan of merger may not be less than the vote required for the members of the limited cooperative association to amend the articles of organization.
(4) Consent in a record to a plan of merger by a member shall be delivered to the limited cooperative association before delivery of articles of merger for filing pursuant to Section 16-16-1609 if as a result of the merger the member will have:
(a) personal liability for an obligation of the association; or
(b) an obligation or liability for an additional contribution.
(5) Subject to Subsection (4) and any contractual rights, after a merger is approved, and at any time before the effective date of the merger, a limited cooperative association that is a party to the merger may approve an amendment to the plan of merger or approve abandonment of the planned merger:
(a) as provided in the plan; and
(b) except as prohibited by the plan, with the same affirmative vote of the board of directors and of the members as was required to approve the plan.
(6) The voting requirements for districts, classes, or voting groups under Section 16-16-404 apply to approval of a merger under this part.

16-16-1609 Filings required for merger -- Effective date.
(1) After each constituent entity has approved a merger, articles of merger shall be signed on behalf of each constituent entity by an authorized representative.
(2) The articles of merger shall include:
(a) the name and form of each constituent entity and the jurisdiction of its governing statute;
(b) the name and form of the surviving entity, the jurisdiction of its governing statute, and, if the surviving entity is created by the merger, a statement to that effect;
(c) the date the merger is effective under the governing statute of the surviving entity;
(d) if the surviving entity is to be created by the merger and:
(i) will be a limited cooperative association, the limited cooperative association's articles of organization; or
(ii) will be an entity other than a limited cooperative association, the organizational document that creates the entity;
(e) if the surviving entity is not created by the merger, any amendments provided for in the plan of merger to the organizational document that created the entity;
(f) a statement as to each constituent entity that the merger was approved as required by the entity's governing statute;
(g) if the surviving entity is a foreign organization not authorized to transact business in this state, the street address and, if different, mailing address of an office which the division may use for the purposes of Section 16-16-120; and
(h) any additional information required by the governing statute of any constituent entity.

(3) Each limited cooperative association that is a party to a merger shall deliver the articles of merger to the division for filing.
(4) A merger becomes effective under this part:
(a) if the surviving entity is a limited cooperative association, upon the later of:
(i) compliance with Subsection (3); or
(ii) subject to S~~ubs~~ection ~~16-16-203(3)~~13-1a-303, as specified in the articles of merger; or
(b) if the surviving entity is not a limited cooperative association, as provided by the governing statute of the surviving entity.

16-16-1610 Effect of merger.
(1) When a merger becomes effective:
(a) the surviving entity continues or comes into existence;
(b) each constituent entity that merges into the surviving entity ceases to exist as a separate entity;
(c) all property owned by each constituent entity that ceases to exist vests in the surviving entity;
(d) all debts, liabilities, and other obligations of each constituent entity that ceases to exist continue as obligations of the surviving entity;
(e) an action or proceeding pending by or against any constituent entity that ceases to exist may be continued as if the merger had not occurred;
(f) except as prohibited by law other than this chapter, all rights, privileges, immunities, powers, and purposes of each constituent entity that ceases to exist vest in the surviving entity;
(g) except as otherwise provided in the plan of merger, the terms and conditions of the plan take effect;
(h) except as otherwise provided in the plan of merger, if a merging limited cooperative association ceases to exist, the merger does not dissolve the association for purposes of Part 12, Dissolution;
(i) if the surviving entity is created by the merger and:
(i) is a limited cooperative association, the articles of organization become effective; or
(ii) is an entity other than a limited cooperative association, the organizational document that creates the entity becomes effective; and
(j) if the surviving entity is not created by the merger, any amendments made by the articles of merger for the organizational documents of the surviving entity become effective.
(2) A surviving entity that is an entity organized under the laws of a jurisdiction other than this state consents to the jurisdiction of the courts of this state to enforce any obligation owed by the constituent entity if, before the merger, the constituent entity was subject to suit in this state on the obligation. ~~A surviving entity that is an entity organized under the laws of a jurisdiction other than this state and not authorized to transact business in this state appoints the division as its agent for service of process for purposes of enforcing an obligation under this Subsection (2). Service on the division under this Subsection (2) is made in the same manner and with the same consequences as in Subsections 16-16-120(3) and (4).~~

16-16-1611 Consolidation.
(1) Constituent entities that are limited cooperative associations or foreign cooperatives may agree to call a merger a consolidation under this part.
(2) All provisions governing mergers or using the term merger in this chapter apply equally to mergers that the constituent entities choose to call consolidations under Subsection (1).

16-16-1612 Part not exclusive.
This part does not prohibit a limited cooperative association from being converted or merged under law other than this chapter.

Part 17
Miscellaneous Provisions

16-16-1701 Uniformity of application and construction.
In applying and construing this uniform act, consideration shall be given to the need to promote

uniformity of the law with respect to its subject matter among states that enact it.

16-16-1702 Relation to Electronic Signatures in Global and National Commerce Act.

This chapter modifies, limits, or supersedes the federal Electronic Signatures in Global and National Commerce Act, 15 U.S.C. Sec. 7001 et seq., but does not modify, limit, or supersede Section 101(c) of that act, 15 U.S.C. Sec. 7001(c), or authorize electronic delivery of any of the notices described in Section 103(b) of that act, 15 U.S.C. Sec. 7003(b).

16-16-1703 Savings clause.

This chapter does not affect an action or proceeding commenced, or right accrued, before May 5, 2008.

Chapter 2
Conducting Business Under Assumed Name

42-2-5 ~~Certificate of assumed and of true name~~Application -- Contents -- Execution -- Filing -- Notice.

~~(1) For purposes of this section, "filed" means the Division of Corporations and Commercial Code has:~~
~~(a) received and approved, as to form, a document submitted under this chapter; and~~
~~(b) marked on the face of the document a stamp or seal indicating:~~
~~(i) the time of day and date of approval;~~
~~(ii) the name of the division; and~~
~~(iii) the division director's signature and division seal, or facsimiles of the signature or seal.~~

(~~2~~1) A person who carries on, conducts, or transacts business in this state under an assumed name, whether that business is carried on, conducted, or transacted as an individual, association, partnership, corporation, or otherwise, shall:

(a) file with the Division of Corporations and Commercial Code an application ~~certificate~~ setting forth:

(i) the name under which the business is, or is to be carried on, conducted, or transacted;

(ii) the full true name, or names, of the person owning, and the person carrying on, conducting, or transacting the business; and

(iii) the location of the principal place of business, and the street address of the person; and

(b) designate, in accordance with S~~ubs~~ection ~~16-17-203(1)~~13-1a-504, and maintain a registered agent in this state.

(~~3~~2) A ~~certificate~~ n application filed under this section shall be:

(a) executed by the person owning, and the person carrying on, conducting, or transacting the business; and

(b) filed not later than 30 days after the time of commencing to carry on, conduct, or transact the business~~; and~~.

(3) An application filed under this section shall comply with Section 13-1a-301.~~(c) submitted in a machine printed format.~~

(4) A~~ certificate~~n application filed with the Division of Corporations and Commercial Code under this chapter on a form from the Division of Corporations and Commercial Code shall include the following notice in a conspicuous place on the face thereof:

NOTICE - THE FILING OF THIS APPLICATION AND ITS APPROVAL BY THE DIVISION OF CORPORATIONS AND COMMERCIAL CODE DOES NOT AUTHORIZE THE USE IN THE STATE OF UTAH OF AN ASSUMED NAME IN VIOLATION OF THE RIGHTS OF ANOTHER UNDER FEDERAL, STATE, OR COMMON LAW (SEE UTAH CODE ANN. SECTIONS 42-2-5 ET SEQ.).

(5)

(a) A~~ certificate~~n application filed under this section on a form from the Division of Corporations and Commercial Code shall include a portion that allows the person filing the form to voluntarily disclose the gender and race of one or more owners of the entity for which the filing is made.

(b) Race shall be indicated under Subsection (5)(a) by selecting from the categories of race listed in 15 U.S.C. Sec. 631(f).

(c) A person is not required to provide information under Subsection (5)(a) concerning the gender or race of one or more owners of the entity for which the filing is made.

(d)

(i) The Division of Corporations and Commercial Code shall compile information concerning the gender or race included on certificates filed with the Division of Corporations and Commercial Code.

(ii) Information compiled by the Division of Corporations and Commercial Code under Subsection (5)(d)(i) may be compiled in a manner determined by the Division of Corporations and Commercial Code by rules made pursuant to Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

(6) A person who carries on, conducts, or transacts business in this state under an assumed name, whether that business is carried on, conducted, or transacted as an individual, association, partnership, corporation, or otherwise, may change its registered agent or the address of its registered agent by filing with the division a statement of change in accordance with ~~Section 16-17-206~~Title 13, Chapter 1a, Part 5, Registered Agent of Business.

42-2-6 Change in persons transacting business under assumed name.

An amended ~~certificate~~ application shall be filed with the Division of Corporations and Commercial Code not later than 30 days after any change in the person or persons owning, carrying on, conducting, or transacting such business or a change in the registered agent or office of the business or in any information required to be filed with the Division of Corporations and Commercial Code under this act.

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

~~(1) The assumed name:~~

~~(a) may not contain:~~

~~(i) any word or phrase that indicates or implies that the business is organized for any purpose other than a purpose contained in the business's application; or~~

~~(ii) for an assumed name that is changed or approved on or after May 4, 2022, the number sequence "911";~~

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

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

~~(i) "Olympic";~~

~~(ii) "Olympiad"; or~~

~~(iii) "Citius Altius Fortius";~~

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

~~(i) "university";~~

~~(ii) "college"; or~~

~~(iii) "institute" or "institution"; and~~

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

~~(i) "incorporated";~~

~~(ii) "inc."; or~~

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

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

~~(a) Subsection 16-6a-102(26);~~

~~(b) Subsection 16-6a-102(35);~~

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

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

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

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

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

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

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

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

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

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

~~(9)~~

~~(a) The requirements of Subsection (1)(d) do not apply to a person who filed a certificate of assumed and of true~~

~~name with the Division of Corporations and Commercial Code on or before May 4, 1998, until December 31, 1998.~~
~~(b) On or after January 1, 1999, any person who carries on, conducts, or transacts business in this state under an assumed name shall comply with the requirements of Subsection (1)(d).~~

42-2-7 Index -- Fees -- Evidence.
(1) The Division of Corporations and Commercial Code shall:
(a) keep an active alphabetical index of all persons filing ~~the certificates~~applications provided for in this chapter; and
(b) collect the required indexing and filing fees.
(2) A copy of any such ~~certificate~~ application ~~certified~~ filed by the Division of Corporations and Commercial Code shall be presumptive evidence of the facts contained in the ~~certificate~~application.

42-2-8 Expiration of filing -- Notice -- Removal from active index.
A filing under this chapter shall be effective for a period of three years from the date of filing. At the expiration of that period, if no new filing is made by or on behalf of the person who made the original filing, the Division of Corporations and Commercial Code shall send a notice by regular mail, postage prepaid, to the registered agent address shown in the filing indicating that it has expired. If no new filing is made within 30 days after the date of mailing the notice, the Division of Corporations and Commercial Code shall remove the name from the active alphabetical index, and place it on a permanent inactive alphabetical index.

42-2-9 Corporate names, limited liability company names, and trademark, service mark, and trade name rights not affected.
(1) This chapter does not affect or apply to any ~~corporation~~ entity organized under the laws of any state if it does business in Utah under its true corporate name.
(2)
(a) This chapter does not affect the statutory or common law trademark, service mark, or trade name rights granted by state or federal statute.
(b) An act listed in Subsection (2)(c) of itself does not authorize the use in this state of an assumed name in violation of the rights of another as established under:
(i) this chapter;
(ii)Title 70, Chapter 3a, Registration and Protection of Trademarks and Service Marks Act;
(iii) the state law relating to names of corporations, partnerships, and other legal business entities;
(iv) the federal Trademark Act of 1946, 15 U.S.C. Section 1051 et seq.; or
(v) the common law, including rights in a trade name.
(c) Subsection (2)(b) applies to:
(i) a filing under this chapter;
(ii) an approval or filing by the Division of Corporations and Commercial Code pursuant to this chapter; or
(iii) the use of an assumed name.
~~(3) This chapter does not affect or apply to any limited liability company doing business in this state under its true name.~~

42-2-10 Penalties.
Any person who carries on, conducts, or transacts business under an assumed name without having complied with the provisions of this chapter, and until the provisions of this chapter are complied with:
(1) shall not sue, prosecute, or maintain any action, suit, counterclaim, cross complaint, or proceeding in any of the courts of this state; and
(2) may be subject to a penalty in the form of a late filing fee determined by the division director in an amount not to exceed three times the fees charged under Section 42-2-7 and established under Section 63J-1-504.

Chapter 1d
Utah Uniform Partnership Act

Part 1
General Provisions

48-1d-101 Title.

This chapter may be cited as the "Utah Uniform Partnership Act."

48-1d-102 Definitions.

As used in this chapter:

(1) "Business" includes every trade, occupation, and profession.

(2) "Contribution," except in the phrase "right of contribution," means property or a benefit described in Section 48-1d-501 which is provided by a person to a partnership to become a partner or in the person's capacity as a partner.

(3) "Debtor in bankruptcy" means a person that is the subject of:

(a) an order for relief under Title 11 of the United States Code or a comparable order under a successor statute of general application; or

(b) a comparable order under federal, state, or foreign law governing insolvency.

(4) "Distribution" means a transfer of money or other property from a partnership to a person on account of a transferable interest or in a person's capacity as a partner. The term:

(a) includes:

(i) a redemption or other purchase by a partnership of a transferable interest; and

(ii) a transfer to a partner in return for the partner's relinquishment of any right to participate as a partner in the management or conduct of the partnership's activities and affairs or have access to records or other information concerning the partnership's activities and affairs; and

(b) does not include amounts constituting reasonable compensation for present or past service or payments made in the ordinary course of business under a bona fide retirement plan or other bona fide benefits program.

(5) "Division" means the Division of Corporations and Commercial Code within the Utah Department of Commerce.

(6) "Foreign limited liability partnership" means a foreign partnership whose partners have limited liability for the debts, obligations, or other liabilities of the foreign partnership under a provision similar to Subsection 48-1d-306(3).

(7) "Foreign partnership" means an unincorporated entity formed under the law of a jurisdiction other than this state which would be a partnership if formed under the law of this state. The term includes a foreign limited liability partnership.

(8) "Jurisdiction," used to refer to a political entity, means the United States, a state, a foreign country, or a political subdivision of a foreign country.

(9) "Jurisdiction of formation" means, with respect to an entity, the jurisdiction:

(a) under whose law the entity is formed; or

(b) in the case of a limited liability partnership or foreign limited liability partnership, in which the partnership's statement of qualification is filed.

(10) "Limited liability partnership," except in the phrase "foreign limited liability partnership," means a partnership that has filed a statement of qualification under Section 48-1d-1101 and does not have a similar statement in effect in any other jurisdiction.

(11) "Partner" means a person that:

(a) has become a partner in a partnership under Section 48-1d-401 or was a partner in a partnership when the partnership became subject to this chapter under Section 48-1d-1405; and

(b) has not dissociated as a partner under Section 48-1d-701.

(12) "Partnership" means an association of two or more persons to carry on as co-owners a business for profit formed under this chapter or that becomes subject to this chapter under Part 10, Merger, Interest Exchange, Conversion, and Domestication, or Section 48-1d-1405. The term includes a limited liability partnership.

(13) “Partnership agreement” means the agreement, whether or not referred to as a partnership agreement, and whether oral, implied, in a record, or in any combination thereof, of all the partners of a partnership concerning the matters described in Subsection 48-1d-106(1). The term includes the agreement as amended or restated.
(14) “Partnership at will” means a partnership in which the partners have not agreed to remain partners until the expiration of a definite term or the completion of a particular undertaking.
(15) “Person” means an individual, business corporation, nonprofit corporation, partnership, limited partnership, limited liability company, limited cooperative association, unincorporated nonprofit association, statutory trust, business trust, common-law business trust, estate, trust, association, joint venture, public corporation, government or governmental subdivision, agency, or instrumentality, or any other legal or commercial entity.
(16) “Principal office” means the principal executive office of a partnership or a foreign limited liability partnership, whether or not the office is located in this state.
(17) “Professional services” means a personal service provided by:
(a) a public accountant holding a license under Title 58, Chapter 26a, Certified Public Accountant Licensing Act, or a subsequent law regulating the practice of public accounting;
(b) an architect holding a license under Title 58, Chapter 3a, Architects Licensing Act, or a subsequent law regulating the practice of architecture;
(c) an attorney granted the authority to practice law by the:
(i) Utah Supreme Court; or
(ii) one or more of the following that licenses or regulates the authority to practice law in a state or territory of the United States other than Utah:
(A) a supreme court;
(B) a court other than a supreme court;
(C) an agency;
(D) an instrumentality; or
(E) a regulating board;
(d) a chiropractor holding a license under Title 58, Chapter 73, Chiropractic Physician Practice Act, or a subsequent law regulating the practice of chiropractics;
(e) a doctor of dentistry holding a license under Title 58, Chapter 69, Dentist and Dental Hygienist Practice Act, or a subsequent law regulating the practice of dentistry;
(f) a professional engineer registered under Title 58, Chapter 22, Professional Engineers and Professional Land Surveyors Licensing Act, or a subsequent law regulating the practice of engineers or land surveyors;
(g) a naturopath holding a license under Title 58, Chapter 71, Naturopathic Physician Practice Act, or a subsequent law regulating the practice of naturopathy;
(h) a nurse licensed under Title 58, Chapter 31b, Nurse Practice Act, or Chapter 44a, Nurse Midwife Practice Act, or a subsequent law regulating the practice of nursing;
(i) an optometrist holding a license under Title 58, Chapter 16a, Utah Optometry Practice Act, or a subsequent law regulating the practice of optometry;
(j) an osteopathic physician or surgeon holding a license under Title 58, Chapter 68, Utah Osteopathic Medical Practice Act, or a subsequent law regulating the practice of osteopathy;
(k) a pharmacist holding a license under Title 58, Chapter 17b, Pharmacy Practice Act, or a subsequent law regulating the practice of pharmacy;
(l) a physician, surgeon, or doctor of medicine holding a license under Title 58, Chapter 67, Utah Medical Practice Act, or a subsequent law regulating the practice of medicine;
(m) a physician assistant holding a license under Title 58, Chapter 70a, Utah Physician Assistant Act, or a subsequent law regulating the practice as a physician assistant;
(n) a physical therapist holding a license under Title 58, Chapter 24b, Physical Therapy Practice Act, or a subsequent law regulating the practice of physical therapy;
(o) a podiatric physician holding a license under Title 58, Chapter 5a, Podiatric Physician Licensing Act, or a subsequent law regulating the practice of podiatry;
(p) a psychologist holding a license under Title 58, Chapter 61, Psychologist Licensing Act, or a subsequent law regulating the practice of psychology;
(q) a principal broker, associate broker, or sales agent holding a license under Title 61, Chapter 2f, Real Estate

Licensing and Practices Act, or a subsequent law regulating the sale, exchange, purchase, rental, or leasing of real estate;
(r) a clinical or certified social worker holding a license under Title 58, Chapter 60, Part 2, Social Worker Licensing Act, or a subsequent law regulating the practice of social work;
(s) a mental health therapist holding a license under Title 58, Chapter 60, Mental Health Professional Practice Act, or a subsequent law regulating the practice of mental health therapy;
(t) a veterinarian holding a license under Title 58, Chapter 28, Veterinary Practice Act, or a subsequent law regulating the practice of veterinary medicine; or
(u) an individual licensed, certified, or registered under Title 61, Chapter 2g, Real Estate Appraiser Licensing and Certification Act, or a subsequent law regulating the practice of appraising real estate.
(18) "Property" means all property, whether real, personal, or mixed, or tangible or intangible, or any right or interest therein.
(19) "Record," used as a noun, means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.
(20) "Registered agent" means an agent of a limited liability partnership or foreign limited liability partnership which is authorized to receive service of any process, notice, or demand required or permitted by law to be served on the partnership.
(21) "Registered foreign limited liability partnership" means a foreign limited liability partnership that is registered to do business in this state pursuant to a ~~statement of registration~~registration statement filed by the division.
(22) "Sign" means, with present intent to authenticate or adopt a record:
(a) to execute or adopt a tangible symbol; or
(b) to attach to or logically associate with the record an electronic symbol, sound, or process.
(23) "State" means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States.
(24) "Transfer" includes:
(a) an assignment;
(b) a conveyance;
(c) a sale;
(d) a lease;
(e) an encumbrance, including a mortgage or security interest;
(f) a gift; and
(g) a transfer by operation of law.
(25) "Transferable interest" means the right, as initially owned by a person in the person's capacity as a partner, to receive distributions from a partnership in accordance with the partnership agreement, whether or not the person remains a partner or continues to own any part of the right. The term applies to any fraction of the interest, by whomever owned.
(26) "Transferee" means a person to which all or part of a transferable interest has been transferred, whether or not the transferor is a partner.
~~(27) "Tribal partnership" means a partnership:~~
~~(a) formed under the law of a tribe; and~~
~~(b) that is at least 51% owned or controlled by the tribe under whose law the partnership is formed.~~
~~(28) "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.~~

48-1d-103 Knowledge -- Notice.
(1) A person knows a fact if the person:
(a) has actual knowledge of it; or
(b) is deemed to know it under Subsection (4)(a) or law other than this chapter.
(2) A person has notice of a fact if the person:
(a) has reason to know the fact from all the facts known to the person at the time in question; or

(b) is deemed to have notice of the fact under Subsection (4)(b).
(3) ~~Subject to Subsection 48-1d-116(6), a~~A person notifies another person of a fact by taking steps reasonably required to inform the other person in ordinary course, whether or not those steps cause the other person to know the fact.
(4) A person not a partner is deemed:
(a) to know of a limitation on authority to transfer real property as provided in Subsection 48-1d-303(7); and
(b) to have notice of:
(i) a partner's dissociation 90 days after a statement of dissociation under Section 48-1d-804 becomes effective; and
(ii) a partnership's:
(A) dissolution 90 days after a statement of dissolution under Subsection 48-1d-902(2)(b)(i) becomes effective;
(B) termination 90 days after a statement of termination under Subsection 48-1d-902(2)(b)(vi) becomes effective;
(C) participation in a merger, interest exchange, conversion, or domestication 90 days after a statement of merger, interest exchange, conversion, or domestication under Part 10, Merger, Interest Exchange, Conversion, and Domestication, becomes effective; and
(D) abandonment of a merger, interest exchange, conversion, or domestication 90 days after a statement of abandonment of merger, interest exchange, conversion, or domestication under Part 10, Merger, Interest Exchange, Conversion, and Domestication, becomes effective.
(5) A partner's knowledge or notice of a fact relating to the partnership is effective immediately as knowledge of or notice to the partnership, except in the case of a fraud on the partnership committed by or with the consent of that partner.

48-1d-104 Governing law.

The internal affairs of a partnership and the liability of a partner as a partner for the debts, obligations, or other liabilities of the partnership are governed by:
(1) in the case of a limited liability partnership, the law of this state; and
(2) in the case of a partnership that is not a limited liability partnership, the law of the state of the jurisdiction in which the partnership has its principal office.

48-1d-105 Supplemental principles of law.

Unless displaced by particular provisions of this chapter, the principles of law and equity supplement this chapter.

48-1d-106 Partnership agreement -- Scope, function, and limitations.
(1) Except as otherwise provided in Subsections (3) and (4), the partnership agreement governs:
(a) relations among the partners as partners and between the partners and the partnership;
(b) the activities and affairs of the partnership and the conduct of those activities and affairs; and
(c) the means and conditions for amending the partnership agreement.
(2) To the extent the partnership agreement does not provide for a matter described in Subsection (1), this chapter governs the matter.
(3) A partnership agreement may not:
(a) vary the law applicable under Section 48-1d-104;
(b) vary the provisions of Section ~~48-1d-111~~13-1a-310;
(c) vary the provisions of Section 48-1d-307;
(d) unreasonably restrict the duties and rights under Section 48-1d-403, but the partnership agreement may impose reasonable restrictions on the availability and use of information obtained under that section and may define appropriate remedies, including liquidated damages, for a breach of any reasonable restriction on use;
(e) eliminate the duty of loyalty or the duty of care, except as otherwise provided in Subsection (4);
(f) eliminate the contractual obligation of good faith and fair dealing under Subsection 48-1d-405(4), but the partnership agreement may prescribe the standards, if not unconscionable or against public policy, by which the performance of the obligation is to be measured;

(g) relieve or exonerate a person from liability for conduct involving bad faith, willful misconduct, or recklessness;
(h) vary the power to dissociate as a partner under Subsection 48-1d-702(1), except to require the notice under Subsection 48-1d-701(1) to be in a record;
(i) vary the right of a court to expel a partner in the events specified in Subsection 48-1d-701(5);
(j) vary the causes of dissolution specified in Subsection 48-1d-901(4), (5), or (6);
(k) vary the requirement to wind up the partnership's activities and affairs as specified in Subsections 48-1d-902(1), (2)(a), and (4);
(l) vary the right of a partner to approve a merger, interest exchange, conversion, or domestication under Subsection 48-1d-1023(1)(b), 48-1d-1033(1)(b), 48-1d-1043(1)(b), or 48-1d-1053(1)(b);
(m) vary any requirement, procedure, or other provision of this chapter pertaining to:
(i) registered agents; or
(ii) the division, including provisions pertaining to records authorized or required to be delivered to the division for filing under this chapter; or
(n) except as otherwise provided in Section 48-1d-107 and Subsection 48-1d-108(2), restrict the rights under this chapter of a person other than a partner.
(4) Subject to Subsection (3)(e), without limiting other terms that may be included in a partnership agreement, the following rules apply:
(a) The partnership agreement may specify the method by which a specific act or transaction that would otherwise violate the duty of loyalty may be authorized or ratified by one or more disinterested and independent persons after full disclosure of all material facts.
(b) If not unconscionable or against public policy, the partnership agreement may:
(i) alter or eliminate the aspects of the duty of loyalty stated in Subsection 48-1d-405(2);
(ii) identify specific types or categories of activities that do not violate the duty of loyalty;
(iii) alter the duty of care, except to authorize intentional misconduct or knowing violation of law; and
(iv) alter or eliminate any other fiduciary duty.
(5) The court shall decide as a matter of law whether a term of a partnership agreement is unconscionable or against public policy under Subsection (3)(f) or (4)(b). The court:
(a) shall make its determination as of the time the challenged term became part of the partnership agreement and by considering only circumstances existing at that time; and
(b) may invalidate the term only if, in light of the purposes and business of the partnership, it is readily apparent that:
(i) the objective of the term is unconscionable or against public policy; or
(ii) the means to achieve the term's objective is unconscionable or against public policy.

48-1d-107 Partnership agreement -- Effect on partnership and person becoming partner -- Preformation agreement.
(1) A partnership is bound by and may enforce the partnership agreement, whether or not the partnership has itself manifested assent to the partnership agreement.
(2) A person that becomes a partner of a partnership is deemed to assent to the partnership agreement.
(3) Two or more persons intending to become the initial partners of a partnership may make an agreement providing that upon the formation of the partnership the agreement will become the partnership agreement.

48-1d-108 Partnership agreement -- Effect on third parties and relationship to records effective on behalf of partnership.
(1) A partnership agreement may specify that its amendment requires the approval of a person that is not a party to the partnership agreement or the satisfaction of a condition. An amendment is ineffective if its adoption does not include the required approval or satisfy the specified condition.
(2) The obligations of a partnership and its partners to a person in the person's capacity as a transferee or person dissociated as a partner are governed by the partnership agreement. Subject only to a court order issued under Subsection 48-1d-604(2)(b) to effectuate a charging order, an amendment to the partnership agreement made after a person becomes a transferee or is dissociated as a partner:

(a) is effective with regard to any debt, obligation, or other liability of the partnership or its partners to the person in the person's capacity as a transferee or person dissociated as a partner; and
(b) is not effective to the extent the amendment:
(i) imposes a new debt, obligation, or other liability on the transferee or person dissociated as a partner; or
(ii) prejudices the rights under Section 48-1d-801 of a person that dissociated as a partner before the amendment was made.
(3) If a record delivered by a partnership to the division for filing becomes effective under this chapter and contains a provision that would be ineffective under Subsection 48-1d-106(3) or (4)(b) if contained in the partnership agreement, the provision is ineffective in the record.
(4) Subject to Subsection (3), if a record delivered by a partnership to the division for filing becomes effective under this chapter and conflicts with a provision of the partnership agreement:
(a) the partnership agreement prevails as to partners, persons dissociated as partners, and transferees; and
(b) the record prevails as to other persons to the extent they reasonably rely on the record.

48-1d-109 Delivery of record.
(1) Except as otherwise provided in this chapter, permissible means of delivery of a record include delivery by hand, the United States Postal Service, commercial delivery service, and electronic transmission.
(2) Delivery to the division is effective only when a record is received by the division.

48-1d-110 Signing of records to be delivered for filing to division.
(1) A record delivered to the division for filing pursuant to this chapter must be signed as follows:
(a) Except as otherwise provided in Subsections (1)(b) and (c), a record signed by a partnership must be signed by a person authorized by the partnership.
(b) A record filed on behalf of a dissolved partnership that has no partner must be signed by the person winding up the partnership's activities and affairs under Subsection 48-1d-902(3) or a person appointed under Subsection 48-1d-902(4) to wind up the business.
(c) A statement of denial by a person under Section 48-1d-304 must be signed by that person.
(d) Any other record delivered on behalf of a person to the division for filing must be signed by that person.
(2) Any record filed under this chapter may be signed by an agent. Whenever this chapter requires a particular individual to sign a record and the individual is deceased or incompetent, the record may be signed by a legal representative of the individual.
(3) A person that signs a record as an agent or legal representative thereby affirms as a fact that the person is authorized to sign the record.

48-1d-111 Signing and filing pursuant to judicial order.
(1) If a person required by this chapter to sign a record or deliver a record to the division for filing under this chapter does not do so, any other person that is aggrieved may petition the district court to order:
(a) the person to sign the record;
(b) the person to deliver the record to the division for filing; or
(c) the division to file the record unsigned.
(2) If a petitioner under Subsection (1) is not the partnership or foreign limited liability partnership to which the record pertains, the petitioner shall make the partnership or foreign limited liability partnership a party to the action.
(3) A record filed under Subsection (1)(c) is effective without being signed.

48-1d-112 Filing requirements.
(1) To be filed by the division pursuant to this chapter, a record must be received by the division, comply with this chapter, and satisfy the following:
(a) The filing of the record must be required or permitted by this chapter.
(b) The record must be physically delivered in written form unless and to the extent the division permits electronic delivery of records.
(c) The words in the record must be in English, and numbers must be in Arabic or Roman numerals, but the

name of an entity need not be in English if written in English letters or Arabic or Roman numerals.
(d) The record must be signed by a person authorized or required under this chapter to sign the record.
(e) The record must state the name and capacity, if any, of each individual who signed it, either on behalf of the individual or the person authorized or required to sign the record, but need not contain a seal, attestation, acknowledgment, or verification.
(2) If law other than this chapter prohibits the disclosure by the division of information contained in a record delivered to the division for filing, the division shall accept the record if the record otherwise complies with this chapter but the division may redact the information.
(3) When a record is delivered to the division for filing, any fee required under this chapter and any fee, tax, interest, or penalty required to be paid under this chapter or law other than this chapter must be paid in a manner permitted by the division or by that law.
(4) The division may require that a record delivered in written form be accompanied by an identical or conformed copy.

48-1d-113 Effective time and date.

Except as otherwise provided in Section 48-1d-114 and subject to Subsection 48-1d-115(3), a record filed under this chapter is effective:
(1) on the date and at the time of its filing by the division, as provided in Section 48-1d-116;
(2) on the date of filing and at the time specified in the record as its effective time, if later than the time under Subsection (1);
(3) at a specified delayed effective time and date, which may not be more than 90 days after the date of filing; or
(4) if a delayed effective date is specified, but no time is specified, at 12:01 a.m. on the date specified, which may not be more than 90 days after the date of filing.

48-1d-114 Withdrawal of filed record before effectiveness.

(1) Except as otherwise provided in Sections 48-1d-1024, 48-1d-1034, 48-1d-1044, and 48-1d-1054, a record delivered to the division for filing may be withdrawn before it takes effect by delivering to the division for filing a statement of withdrawal.
(2) A statement of withdrawal must:
(a) be signed by each person that signed the record being withdrawn, except as otherwise agreed by those persons;
(b) identify the record to be withdrawn; and
(c) if signed by fewer than all the persons that signed the record being withdrawn, state that the record is withdrawn in accordance with the agreement of all the persons that signed the record.
(3) On filing by the division of a statement of withdrawal, the action or transaction evidenced by the original record does not take effect.

48-1d-115 Correcting filed record.

(1) A person on whose behalf a filed record was delivered to the division for filing may correct the record if:
(a) the record at the time of filing was inaccurate;
(b) the record was defectively signed; or
(c) the electronic transmission of the record to the division was defective.
(2) To correct a filed record, a person on whose behalf the record was delivered to the division must deliver to the division for filing a statement of correction.
(3) A statement of correction:
(a) may not state a delayed effective date;
(b) must be signed by the person correcting the filed record;
(c) must identify the filed record to be corrected;
(d) must specify the inaccuracy or defect to be corrected; and
(e) must correct the inaccuracy or defect.
(4) A statement of correction is effective as of the effective date of the filed record that it corrects except for

~~purposes of Subsection 48-1d-103(4) and as to persons relying on the uncorrected filed record and adversely affected by the correction. For those purposes and as to those persons, the statement of correction is effective when filed.~~

~~48-1d-116 Duty of division to file -- Review of refusal to file -- Transmission of information by division.~~

~~(1) The division shall file a record delivered to the division for filing which satisfies this chapter. The duty of the division under this section is ministerial.~~

~~(2) When the division files a record, the division shall record it as filed on the date and at the time of its delivery. After filing a record, the division shall deliver to the person that submitted the record a copy of the record with an acknowledgment of the date and time of filing and, in the case of a statement of denial, also to the partnership to which the statement pertains.~~

~~(3) If the division refuses to file a record, the division, not later than 15 business days after the record is delivered, shall:~~

~~(a) return the record or notify the person that submitted the record of the refusal; and~~

~~(b) provide a brief explanation in a record of the reason for the refusal.~~

~~(4) If the division refuses to file a record, the person that submitted the record may petition the district court to compel filing of the record. The record and the explanation of the division of the refusal to file must be attached to the petition. The court may decide the matter in a summary proceeding.~~

~~(5) The filing of or refusal to file a record does not create a presumption that the information contained in the record is correct or incorrect.~~

~~(6) Except as otherwise provided by Section 16-17-301 or by law other than this chapter, the division may deliver any record to a person by delivering it:~~

~~(a) in person to the person that submitted it;~~

~~(b) to the address of the person's registered agent;~~

~~(c) to the principal office of the person; or~~

~~(d) to another address the person provides to the division for delivery.~~

~~48-1d-117 Liability for inaccurate information in filed record.~~

~~(1) If a record delivered to the division for filing under this chapter and filed by the division contains inaccurate information, a person that suffers loss by reliance on the information may recover damages for the loss from:~~

~~(a) a person that signed the record, or caused another to sign it on the person's behalf, and knew the information to be inaccurate at the time the record was signed; and~~

~~(b) a partner, if:~~

~~(i) the record was delivered for filing on behalf of the partnership; and~~

~~(ii) the partner had notice of the inaccuracy for a reasonably sufficient time before the information was relied upon so that, before the reliance, the partner reasonably could have:~~

~~(A) effected an amendment under Subsection 48-1d-1101(6);~~

~~(B) filed a petition under Section 48-1d-111; or~~

~~(C) delivered to the division for filing a statement of change under Section 16-17-206 or a statement of correction under Section 48-1d-115.~~

~~(2) An individual who signs a record authorized or required to be filed under this chapter affirms under penalty of perjury that the information stated in the record is accurate.~~

48-1d-118 Reservation of power to amend or repeal.

The Legislature of this state has power to amend or repeal all or part of this chapter at any time, and all domestic and foreign limited liability partnerships subject to this chapter are governed by the amendment or repeal.

Part 2
Nature of Partnership

48-1d-201 Partnership as entity.

(1) A partnership is an entity distinct from its partners.
(2) A partnership is the same entity regardless of whether the partnership has a statement of qualification in effect under Section 48-1d-1101.

48-1d-202 Formation of partnership.
(1) Except as otherwise provided in Subsection (2), the association of two or more persons to carry on as co-owners a business for profit forms a partnership, whether or not the persons intend to form a partnership.
(2) An association formed under a statute other than this chapter, a predecessor statute, or a comparable statute of another jurisdiction is not a partnership under this chapter.
(3) In determining whether a partnership is formed, the following rules apply:
(a) Joint tenancy, tenancy in common, tenancy by the entireties, joint property, common property, or part ownership does not by itself establish a partnership, even if the co-owners share profits made by the use of the property.
(b) The sharing of gross returns does not by itself establish a partnership, even if the persons sharing them have a joint or common right or interest in property from which the returns are derived.
(c) A person who receives a share of the profits of a business is presumed to be a partner in the business, unless the profits were received in payment:
(i) of a debt by installments or otherwise;
(ii) for services as an independent contractor or of wages or other compensation to an employee;
(iii) of rent;
(iv) of an annuity or other retirement or health benefit to a deceased or retired partner or a beneficiary, representative, or designee of a deceased or retired partner;
(v) of interest or other charge on a loan, even if the amount of payment varies with the profits of the business, including a direct or indirect present or future ownership of the collateral, or rights to income, proceeds, or increase in value derived from the collateral; or
(vi) for the sale of the goodwill of a business or other property by installments or otherwise.

48-1d-203 Partnership property.
Property acquired by a partnership is property of the partnership and not of the partners individually.

48-1d-204 When property is partnership property.
(1) Property is partnership property if acquired in the name of:
(a) the partnership; or
(b) one or more partners with an indication in the instrument transferring title to the property of the person's capacity as a partner or of the existence of a partnership but without an indication of the name of the partnership.
(2) Property is acquired in the name of the partnership by a transfer to:
(a) the partnership in its name; or
(b) one or more partners in their capacity as partners in the partnership, if the name of the partnership is indicated in the instrument transferring title to the property.
(3) Property is presumed to be partnership property if purchased with partnership assets, even if not acquired in the name of the partnership or of one or more partners with an indication in the instrument transferring title to the property of the person's capacity as a partner or of the existence of a partnership.
(4) Property acquired in the name of one or more of the partners, without an indication in the instrument transferring title to the property of the person's capacity as a partner or of the existence of a partnership and without use of partnership assets, is presumed to be separate property, even if used for partnership purposes.

Part 3
Relations of Partners to Persons Dealing with Partnership

48-1d-301 Partner agent of partnership.
Subject to the effect of a statement of partnership authority under Section 48-1d-303, the following

rules apply:
(1) Each partner is an agent of the partnership for the purpose of its activities and affairs. An act of a partner, including the signing of an instrument in the partnership name, for apparently carrying on in the ordinary course the partnership's activities and affairs or activities and affairs of the kind carried on by the partnership binds the partnership, unless the partner did not have authority to act for the partnership in the particular matter and the person with which the partner was dealing knew, or had notice, that the partner lacked authority.
(2) An act of a partner, which is not apparently for carrying on in the ordinary course the partnership's activities and affairs or activities and affairs of the kind carried on by the partnership, binds the partnership only if the act was actually authorized by all the other partners.

48-1d-302 Transfer of partnership property.
(1) Partnership property may be transferred as follows:
(a) Subject to the effect of a statement of partnership authority under Section 48-1d-303, partnership property held in the name of the partnership may be transferred by an instrument of transfer executed by a partner in the partnership name.
(b) Partnership property held in the name of one or more partners with an indication in the instrument transferring the property to them of their capacity as partners or of the existence of a partnership, but without an indication of the name of the partnership, may be transferred by an instrument of transfer executed by the persons in whose name the property is held.
(c) Partnership property held in the name of one or more persons other than the partnership, without an indication in the instrument transferring the property to them of their capacity as partners or of the existence of a partnership, may be transferred by an instrument of transfer executed by the persons in whose name the property is held.
(2) A partnership may recover partnership property from a transferee only if it proves that execution of the instrument of initial transfer did not bind the partnership under Section 48-1d-301 and:
(a) as to a subsequent transferee who gave value for property transferred under Subsection (1)(a) or (1)(b), proves that the subsequent transferee knew or had received a notification that the person who executed the instrument of initial transfer lacked authority to bind the partnership; or
(b) as to a transferee who gave value for property transferred under Subsection (1)(c), proves that the transferee knew or had received a notification that the property was partnership property and that the person who executed the instrument of initial transfer lacked authority to bind the partnership.
(3) A partnership may not recover partnership property from a subsequent transferee if the partnership would not have been entitled to recover the property, under Subsection (2), from any earlier transferee of the property.
(4) If a person holds all the partners' interests in the partnership, all the partnership property vests in that person. The person may execute a document in the name of the partnership to evidence vesting of the property in that person and may file or record the document.

48-1d-303 Statement of partnership authority.
(1) A partnership may deliver to the division for filing a statement of partnership authority. The statement:
(a) must include:
(i) the name of the partnership; ~~and~~
(ii) if the partnership is not a limited liability partnership, the street and mailing addresses of its principal office; and
(iii) the partnership's North American Industry Classification System (NAICS) code.
(b) with respect to any position that exists in or with respect to the partnership, may state the authority, or limitations on the authority, of all persons holding the position to:
(i) execute an instrument transferring real property held in the name of the partnership; or
(ii) enter into other transactions on behalf of, or otherwise act for or bind, the partnership; and
(c) may state the authority, or limitations on the authority, of a specific person to:
(i) execute an instrument transferring real property held in the name of the partnership; or
(ii) enter into other transactions on behalf of, or otherwise act for or bind, the partnership.
(2) To amend or cancel a statement of authority filed by the division, a partnership must deliver to the division

for filing an amendment or cancellation stating:
(a) the name of the partnership;
(b) the street and mailing addresses of the partnership's principal office;
(c) the date the statement of authority being affected became effective; and
(d) the contents of the amendment or a declaration that the statement of authority is canceled.
(3) A statement of authority affects only the power of a person to bind a partnership to persons that are not partners.
(4) Subject to Subsection (3) and Subsection 48-1d-103(4)(a), and except as otherwise provided in Subsections (6), (7), and (8), a limitation on the authority of a person or a position contained in an effective statement of authority is not by itself evidence of any person's knowledge or notice of the limitation.
(5) Subject to Subsection (3), a grant of authority not pertaining to transfers of real property and contained in an effective statement of authority is conclusive in favor of a person that gives value in reliance on the grant, except to the extent that if the person gives value:
(a) the person has knowledge to the contrary;
(b) the statement of authority has been canceled or restrictively amended under Subsection (2); or
(c) a limitation on the grant is contained in another statement of authority that became effective after the statement of authority containing the grant became effective.
(6) Subject to Subsection (3), an effective statement of authority that grants authority to transfer real property held in the name of the partnership and a certified copy of which is recorded in the office for recording transfers of the real property is conclusive in favor of a person that gives value in reliance on the grant without knowledge to the contrary, except to the extent that when the person gives value:
(a) the statement of authority has been canceled or restrictively amended under Subsection (2), and a certified copy of the cancellation or restrictive amendment has been recorded in the office for recording transfers of the real property; or
(b) a limitation on the grant is contained in another statement of authority that became effective after the statement of authority containing the grant became effective, and a certified copy of the later-effective statement of authority is recorded in the office for recording transfers of the real property.
(7) Subject to Subsection (3), if a certified copy of an effective statement of authority containing a limitation on the authority to transfer real property held in the name of a partnership is recorded in the office for recording transfers of that real property, all persons are deemed to know of the limitation.
(8) Subject to Subsection (9), an effective statement of dissolution is a cancellation of any filed statement of authority for the purposes of Subsection (6) and is a limitation on authority for purposes of Subsection (7).
(9) After a statement of dissolution becomes effective, a partnership may deliver to the division for filing and, if appropriate, may record a statement of authority that is designated as a postdissolution statement of authority. The postdissolution statement of authority operates as provided in Subsections (6) and (7).
(10) Unless canceled earlier, an effective statement of authority is canceled by operation of law five years after the date on which the statement of authority, or its most recent amendment, becomes effective. Cancellation is effective without recording under Subsection (6) or (7).
(11) An effective statement of denial operates as a restrictive amendment under this section and may be recorded by certified copy for purposes of Subsection (6)(a).

48-1d-304 Statement of denial.

A person named in a filed statement of authority granting that person authority may deliver to the division for filing a statement of denial that:
(1) provides the name of the partnership and the caption of the statement of authority to which the statement of denial pertains; and
(2) denies the grant of authority.

48-1d-305 Partnership liable for partner's actionable conduct.

(1) A partnership is liable for loss or injury caused to a person, or for a penalty incurred, as a result of a wrongful act or omission, or other actionable conduct, of a partner acting in the ordinary course of activities and affairs of the partnership or with the actual or apparent authority of the partnership.

(2) If, in the course of the partnership's activities and affairs or while acting with actual or apparent authority of the partnership, a partner receives or causes the partnership to receive money or property of a person not a partner, and the money or property is misapplied by a partner, the partnership is liable for the loss.

48-1d-306 Partner's liability.
(1) Except as otherwise provided in Subsections (2) and (3), all partners are liable jointly and severally for all debts, obligations, and other liabilities of the partnership unless otherwise agreed to by the claimant or provided by law.
(2) A person that becomes a partner is not personally liable for a debt, obligation, or other liability of the partnership incurred before the person became a partner.
(3) A debt, obligation, or other liability of a partnership incurred while the partnership is a limited liability partnership is solely the debt, obligation, or other liability of the limited liability partnership. A partner is not personally liable, directly or indirectly, by way of contribution or otherwise, for a debt, obligation, or other liability of the limited liability partnership solely by reason of being or acting as a partner. This Subsection (3) applies:
(a) despite anything inconsistent in the partnership agreement that existed immediately before the vote or consent required to become a limited liability partnership under Subsection 48-1d-1101(2); and
(b) regardless of the dissolution of the limited liability partnership.
(4) The failure of a limited liability partnership to observe any formalities relating to the exercise of its powers or management of its activities and affairs is not a ground for imposing liability on any partner of the limited liability partnership for a debt, obligation, or other liability of the limited liability partnership.
(5) The cancellation or administrative revocation of a limited liability partnership's statement of qualification does not affect the limitation under this section on the liability of a partner for a debt, obligation, or other liability of the partnership incurred while the statement was in effect.
(6) Subsection (3) and Part 11, Limited Liability Partnerships, do not alter any law applicable to the relationship between a person providing a professional service and a person receiving the professional service, including liability arising out of those professional services. A person providing a professional service remains personally liable for a result of that person's act or omission.

48-1d-307 Actions by and against partnership and partners.
(1) A partnership may sue and be sued in the name of the partnership.
(2) To the extent not inconsistent with Section 48-1d-306, a partner may be joined in an action against the partnership or named in a separate action.
(3) A judgment against a partnership is not by itself a judgment against a partner. A judgment against a partnership may not be satisfied from a partner's assets unless there is also a judgment against the partner.
(4) A judgment creditor of a partner may not levy execution against the assets of the partner to satisfy a judgment based on a claim against the partnership unless the partner is personally liable for the claim under Section 48-1d-306, and:
(a) a judgment based on the same claim has been obtained against the partnership and a writ of execution on the judgment has been returned unsatisfied in whole or in part;
(b) the partnership is a debtor in bankruptcy;
(c) the partner has agreed that the creditor need not exhaust partnership assets;
(d) a court grants permission to the judgment creditor to levy execution against the assets of a partner based on a finding that partnership assets subject to execution are clearly insufficient to satisfy the judgment, that exhaustion of partnership assets is excessively burdensome, or that the grant of permission is an appropriate exercise of the court's equitable powers; or
(e) liability is imposed on the partner by law or contract independent of the existence of the partnership.
(5) This section applies to any partnership liability or obligation resulting from a representation by a partner or purported partner under Section 48-1d-308.

48-1d-308 Liability of purported partner.
(1) If a person, by words or conduct, purports to be a partner, or consents to being represented by another as a

partner, in a partnership or with one or more persons not partners, the purported partner is liable to a person to whom the representation is made, if that person, relying on the representation, enters into a transaction with the actual or purported partnership. If the representation, either by the purported partner or by a person with the purported partner's consent, is made in a public manner, the purported partner is liable to a person who relies upon the purported partnership even if the purported partner is not aware of being held out as a partner to the claimant. If partnership liability results, the purported partner is liable with respect to that liability as if the purported partner were a partner. If no partnership liability results, the purported partner is liable with respect to that liability jointly and severally with any other person consenting to the representation.
(2) If a person is thus represented to be a partner in an existing partnership, or with one or more persons not partners, the purported partner is an agent of persons consenting to the representation to bind them to the same extent and in the same manner as if the purported partner were a partner, with respect to persons who enter into transactions in reliance upon the representation. If all the partners of the existing partnership consent to the representation, a partnership act or obligation results. If fewer than all the partners of the existing partnership consent to the representation, the person acting and the partners consenting to the representation are jointly and severally liable.
(3) A person is not liable as a partner merely because the person is named by another in a statement of partnership authority.
(4) A person does not continue to be liable as a partner merely because of a failure to file a statement of dissociation or to amend a statement of partnership authority to indicate the partner's dissociation from the partnership.
(5) Except as otherwise provided in Subsections (1) and (2), persons who are not partners as to each other are not liable as partners to other persons.

Part 4
Relations of Partners to Each Other and to Partnership

48-1d-401 Becoming partner.
(1) Upon formation of a partnership, a person becomes a partner under Subsection 48-1d-202(1).
(2) After formation of a partnership, a person becomes a partner:
(a) as provided in the partnership agreement;
(b) as a result of a transaction effective under Part 10, Merger, Interest Exchange, Conversion, and Domestication; or
(c) with the consent of all the partners.
(3) A person may become a partner without either:
(a) acquiring a transferable interest; or
(b) making or being obligated to make a contribution to the partnership.

48-1d-402 Management rights of partners.
(1) Each partner has equal rights in the management and conduct of the partnership's activities and affairs.
(2) A partner may use or possess partnership property only on behalf of the partnership.
(3) A partner is not entitled to remuneration for services performed for the partnership, except for reasonable compensation for services rendered in winding up the activities and affairs of the partnership.
(4) A difference arising among partners as to a matter in the ordinary course of the activities of the partnership shall be decided by a majority of the partners.
(5) An act outside the ordinary course of the activities and affairs of the partnership may be undertaken only with the consent of all partners. An act outside the ordinary course of business of a partnership, an amendment to the partnership agreement, and the approval of a transaction under Part 10, Merger, Interest Exchange, Conversion, and Domestication, may be undertaken only with the affirmative vote or consent of all of the partners.

48-1d-403 Rights of partners and person dissociated as partner to information.
(1) A partnership shall keep its books and records, if any, at its principal office.

(2) On reasonable notice, a partner may inspect and copy during regular business hours, at a reasonable location specified by the partnership, any record maintained by the partnership regarding the partnership's activities, affairs, financial condition, and other circumstances, to the extent the information is material to the partner's rights and duties under the partnership agreement or this chapter.
(3) The partnership shall furnish to each partner:
(a) without demand, any information concerning the partnership's activities, affairs, financial condition, and other circumstances which the partnership knows and is material to the proper exercise of the partner's rights and duties under the partnership agreement or this chapter, except to the extent the partnership can establish that it reasonably believes the partner already knows the information; and
(b) on demand, any other information concerning the partnership's activities, affairs, financial condition, and other circumstances, except to the extent the demand or information demanded is unreasonable or otherwise improper under the circumstances.
(4) The duty to furnish information under Subsection (3) also applies to each partner to the extent the partner knows any of the information described in Subsection (3).
(5) Subject to Subsection (8), on 10 days' demand made in a record received by a partnership, a person dissociated as a partner may have access to information to which the person was entitled while a partner if:
(a) the information pertains to the period during which the person was a partner;
(b) the person seeks the information in good faith; and
(c) the person satisfies the requirements imposed on a partner by Subsection (2).
(6) Not later than 10 days after receiving a demand under Subsection (5), the partnership in a record shall inform the person that made the demand of:
(a) the information that the partnership will provide in response to the demand and when and where the partnership will provide the information; and
(b) the partnership's reasons for declining, if the partnership declines to provide any demanded information.
(7) A partnership may charge a person that makes a demand under this section the reasonable costs of copying, limited to the costs of labor and material.
(8) A partner or person dissociated as a partner may exercise rights under this section through an agent or, in the case of an individual under legal disability, a legal representative. Any restriction or condition imposed by the partnership agreement or under Subsection (11) applies both to the agent or legal representative and the partner or person dissociated as a partner.
(9) The rights under this section do not extend to a person as transferee.
(10) If a partner dies, Section 48-1d-605 applies.
(11) In addition to any restriction or condition stated in the partnership agreement, a partnership, as a matter within the ordinary course of its business, may impose reasonable restrictions and conditions on access to and use of information to be furnished under this section, including designating information confidential and imposing nondisclosure and safeguarding obligations on the recipient. In a dispute concerning the reasonableness of a restriction under this subsection, the partnership has the burden of proving reasonableness.

48-1d-404 Reimbursement, indemnification, advancement, and insurance.
(1) A partnership shall reimburse a partner for any payment made by the partner in the course of the partner's activities on behalf of the partnership, if the partner complied with Sections 48-1d-402 and 48-1d-405 in making the payment.
(2) A partnership shall indemnify and hold harmless a person with respect to any claim or demand against the person and any debt, obligation, or other liability incurred by the person by reason of the person's former or present capacity as a partner, if the claim, demand, debt, obligation, or other liability does not arise from the person's breach of Section 48-1d-402, 48-1d-405, or 48-1d-504.
(3) In the ordinary course of its activities and affairs, a partnership may advance reasonable expenses, including attorney's fees and costs, incurred by a person in connection with a claim or demand against the person by reason of the person's former or present capacity as a partner, if the person promises to repay the partnership if the person ultimately is determined not to be entitled to be indemnified under Subsection (2).
(4) A partnership may purchase and maintain insurance on behalf of a partner against liability asserted against or incurred by the partner in that capacity or arising from that status even if, under Subsection 48-1d-106(3)(g),

the partnership agreement could not eliminate or limit the person's liability to the partnership for the conduct giving rise to the liability.
(5) A partnership shall reimburse a partner for an advance to the partnership beyond the amount of capital the partner agreed to contribute.
(6) A payment or advance made by a partner which gives rise to a partnership obligation under Subsection (1) or (5) constitutes a loan to the partnership which accrues interest from the date of the payment or advance.

48-1d-405 Standards of conduct for partners.
(1) A partner owes to the partnership and the other partners the duties of loyalty and care stated in Subsections (2) and (3).
(2) The duty of loyalty of a partner includes the duties:
(a) to account to the partnership and hold as trustee for it any property, profit, or benefit derived by the partner:
(i) in the conduct or winding up of the partnership's activities and affairs;
(ii) from a use by the partner of the partnership's property; or
(iii) from the appropriation of a partnership opportunity;
(b) to refrain from dealing with the partnership in the conduct or winding up of the partnership's activities and affairs as or on behalf of a person having an interest adverse to the partnership; and
(c) to refrain from competing with the partnership in the conduct of the partnership's activities and affairs before the dissolution of the partnership.
(3) The duty of care of a partner in the conduct or winding up of the partnership's activities and affairs is to refrain from engaging in grossly negligent or reckless conduct, intentional misconduct, or a knowing violation of law.
(4) A partner shall discharge the duties and obligations under this chapter or under the partnership agreement and exercise any rights consistently with the contractual obligation of good faith and fair dealing.
(5) A partner does not violate a duty or obligation under this chapter or under the partnership agreement solely because the partner's conduct furthers the partner's own interest.
(6) All the partners may authorize or ratify, after full disclosure of all material facts, a specific act or transaction that otherwise would violate the duty of loyalty.
(7) It is a defense to a claim under Subsection (2)(b) and any comparable claim in equity or at common law that the transaction was fair to the partnership.
(8) If, as permitted by Subsection (6) or the partnership agreement, a partner enters into a transaction with the partnership which otherwise would be prohibited by Subsection (2)(b), the partner's rights and obligations arising from the transaction are the same as those of a person that is not a partner.

48-1d-406 Actions by partnership and partners.
(1) A partnership may maintain an action against a partner for a breach of the partnership agreement, or for the violation of a duty to the partnership, causing harm to the partnership.
(2) A partner may maintain an action against the partnership or another partner for legal or equitable relief, with or without an accounting as to the partnership's activities and affairs, to:
(a) enforce the partner's rights under the partnership agreement;
(b) enforce the partner's rights under this chapter; or
(c) enforce the rights and otherwise protect the interests of the partner, including rights and interests arising independently of the partnership relationship.
(3) The accrual of, and any time limitation on, a right of action for a remedy under this section is governed by other law. A right to an accounting upon a dissolution and winding up does not revive a claim barred by law.

48-1d-407 Continuation of partnership beyond definite term or particular undertaking.
(1) If a partnership for a definite term or particular undertaking is continued, without an express agreement, after the expiration of the term or completion of the undertaking, the rights and duties of the partners remain the same as they were at the expiration or completion, so far as is consistent with a partnership at will.
(2) If the partners, or those of them who habitually acted in the business during the term or undertaking, continue the business without any settlement or liquidation of the partnership, they are presumed to have agreed

that the partnership will continue.

Part 5
Contributions and Distributions

48-1d-501 Form of contribution.

A contribution may consist of property transferred to, services performed for, or other benefit provided to the partnership or an agreement to transfer property to, perform services for, or provide another benefit to the partnership.

48-1d-502 Liability for contribution.

(1) A person's obligation to make a contribution to a partnership is not excused by the person's death, disability, dissolution, or other inability to perform personally.
(2) If a person does not fulfill an obligation to make a contribution other than money, the person is obligated at the option of the partnership to contribute money equal to the value of the part of the contribution which has not been made.
(3) The obligation of a person to make a contribution may be compromised only by consent of all partners. If a creditor of a limited liability partnership extends credit or otherwise acts in reliance on an obligation described in Subsection (1), without notice of a compromise under this Subsection (3), the creditor may enforce the obligation.

48-1d-503 Sharing of and right to distributions before dissolution.

(1) Any distributions made by a partnership before its dissolution and winding up must be in equal shares among partners, except to the extent necessary to comply with a transfer effective under Section 48-1d-603 or charging order in effect under Section 48-1d-604.
(2) A person has a right to a distribution before the dissolution and winding up of a partnership only if the partnership decides to make an interim distribution.
(3) A person does not have a right to demand or receive a distribution from a partnership in any form other than money. Except as otherwise provided in Section 48-1d-906, a partnership may distribute an asset in kind only if each part of the asset is fungible with each other part and each person receives a percentage of the asset equal in value to the person's share of distributions.
(4) If a partner or transferee becomes entitled to receive a distribution, the partner or transferee has the status of, and is entitled to all remedies available to, a creditor of the partnership with respect to the distribution. However, the partnership's obligation to make a distribution is subject to offset for any amount owed to the partnership by the partner or a person dissociated as partner on whose account the distribution is made.

48-1d-504 Limitation on distributions by limited liability partnership.

(1) A limited liability partnership may not make a distribution, including a distribution under Section 48-1d-906, if after the distribution:
(a) the limited liability partnership would not be able to pay its debts as they become due in the ordinary course of the partnership's activities and affairs; or
(b) the limited liability partnership's total assets would be less than the sum of its total liabilities plus, unless the partnership agreement permits otherwise, the amount that would be needed, if the partnership were to be dissolved and wound up at the time of the distribution, to satisfy the preferential rights upon dissolution and winding up of partners and transferees whose preferential rights are superior to the right to receive distributions of the persons receiving the distribution.
(2) A limited liability partnership may base a determination that a distribution is not prohibited under Subsection (1) on:
(a) financial statements prepared on the basis of accounting practices and principles that are reasonable in the circumstances; or
(b) a fair valuation or other method that is reasonable under the circumstances.
(3) Except as otherwise provided in Subsection (5), the effect of a distribution under Subsection (1) is

measured:
(a) in the case of a distribution as defined in Subsection 48-1d-102(4)(a), as of the earlier of the date:
(i) money or other property is transferred or debt is incurred by the limited liability partnership; or
(ii) the person entitled to the distribution ceases to own the interest or rights being acquired by the limited liability partnership in return for the distribution;
(b) in the case of any other distribution of indebtedness, as of the date the indebtedness is distributed; and
(c) in all other cases, as of the date:
(i) the distribution is authorized, if the payment occurs not later than 120 days after that date; or
(ii) the payment is made, if the payment occurs more than 120 days after the distribution is authorized.
(4) A limited liability partnership's indebtedness to a partner or transferee incurred by reason of a distribution made in accordance with this section is at parity with the limited liability partnership's indebtedness to its general, unsecured creditors, except to the extent subordinated by agreement.
(5) A limited liability partnership's indebtedness, including indebtedness issued as a distribution, is not a liability for purposes of Subsection (1) if the terms of the indebtedness provide that payment of principal and interest is made only if and to the extent that a payment of a distribution could then be made under this section. If the indebtedness is issued as a distribution, each payment of principal or interest is treated as a distribution, the effect of which is measured on the date the payment is made.
(6) In measuring the effect of a distribution under Section 48-1d-906, the liabilities of a dissolved limited liability partnership do not include any claim that has been disposed of under Sections 48-1d-907, 48-1d-908, and 48-1d-909.

48-1d-505 Liability for improper distributions by a limited liability partnership.
(1) If a partner of a limited liability partnership consents to a distribution made in violation of Section 48-1d-504 and in consenting to the distribution fails to comply with Section 48-1d-405, the partner is personally liable to the limited liability partnership for the amount of the distribution which exceeds the amount that could have been distributed without the violation of Section 48-1d-504.
(2) A person that receives a distribution knowing that the distribution violated Section 48-1d-504 is personally liable to the limited liability partnership but only to the extent that the distribution received by the person exceeded the amount that could have been properly paid under Section 48-1d-504.
(3) A person against which an action is commenced because the person is liable under Subsection (1) may:
(a) implead any other person that is liable under Subsection (1) and seek to enforce a right of contribution from the person; and
(b) implead any person that received a distribution in violation of Subsection (2) and seek to enforce a right of contribution from the person in the amount the person received in violation of Subsection (2).
(4) An action under this section is barred unless commenced not later than two years after the distribution.

Part 6
Transferable Interests and Rights of Transferees and Creditors

48-1d-601 Partner not co-owner of partnership property.
A partner is not a co-owner of partnership property and has no interest in partnership property which can be transferred, either voluntarily or involuntarily.

48-1d-602 Nature of transferable interest.
A transferable interest is personal property.

48-1d-603 Transfer of transferable interest.
(1) A transfer, in whole or in part, of a transferable interest:
(a) is permissible;
(b) does not by itself cause a person's dissociation or a dissolution and winding up of the partnership's activities and affairs; and
(c) subject to Section 48-1d-605, does not entitle the transferee to:

(i) participate in the management or conduct of the partnership's activities and affairs; or
(ii) except as otherwise provided in Subsection (3), have access to records or other information concerning the partnership's activities and affairs.
(2) A transferee has the right to:
(a) receive, in accordance with the transfer, distributions to which the transferor would otherwise be entitled; and
(b) seek under Subsection 48-1d-901(5) a judicial determination that it is equitable to wind up the partnership's activities and affairs.
(3) In a dissolution and winding up of a partnership, a transferee is entitled to an account of the partnership's transactions only from the date of the last account agreed to by the partners.
(4) A partnership need not give effect to a transferee's rights under this section until the partnership knows or has notice of the transfer.
(5) A transfer of a transferable interest in violation of a restriction on transfer contained in the partnership agreement is ineffective as to a person having knowledge or notice of the restriction at the time of transfer.
(6) Except as otherwise provided in Subsection 48-1d-701(4)(b), if a partner transfers a transferable interest, the transferor retains the rights of a partner other than the transferable interest transferred and retains all duties and obligations of a partner.
(7) If a partner transfers a transferable interest to a person that becomes a partner with respect to the transferred interest, the transferee is liable for the transferor's obligations under Sections 48-1d-502 and 48-1d-505 known to the transferee when the transferee becomes a partner.

48-1d-604 Charging order.
(1) On application by a judgment creditor of a partner or transferee, a court may enter a charging order against the transferable interest of the judgment debtor for the unsatisfied amount of the judgment. A charging order constitutes a lien on a judgment debtor's transferable interest and, after the partnership has been served with the charging order, requires the partnership to pay over to the person to which the charging order was issued any distribution that otherwise would be paid to the judgment debtor.
(2) To the extent necessary to effectuate the collection of distributions pursuant to a charging order in effect under Subsection (1), the court may:
(a) appoint a receiver of the distributions subject to the charging order, with the power to make all inquiries the judgment debtor might have made; and
(b) make all other orders necessary to give effect to the charging order.
(3) Upon a showing that distributions under a charging order will not pay the judgment debt within a reasonable time, the court may foreclose the lien and order the sale of the transferable interest. The purchaser at the foreclosure sale obtains only the transferable interest, does not thereby become a partner, and is subject to Section 48-1d-603.
(4) At any time before foreclosure under Subsection (3), the partner or transferee whose transferable interest is subject to a charging order under Subsection (1) may extinguish the charging order by satisfying the judgment and filing a certified copy of the satisfaction with the court that issued the charging order.
(5) At any time before foreclosure under Subsection (3), a partnership or one or more partners whose transferable interests are not subject to the charging order may pay to the judgment creditor the full amount due under the judgment and thereby succeed to the rights of the judgment creditor, including the charging order.
(6) This chapter does not deprive any partner or transferee of the benefit of any exemption law applicable to the transferable interest of the partner or transferee.
(7) This section provides the exclusive remedy by which a person seeking to enforce a judgment against a partner or transferee, in the capacity of judgment creditor, may satisfy the judgment from the judgment debtor's transferable interest.

48-1d-605 Power of legal representative of deceased partner.
If a partner dies, the deceased partner's legal representative may exercise:
(1) the rights of a transferee provided in Subsection 48-1d-603(3); and
(2) for purposes of settling the estate, the rights the deceased partner had under Section 48-1d-403.

Part 7
Dissociation

48-1d-701 Events causing dissociation.

A person is dissociated as a partner when:

(1) the partnership has notice of the person's express will to withdraw as a partner, but, if the person specified a withdrawal date later than the date the partnership had notice, on that later date;

(2) an event stated in the partnership agreement as causing the person's dissociation occurs;

(3) the person is expelled as a partner pursuant to the partnership agreement;

(4) the person is expelled as a partner by the unanimous vote or consent of the other partners if:

(a) it is unlawful to carry on the partnership's activities and affairs with the person as a partner;

(b) there has been a transfer of all of the person's transferable interest in the partnership, other than:

(i) a transfer for security purposes; or

(ii) a charging order in effect under Section 48-1d-604, which has not been foreclosed;

(c) the person is a corporation and:

(i) the partnership notifies the person that it will be expelled as a partner because the person has filed a statement of dissolution or the equivalent, its charter has been revoked, or its right to conduct business has been suspended by the jurisdiction of its incorporation; and

(ii) not later than 90 days after the notification, the statement of dissolution or the equivalent has not been revoked or the charter or right to conduct business has not been reinstated; or

(d) the person is an unincorporated entity that has been dissolved and whose business is being wound up;

(5) on application by the partnership or another partner, the person is expelled as a partner by judicial order because the person:

(a) has engaged or is engaging in wrongful conduct that has affected adversely and materially, or will affect adversely and materially, the partnership's activities and affairs;

(b) has committed willfully or persistently, or is committing willfully or persistently, a material breach of the partnership agreement or a duty or obligation under Section 48-1d-405; or

(c) engaged or is engaging in conduct relating to the partnership's activities and affairs which makes it not reasonably practicable to carry on the partnership's activities and affairs with the person as a partner;

(6) in the case of an individual:

(a) the individual dies;

(b) a guardian or general conservator for the individual is appointed; or

(c) a court orders that the individual has otherwise become incapable of performing the individual's duties as a partner under this chapter or the partnership agreement;

(7) the person:

(a) becomes a debtor in bankruptcy;

(b) executes an assignment for the benefit of creditors; or

(c) seeks, consents to, or acquiesces in the appointment of a trustee, receiver, or liquidator of the person or of all, or substantially all, of the person's property;

(8) in the case of a person that is a testamentary or inter vivos trust or is acting as a partner by virtue of being a trustee of such a trust, the trust's entire transferable interest in the partnership is distributed;

(9) in the case of a person that is an estate or is acting as a partner by virtue of being a personal representative of an estate, the estate's entire transferable interest in the partnership is distributed, but not merely by reason of the substitution of a successor personal representative;

(10) in the case of a person that is not an individual, corporation, unincorporated entity, trust, or estate, the existence of the person terminates;

(11) the partnership participates in a merger under Part 10, Merger, Interest Exchange, Conversion, and Domestication, and:

(a) the partnership is not the surviving entity; or

(b) otherwise as a result of the merger, the person ceases to be a partner;

(12) the partnership participates in an interest exchange under Part 10, Merger, Interest Exchange, Conversion,

and Domestication, and, as a result of the interest exchange, the person ceases to be a partner;
(13) the partnership participates in a conversion under Part 10, Merger, Interest Exchange, Conversion, and Domestication;
(14) the partnership participates in a domestication under Part 10, Merger, Interest Exchange, Conversion, and Domestication, and, as a result of the domestication, the person ceases to be a partner; or
(15) the partnership dissolves and completes winding up.

48-1d-702 Power to dissociate as partner -- Wrongful dissociation.
(1) A person has the power to dissociate as a partner at any time, rightfully or wrongfully, by withdrawing as a partner by express will under Subsection 48-1d-701(1).
(2) A person's dissociation as a partner is wrongful only if the dissociation:
(a) is in breach of an express provision of the partnership agreement; or
(b) in the case of a partnership for a definite term or particular undertaking, occurs before the expiration of the term or the completion of the undertaking and:
(i) the person withdraws by express will, unless the withdrawal follows not later than 90 days after another person's dissociation by death or otherwise under Subsections 48-1d-701(6) through (10) or wrongful dissociation under this subsection;
(ii) the person is expelled by judicial order under Subsection 48-1d-701(5);
(iii) the person is dissociated under Subsection 48-1d-701(7); or
(iv) in the case of a person that is not a trust other than a business trust, an estate, an individual, or a trust other than a business trust, the person is expelled or otherwise dissociated because it willfully dissolved or terminated.
(3) A person that wrongfully dissociates is liable to the partnership and to the other partners for damages caused by the dissociation. The liability is in addition to any debt, obligation, or other liability of the partner to the partnership or the other partners.

48-1d-703 Effect of dissociation.
(1) If a person's dissociation results in a dissolution and winding up of the partnership's activities and affairs, Part 9, Dissolution and Winding Up, applies, otherwise, Part 8, Partner's Dissociation When Business Not Wound Up, applies.
(2) If a person is dissociated as a partner:
(a) the person's right to participate in the management and conduct of the partnership's activities and affairs terminates, except as otherwise provided in Subsection 48-1d-902(3); and
(b) the person's duties and obligations under Section 48-1d-405:
(i) end with regard to matters arising and events occurring after the person's dissociation; and
(ii) continue only with regard to matters arising and events occurring before the person's dissociation, unless the partner participates in winding up the partnership's activities and affairs pursuant to Section 48-1d-902.
(3) A person's dissociation does not of itself discharge the person from a debt, obligation, or other liability to the partnership or the other partners which the person incurred while a partner.

Part 8
Partner's Dissociation When Business Not Wound Up

48-1d-801 Purchase of interest of person dissociated as partner.
(1) If a person is dissociated as a partner without the dissociation resulting in a dissolution and winding up of the partnership's activities and affairs under Section 48-1d-901, the partnership shall cause the person's interest in the partnership to be purchased for a buyout price determined pursuant to Subsection (2).
(2) The buyout price of the interest of a person dissociated as a partner is the amount that would have been distributable to the person under Subsection 48-1d-906(2) if, on the date of dissociation, the assets of the partnership were sold and the partnership were wound up, with the sale price equal to the greater of:
(a) the liquidation value; or
(b) the value based on a sale of the entire business as a going concern without the person.
(3) Interest accrues on the buyout price from the date of dissociation to the date of payment, but damages for

wrongful dissociation under Subsection 48-1d-702(2), and all other amounts owing, whether or not presently due, from the person dissociated as a partner to the partnership, must be offset against the buyout price.
(4) A partnership shall defend, indemnify, and hold harmless a person dissociated as a partner whose interest is being purchased against all partnership liabilities, whether incurred before or after the dissociation, except liabilities incurred by an act of the person dissociated as a partner under Section 48-1d-802.
(5) If no agreement for the purchase of the interest of a person dissociated as a partner is reached not later than 120 days after a written demand for payment, the partnership shall pay, or cause to be paid, in money to the person the amount the partnership estimates to be the buyout price and accrued interest, reduced by any offsets and accrued interest under Subsection (3).
(6) If a deferred payment is authorized under Subsection (8), the partnership may tender a written offer to pay the amount it estimates to be the buyout price and accrued interest, reduced by any offsets under Subsection (3), stating the time of payment, the amount and type of security for payment, and the other terms and conditions of the obligation.
(7) The payment or tender required by Subsection (5) or (6) must be accompanied by the following:
(a) a statement of partnership assets and liabilities as of the date of dissociation;
(b) the latest available partnership balance sheet and income statement, if any;
(c) an explanation of how the estimated amount of the payment was calculated; and
(d) written notice that the payment is in full satisfaction of the obligation to purchase unless, not later than 120 days after the written notice, the person dissociated as a partner commences an action to determine the buyout price, any offsets under Subsection (3), or other terms of the obligation to purchase.
(8) A person that wrongfully dissociates as a partner before the expiration of a definite term or the completion of a particular undertaking is not entitled to payment of any part of the buyout price until the expiration of the term or completion of the undertaking, unless the person establishes to the satisfaction of the court that earlier payment will not cause undue hardship to the business of the partnership. A deferred payment must be adequately secured and bear interest.
(9) A person dissociated as a partner may maintain an action against the partnership, pursuant to Subsection 48-1d-406(2), to determine the buyout price of that person's interest, any offsets under Subsection (3), or other terms of the obligation to purchase. The action must be commenced not later than 120 days after the partnership has tendered payment or an offer to pay or within one year after written demand for payment if no payment or offer to pay is tendered. The court shall determine the buyout price of the person's interest, any offset due under Subsection (3), and accrued interest, and enter judgment for any additional payment or refund. If deferred payment is authorized under Subsection (8), the court shall also determine the security for payment and other terms of the obligation to purchase. The court may assess reasonable attorney's fees and the fees and expenses of appraisers or other experts for a party to the action, in amounts the court finds equitable, against a party that the court finds acted arbitrarily, vexatiously, or not in good faith. The finding may be based on the partnership's failure to tender payment or an offer to pay or to comply with Subsection (7).

48-1d-802 Power to bind and liability of person dissociated as partner.
(1) After a person is dissociated as a partner without the dissociation resulting in a dissolution and winding up of the partnership's activities and affairs and before the partnership is merged out of existence, converted, or domesticated under Part 10, Merger, Interest Exchange, Conversion, and Domestication, or dissolved, the partnership is bound by an act of the person only if:
(a) the act would have bound the partnership under Section 48-1d-301 before dissociation; and
(b) at the time the other party enters into the transaction:
(i) less than two years has passed since the dissociation; and
(ii) the other party does not know or have notice of the dissociation and reasonably believes that the person is a partner.
(2) If a partnership is bound under Subsection (1), the person dissociated as a partner which caused the partnership to be bound is liable:
(a) to the partnership for any damage caused to the partnership arising from the obligation incurred under Subsection (1); and
(b) if a partner or another person dissociated as a partner is liable for the obligation, to the partner or other

person for any damage caused to the partner or other person arising from the liability.

48-1d-803 Liability of person dissociated as partner to other persons.
(1) A person's dissociation as a partner does not of itself discharge the person's liability as a partner for a debt, obligation, or other liability of the partnership incurred before dissociation. Except as otherwise provided in Subsection (2), the person is not liable for a partnership obligation incurred after dissociation.
(2) A person that has dissociated as a partner without the dissociation resulting in a dissolution and winding up of the partnership's activities and affairs is liable on a transaction entered into by the partnership after the dissociation only if:
(a) a partner would be liable on the transaction; and
(b) at the time the other party enters into the transaction:
(i) less than two years has passed since the dissociation; and
(ii) the other party does not have knowledge or notice of the dissociation and reasonably believes that the person is a partner.
(3) By agreement with a creditor of a partnership and the partnership, a person dissociated as a partner may be released from liability for an obligation of the partnership.
(4) A person dissociated as a partner is released from liability for an obligation of the partnership if the partnership's creditor, with knowledge or notice of the person's dissociation but without the person's consent, agrees to a material alteration in the nature or time of payment of the obligation.

48-1d-804 Statement of dissociation.
(1) A person dissociated as a partner or the partnership may file a statement of dissociation stating the name of the partnership and that the partner is dissociated from the partnership.
(2) A statement of dissociation is a limitation on the authority of a person dissociated as a partner for the purposes of Subsections 48-1d-303(4) and (5).

48-1d-805 Continued use of partnership name.
Continued use of a partnership name, or name of a person dissociated as a partner as part of the partnership name, by partners continuing the business does not of itself make the person dissociated as a partner liable for an obligation of the partners or the partnership continuing the business.

Part 9
Dissolution and Winding Up

48-1d-901 Events causing dissolution.
A partnership is dissolved, and its activities and affairs must be wound up, upon the occurrence of any of the following:
(1) in a partnership at will, the partnership has notice of a person's express will to withdraw as a partner, other than a partner that has dissociated under Subsections 48-1d-701(2) through (10), but, if the person specifies a withdrawal date later than the date the partnership had notice, on the later date;
(2) in a partnership for a definite term or particular undertaking:
(a) within 90 days after a person's dissociation by death or otherwise under Subsections 48-1d-701(6) through (10) or wrongful dissociation under Subsection 48-1d-702(2), the affirmative vote or consent of at least half of the remaining partners to wind up the partnership's activities and affairs, for which purpose a person's rightful dissociation pursuant to Subsection 48-1d-702(2)(b)(i) constitutes the expression of that partner's consent to wind up the partnership's activities and affairs;
(b) the express consent of all the partners to wind up the partnership's activities and affairs; or
(c) the expiration of the term or the completion of the undertaking;
(3) an event or circumstance that the partnership agreement states causes dissolution;
(4) on application by a partner, the entry by the district court of an order dissolving the partnership on the ground that:
(a) the conduct of all or substantially all the partnership's activities and affairs is unlawful;

(b) the economic purpose of the partnership is likely to be unreasonably frustrated;
(c) another partner has engaged in conduct relating to the partnership's activities and affairs which makes it not reasonably practicable to carry on the business in partnership with that partner; or
(d) it is not otherwise reasonably practicable to carry on the partnership's activities and affairs in conformity with the partnership agreement;
(5) on application by a transferee, the entry by the district court of an order dissolving the partnership on the ground that it is equitable to wind up the partnership's activities and affairs:
(a) after the expiration of the term or completion of the undertaking, if the partnership was for a definite term or particular undertaking at the time of the transfer or entry of the charging order that gave rise to the transfer; or
(b) at any time, if the partnership was a partnership at will at the time of the transfer or entry of the charging order that gave rise to the transfer; or
(6) the passage of 90 consecutive days during which the partnership does not have at least two partners.

48-1d-902 Winding up.
(1) A dissolved partnership shall wind up its activities and affairs and, except as otherwise provided in Section 48-1d-903, the partnership continues after dissolution only for the purpose of winding up.
(2) In winding up its activities and affairs, the partnership:
(a) shall discharge the partnership's debts, obligations, and other liabilities, settle and close the partnership's activities and affairs, and marshal and distribute the assets of the partnership; and
(b) may:
(i) deliver to the division for filing a statement of dissolution stating the name of the partnership and that the partnership is dissolved;
(ii) preserve the partnership's activities and affairs and property as a going concern for a reasonable time;
(iii) prosecute and defend actions and proceedings, whether civil, criminal, or administrative;
(iv) transfer the partnership's property;
(v) settle disputes by mediation or arbitration;
(vi) deliver to the division for filing a statement of termination stating the name of the partnership and that the partnership is terminated; and
(vii) perform other acts necessary or appropriate to the winding up.
(3) A person whose dissociation as a partner resulted in dissolution may participate in winding up as if still a partner, unless the dissociation was wrongful.
(4) If a dissolved partnership does not have a partner and no person has the right to participate in winding up under Subsection (3), the personal or legal representative of the last person to have been a partner may wind up the partnership's activities and affairs. If the representative does not exercise that right, a person to wind up the partnership's activities and affairs may be appointed by the consent of transferees owning a majority of the rights to receive distributions at the time the consent is to be effective. A person appointed under this Subsection (4) has the powers of a partner under Section 48-1d-904 but is not liable for the debts, obligations, and other liabilities of the partnership solely by reason of having or exercising those powers or otherwise acting to wind up the partnership's activities and affairs.
(5) On the application of any partner or person entitled under Subsection (3) to participate in winding up, the district court may order judicial supervision of the winding up of a dissolved partnership, including the appointment of a person to wind up the partnership's activities and affairs, if:
(a) the partnership does not have a partner, and within a reasonable time following the dissolution no person has been appointed under Subsection (4); or
(b) the applicant establishes other good cause.

48-1d-903 Rescinding dissolution.
(1) A partnership may rescind its dissolution, unless a statement of termination applicable to the partnership is effective or the district court has entered an order under Subsection 48-1d-901(4) or (5) dissolving the partnership.
(2) Rescinding dissolution under this section requires:
(a) the affirmative vote or consent of each partner;

(b) if a statement of dissolution applicable to the partnership has been filed by the division but has not become effective, delivery to the division for filing of a statement of withdrawal under Section ~~48-1d-114~~13-1a-304 applicable to the statement of dissolution; and
(c) if a statement of dissolution applicable to the partnership is effective, the delivery to the division for filing of a statement of correction under Section ~~48-1d-115~~13-1a-305 stating that dissolution has been rescinded under this section.
(3) If a partnership rescinds its dissolution:
(a) the partnership resumes carrying on its activities and affairs as if dissolution had never occurred;
(b) subject to Subsection (3)(c), any liability incurred by the partnership after the dissolution and before the rescission is effective is determined as if dissolution had never occurred; and
(c) the rights of a third party arising out of conduct in reliance on the dissolution before the third party knew or had notice of the rescission may not be adversely affected.

48-1d-904 Power to bind partnership after dissolution.
(1) A partnership is bound by a partner's act after dissolution which:
(a) is appropriate for winding up the partnership's activities and affairs; or
(b) would have bound the partnership under Section 48-1d-301 before dissolution, if, at the time the other party enters into the transaction, the other party does not know or have notice of the dissolution.
(2) A person dissociated as a partner binds a partnership through an act occurring after dissolution if at the time the other party enters into the transaction:
(a) less than two years has passed since the dissociation;
(b) the other party does not have notice of the dissociation and reasonably believes that the person is a partner; and
(c) the act:
(i) is appropriate for winding up the partnership's activities and affairs; or
(ii) would have bound the partnership under Section 48-1d-301 before dissolution, and at the time the other party enters into the transaction the other party does not know or have notice of the dissolution.

48-1d-905 Liability after dissolution.
(1) If a partner having knowledge of the dissolution causes a partnership to incur an obligation under Subsection 48-1d-904(1) by an act that is not appropriate for winding up the partnership's activities and affairs, the partner is liable:
(a) to the partnership for any damage caused to the partnership arising from the obligation; and
(b) if another partner or person dissociated as a partner is liable for the obligation, to that other partner or person for any damage caused to that other partner or person arising from the liability.
(2) If a person dissociated as a partner causes a partnership to incur an obligation under Subsection 48-1d-904(2), the person is liable:
(a) to the partnership for any damage caused to the partnership arising from the obligation; and
(b) if a partner or another person dissociated as a partner is liable for the obligation, to the partner or other person for any damage caused to the partner or other person arising from the obligation.

48-1d-906 Disposition of assets in winding up -- When contributions required.
(1) In winding up its activities and affairs, a partnership shall apply its assets, including the contributions required by this section, to discharge the partnership's obligations to creditors, including partners that are creditors.
(2) After a partnership complies with Subsection (1), any surplus must be distributed in the following order, subject to any charging order in effect under Section 48-1d-604:
(a) to each person owning a transferable interest that reflects contributions made and not previously returned, an amount equal to the value of the unreturned contributions; and
(b) among partners in proportion to their respective rights to share in distributions immediately before the dissolution of the partnership, except to the extent necessary to comply with any transfer effective under Section 48-1d-603.

(3) If a partnership's assets are insufficient to satisfy all its obligations under Subsection (1), with respect to each unsatisfied obligation incurred when the partnership was not a limited liability partnership, the following rules apply:
(a) Each person that was a partner when the obligation was incurred and that has not been released from the obligation under Subsections 48-1d-803(3) and (4) shall contribute to the partnership to enable the partnership to satisfy the obligation. The contribution due from each of those persons is in proportion to the right to receive distributions in the capacity of partner in effect for each of those persons when the obligation was incurred.
(b) If a person does not contribute the full amount required under Subsection (3)(a) with respect to an unsatisfied obligation of the partnership, the other persons required to contribute by Subsection (3)(a) on account of the obligation shall contribute the additional amount necessary to discharge the obligation. The additional contribution due from each of those other persons is in proportion to the right to receive distributions in the capacity of partner in effect for each of those other persons when the obligation was incurred.
(c) If a person does not make the additional contribution required by Subsection (3)(b), further additional contributions are determined and due in the same manner as provided in that subsection.
(d) A person that makes an additional contribution under Subsection (3)(b) or (3)(c) may recover from any person whose failure to contribute under Subsection (3)(a) or (3)(b) necessitated the additional contribution. A person may not recover under this Subsection (3) more than the amount additionally contributed. A person's liability under this Subsection (3) may not exceed the amount the person failed to contribute.
(4) If a partnership does not have sufficient surplus to comply with Subsection (2)(a), any surplus must be distributed among the owners of transferable interests in proportion to the value of the respective unreturned contributions.
(5) All distributions made under Subsections (2) and (4) must be paid in money.

48-1d-907 Known claims against dissolved limited liability partnership.
(1) Except as otherwise provided in Subsection (4), a dissolved limited liability partnership may give notice of a known claim under Subsection (2), which has the effect provided in Subsection (3).
(2) A dissolved limited liability partnership may in a record notify its known claimants of the dissolution. The notice must:
(a) specify the information required to be included in a claim;
(b) state that the claim must be in writing and provide a mailing address to which the claim is to be sent;
(c) state the deadline for receipt of a claim, which may not be less than 120 days after the date of the notice is received by the claimant;
(d) state that the claim will be barred if not received by the deadline; and
(e) unless the partnership has been throughout its existence a limited liability partnership, state that the barring of a claim against the partnership will also bar any corresponding claim against any partner or person dissociated as a partner which is based on Section 48-1d-305.
(3) A claim against a dissolved limited liability partnership is barred if the requirements of Subsection (2) are met and:
(a) the claim is not received by the specified deadline; or
(b) if the claim is timely received but rejected by the limited liability partnership:
(i) the partnership causes the claimant to receive a notice in a record stating that the claim is rejected and will be barred unless the claimant commences an action against the partnership to enforce the claim not later than 90 days after the claimant receives the notice; and
(ii) the claimant does not commence the required action not later than 90 days after the claimant receives the notice.
(4) This section does not apply to a claim based on an event occurring after the effective date of dissolution or a liability that on that date is contingent.

48-1d-908 Other claims against dissolved limited liability partnership.
(1) A dissolved limited liability partnership may publish notice of its dissolution and request persons having claims against the dissolved limited liability partnership to present them in accordance with the notice.

(2) A notice under Subsection (1) must:
(a) be published at least once in a newspaper of general circulation in the county in this state in which the dissolved limited liability partnership's principal office is located or, if the principal office is not located in this state, in the county in which the office of the dissolved limited liability partnership's registered agent is or was last located and in accordance with Section 45-1-101;
(b) describe the information required to be contained in a claim, state that the claim must be in writing, and provide a mailing address to which the claim is to be sent;
(c) state that a claim against the dissolved limited liability partnership is barred unless an action to enforce the claim is commenced not later than three years after publication of the notice; and
(d) unless the dissolved limited liability partnership has been throughout its existence a limited liability partnership, state that the barring of a claim against the dissolved limited liability partnership will also bar any corresponding claim against any partner or person dissociated as a partner which is based on Section 48-1d-306.
(3) If a dissolved limited liability partnership publishes a notice in accordance with Subsection (2), the claim of each of the following claimants is barred unless the claimant commences an action to enforce the claim against the dissolved limited liability partnership not later than three years after the publication date of the notice:
(a) a claimant that did not receive notice in a record under Section 48-1d-907;
(b) a claimant whose claim was timely sent to the partnership but not acted on; and
(c) a claimant whose claim is contingent at, or based on an event occurring after, the effective date of dissolution.
(4) A claim not barred under this section or Section 48-1d-907 may be enforced:
(a) against a dissolved limited liability partnership, to the extent of its undistributed assets;
(b) except as otherwise provided in Section 48-1d-909, if assets of the dissolved limited liability partnership have been distributed after dissolution, against a partner or transferee to the extent of that person's proportionate share of the claim or of the dissolved limited liability partnership's assets distributed to the partner or transferee after dissolution, whichever is less, but a person's total liability for all claims under this subsection may not exceed the total amount of assets distributed to the person after dissolution; and
(c) against any person liable on the claim under Sections 48-1d-306, 48-1d-803, and 48-1d-905.

48-1d-909 Court proceedings.
(1) A dissolved limited liability partnership that has published a notice under Section 48-1d-908 may file an application with the district court in the county where the dissolved limited liability partnership's principal office is located or, if the principal office is not located in this state, where the office of its registered agent is located, for a determination of the amount and form of security to be provided for payment of claims that are contingent, have not been made known to the dissolved limited liability partnership, or are based on an event occurring after the effective date of dissolution but which, based on the facts known to the dissolved limited liability partnership, are reasonably expected to arise after the effective date of dissolution. Security is not required for any claim that is or is reasonably anticipated to be barred under Subsection 48-1d-907(3).
(2) Not later than 10 days after the filing of an application under Subsection (1), the dissolved limited liability partnership shall give notice of the proceeding to each claimant holding a contingent claim known to the dissolved limited liability partnership.
(3) In any proceeding under this section, the district court may appoint a guardian ad litem to represent all claimants whose identities are unknown. The reasonable fees and expenses of the guardian, including all reasonable expert witness fees, must be paid by the dissolved limited liability partnership.
(4) A dissolved limited liability partnership that provides security in the amount and form ordered by the district court under Subsection (1) satisfies the dissolved limited liability partnership's obligations with respect to claims that are contingent, have not been made known to the dissolved limited liability partnership, or are based on an event occurring after the effective date of dissolution, and the claims may not be enforced against a partner or transferee who receives assets in liquidation.
(5) This section applies only to a debt, obligation, or other liability incurred while a partnership was a limited liability partnership.

48-1d-910 Liability of partner and person dissociation as partner when claim against limited liability

partnership is barred.

If a claim against a dissolved limited liability partnership is barred under Section 48-1d-907, 48-1d-908, or 48-1d-909, any corresponding claim under Section 48-1d-306, 48-1d-803, or 48-1d-905 is also barred.

Part 10
Merger, Interest Exchange, Conversion, and Domestication

48-1d-1001 Definitions.

In this part:

(1) "Acquired entity" means the entity, all of one or more classes or series of interests in which are acquired in an interest exchange.

(2) "Acquiring entity" means the entity that acquires all of one or more classes or series of interests of the acquired entity in an interest exchange.

(3) "Conversion" means a transaction authorized by Sections 48-1d-1041 through 48-1d-1046.

(4) "Converted entity" means the converting entity as it continues in existence after a conversion.

(5) "Converting entity" means the domestic entity that approves a plan of conversion pursuant to Section 48-1d-1043 or the foreign entity that approves a conversion pursuant to the law of its jurisdiction of formation.

(6) "Distributional interest" means the right under an unincorporated entity's organic law and organic rules to receive distributions from the entity.

(7) "Domestic," with respect to an entity, means governed as to its internal affairs by the law of this state.

(8) "Domesticated limited liability partnership" means a domesticating limited liability partnership as it continues in existence after a domestication.

(9) "Domesticating limited liability partnership" means a domestic limited liability partnership that approves a plan of domestication pursuant to Section 48-1d-1053 or foreign limited liability partnership that approves a domestication pursuant to the law of its jurisdiction of formation.

(10) "Domestication" means a transaction authorized by Sections 48-1d-1051 through 48-1d-1056.

(11) "Entity":

(a) means:

(i) a business corporation;

(ii) a nonprofit corporation;

(iii) a general partnership, including a limited liability partnership;

(iv) a limited partnership, including a limited liability limited partnership;

(v) a limited liability company;

(vi) a limited cooperative association;

(vii) an unincorporated nonprofit association;

(viii) a statutory trust, business trust, or common-law business trust; or

(ix) any other person that has:

(A) a legal existence separate from any interest holder of that person; or

(B) the power to acquire an interest in real property in its own name; and

(b) does not include:

(i) an individual;

(ii) a trust with a predominantly donative purpose, or a charitable trust;

(iii) an association or relationship that is not a partnership solely by reason of Subsection 48-1d-202(3) or a similar provision of the law of another jurisdiction;

(iv) a decedent's estate; or

(v) a government or a governmental subdivision, agency, or instrumentality.

(12) "Filing entity" means an entity whose formation requires the filing of a public organic record.

(13) "Foreign," with respect to an entity, means an entity governed as to its internal affairs by the law of a jurisdiction other than this state.

(14) "Governance interest" means a right under the organic law or organic rules of an unincorporated entity, other than as a governor, agent, assignee, or proxy, to:

(a) receive or demand access to information concerning, or the books and records of, the entity;

(b) vote for or consent to the election of the governors of the entity; or
(c) receive notice of or vote on or consent to an issue involving the internal affairs of the entity.
(15) “Governor” means:
(a) a director of a business corporation;
(b) a director or trustee of a nonprofit corporation;
(c) a general partner of a general partnership;
(d) a general partner of a limited partnership;
(e) a manager of a manager-managed limited liability company;
(f) a member of a member-managed limited liability company;
(g) a director of a limited cooperative association;
(h) a manager of an unincorporated nonprofit association;
(i) a trustee of a statutory trust, business trust, or common-law business trust; or
(j) any other person under whose authority the powers of an entity are exercised and under whose direction the activities and affairs of the entity are managed pursuant to the organic law and organic rules of the entity.
(16) “Interest” means:
(a) a share in a business corporation;
(b) a membership in a nonprofit corporation;
(c) a partnership interest in a general partnership;
(d) a partnership interest in a limited partnership;
(e) a membership interest in a limited liability company;
(f) a member’s interest in a limited cooperative association;
(g) a membership in an unincorporated nonprofit association;
(h) a beneficial interest in a statutory trust, business trust, or common-law business trust; or
(i) a governance interest or distributional interest in any other type of unincorporated entity.
(17) “Interest exchange” means a transaction authorized by Sections 48-1d-1031 through 48-1d-1036.
(18) “Interest holder” means:
(a) a shareholder of a business corporation;
(b) a member of a nonprofit corporation;
(c) a general partner of a general partnership;
(d) a general partner of a limited partnership;
(e) a limited partner of a limited partnership;
(f) a member of a limited liability company;
(g) a member of a limited cooperative association;
(h) a member of an unincorporated nonprofit association;
(i) a beneficiary or beneficial owner of a statutory trust, business trust, or common-law business trust; or
(j) any other direct holder of an interest.
(19) “Interest holder liability” means:
(a) personal liability for a liability of an entity which is imposed on a person:
(i) solely by reason of the status of the person as an interest holder; or
(ii) by the organic rules of the entity which make one or more specified interest holders or categories of interest holders liable in their capacity as interest holders for all or specified liabilities of the entity; or
(b) an obligation of an interest holder under the organic rules of an entity to contribute to the entity.
(20) “Jurisdiction of formation” means the jurisdiction whose law includes the organic law of an entity.
(21) “Merger” means a transaction authorized by Sections 48-1d-1021 through 48-1d-1026.
(22) “Merging entity” means an entity that is a party to a merger and exists immediately before the merger becomes effective.
(23) “Organic law” means the law of an entity’s jurisdiction of formation governing the internal affairs of the entity.
(24) “Organic rules” means the public organic record and private organic rules of an entity.
(25) “Plan” means a plan of merger, plan of interest exchange, plan of conversion, or plan of domestication.
(26) “Plan of conversion” means a plan under Section 48-1d-1042.
(27) “Plan of domestication” means a plan under Section 48-1d-1052.

(28) “Plan of interest exchange” means a plan under Section 48-1d-1032.
(29) “Plan of merger” means a plan under Section 48-1d-1022.
(30) “Private organic rules” means the rules, whether or not in a record, that govern the internal affairs of an entity, are binding on all its interest holders, and are not part of its public organic record, if any. The term includes:
(a) the bylaws of a business corporation;
(b) the bylaws of a nonprofit corporation;
(c) the partnership agreement of a general partnership;
(d) the partnership agreement of a limited partnership;
(e) the operating agreement of a limited liability company;
(f) the bylaws of a limited cooperative association;
(g) the governing principles of an unincorporated nonprofit association; and
(h) the trust instrument of a statutory trust or similar rules of a business trust or common-law business trust.
(31) “Protected agreement” means:
(a) a record evidencing indebtedness and any related agreement in effect on January 1, 2014;
(b) an agreement that is binding on an entity on January 1, 2014;
(c) the organic rules of an entity in effect on January 1, 2014; or
(d) an agreement that is binding on any of the governors or interest holders of an entity on January 1, 2014.
(32) “Public organic record” means the record the filing of which by the division is required to form an entity and any amendment to or restatement of that record. The term includes:
(a) the articles of incorporation of a business corporation;
(b) the articles of incorporation of a nonprofit corporation;
(c) the certificate of limited partnership of a limited partnership;
(d) the certificate of organization of a limited liability company;
(e) the articles of organization of a limited cooperative association; and
(f) the certificate of trust of a statutory trust or similar record of a business trust.
(33) “Registered foreign entity” means a foreign entity that is registered to do business in this state pursuant to a record filed by the division.
(34) “Statement of conversion” means a statement under Section 48-1d-1045.
(35) “Statement of domestication” means a statement under Section 48-1d-1055.
(36) “Statement of interest exchange” means a statement under Section 48-1d-1035.
(37) “Statement of merger” means a statement under Section 48-1d-1025.
(38) “Surviving entity” means an entity that continues in existence after or is created by a merger.
(39) “Type of entity” means a generic form of entity:
(a) recognized at common law; or
(b) formed under an organic law, whether or not some entities formed under that organic law are subject to provisions of that law that create different categories of the form of entity.

48-1d-1002 Relationship of part to other laws.

This part does not authorize an act prohibited by, and does not affect the application or requirements of, law other than this part.

48-1d-1003 Required notice or approval.

(1) A domestic or foreign entity that is required to give notice to, or obtain the approval of, a governmental agency or officer of this state to be a party to a merger must give the notice or obtain the approval to be a party to an interest exchange, conversion, or domestication.
(2) Property held for a charitable purpose under the law of this state by a domestic or foreign entity immediately before a transaction under this part becomes effective may not, as a result of the transaction, be diverted from the objects for which it was donated, granted, devised, or otherwise transferred unless, to the extent required by or pursuant to the law of this state concerning cy pres or other law dealing with nondiversion of charitable assets, the entity obtains an appropriate order of the district court specifying the disposition of the property.
(3) A bequest, devise, gift, grant, or promise contained in a will or other instrument of donation, subscription, or

conveyance that is made to a merging entity that is not the surviving entity and that takes effect or remains payable after the merger inures to the surviving entity. A trust obligation that would govern property if transferred to the nonsurviving entity applies to property that is transferred to the surviving entity under this section.

48-1d-1004 Status of filings.

A filing under this part signed by a domestic entity becomes part of the public organic record of the entity if the entity's organic law provides that similar filings under that law become part of the public organic record of the entity.

48-1d-1005 Nonexclusivity.

The fact that a transaction under this part produces a certain result does not preclude the same result from being accomplished in any other manner permitted by law other than this part.

48-1d-1006 Reference to external facts.

A plan may refer to facts ascertainable outside the plan if the manner in which the facts will operate upon the plan is specified in the plan. The facts may include the occurrence of an event or a determination or action by a person, whether or not the event, determination, or action is within the control of a party to the transaction.

48-1d-1007 Alternative means of approval of transactions.

Except as otherwise provided in the organic law or organic rules of a domestic entity, approval of a transaction under this part by the unanimous vote or consent of its interest holders satisfies the requirements of this part for approval of the transaction.

48-1d-1008 Appraisal rights.

(1) An interest holder of a domestic merging, acquired, converting, or domesticating entity is entitled to appraisal rights in connection with the transaction if the interest holder would have been entitled to appraisal rights under the entity's organic law in connection with a merger in which the interest of the interest holder was changed, converted, or exchanged unless:
(a) the organic law permits the organic rules to limit the availability of appraisal rights; and
(b) the organic rules provide such a limit.
(2) An interest holder of a domestic merging, acquired, converting, or domesticating entity is entitled to contractual appraisal rights in connection with a transaction under this part to the extent provided in:
(a) the entity's organic rules; or
(b) the plan.

48-1d-1021 Merger authorized.

(1) By complying with Sections 48-1d-1021 through 48-1d-1026:
(a) one or more domestic partnerships may merge with one or more domestic or foreign entities into a domestic or foreign surviving entity; and
(b) two or more foreign entities may merge into a domestic partnership.
(2) By complying with the provisions of Sections 48-1d-1021 through 48-1d-1026 applicable to foreign entities, a foreign entity may be a party to a merger under Sections 48-1d-1021 through 48-1d-1026 or may be the surviving entity in such a merger if the merger is authorized by the law of the foreign entity's jurisdiction of formation.

48-1d-1022 Plan of merger.

(1) A domestic partnership may become a party to a merger under Sections 48-1d-1021 through 48-1d-1026 by approving a plan of merger. The plan must be in a record and contain:
(a) as to each merging entity, its name, jurisdiction of formation, and type of entity;
(b) if the surviving entity is to be created in the merger, a statement to that effect and the entity's name,

jurisdiction of formation, and type of entity;
(c) the manner of converting the interests in each party to the merger into interests, securities, obligations, money, other property, rights to acquire interests or securities, or any combination of the foregoing;
(d) if the surviving entity exists before the merger, any proposed amendments to its public organic record, if any, or to its private organic rules that are, or are proposed to be, in a record;
(e) if the surviving entity is to be created in the merger, its proposed public organic record, if any, and the full text of its private organic rules that are proposed to be in a record;
(f) the other terms and conditions of the merger; and
(g) any other provision required by the law of a merging entity's jurisdiction of formation or the organic rules of a merging entity.
(2) In addition to the requirements of Subsection (1), a plan of merger may contain any other provision not prohibited by law.

48-1d-1023 Approval of merger.
(1) A plan of merger is not effective unless it has been approved:
(a) by a domestic merging partnership, by all the partners of the partnership entitled to vote on or consent to any matter; and
(b) in a record, by each partner of a domestic merging partnership that will have interest holder liability for debts, obligations, and other liabilities that arise after the merger becomes effective, unless:
(i) the partnership agreement of the partnership provides in a record for the approval of a merger in which some or all of its partners become subject to interest holder liability by the vote or consent of fewer than all the partners; and
(ii) the partner consented in a record to or voted for that provision of the partnership agreement or became a partner after the adoption of that provision.
(2) A merger involving a domestic merging entity that is not a partnership is not effective unless the merger is approved by that entity in accordance with its organic law.
(3) A merger involving a foreign merging entity is not effective unless the merger is approved by the foreign entity in accordance with the law of the foreign entity's jurisdiction of formation.

48-1d-1024 Amendment or abandonment of plan of merger.
(1) A plan of merger may be amended only with the consent of each party to the plan, except as otherwise provided in the plan.
(2) A domestic merging partnership may approve an amendment of a plan of merger:
(a) in the same manner as the plan was approved, if the plan does not provide for the manner in which it may be amended; or
(b) by the partners in the manner provided in the plan, but a partner that was entitled to vote on or consent to approval of the merger is entitled to vote on or consent to any amendment of the plan that will change:
(i) the amount or kind of interests, securities, obligations, money, other property, rights to acquire interests or securities, or any combination of the foregoing, to be received by the interest holders of any party to the plan;
(ii) the public organic record, if any, or private organic rules of the surviving entity that will be in effect immediately after the merger becomes effective, except for changes that do not require approval of the interest holders of the surviving entity under its organic law or organic rules; or
(iii) any other terms or conditions of the plan, if the change would adversely affect the partner in any material respect.
(3) After a plan of merger has been approved and before a statement of merger becomes effective, the plan may be abandoned as provided in the plan. Unless prohibited by the plan, a domestic merging partnership may abandon the plan in the same manner as the plan was approved.
(4) If a plan of merger is abandoned after a statement of merger has been delivered to the division for filing and before the statement of merger becomes effective, a statement of abandonment, signed by a party to the plan, must be delivered to the division for filing before the statement of merger becomes effective. The statement of abandonment takes effect on filing, and the merger is abandoned and does not become effective. The statement of abandonment must contain:

(a) the name of each party to the plan of merger;
(b) the date on which the statement of merger was delivered to the division for filing; and
(c) a statement that the merger has been abandoned in accordance with this section.

48-1d-1025 Statement of merger.
(1) A statement of merger must be signed by each merging entity and delivered to the division for filing.
(2) A statement of merger must contain:
(a) the name, jurisdiction of formation, and type of entity of each merging entity that is not the surviving entity;
(b) the name, jurisdiction of formation, and type of entity of the surviving entity;
(c) a statement that the merger was approved by each domestic merging entity, if any, in accordance with Sections 48-1d-1021 through 48-1d-1026 and by each foreign merging entity, if any, in accordance with the law of its jurisdiction of formation;
(d) if the surviving entity exists before the merger and is a domestic filing entity, any amendment to its public organic record approved as part of the plan of merger;
(e) if the surviving entity is created by the merger and is a domestic filing entity, its public organic record, as an attachment;
(f) if the surviving entity is created by the merger and is a domestic limited liability partnership, its statement of qualification, as an attachment; and
(g) if the surviving entity is a foreign entity that is not a registered foreign entity, a mailing address to which the division may send any process served on the division pursuant to Subsection 48-1d-1026(5).
(3) In addition to the requirements of Subsection (2), a statement of merger may contain any other provision not prohibited by law.
(4) If the surviving entity is a domestic entity, its public organic record, if any, must satisfy the requirements of the law of this state, except that the public organic record does not need to be signed.
(5) A plan of merger that is signed by all the merging entities and meets all the requirements of Subsection (2) may be delivered to the division for filing instead of a statement of merger and on filing has the same effect. If a plan of merger is filed as provided in this Subsection (5), references in this part to a statement of merger refer to the plan of merger filed under this Subsection (5).

48-1d-1026 Effect of merger.
(1) When a merger becomes effective:
(a) the surviving entity continues or comes into existence;
(b) each merging entity that is not the surviving entity ceases to exist;
(c) all property of each merging entity vests in the surviving entity without transfer, reversion, or impairment;
(d) all debts, obligations, and other liabilities of each merging entity are debts, obligations, and liabilities of the surviving entity;
(e) except as otherwise provided by law or the plan of merger, all the rights, privileges, immunities, powers, and purposes of each merging entity vest in the surviving entity;
(f) if the surviving entity exists before the merger:
(i) all its property continues to be vested in it without transfer, reversion, or impairment;
(ii) it remains subject to all its debts, obligations, and other liabilities; and
(iii) all its rights, privileges, immunities, powers, and purposes continue to be vested in it;
(g) the name of the surviving entity may be substituted for the name of any merging entity that is a party to any pending action or proceeding;
(h) if the surviving entity exists before the merger:
(i) its public organic record, if any, is amended as provided in the statement of merger; and
(ii) its private organic rules that are to be in a record, if any, are amended to the extent provided in the plan of merger;
(i) if the surviving entity is created by the merger:
(i) its public organic record, if any, is effective; and
(ii) its private organic rules are effective; and
(j) the interests in each merging entity which are to be converted in the merger are converted, and the interest

holders of those interests are entitled only to the rights provided to them under the plan of merger and to any appraisal rights they have under Section 48-1d-1008 and the merging entity's organic law.
(2) Except as otherwise provided in the organic law or organic rules of a merging entity, the merger does not give rise to any rights that an interest holder, governor, or third party would have upon a dissolution, liquidation, or winding up of the merging entity.
(3) When a merger becomes effective, a person that did not have interest holder liability with respect to any of the merging entities and becomes subject to interest holder liability with respect to a domestic entity as a result of the merger has interest holder liability only to the extent provided by the organic law of that entity and only for those debts, obligations, and other liabilities that arise after the merger becomes effective.
(4) When a merger becomes effective, the interest holder liability of a person that ceases to hold an interest in a domestic merging entity with respect to which the person had interest holder liability is as follows:
(a) The merger does not discharge any interest holder liability under the organic law of the domestic merging entity to the extent the interest holder liability arose before the merger became effective.
(b) The person does not have interest holder liability under the organic law of the domestic merging entity for any debt, obligation, or other liability that arises after the merger becomes effective.
(c) The organic law of the domestic merging entity continues to apply to the release, collection, or discharge of any interest holder liability preserved under Subsection (4)(a) as if the merger had not occurred and the surviving entity were the domestic merging entity.
(d) The person has whatever rights of contribution from any other person as are provided by law other than this chapter, this chapter, or the organic rules of the domestic merging entity with respect to any interest holder liability preserved under Subsection (4)(a) as if the merger had not occurred.
(5) When a merger becomes effective, a foreign entity that is the surviving entity may be served with process in this state for the collection and enforcement of any debts, obligations, or other liabilities of a domestic merging entity as provided in Section ~~16-17-301~~13-1a-511.
(6) When a merger becomes effective, the registration to do business in this state of any foreign merging entity that is not the surviving entity is canceled.

48-1d-1031 Interest exchange authorized.
(1) By complying with Sections 48-1d-1031 through 48-1d-1036:
(a) a domestic partnership may acquire all of one or more classes or series of interests of another domestic or foreign entity in exchange for interests, securities, obligations, money, other property, rights to acquire interests or securities, or any combination of the foregoing; or
(b) all of one or more classes or series of interests of a domestic partnership may be acquired by another domestic or foreign entity in exchange for interests, securities, obligations, money, other property, rights to acquire interests or securities, or any combination of the foregoing.
(2) By complying with the provisions of Sections 48-1d-1031 through 48-1d-1036 applicable to foreign entities, a foreign entity may be the acquiring or acquired entity in an interest exchange under Sections 48-1d-1031 through 48-1d-1036 if the interest exchange is authorized by the law of the foreign entity's jurisdiction of formation.
(3) If a protected agreement contains a provision that applies to a merger of a domestic partnership but does not refer to an interest exchange, the provision applies to an interest exchange in which the domestic partnership is the acquired entity as if the interest exchange were a merger until the provision is amended after January 1, 2014.

48-1d-1032 Plan of interest exchange.
(1) A domestic partnership may be the acquired entity in an interest exchange under Sections 48-1d-1031 through 48-1d-1036 by approving a plan of interest exchange. The plan must be in a record and contain:
(a) the name of the acquired entity;
(b) the name, jurisdiction of formation, and type of entity of the acquiring entity;
(c) the manner of converting the interests in the acquired entity into interests, securities, obligations, money, other property, rights to acquire interests or securities, or any combination of the foregoing;
(d) any proposed amendments to the partnership agreement that are, or are proposed to be, in a record of the

acquired entity;
(e) the other terms and conditions of the interest exchange; and
(f) any other provision required by the law of this state or the partnership agreement of the acquired entity.
(2) In addition to the requirements of Subsection (1), a plan of interest exchange may contain any other provision not prohibited by law.

48-1d-1033 Approval of interest exchange.
(1) A plan of interest exchange is not effective unless it has been approved:
(a) by all the partners of a domestic acquired partnership entitled to vote on or consent to any matter; and
(b) in a record, by each partner of the domestic acquired partnership that will have interest holder liability for debts, obligations, and other liabilities that arise after the interest exchange becomes effective, unless:
(i) the partnership agreement of the partnership provides in a record for the approval of an interest exchange or a merger in which some or all its partners become subject to interest holder liability by the vote or consent of fewer than all the partners; and
(ii) the partner consented in a record to or voted for that provision of the partnership agreement or became a partner after the adoption of that provision.
(2) An interest exchange involving a domestic acquired entity that is not a partnership is not effective unless it is approved by the domestic entity in accordance with its organic law.
(3) An interest exchange involving a foreign acquired entity is not effective unless it is approved by the foreign entity in accordance with the law of the foreign entity's jurisdiction of formation.
(4) Except as otherwise provided in its organic law or organic rules, the interest holders of the acquiring entity are not required to approve the interest exchange.

48-1d-1034 Amendment or abandonment of plan of interest exchange.
(1) A plan of interest exchange may be amended only with the consent of each party to the plan, except as otherwise provided in the plan.
(2) A domestic acquired partnership may approve an amendment of a plan of interest exchange:
(a) in the same manner as the plan was approved, if the plan does not provide for the manner in which it may be amended; or
(b) by the partners of the acquired partnership in the manner provided in the plan, but a partner that was entitled to vote on or consent to approval of the interest exchange is entitled to vote on or consent to any amendment of the plan that will change:
(i) the amount or kind of interests, securities, obligations, money, other property, rights to acquire interests or securities, or any combination of the foregoing, to be received by any of the partners of the acquired partnership under the plan;
(ii) the partnership agreement of the acquired partnership that will be in effect immediately after the interest exchange becomes effective, except for changes that do not require approval of the partners of the acquired partnership under this chapter or the partnership agreement; or
(iii) any other terms or conditions of the plan, if the change would adversely affect the partner in any material respect.
(3) After a plan of interest exchange has been approved and before a statement of interest exchange becomes effective, the plan may be abandoned as provided in the plan. Unless prohibited by the plan, a domestic acquired partnership may abandon the plan in the same manner as the plan was approved.
(4) If a plan of interest exchange is abandoned after a statement of interest exchange has been delivered to the division for filing and before the statement becomes effective, a statement of abandonment, signed by the acquired partnership, must be delivered to the division for filing before the statement of interest exchange becomes effective. The statement of abandonment takes effect on filing, and the interest exchange is abandoned and does not become effective. The statement of abandonment must contain:
(a) the name of the acquired partnership;
(b) the date on which the statement of interest exchange was delivered to the division for filing; and
(c) a statement that the interest exchange has been abandoned in accordance with this section.

48-1d-1035 Statement of interest exchange.
(1) A statement of interest exchange must be signed by a domestic acquired partnership and delivered to the division for filing.
(2) A statement of interest exchange must contain:
(a) the name of the acquired partnership;
(b) the name, jurisdiction of formation, and type of entity of the acquiring entity; and
(c) a statement that the plan of interest exchange was approved by the acquired entity in accordance with Sections 48-1d-1031 through 48-1d-1036.
(3) In addition to the requirements of Subsection (2), a statement of interest exchange may contain any other provision not prohibited by law.
(4) A plan of interest exchange that is signed by a domestic acquired partnership and meets all the requirements of Subsection (2) may be delivered to the division for filing instead of a statement of interest exchange and on filing has the same effect. If a plan of interest exchange is filed as provided in this subsection, references in this part to a statement of interest exchange refer to the plan of interest exchange filed under this Subsection (4).

48-1d-1036 Effect of interest exchange.
(1) When an interest exchange in which the acquired entity is a domestic partnership becomes effective:
(a) the interests in the domestic acquired partnership that are the subject of the interest exchange cease to exist or are converted or exchanged, and the partners holding those interests are entitled only to the rights provided to them under the plan of interest exchange and to any appraisal rights they have under Section 48-1d-1008;
(b) the acquiring entity becomes the interest holder of the interests in the acquired partnership stated in the plan of interest exchange to be acquired by the acquiring entity; and
(c) the provisions of the partnership agreement of the acquired partnership that are to be in a record, if any, are amended to the extent provided in the plan of interest exchange.
(2) Except as otherwise provided in the partnership agreement of a domestic acquired partnership, the interest exchange does not give rise to any rights that a partner or third party would have upon a dissolution, liquidation, or winding up of the acquired partnership.
(3) When an interest exchange becomes effective, a person that did not have interest holder liability with respect to a domestic acquired partnership and becomes subject to interest holder liability with respect to a domestic entity as a result of the interest exchange has interest holder liability only to the extent provided by the organic law of the entity and only for those debts, obligations, and other liabilities that arise after the interest exchange becomes effective.
(4) When an interest exchange becomes effective, the interest holder liability of a person that ceases to hold an interest in a domestic acquired partnership with respect to which the person had interest holder liability is as follows:
(a) The interest exchange does not discharge any interest holder liability to the extent the interest holder liability arose before the interest exchange became effective.
(b) The person does not have interest holder liability for any debt, obligation, or other liability that arises after the interest exchange becomes effective.
(c) The person has whatever rights of contribution from any other person as are provided by law other than this chapter, this chapter, or the partnership agreement of the acquired entity with respect to any interest holder liability preserved under Subsection (4)(a) as if the interest exchange had not occurred.

48-1d-1041 Conversion authorized.
(1) As used in Sections 48-1d-1041 through 48-1d-1046, the term “subject entity” includes a corporation, a business trust or association, a real estate investment trust, a common-law trust, or any other unincorporated business, including a limited liability company, a general partnership, a registered limited liability partnership, or a foreign limited partnership.
(2) A subject entity may convert to a domestic partnership by complying with Sections 48-1d-1041 through 48-1d-1046.
(3) By complying with Sections 48-1d-1041 through 48-1d-1046, a domestic partnership may become:
(a) a domestic entity that is a different type of entity; or

(b) a foreign entity that is a different type of entity, if the conversion is authorized by the law of the foreign jurisdiction.
(4) By complying with the provisions of Sections 48-1d-1041 through 48-1d-1046 applicable to foreign entities, a foreign entity that is not a foreign partnership may become a domestic partnership if the conversion is authorized by the law of the foreign entity's jurisdiction of formation.
(5) If a protected agreement contains a provision that applies to a merger of a domestic partnership but does not refer to a conversion, the provision applies to a conversion of the entity as if the conversion were a merger until the provision is amended after January 1, 2014.

48-1d-1042 Plan of conversion.
(1) A subject entity may convert to a domestic partnership or a domestic partnership may convert to a different type of entity under Sections 48-1d-1041 through 48-1d-1046 by approving a plan of conversion. The plan must be in a record and contain:
(a) the name of the converting subject entity or partnership;
(b) the name, jurisdiction of formation, and type of entity of the converted entity;
(c) the manner of converting the interests in the converting subject entity or partnership into interests, securities, obligations, money, other property, rights to acquire interests or securities, or any combination of the foregoing;
(d) the proposed public organic record of the converted entity if it will be a filing entity;
(e) the full text of the private organic rules of the converted entity that are proposed to be in a record;
(f) the other terms and conditions of the conversion; and
(g) any other provision required by the law of this state or the partnership agreement of the converting partnership.
(2) In addition to the requirements of Subsection (1), a plan of conversion may contain any other provision not prohibited by law.

48-1d-1043 Approval of conversion.
(1) A plan of conversion is not effective unless it has been approved:
(a) by a domestic converting partnership by all the partners of the partnership entitled to vote on or consent to any matter; and
(b) in a record, by each partner of a domestic converting partnership that will have interest holder liability for debts, obligations, and other liabilities that arise after the conversion becomes effective:
(i) the partnership agreement provides in a record for the approval of a conversion or a merger in which some or all of its partners become subject to interest holder liability by the vote or consent of fewer than all the interest holders; and
(ii) the partner voted for or consented in a record to that provision of the partnership agreement or became a partner after the adoption of that provision.
(2) A conversion involving a domestic converting entity that is not a partnership, including a subject entity, is not effective unless it is approved by the domestic converting entity in accordance with its organic law.
(3) A conversion of a foreign converting entity is not effective unless it is approved by the foreign entity in accordance with the law of the foreign entity's jurisdiction of formation.

48-1d-1044 Amendment or abandonment of plan of conversion.
(1) A plan of conversion of a subject entity or domestic converting partnership may be amended:
(a) in the same manner as the plan was approved, if the plan does not provide for the manner in which it may be amended; or
(b) by the partners of the entity in the manner provided in the plan, but a partner that was entitled to vote on or consent to approval of the conversion is entitled to vote on or consent to any amendment of the plan that will change:
(i) the amount or kind of interests, securities, obligations, money, other property, rights to acquire interests or securities, or any combination of the foregoing, to be received by any of the partners of the converting entity under the plan;
(ii) the public organic record or private organic rules of the converted entity that will be in effect immediately

after the conversion becomes effective, except for changes that do not require approval of the interest holders of the converted entity under its organic law or organic rules; or
(iii) any other terms or conditions of the plan, if the change would adversely affect the partner in any material respect.
(2) After a plan of conversion has been approved and before a statement of conversion becomes effective, the plan may be abandoned as provided in the plan. Unless prohibited by the plan, a domestic converting partnership may abandon the plan in the same manner as the plan was approved.
(3) If a plan of conversion is abandoned after a statement of conversion has been delivered to the division for filing and before the statement of conversion becomes effective, a statement of abandonment, signed by the converting entity, must be delivered to the division for filing before the time the statement of conversion becomes effective. The statement of abandonment takes effect on filing, and the conversion is abandoned and does not become effective. The statement of abandonment must contain:
(a) the name of the converting subject entity or partnership;
(b) the date on which the statement of conversion was delivered to the division for filing; and
(c) a statement that the conversion has been abandoned in accordance with this section.

48-1d-1045 Statement of conversion.
(1) A statement of conversion must be signed by the converting entity and delivered to the division for filing.
(2) A statement of conversion must contain:
(a) the name, jurisdiction of formation, and type of entity of the converting entity;
(b) the name, jurisdiction of formation, and type of entity of the converted entity;
(c) if the converting entity is a domestic entity, a statement that the plan of conversion was approved in accordance with Sections 48-1d-1041 through 48-1d-1046 or, if the converting entity is a foreign entity, a statement that the conversion was approved by the foreign converting entity in accordance with the law of its jurisdiction of formation;
(d) if the converted entity is a domestic filing entity, the text of its public organic record, as an attachment;
(e) if the converted entity is a domestic limited liability partnership, the text of its statement of qualification, as an attachment; and
(f) if the converted entity is a foreign entity that is not a registered foreign entity, a mailing address to which the division may send any process served on the division pursuant to Subsection 48-1d-1046(5).
(3) In addition to the requirements of Subsection (2), a statement of conversion may contain any other provision not prohibited by law.
(4) If the converted entity is a domestic entity, its public organic record, if any, must satisfy the requirements of the law of this state, except that the public organic record does not need to be signed.
(5) A plan of conversion that is signed by a domestic converting entity and meets all the requirements of Subsection (2) may be delivered to the division for filing instead of a statement of conversion and on filing has the same effect. If a plan of conversion is filed as provided in this Subsection (5), references in this part to a statement of conversion refer to the plan of conversion filed under this Subsection (5).

48-1d-1046 Effect of conversion.
(1) When a conversion in which the converted entity is a subject entity or domestic partnership becomes effective:
(a) the converted entity is:
(i) organized under and subject to this chapter; and
(ii) the same entity without interruption as the converting entity;
(b) all property of the converting entity continues to be vested in the converted entity without transfer, reversion, or impairment;
(c) all debts, obligations, and other liabilities of the converting entity continue as debts, obligations, and other liabilities of the converted entity;
(d) except as otherwise provided by law or the plan of conversion, all the rights, privileges, immunities, powers, and purposes of the converting entity remain in the converted entity;
(e) the name of the converted entity may be substituted for the name of the converting entity in any pending

action or proceeding;
(f) if the converted entity is a limited liability partnership, its statement of qualification is effective simultaneously;
(g) the provisions of the partnership agreement of the converted entity that are to be in a record, if any, approved as part of the plan of conversion are effective; and
(h) the interests in the converting entity are converted, and the interest holders of the converting entity are entitled only to the rights provided to them under the plan of conversion and to any appraisal rights they have under Section 48-1d-1008 and the converting entity's organic law.
(2) Except as otherwise provided in the partnership agreement of a domestic converting partnership, the conversion does not give rise to any rights that a partner or third party would otherwise have upon a dissolution, liquidation, or winding up of the converting entity.
(3) When a conversion becomes effective, a person that did not have interest holder liability with respect to the converting entity and becomes subject to interest holder liability with respect to a domestic entity as a result of the conversion has interest holder liability only to the extent provided by the organic law of the entity and only for those debts, obligations, and other liabilities that arise after the conversion becomes effective.
(4) When a conversion becomes effective, the interest holder liability of a person that ceases to hold an interest in a domestic partnership with respect to which the person had interest holder liability is as follows:
(a) The conversion does not discharge any interest holder liability to the extent the interest holder liability arose before the conversion became effective.
(b) The person does not have interest holder liability for any debt, obligation, or other liability that arises after the conversion becomes effective.
(c) The person has whatever rights of contribution from any other person as are provided by law other than this chapter, this chapter, or the partnership agreement of the converting entity with respect to any interest holder liability preserved under Subsection (4)(a) as if the conversion had not occurred.
(5) When a conversion becomes effective, a foreign entity that is the converted entity may be served with process in this state for the collection and enforcement of any of its debts, obligations, and other liabilities as provided in Section ~~16-17-301~~13-1a-511.
(6) If the converting entity is a registered foreign entity, its registration to do business in this state is canceled when the conversion becomes effective.
(7) A conversion does not require the entity to wind up its affairs and does not constitute or cause the dissolution of the entity.

48-1d-1051 Domestication authorized.
(1) By complying with Sections 48-1d-1051 through 48-1d-1056, a domestic limited liability partnership may become a foreign limited liability partnership if the domestication is authorized by the law of the foreign jurisdiction.
(2) By complying with the provisions of Sections 48-1d-1051 through 48-1d-1056 applicable to foreign limited liability partnerships, a foreign limited liability partnership may become a domestic limited liability partnership if the domestication is authorized by the law of the foreign limited liability partnership's jurisdiction of formation.
(3) If a protected agreement contains a provision that applies to a merger of a domestic limited liability partnership but does not refer to a domestication, the provision applies to a domestication of the limited liability partnership as if the domestication were a merger until the provision is amended after January 1, 2014.

48-1d-1052 Plan of domestication.
(1) A domestic limited liability partnership may become a foreign limited liability partnership in a domestication by approving a plan of domestication. The plan must be in a record and contain:
(a) the name of the domesticating limited liability partnership;
(b) the name and jurisdiction of formation of the domesticated limited liability partnership;
(c) the manner of converting the interests in the domesticating limited liability partnership into interests, securities, obligations, money, other property, rights to acquire interests or securities, or any combination of the foregoing;

(d) the proposed statement of qualification of the domesticated limited liability partnership;
(e) the full text of the partnership agreement of the domesticated limited liability partnership that are proposed to be in a record;
(f) the other terms and conditions of the domestication; and
(g) any other provision required by the law of this state or the partnership agreement of the domesticating limited liability partnership.
(2) In addition to the requirements of Subsection (1), a plan of domestication may contain any other provision not prohibited by law.

48-1d-1053 Approval of domestication.
(1) A plan of domestication of a domestic domesticating limited liability partnership is not effective unless it has been approved:
(a) by all the partners entitled to vote on or consent to any matter; and
(b) in a record, by each partner that will have interest holder liability for debts, obligations, and other liabilities that arise after the domestication becomes effective, unless:
(i) the partnership agreement of the entity provides in a record for the approval of a domestication or merger in which some or all of its partners become subject to interest holder liability by the vote or consent of fewer than all the partners; and
(ii) the partner voted for or consented in a record to that provision of the partnership agreement or became a partner after the adoption of that provision.
(2) A domestication of a foreign domesticating limited liability partnership is not effective unless it is approved in accordance with the law of the foreign limited liability partnership's jurisdiction of formation.

48-1d-1054 Amendment or abandonment of plan of domestication.
(1) A plan of domestication of a domestic domesticating limited liability partnership may be amended:
(a) in the same manner as the plan was approved, if the plan does not provide for the manner in which it may be amended; or
(b) by the partners of the limited liability partnership in the manner provided in the plan, but a partner that was entitled to vote on or consent to approval of the domestication is entitled to vote on or consent to any amendment of the plan that will change:
(i) the amount or kind of interests, securities, obligations, money, other property, rights to acquire interests or securities, or any combination of the foregoing, to be received by any of the partners of the domesticating limited liability partnership under the plan;
(ii) the partnership agreement of the domesticated limited liability partnership that will be in effect immediately after the domestication becomes effective, except for changes that do not require approval of the partners of the domesticated limited liability partnership under its organic law or partnership agreement; or
(iii) any other terms or conditions of the plan, if the change would adversely affect the partner in any material respect.
(2) After a plan of domestication has been approved by a domestic domesticating limited liability partnership and before a statement of domestication becomes effective, the plan may be abandoned as provided in the plan. Unless prohibited by the plan, a domestic domesticating limited liability partnership may abandon the plan in the same manner as the plan was approved.
(3) If a plan of domestication is abandoned after a statement of domestication has been delivered to the division for filing and before the statement of domestication becomes effective, a statement of abandonment, signed by the limited liability partnership, must be delivered to the division for filing before the time the statement of domestication becomes effective. The statement of abandonment takes effect on filing, and the domestication is abandoned and does not become effective. The statement of abandonment must contain:
(a) the name of the domesticating limited liability partnership;
(b) the date on which the statement of domestication was delivered to the division for filing; and
(c) a statement that the domestication has been abandoned in accordance with this section.

48-1d-1055 Statement of domestication.

(1) A statement of domestication must be signed by the domesticating limited liability partnership and delivered to the division for filing.
(2) A statement of domestication must contain:
(a) the name of the domesticating limited liability partnership and the name of the jurisdiction whose law governs the domesticating limited liability partnership's internal affairs;
(b) the name of the domesticated limited liability partnership and the name of the jurisdiction whose law governs the domesticating limited liability partnership's internal affairs;
(c) if the domesticating limited liability partnership is a domestic limited liability partnership, a statement that the plan of domestication was approved in accordance with Sections 48-1d-1051 through 48-1d-1056 or, if the domesticating limited liability partnership is a foreign limited liability partnership, a statement that the domestication was approved in accordance with the law of the jurisdiction whose law governs the internal affairs of the foreign limited liability partnership;
(d) the statement of qualification of the domesticated limited liability partnership, as an attachment; and
(e) if the domesticated foreign limited liability partnership is not a registered foreign limited liability partnership, a mailing address to which the division may send any process served on the division pursuant to Subsection 48-1d-1056(5).
(3) In addition to the requirements of Subsection (2), a statement of domestication may contain any other provision not prohibited by law.
(4) The statement of qualification of a domesticated domestic limited liability partnership must satisfy the requirements of the law of this state, but the statement does not need to be signed.
(5) A plan of domestication that is signed by a domesticating domestic limited liability partnership and meets all the requirements of Subsection (2) may be delivered to the division for filing instead of a statement of domestication and on filing has the same effect. If a plan of domestication is filed as provided in this Subsection (5), references in this part to a statement of domestication refer to the plan of domestication filed under this Subsection (5).

48-1d-1056 Effect of domestication.
(1) When a domestication becomes effective:
(a) the domesticated limited liability partnership is:
(i) organized under and subject to the organic law of the domesticated limited liability partnership; and
(ii) the same entity without interruption as the domesticating limited liability partnership;
(b) all property of the domesticating limited liability partnership continues to be vested in the domesticated entity without transfer, reversion, or impairment;
(c) all debts, obligations, and other liabilities of the domesticating limited liability partnership continue as debts, obligations, and other liabilities of the domesticated limited liability partnership;
(d) except as otherwise provided by law or the plan of domestication, all the rights, privileges, immunities, powers, and purposes of the domesticating limited liability partnership remain in the domesticated limited liability partnership;
(e) the name of the domesticated limited liability partnership may be substituted for the name of the domesticating limited liability partnership in any pending action or proceeding;
(f) the statement of qualification of the domestic limited liability partnership is effective;
(g) the provisions of the partnership agreement of the domesticated limited liability partnership that are to be in a record, if any, approved as part of the plan of domestication are effective; and
(h) the interests in the domesticating limited liability partnership are converted to the extent and as approved in connection with the domestication, and the partners of the domesticating limited liability partnership are entitled only to the rights provided to them under the plan of domestication and to any appraisal rights they have under Section 48-1d-1008.
(2) Except as otherwise provided in the organic law or partnership agreement of the domesticating limited liability partnership, the domestication does not give rise to any rights that a partner or third party would have upon a dissolution, liquidation, or winding up of the domesticating limited liability partnership.
(3) When a domestication becomes effective, a person that did not have interest holder liability with respect to the domesticating limited liability partnership and becomes subject to interest holder liability with respect to a

domestic limited liability partnership as a result of the domestication has interest holder liability only to the extent provided by the organic law of the domestic limited liability partnership and only for those debts, obligations, and other liabilities that arise after the domestication becomes effective.
(4) When a domestication becomes effective:
(a) The domestication does not discharge any interest holder liability under this part to the extent the interest holder liability arose before the domestication became effective.
(b) A person does not have interest holder liability under this chapter for any debt, obligation, or other liability that arise after the domestication becomes effective.
(c) A person has whatever rights of contribution from any other person as are provided by law other than this chapter, or this chapter, or the partnership agreement of a domestic domesticating limited liability partnership with respect to any interest holder liability preserved under Subsection (4)(a) as if the domestication had not occurred.
(5) When a domestication becomes effective, a foreign limited liability partnership that is the domesticated limited liability partnership may be served with process in this state for the collection and enforcement of any of its debts, obligations, and other liabilities as provided in Section ~~16-17-301~~13-1a-511.
(6) If the domesticating limited liability partnership is a registered foreign limited liability partnership, the registration of the foreign limited liability partnership is canceled when the domestication becomes effective.
(7) A domestication does not require the limited liability partnership to wind up its business and does not constitute or cause the dissolution of the limited liability partnership.

Part 11
Limited Liability Partnerships

48-1d-1101 Statement of qualification.
(1) A partnership may become a limited liability partnership pursuant to this section.
(2) The terms and conditions on which a partnership becomes a limited liability partnership must be approved by the vote or consent necessary to amend the partnership agreement except, in the case of a partnership agreement that expressly addresses obligations to contribute to the partnership, the vote or consent necessary to amend those provisions.
(3) After the approval required by Subsection (2), a partnership may become a limited liability partnership by delivering to the division for filing a statement of qualification. The statement of qualification must contain:
(a) the name of the limited liability partnership;
(b) the street address of the limited liability partnership's principal office and, if different, the street address of an office in this state, if any;
(c) the information required by S~~ub~~section ~~16-17-203(1)~~13-1a-504; and
(d) a statement that the partnership elects to become a limited liability partnership.
(4) A partnership's status as a limited liability partnership remains effective, regardless of changes in the limited liability partnership, until it is canceled pursuant to Subsection (6) or administratively revoked pursuant to Section 48-1d-1102.
(5) The status of a partnership as a limited liability partnership and the liability of its partners for the debts, obligations, or other liabilities of the partnership while it is a limited liability partnership is not affected by errors or later changes in the information required to be contained in the statement of qualification.
(6) A limited liability partnership may amend or cancel its statement of qualification by delivering to the division for filing a statement of amendment or cancellation. The statement must be consented to by all partners and state the name of the limited liability partnership and in the case of:
(a) an amendment, state the amendment; and
(b) a cancellation, state that the statement of qualification is canceled.

48-1d-1102 Administrative revocation of statement of qualification.
(1) The division may commence a proceeding under Subsections (2) and (3) to revoke the statement of qualification of a limited liability partnership administratively if the limited liability partnership does not:
(a) pay any fee~~, tax, or penalty~~ required to be paid to the division not later than ~~60 days~~six months after it is due;

(b) deliver an annual report to the division not later than ~~60 days~~six months after it is due; or
(c) have a registered agent in this state for 60 consecutive days.
(2) If the division determines that one or more grounds exist for administratively revoking a statement of qualification, the division shall serve the limited liability partnership pursuant to 13-1a-312 with notice in a record of the division's determination.
(3) If a limited liability partnership, not later than 60 days after service of the notice is effected under Subsection (2), does not cure each ground for revocation or demonstrate to the satisfaction of the division that each ground determined by the division does not exist, the division shall administratively revoke the statement of qualification by signing a statement of administrative revocation that recites the grounds for revocation and the effective date of the revocation. The division shall file the statement and serve a copy on the limited liability partnership pursuant to Section ~~48-1d-116~~13-1a-312.
(4) An administrative revocation under Subsection (3) affects only a partnership's status as a limited liability partnership and is not an event causing dissolution of the partnership.
(5) The administrative revocation of a statement of qualification of a limited liability partnership does not terminate the authority of its registered agent.

48-1d-1103 Reinstatement.
(1) A limited liability partnership whose statement of qualification has been revoked administratively under Section 48-1d-1102 may apply to the division for reinstatement of the statement of qualification not later than two years after the effective date of the revocation. The application must state:
(a) the name of the partnership at the time of the administrative revocation of its statement of qualification and, if needed, a different name that satisfies Section 48-1d-1105;
(b) the address of the principal office of the partnership and information required under Subsection ~~16-17-203(1)~~13-1a-504;
(c) the effective date of administrative revocation of the partnership's statement of qualification; and
(d) that the grounds for revocation did not exist or have been cured.
~~(2) To have its statement of qualification reinstated, a partnership whose statement of qualification has been revoked administratively must pay all fees, taxes, and penalties that were due to the division at the time of the administrative revocation and all fees, taxes, and penalties that would have been due to the division while the partnership's statement of qualification was revoked administratively.~~
(~~3~~2) If the division determines that the application contains the information required by Subsection (1), and is satisfied that the information is correct, ~~and determines that all payments required to be made to the division by Subsection (2) have been made,~~ the division shall:
(a) cancel the statement of revocation and prepare a statement of reinstatement that states the division's determination and the effective date of reinstatement;
(b) file the statement of revocation; and
(c) serve a copy of the statement of revocation on the limited liability partnership.
(4) When reinstatement under this section is effective, the following rules apply:
(a) the reinstatement relates back to and takes effect as of the effective date of the administrative revocation; and
(b) the partnership's status as a limited liability partnership continues as if the revocation had not occurred, except for the rights of a person arising out of an act or omission in reliance on the revocation before the person knew or had notice of the reinstatement are not affected.

48-1d-1104 ~~Judicial~~ Administrative review of denial of reinstatement.
(1) If the division denies a limited liability partnership's application for reinstatement following administrative revocation of the limited liability partnership's statement of qualification, the division shall serve the limited liability ~~company~~ partnership with notice in a record that explains the reasons for the denial.
(2) A limited liability partnership may seek administrative review of denial of reinstatement by the executive director, in accordance with Title 63G, Chapter 4, Administrative Procedures Act, not later than 30 days after service of the notice of denial.~~may seek judicial review of denial of reinstatement in the district court not later than 30 days after service of the notice of denial.~~

48-1d-1105 Permitted names.

~~(1) The name of a partnership that is not a limited liability partnership may not contain the phrase "Registered Limited Liability Partnership" or "Limited Liability Partnership" or the abbreviation "R.L.L.P.", "L.L.P.", "RLLP", or "LLP".~~

~~(2) The name of a limited liability partnership must contain the words "Registered Limited Liability Partnership", "Limited Liability Partnership", "R.L.L.P.", "L.L.P.", "RLLP", or "LLP".~~

~~(3) Except as otherwise provided in Subsection (6), the name of a limited liability partnership and the name under which a foreign limited liability partnership may register to do business in this state must be distinguishable on the records of the division from any:~~

~~(a) name of an existing person whose formation required the filing of a record by the division;~~

~~(b) name of a limited liability partnership;~~

~~(c) name of a person that is registered to do business in this state by the filing of a record by the division;~~

~~(d) name reserved under Section 48-1d-1106 or other law of this state providing for the reservation of a name by the filing of a record by the division;~~

~~(e) name registered under Section 48-1d-1107 or other law of this state providing for the registration of a name by the filing of a record by the division; or~~

~~(f) assumed name registered under Title 42, Chapter 2, Conducting Business Under Assumed Name.~~

~~(4) If a person consents in a record to the use of the person's name and submits an undertaking in a form satisfactory to the division to change the person's name to a name that is distinguishable on the records of the division from any name in any category of names in Subsection (3), the name of the consenting person may be used by the person to which the consent was given.~~

~~(5) Except as otherwise provided in Subsection (6), in determining whether a name is the same as or not distinguishable on the records of the division from the name of another entity, words, phrases, or abbreviations indicating the type of entity, such as "corporation", "corp.", "incorporated", "Inc.", "professional corporation", "PC", "P.C.", "professional association", "PA", "P.A.", "Limited", "Ltd.", "limited partnership", "LP", "L.P.", "limited liability partnership", "LLP", "L.L.P.", "registered limited liability partnership", "RLLP", "R.L.L.P.", "limited liability limited partnership", "LLLP", "L.L.L.P.", "registered limited liability limited partnership", "RLLLP", "R.L.L.L.P.", "limited liability company", or "LLC", "L.L.C.", "professional limited liability company", "PLLC", or "P.L.L.C.", may not be taken into account.~~

~~(6) A person may consent in a record to the use of a name that is not distinguishable on the records of the division from the person's name except for the addition of a word, phrase, or abbreviation indicating the type of person as provided in Subsection (5). In such a case, the person need not change person's name pursuant to Subsection (4).~~

~~(7) The division may not approve for filing a name that implies that a limited liability partnership is an agency of this state or any of the state's political subdivisions, if the limited liability partnership is not actually such a legally established agency or subdivision.~~

~~(8) The authorization to file a certificate under or to reserve or register a limited liability partnership name as granted by the division does not:~~

~~(a) abrogate or limit the law governing unfair competition or unfair trade practices;~~

~~(b) derogate from the common law, the principles of equity, or the statutes of this state or of the United States with respect to the right to acquire and protect names and trademarks; or~~

~~(c) create an exclusive right in geographic or generic terms contained within a name.~~

~~(9) The name of a limited liability partnership or foreign limited liability partnership may not contain:~~

~~(a) the words:~~

~~(i) "association";~~

~~(ii) "corporation";~~

~~(iii) "incorporated";~~

~~(iv) "limited liability company";~~

~~(v) "limited company";~~

~~(vi) "limited partnership"; or~~

~~(vii) "Ltd.";~~

~~(b) any word or abbreviation that is of like import to the words listed in Subsection (9)(a);~~
~~(c) without the written consent of the United States Olympic Committee, the words:~~
~~(i) "Olympic";~~
~~(ii) "Olympiad"; or~~
~~(iii) "Citius Altius Fortius";~~
~~(d) without the written consent of the Division of Consumer Protection issued in accordance with Section 13-34-114 the words:~~
~~(i) "university";~~
~~(ii) "college"; or~~
~~(iii) "institute" or "institution"; or~~
~~(e) for a limited liability partnership that changes the limited liability partnership's name or registers to do business in the state on or after May 4, 2022, the number sequence "911."~~

~~48-1d-1106 Reservation of name.~~
~~(1) A person may reserve the exclusive use of a name that complies with Section 48-1d-1105 by delivering an application to the division for filing. The application must state the name and address of the applicant and the name to be reserved. If the division finds that the name is available, the division shall reserve the name for the applicant's exclusive use for a period of 120 days.~~
~~(2) The owner of a reserved name may transfer the reservation to another person by delivering to the division a signed notice in a record of the transfer, which states the name and address of the transferee.~~

~~48-1d-1107 Registration of name.~~
~~(1) A foreign limited liability partnership not registered to do business in this state under Part 12, Foreign Limited Liability Partnerships, may register its name, or an alternate name adopted pursuant to Section 48-1d-1206, if the name is distinguishable on the records of the division from the names that are not available under Section 48-1d-1105.~~
~~(2) To register its name or an alternate name adopted pursuant to Section 48-1d-1206, a foreign limited liability partnership must deliver to the division for filing an application stating the foreign limited liability partnership's name, the jurisdiction and date of its formation, and any alternate name adopted pursuant to Section 48-1d-1206. If the division finds that the name applied for is available, the division shall register the name for the applicant's exclusive use.~~
~~(3) The registration of a name under this section is effective for one year after the date of registration.~~
~~(4) A foreign limited liability partnership whose name registration is effective may renew the registration for successive one-year periods by delivering, not earlier than three months before the expiration of the registration, to the division for filing a renewal application that complies with this section. When filed, the renewal application renews the registration for a succeeding one-year period.~~
~~(5) A foreign limited liability partnership whose name registration is effective may register as a foreign limited liability company under the registered name or consent in a signed record to the use of that name by another person that is not an individual.~~

48-1d-1108 Registered agent.
(1) Each limited liability partnership and each registered foreign limited liability partnership shall designate in accordance with Subsection ~~16-17-203(1)~~13-1a-504 and maintain a registered agent in this state.
(2) A limited liability partnership or registered foreign limited liability partnership may change its registered agent or the address of its registered agent by filing with the division a statement of change in accordance with Section ~~16-17-206~~13-1a-507.

~~48-1d-1109 Annual report for division.~~
~~(1) Each limited liability partnership and registered foreign limited liability partnership shall deliver to the division for filing an annual 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;
(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 an annual report must be current as of the date the report is signed by the limited liability partnership or registered foreign limited liability partnership.
(3) A report must be delivered to the division 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:
(a) in the case of a limited liability partnership, the annual report must be delivered to the division during the month in which is the anniversary date on which the limited liability partnership statement of qualification became effective; and
(b) in the case of a registered foreign limited liability partnership, the annual report must be delivered to the division during the month in which is the anniversary date on which the registered foreign limited liability partnership registered to do business in this state.
(4) If an annual 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 report for correction.
(5) If an annual 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 annual report becomes effective, the differing information in the annual report is considered a statement of change under Section 16-17-206.

Part 12
Foreign Limited Liability Partnerships

48-1d-1201 Governing law.
(1) The law of the jurisdiction in which the statement of qualification or equivalent filing of a foreign limited liability partnership is filed governs:
(a) the internal affairs of the foreign limited liability partnership; and
(b) the liability of a partner as partner for a debt, obligation, or other liability of the foreign limited liability partnership.
(2) A foreign limited liability partnership is not precluded from registering to do business in this state because of any difference between the law of this state and the jurisdiction under which the foreign limited liability partnership's statement of qualification or equivalent filing is filed.
(3) Registration of a foreign limited liability partnership to do business in this state does not authorize the foreign limited liability partnership to engage in any business or exercise any power that a domestic limited liability partnership may not engage in or exercise in this state as a limited liability partnership.
(4)
(a) The division may permit a tribal limited liability partnership to apply for authority to transact business in the state in the same manner as a foreign limited liability partnership formed in another state.
(b) If a tribal limited liability partnership elects to apply for authority to transact business in the state, for purposes of this chapter, the tribal limited liability partnership shall be treated in the same manner as a foreign limited liability partnership formed under the laws of another state.

48-1d-1202 Registration to do business in this state.
(1) A foreign limited liability partnership may not do business in this state until it registers with the division under this part.
(2) A foreign limited liability partnership doing business in this state may not maintain an action or proceeding in this state unless it has registered to do business in this state.
(3) The failure of a foreign limited liability partnership to register to do business in this state does not impair the validity of a contract or act of the foreign limited liability partnership or preclude it from defending an action or proceeding in this state.

(4) A limitation on the liability of a partner of a foreign limited liability partnership is not waived solely because the foreign limited liability partnership does business in this state without registering to do business in this state.
(5) Subsections 48-1d-1201(1) and (2) apply even if a foreign limited liability partnership fails to register under this part.

48-1d-1203 Foreign registration statement.

To register to do business in this state, a foreign limited liability partnership must deliver a foreign registration statement to the division for filing. The statement must state:
(1) the name of the foreign limited liability partnership and, if the name does not comply with Section 48-1d-1105, an alternate name adopted pursuant to Subsection 48-1d-1206(1);
(2) that the limited liability partnership is a foreign limited liability partnership;
(3) the jurisdiction in which the foreign limited liability partnership's statement of qualification or equivalent filing is filed;
(4) the street and mailing addresses of the foreign limited liability partnership's principal office and, if the law of the jurisdiction in which the foreign limited liability partnership's statement of qualification or equivalent filing is filed requires the foreign limited liability partnership to maintain an office in that jurisdiction, the street and mailing addresses of the required office; and
(5) the information required by Subsection 16-17-203(1).

48-1d-1204 Amendment of foreign registration statement.

A registered foreign limited liability partnership shall deliver to the division for filing an amendment to its foreign registration statement if there is a change in:
(1) the name of the foreign limited liability partnership;
(2) the jurisdiction in which the foreign limited liability partnership's statement of qualification or equivalent filing is filed;
(3) an address required by Subsection 48-1d-1203(4); or
(4) the information required by Subsection 48-1d-1203(5).

48-1d-1205 Activities not constituting doing business.

(1) Activities of a foreign limited liability partnership which do not constitute doing business in this state under this part include:
(a) maintaining, defending, mediating, arbitrating, and settling an action or proceeding;
(b) carrying on any activity concerning its internal affairs, including meetings of its partners;
(c) maintaining accounts in financial institutions;
(d) maintaining offices or agencies for the transfer, exchange, and registration of securities of the foreign limited liability partnership or maintaining trustees or depositories with respect to those securities;
(e) selling through independent contractors;
(f) soliciting or obtaining orders by any means if the orders require acceptance outside this state before they become contracts;
(g) creating or acquiring indebtedness, mortgages, or security interests in property;
(h) securing or collecting debts or enforcing mortgages or security interests in property securing the debts, and holding, protecting, or maintaining property;
(i) conducting an isolated transaction that is not in the course of similar transactions;
(j) owning, without more, property; and
(k) doing business in interstate commerce.
(2) A person does not do business in this state solely by being a partner of a foreign limited liability partnership that does business in this state.
(3) This section does not apply in determining the contacts or activities that may subject a foreign limited liability partnership to service of process, taxation, or regulation under law of this state other than this chapter.

48-1d-1206 Noncomplying name of foreign limited liability partnership.

(1) A foreign limited liability partnership whose name does not comply with Section 48-1d-1105 may not

register to do business in this state until it adopts, for the purpose of doing business in this state, an alternate name that complies with Section 48-1d-1105. A registered foreign limited liability partnership that registers under an alternate name under this Subsection (1) need not comply with Title 42, Chapter 2, Conducting Business Under Assumed Name. After registering to do business in this state with an alternate name, a registered foreign partnership shall do business in this state under:
(a) the alternate name;
(b) the foreign limited liability partnership's name, with the addition of its jurisdiction in which the foreign limited liability partnership's statement of qualification or equivalent filing is filed; or
(c) an assumed or fictitious name the foreign limited liability partnership is authorized to use under Title 42, Chapter 2, Conducting Business Under Assumed Name.
(2) If a registered foreign limited liability partnership changes its name to one that does not comply with Section 48-1d-1105, it may not do business in this state until it complies with Subsection (1) by amending its registration to adopt an alternate name that complies with Section 48-1d-1105.

48-1d-1207 Withdrawal deemed on conversion to domestic filing entity or domestic limited liability partnership.

A registered foreign limited liability partnership that converts to a domestic limited liability partnership or to a domestic entity that is organized, incorporated, or otherwise formed through the delivery of a record to the division for filing is deemed to have withdrawn its registration on the effective date of the conversion.

48-1d-1208 Withdrawal on dissolution or conversion to nonfiling entity other than limited liability partnership.

(1) A registered foreign limited liability partnership that has dissolved and completed winding up or has converted to a domestic or foreign entity that is not organized, incorporated, or otherwise formed through the public filing of a record, other than a limited liability partnership, shall deliver a statement of withdrawal to the division for filing. The statement must state:
(a) in the case of a foreign limited liability partnership that has completed winding up:
(i) its name and the jurisdiction in which the foreign limited liability partnership's statement of qualification is filed; and
(ii) that the foreign limited liability partnership surrenders its registration to do business in this state; and
(b) in the case of a foreign limited liability partnership that has converted:
(i) the name of the converting foreign limited liability partnership and the jurisdiction in which its statement of qualification is filed;
(ii) the type of entity to which the foreign limited liability partnership has converted and its jurisdiction of formation;
(iii) that the converted entity surrenders the converting foreign limited liability partnership's registration to do business and revokes the authority of the converting foreign limited liability partnership's registered agent to act as registered agent in this state on behalf of the foreign limited liability partnership or the converted entity; and
(iv) a mailing address to which service of process may be made under Subsection (2).
(2) After a withdrawal under this section of a foreign limited liability partnership that has converted to another type of entity is effective, service of process in any action or proceeding based on a cause of action arising during the time the foreign limited liability partnership was registered to do business in this state may be made pursuant to Subsection 16-17-301(2).

48-1d-1209 Transfer of registration.

(1) When a registered foreign limited liability partnership has merged into a foreign entity that is not registered to do business in this state or has converted to a foreign entity required to register with the division to do business in this state, the foreign entity shall deliver to the division for filing an application for transfer of registration. The application must state:
(a) the name of the registered foreign limited liability partnership before the merger or conversion;
(b) that before the merger or conversion the registration pertained to a foreign limited liability partnership;
(c) the name of the applicant foreign entity into which the foreign limited liability partnership has merged or to

~~which it has been converted, and, if the name does not comply with Section 48-1d-1105, an alternate name adopted pursuant to Subsection 48-1d-1206(1) or similar provision of law of this state governing a foreign entity registered to do business in this state of the same type as the applicable foreign entity;~~
~~(d) the type of entity of the applicant foreign entity and its jurisdiction of formation;~~
~~(e) the street and mailing addresses of the principal office of the applicant foreign entity and, if the law of that entity's jurisdiction of formation requires the entity to maintain an office in that jurisdiction, the street and mailing addresses of that office; and~~
~~(f) the information required under Subsection 16-17-203(1).~~
~~(2) When an application for transfer of registration takes effect, the registration of the foreign limited liability partnership to do business in this state is transferred without interruption to the foreign entity into which the foreign limited liability partnership has merged or to which it has been converted.~~

~~48-1d-1210 Termination of registration.~~
~~(1) The division may terminate the registration of a registered foreign limited liability partnership in the manner provided in Subsections (2) and (3) if the foreign limited liability partnership does not:~~
~~(a) pay, not later than 60 days after the due date, any fee, tax, interest, or penalty required to be paid to the division under this chapter or law other than this chapter;~~
~~(b) deliver to the division for filing, not later than 60 days after the due date, the annual report required under Section 48-1d-1109;~~
~~(c) have a registered agent as required by Section 48-1d-1108; or~~
~~(d) deliver to the division for filing a statement of a change under Section 16-17-206 not later than 30 days after a change has occurred in the name or address of the registered agent.~~
~~(2) The division may terminate the registration of a registered foreign limited liability partnership by:~~
~~(a) filing a notice of termination or noting the termination in the records of the division; and~~
~~(b) delivering a copy of the notice or the information in the notation to the foreign limited liability partnership's registered agent, or if the foreign limited liability partnership does not have a registered agent, to the foreign limited liability partnership's principal office.~~
~~(3) A notice or information in a notation under Subsection (2) must include:~~
~~(a) the effective date of the termination, which must be at least 60 days after the date the division delivers the copy; and~~
~~(b) the grounds for termination under Subsection (1).~~
~~(4) The authority of a registered foreign limited liability partnership to do business in this state ceases on the effective date of the notice of termination or notation under Subsection (2), unless before that date the foreign limited liability partnership cures each ground for termination stated in the notice or notation. If the foreign limited liability partnership cures each ground, the division shall file a record so stating.~~

~~48-1d-1211 Withdrawal of registration of registered foreign limited liability partnership.~~
~~(1) A registered foreign limited liability partnership may withdraw its registration by delivering a statement of withdrawal to the division for filing. The statement of withdrawal must state:~~
~~(a) the name of the foreign limited liability partnership and the jurisdiction in which the foreign limited liability partnership's statement of qualification or equivalent filing is filed;~~
~~(b) that the foreign limited liability partnership is not doing business in this state and that it withdraws its registration to do business in this state;~~
~~(c) that the foreign limited liability partnership revokes the authority of its registered agent to accept service on its behalf in this state; and~~
~~(d) an address to which service of process may be made under Subsection (2).~~
~~(2) After the withdrawal of the registration of a foreign limited liability partnership, service of process in any action or proceeding based on a cause of action arising during the time the foreign limited liability partnership was registered to do business in this state may be made pursuant to Subsection 16-17-301(2).~~

48-1d-1212 Action by attorney general.

The attorney general may maintain an action to enjoin a foreign limited liability partnership from doing

business in this state in violation of this part.

Part 13
Professional Services Limited Liability Partnerships

48-1d-1301 Definitions.

As used in this part:

(1) "Professional services partnership" means a limited liability partnership organized in accordance with this part to provide professional services.

(2) "Regulating board" means the entity organized pursuant to state law that licenses and regulates the practice of the profession that a limited liability partnership is organized to provide.

48-1d-1302 Application of this part.

If a conflict arises between this part and another provision of this chapter, this part controls.

48-1d-1303 Name limitations.

(1) The name of a domestic professional services partnership and of a foreign professional services partnership authorized to transact business in this state, in addition to complying with Sections ~~48-1d-1105~~13-1a-401 and ~~48-1d-1206~~13-1a-606:

(a) may not contain language stating or implying that it is formed for a purpose other than that authorized by Section 48-1d-1304; and

(b) must conform with any rule made by the regulating board having jurisdiction over a professional service to be rendered by the professional service partnership.

(2) Sections ~~48-1d-1105~~13-1a-401 and ~~48-1d-1206~~13-1a-606 do not prevent the use of a name otherwise prohibited by those sections if the name is:

(a) the personal name of an individual partner or individual former partner of the professional services partnership; or

(b) the name of an individual who was associated with a predecessor of the professional services partnership.

48-1d-1304 Providing a professional service.

(1) Subject to Section 48-1d-1305, a professional services partnership may provide a professional service in this state only through an individual licensed or otherwise authorized in this state to provide the professional service.

(2) Subsection (1) does not:

(a) require an individual employed by a professional services partnership to be licensed to perform a service for the professional services company if a license is not otherwise required;

(b) prohibit a licensed individual from providing a professional service in the individual's professional capacity although the individual is a partner, employee, or agent of a professional services partnership; or

(c) prohibit an individual licensed in another state from providing a professional service for a professional services partnership in this state if not prohibited by the regulating board.

48-1d-1305 Limit of one profession.

(1) A professional services partnership organized to provide a professional service under this part may provide only:

(a) one specific type of professional service; and

(b) services ancillary to the professional service described in Subsection (1)(a).

(2) A professional services partnership organized to provide a professional service under this part may not engage in a business other than to provide:

(a) the professional service that it was organized to provide; and

(b) services ancillary to the professional service described in Subsection (2)(a).

(3) Notwithstanding Subsections (1) and (2), a professional services partnership may:

(a) own real and personal property necessary or appropriate for providing the type of professional service it was

organized to provide; and
(b) invest the professional services partnership's money in one or more of the following:
(i) real estate;
(ii) mortgages;
(iii) stocks;
(iv) bonds; or
(v) another type of investment.

48-1d-1306 Activity limitations.

A professional services partnership may not do anything that an individual licensed to practice the profession that the professional services partnership is organized to provide is prohibited from doing.

48-1d-1307 This part does not limit regulating board.

This part does not restrict the authority or duty of a regulating board to license an individual providing a professional service or the practice of the profession that is within the jurisdiction of the regulating board, notwithstanding that the individual:
(1) is a partner or employee of a professional services partnership; or
(2) provides the professional service or engages in the practice of the profession through a professional services partnership.

48-1d-1308 Partner of a professional services partnership.

A professional services partnership organized to provide a professional service:
(1) may include a partner or employee who is authorized under the laws of the jurisdiction where the partner or employee resides to provide a similar professional service;
(2) may include a partner who is not licensed or registered by the state to provide the professional service to the extent allowed by the applicable licensing or registration act relating to the professional service; and
(3) may render a professional service in this state only through a partner or employee who is licensed or registered by this state to render the professional service.

48-1d-1309 Restriction on transfer by partner.

(1) Except as provided in Subsections (2) and (3), a partner of a professional services partnership may sell or transfer the partner's interest in the professional services partnership only to:
(a) the professional services partnership; or
(b) an individual who is licensed or registered by this state to provide the same type of professional service as the professional service for which the professional services partnership is organized, or who otherwise satisfies the requirements of Subsection 48-1d-1308(1) or (2).
(2) Upon the death or incapacity of a partner of a professional services partnership, the partner's interest in the professional services partnership may be transferred to the personal representative or estate of the deceased or incapacitated partner.
(3) The person to whom an interest is transferred under Subsection (2) may continue to hold the interest for a reasonable period, but may not participate in a decision concerning the providing of a professional service.

48-1d-1310 Purchase of interest upon death, incapacity, or disqualification of member.

(1) Subject to this part, one or more of the following may provide for the purchase of a partner's interest in a professional services partnership upon the death, incapacity, or disqualification of the partner:
(a) the partnership agreement; or
(b) a private agreement.
(2) In the absence of a provision described in Subsection (1), a professional services partnership shall purchase the interest of a partner who is deceased, incapacitated, or no longer qualified to own an interest in the professional services partnership within 90 days after the day on which the professional services partnership is notified of the death, incapacity, or disqualification.
(3) If a professional services partnership purchases a partner's interest under Subsection (2), the professional

services company shall purchase the interest at a price that is the reasonable fair market value as of the date of death, incapacity, or disqualification.
(4) If a professional services partnership fails to purchase a partner's interest as required by Subsection (2) at the end of the 90-day period described in Subsection (2), one of the following may bring an action in the district court of the county in which the principal office or place of practice of the professional services partnership is located to enforce Subsection (2):
(a) the personal representative of a deceased partner;
(b) the guardian or conservator of an incapacitated partner; or
(c) the disqualified partner.
(5) A court in which an action is brought under Subsection (4) may:
(a) award the person bringing the action the reasonable fair market value of the interest; or
(b) within its jurisdiction, order the liquidation of the professional services partnership.
(6) If a person described in Subsections (4)(a) through (c) is successful in an action under Subsection (4), the court shall award the person reasonable attorney's fees and costs.

Part 14
Miscellaneous Provisions

48-1d-1401 Uniformity of application and construction.

In applying and construing this chapter, consideration must be given to the need to promote uniformity of the law with respect to its subject matter among states that enact the uniform act upon which this chapter is based.

48-1d-1402 Severability clause.

If any provision of this chapter or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of this chapter which can be given effect without the invalid provision or application, and to this end the provisions of this chapter are severable.

48-1d-1403 Relation to Electronic Signatures in Global and National Commerce Act.

This chapter modifies, limits, and supersedes the Electronic Signatures in Global and National Commerce Act, 15 U.S.C. Sec. 7001 et seq., but this chapter does not modify, limit, or supersede Sec. 101(c) of that act, 15 U.S.C. Sec. 7001(c), or authorize electronic delivery of any of the notices described in Sec. 103(b) of that act, 15 U.S.C. Sec. 7003(b).

48-1d-1404 Savings clause.

This chapter does not affect an action commenced, proceeding brought, or right accrued before this chapter takes effect.

48-1d-1405 Application to existing relationships.
(1) Before January 1, 2016, this chapter governs only:
(a) a partnership formed on or after January 1, 2014; and
(b) except as otherwise provided in Subsection (3), a partnership formed before January 1, 2014, which elects, in the manner provided in its partnership agreement or by law for amending the partnership agreement, to be subject to this chapter.
(2) Except as otherwise provided in Subsection (3), on and after January 1, 2016, this chapter governs all partnerships.
(3) With respect to a partnership that elects pursuant to Subsection (1)(b) to be subject to this chapter, after the election takes effect the provisions of this chapter relating to the liability of the partnership's partners to third parties apply:
(a) before January 1, 2016, to:
(i) a third party that had not done business with the partnership in the year before the election took effect; and
(ii) a third party that had done business with the partnership in the year before the election took effect only if the

third party knows or has received a notification of the election; and
(b) on and after January 1, 2016, to all third parties, but those provisions remain inapplicable to any obligation incurred while those provisions were inapplicable under Subsection (3)(a)(ii).

Chapter 2e
Utah Uniform Limited Partnership Act

Part 1
General Provisions

48-2e-101 Title.

This chapter is known as the "Utah Uniform Limited Partnership Act."

48-2e-102 Definitions.

As used in this chapter:

(1) "Certificate of limited partnership" means the certificate required by Section 48-2e-201. The term includes the certificate as amended or restated.

(2) "Contribution," except in the phrase "right of contribution," means property or a benefit described in Section 48-2e-501 which is provided by a person to a limited partnership to become a partner or in the person's capacity as a partner.

(3) "Debtor in bankruptcy" means a person that is the subject of:

(a) an order for relief under Title 11 of the United States Code or a comparable order under a successor statute of general application; or

(b) a comparable order under federal, state, or foreign law governing insolvency.

(4) "Distribution" means a transfer of money or other property from a limited partnership to a person on account of a transferable interest or in the person's capacity as a partner. The term:

(a) includes:

(i) a redemption or other purchase by a limited partnership of a transferable interest; and

(ii) a transfer to a partner in return for the partner's relinquishment of any right to participate as a partner in the management or conduct of the limited partnership's activities and affairs or to have access to records or other information concerning the limited partnership's activities and affairs; and

(b) does not include amounts constituting reasonable compensation for present or past service or payments made in the ordinary course of business under a bona fide retirement plan or other bona fide benefits program.

(5) "Division" means the Division of Corporations and Commercial Code within the Utah Department of Commerce.

(6) "Foreign limited liability limited partnership" means a foreign limited partnership whose general partners have limited liability for the debts, obligations, or other liabilities of the foreign limited partnership under a provision similar to Subsection 48-2e-404(3).

(7) "Foreign limited partnership" means an unincorporated entity formed under the law of a jurisdiction other than this state which would be a limited partnership if formed under the law of this state. The term includes a foreign limited liability limited partnership.

(8) "General partner" means a person that:

(a) has become a general partner under Section 48-2e-401 or was a general partner in a limited partnership when the limited partnership became subject to this chapter under Section 48-2e-1205; and

(b) has not dissociated as a general partner under Section 48-2e-603.

(9) "Jurisdiction," used to refer to a political entity, means the United States, a state, a foreign country, or a political subdivision of a foreign country.

(10) "Jurisdiction of formation" means, with respect to an entity, the jurisdiction:

(a) under whose law the entity is formed; or

(b) in the case of a limited liability partnership or foreign limited liability partnership, in which the partnership's statement of qualification is filed.

(11) "Limited liability limited partnership," except in the phrase "foreign limited liability limited partnership," means a limited partnership whose certificate of limited partnership states that the partnership is a limited liability limited partnership.

(12) "Limited partner" means a person that:

(a) has become a limited partner under Section 48-2e-301 or was a limited partner in a limited partnership when

the limited partnership became subject to this chapter under Section 48-2e-1205; and
(b) has not dissociated under Section 48-2e-601.
(13) "Limited partnership" means an entity formed under this chapter or which becomes subject to this chapter under Part 11, Merger, Interest Exchange, Conversion, and Domestication, or Section 48-2e-1205. The term includes a limited liability limited partnership.
(14) "Partner" means a limited partner or general partner.
(15) "Partnership agreement" means the agreement, whether or not referred to as a partnership agreement, and whether oral, implied, in a record, or in any combination thereof, of all the partners of a limited partnership concerning the matters described in Subsection 48-2e-112(1). The term includes the agreement as amended or restated.
(16) "Person" means an individual, business corporation, nonprofit corporation, partnership, limited partnership, limited liability company, limited cooperative association, unincorporated nonprofit association, statutory trust, business trust, common-law business trust, estate, trust, association, joint venture, public corporation, government or governmental subdivision, agency, or instrumentality, or any other legal or commercial entity.
(17) "Principal office" means the principal executive office of a limited partnership or foreign limited partnership, whether or not the office is located in this state.
(18) "Property" means all property, whether real, personal, or mixed or tangible or intangible, or any right or interest therein.
(19) "Record," used as a noun, means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.
(20) "Registered agent" means an agent of a limited partnership or foreign limited partnership which is authorized to receive service of any process, notice, or demand required or permitted by law to be served on the limited partnership.
(21) "Registered foreign limited partnership" means a foreign limited partnership that is registered to do business in this state pursuant to a statement of registration filed by the division.
(22) "Required information" means the information that a limited partnership is required to maintain under Section 48-2e-115.
(23) "Sign" means, with present intent to authenticate or adopt a record:
(a) to execute or adopt a tangible symbol; or
(b) to attach to or logically associate with the record an electronic symbol, sound, or process.
(24) "State" means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States.
(25) "Transfer" includes:
(a) an assignment;
(b) a conveyance;
(c) a sale;
(d) a lease;
(e) an encumbrance, including a mortgage or security interest;
(f) a gift; and
(g) a transfer by operation of law.
(26) "Transferable interest" means the right, as initially owned by a person in the person's capacity as a partner, to receive distributions from a limited partnership in accordance with the partnership agreement, whether or not the person remains a partner or continues to own any part of the right. The term applies to any fraction of the interest, by whomever owned.
(27) "Transferee" means a person to which all or part of a transferable interest has been transferred, whether or not the transferor is a partner. The term includes a person that owns a transferable interest under Subsection 48-2e-602(1)(c) or 48-2e-605(1)(d).
~~(28) "Tribal limited partnership" means a limited partnership:~~
~~(a) formed under the law of a tribe; and~~
~~(b) that is at least 51% owned or controlled by the tribe under whose law the limited partnership is formed.~~
~~(29) "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.~~

48-2e-103 Knowledge -- Notice.
(1) A person knows a fact if the person:
(a) has actual knowledge of it; or
(b) is deemed to know it under law other than this chapter.
(2) A person has notice of a fact if the person:
(a) has reason to know the fact from all of the facts known to the person at the time in question; or
(b) is deemed to have notice of the fact under Subsection (3) or (4).
(3) A certificate of limited partnership on file in the office of the division is notice that the partnership is a limited partnership and the persons designated in the certificate as general partners are general partners. Except as otherwise provided in Subsection (4), the certificate is not notice of any other fact.
(4) A person not a partner is deemed to have notice of:
(a) another person's dissociation as a general partner 90 days after the effective date of an amendment to the certificate of limited partnership which states that the other person has dissociated or 90 days after the effective date of a statement of dissociation pertaining to the other person, whichever occurs first;
(b) a limited partnership's:
(i) dissolution 90 days after an amendment to the certificate of limited partnership stating that the limited partnership becomes effective;
(ii) termination 90 days after a statement of termination under Subsection 48-2e-802(2)(b)(vi) becomes effective;
(iii) participation in a merger, interest exchange, conversion, or domestication 90 days after a statement of merger, interest exchange, conversion, or domestication under Part 11, Merger, Interest Exchange, Conversion, and Domestication, becomes effective; and
(iv) abandonment of a merger, interest exchange, conversion, or domestication 90 days after a statement of abandonment of merger, interest exchange, conversion, or domestication under Part 11, Merger, Interest Exchange, Conversion, and Domestication, becomes effective.
(5) Subject to Subsection ~~48-2e-209(6)~~13-1a-306, a person notifies another person of a fact by taking steps reasonably required to inform the other person in ordinary course, whether or not those steps cause the other person to know the fact.
(6) A general partner's knowledge or notice of a fact relating to the limited partnership is effective immediately as knowledge of or notice to the limited partnership, except in the case of a fraud on the limited partnership committed by or with the consent of the general partner. A limited partner's knowledge or notice of a fact relating to the limited partnership is not effective as knowledge of or notice to the limited partnership.

48-2e-104 Nature, purpose, and duration of limited partnership.
(1) A limited partnership is an entity distinct from its partners. A limited partnership is the same entity regardless of whether its certificate states that the limited partnership is a limited liability limited partnership.
(2) A limited partnership may have any lawful purpose, regardless of whether for profit.
(3) A limited partnership has perpetual duration.

48-2e-105 Powers.
A limited partnership has the capacity to sue and be sued in its own name and the power to do all things necessary or convenient to carry on its activities and affairs.

48-2e-106 Governing law.
The law of this state governs:
(1) the internal affairs of a limited partnership; and
(2) the liability of a partner as partner for the debts, obligations, or other liabilities of a limited partnership.

48-2e-107 Supplemental principles of law.
Unless displaced by particular provisions of this chapter, the principles of law and equity supplement

this chapter.

~~48-2e-108 Permitted names.~~

~~(1) The name of a limited partnership may contain the name of any partner.~~

~~(2) The name of a limited partnership that is not a limited liability limited partnership shall contain the words "limited partnership" or the abbreviation "L.P." or "LP" and may not contain the words "limited liability limited partnership" or the abbreviation "L.L.L.P." or "LLLP".~~

~~(3) The name of a limited liability limited partnership shall contain the words "limited liability limited partnership" or the abbreviation "LLLP" or "L.L.L.P." and may not contain the abbreviation "L.P." or "LP".~~

~~(4) Except as otherwise provided in Subsection (7), the name of a limited partnership, and the name under which a foreign limited partnership may register to do business in this state, shall be distinguishable on the records of the division from:~~

~~(a) the name of an existing person whose formation required the filing of a record by the division;~~

~~(b) the name of a limited liability partnership;~~

~~(c) the name of a person that is registered to do business in this state by the filing of a record by the division;~~

~~(d) each name reserved under Section 48-2e-109 or other law of this state providing for the reservation of a name by the filing of a record by the division;~~

~~(e) each name registered under Section 48-2e-110 or other law of this state providing for the registration of a name by the filing of a record by the division; or~~

~~(f) an assumed name registered under Title 42, Chapter 2, Conducting Business Under Assumed Name.~~

~~(5) If a person consents in a record to the use of the person's name and submits an undertaking in a form satisfactory to the division to change the person's name to a name that is distinguishable on the records of the division from any name in any category of names in Subsection (4), the name of the consenting person may be used by the person to which the consent was given.~~

~~(6) Except as otherwise provided in Subsection (7), in determining whether a name is the same as or not distinguishable on the records of the division from the name of another entity, words, phrases, or abbreviations indicating the type of entity, such as "corporation", "corp.", "incorporated", "Inc.", "professional corporation", "PC", "P.C.", "professional association", "PA", "P.A.", "Limited", "Ltd.", "limited partnership", "LP", "L.P.", "limited liability partnership", "LLP", "L.L.P.", "registered limited liability partnership", "RLLP", "R.L.L.P.", "limited liability limited partnership", "LLLP", "L.L.L.P.", "registered limited liability limited partnership", "RLLLP", "R.L.L.L.P.", "limited liability company", "LLC", "L.L.C.", "professional limited liability company", "PLLC", or "P.L.L.C.", may not be taken into account.~~

~~(7) A person may consent in a record to the use of a name that is not distinguishable on the records of the division from the person's name except for the addition of a word, phrase, or abbreviation indicating the type of person as provided in Subsection (6). In such a case, the person is not required to change the person's name pursuant to Subsection (5).~~

~~(8) The division may not approve for filing a name that implies that a limited partnership is an agency of this state or any of the state's political subdivisions, if the limited partnership is not actually such a legally established agency or subdivision.~~

~~(9) The authorization to file a certificate under or to reserve or register a limited partnership name as granted by the division does not:~~

~~(a) abrogate or limit the law governing unfair competition or unfair trade practices;~~

~~(b) derogate from the common law, the principles of equity, or the statutes of this state or of the United States with respect to the right to acquire and protect names and trademarks; or~~

~~(c) create an exclusive right in geographic or generic terms contained within a name.~~

~~(10) The name of a limited partnership or foreign limited partnership may not contain:~~

~~(a) the words:~~

~~(i) "association";~~

~~(ii) "corporation";~~

~~(iii) "incorporated";~~

~~(iv) "limited liability company"; or~~

~~(v) "limited company";~~

~~(b) any word or abbreviation that is of like import to the words listed in Subsection (10)(a);~~
~~(c) without the written consent of the United States Olympic Committee, the words:~~
~~(i) "Olympic";~~
~~(ii) "Olympiad"; or~~
~~(iii) "Citius Altius Fortius";~~
~~(d) without the written consent of the Division of Consumer Protection issued in accordance with Section 13-34-114 the words:~~
~~(i) "university";~~
~~(ii) "college"; or~~
~~(iii) "institute" or "institution"; or~~
~~(e) for a limited partnership that changes the limited partnership's name or is formed on or after May 4, 2022, the number sequence "911."~~

~~48-2e-109 Reservation of name.~~
~~(1) A person may reserve the exclusive use of a name that complies with Section 48-2e-108 by delivering an application to the division for filing. The application must state the name and address of the applicant and the name to be reserved. If the division finds that the name is available, the division shall reserve the name for the applicant's exclusive use for 120 days.~~
~~(2) The owner of a reserved name may transfer the reservation to another person by delivering to the division a signed notice in a record of the transfer which states the name and address of the transferee.~~

~~48-2e-110 Registration of name.~~
~~(1) A foreign limited partnership not registered to do business in this state under Part 9, Foreign Limited Partnerships, may register its name, or an alternate name adopted pursuant to Section 48-2e-906, if the name is distinguishable on the records of the division from the names that are not available under Section 48-2e-108.~~
~~(2) To register its name or an alternate name adopted pursuant to Section 48-2e-906, a foreign limited partnership must deliver to the division for filing an application stating the foreign limited partnership's name, the jurisdiction and date of its formation, and any alternate name adopted pursuant to Section 48-2e-906. If the division finds that the name applied for is available, the division shall register the name for the applicant's exclusive use.~~
~~(3) The registration of a name under this section is effective for one year after the date of registration.~~
~~(4) A foreign limited partnership whose name registration is effective may renew the registration for successive one-year periods by delivering, not earlier than three months before the expiration of the registration, to the division for filing a renewal application that complies with this section. When filed, the renewal application renews the registration for a succeeding one-year period.~~
~~(5) A foreign limited partnership whose name registration is effective may register as a foreign limited partnership under the registered name or consent in a signed record to the use of that name by another person that is not an individual.~~

48-2e-111 Registered agent.
(1) Each limited partnership and each registered foreign limited partnership shall designate in accordance with Section ~~16-17-203(1)~~13-1a-504 and maintain a registered agent in this state.
(2) A limited partnership or registered foreign limited partnership may change its registered agent or the address of its registered agent by filing with the division a statement of change in accordance with Section ~~16-17-206~~13-1a-507.

48-2e-112 Partnership agreement -- Scope, function, and limitations.
(1) Except as otherwise provided in Subsections (3) and (4), the partnership agreement governs:
(a) relations among the partners as partners and between the partners and the limited partnership;
(b) the activities and affairs of the limited partnership and the conduct of those activities and affairs; and
(c) the means and conditions for amending the partnership agreement.
(2) To the extent the partnership agreement does not provide for a matter described in Subsection (1), this

chapter governs the matter.
(3) A partnership agreement may not:
(a) vary a limited partnership's capacity under Section 48-2e-105 to sue and be sued in its own name;
(b) vary the law applicable under Section 48-2e-106;
(c) vary any requirement, procedure, or other provision of this chapter pertaining to:
(i) registered agents; or
(ii) the division, including provisions pertaining to records authorized or required to be delivered to the division for filing under this chapter;
(d) vary the provisions of Section ~~48-2e-204~~13-1a-310;
(e) vary the right of a general partner under Subsection 48-2e-406(2)(b) to vote on or consent to an amendment to the certificate of limited partnership which deletes a statement that the limited partnership is a limited liability limited partnership;
(f) eliminate the duty of loyalty or the duty of care except as otherwise provided in Subsection (4);
(g) eliminate the contractual obligation of good faith and fair dealing under Subsections 48-2e-305(1) and 48-2e-409(4), but the partnership agreement may prescribe the standards, if not unconscionable or against public policy, by which the performance of the obligation is to be measured;
(h) relieve or exonerate a person from liability for conduct involving bad faith, willful misconduct, or recklessness;
(i) vary the information required under Section 48-2e-115 or unreasonably restrict the duties and rights under Section 48-2e-304 or 48-2e-407, but the partnership agreement may impose reasonable restrictions on the availability and use of information obtained under those sections and may define appropriate remedies, including liquidated damages, for a breach of any reasonable restriction on use;
(j) vary the power of a person to dissociate as a general partner under Subsection 48-2e-604(1) except to require that the notice under Subsection 48-2e-603(1) be in a record;
(k) vary the causes of dissolution specified in Subsection 48-2e-801(1)(f);
(l) vary the requirement to wind up the limited partnership's activities and affairs as specified in Subsections 48-2e-802(1), (2)(a), and (4);
(m) unreasonably restrict the right of a partner to maintain an action under Part 10, Actions by Partners;
(n) vary the provisions of Section 48-2e-1005, but the partnership agreement may provide that the limited partnership may not have a special litigation committee;
(o) vary the right of a partner to approve a merger, interest exchange, conversion, or domestication under Subsection 48-2e-1123(1)(b), 48-2e-1133(1)(b), 48-2e-1143(1)(b), or 48-2e-1153(1)(b); or
(p) except as otherwise provided in Section 48-2e-113 and Subsection 48-2e-114(2), restrict the rights under this chapter of a person other than a partner.
(4) Subject to Subsection (3)(h), without limiting other terms that may be included in a partnership agreement, the following rules apply:
(a) The partnership agreement may specify the method by which a specific act or transaction that would otherwise violate the duty of loyalty may be authorized or ratified by one or more disinterested and independent persons after full disclosure of all material facts.
(b) If not unconscionable or against public policy, the partnership agreement may:
(i) alter or eliminate the aspects of the duty of loyalty stated in Subsection 48-2e-409(2);
(ii) identify specific types or categories of activities that do not violate the duty of loyalty;
(iii) alter the duty of care, but may not authorize intentional misconduct or knowing violation of law; and
(iv) alter or eliminate any other fiduciary duty.
(5) The court shall decide as a matter of law whether a term of a partnership agreement is unconscionable or against public policy under Subsection (3)(g) or (4)(b). The court:
(a) shall make its determination as of the time the challenged term became part of the partnership agreement and by considering only circumstances existing at that time; and
(b) may invalidate the term only if, in light of the purposes, activities, and affairs of the limited partnership, it is readily apparent that:
(i) the objective of the term is unconscionable or against public policy; or
(ii) the means to achieve the term's objective is unconscionable or against public policy.

48-2e-113 Partnership agreement -- Effect on limited partnership and person becoming partner -- Preformation agreement.
(1) A limited partnership is bound by and may enforce the partnership agreement, whether or not the limited partnership has itself manifested assent to the partnership agreement.
(2) A person that becomes a partner of a limited partnership is deemed to assent to the partnership agreement.
(3) Two or more persons intending to become the initial partners of a limited partnership may make an agreement providing that upon the formation of the limited partnership the agreement will become the limited partnership agreement.

48-2e-114 Partnership agreement -- Effect on third parties and relationship to records effective on behalf of limited partnership.
(1) A partnership agreement may specify that its amendment requires the approval of a person that is not a party to the partnership agreement or the satisfaction of a condition. An amendment is ineffective if its adoption does not include the required approval or satisfy the specified condition.
(2) The obligations of a limited partnership and its partners to a person in the person's capacity as a transferee or person dissociated as a partner are governed by the partnership agreement. Subject only to a court order issued under Subsection 48-2e-703(2)(b) to effectuate a charging order, an amendment to the partnership agreement made after a person becomes a transferee or is dissociated as a partner:
(a) is effective with regard to any debt, obligation, or other liability of the limited partnership or its partners to the person in the person's capacity as a transferee or person dissociated as a partner; and
(b) is not effective to the extent the amendment imposes a new debt, obligation, or other liability on the transferee or person dissociated as a partner.
(3) If a record delivered by a limited partnership to the division for filing becomes effective and contains a provision that would be ineffective under Subsection 48-2e-112(3) or (4)(b) if contained in the partnership agreement, the provision is ineffective in the record.
(4) Subject to Subsection (3), if a record delivered by a limited partnership to the division for filing becomes effective and conflicts with a provision of the partnership agreement:
(a) the partnership agreement prevails as to partners, persons dissociated as partners, and transferees; and
(b) the record prevails as to other persons to the extent they reasonably rely on the record.

48-2e-115 Required information.
A limited partnership shall maintain at its principal office the following information:
(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 statement of merger, interest exchange, conversion, or domestication;
(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 reports delivered by the limited partnership to the division pursuant to Section ~~48-2e-212~~13-1a-313;
(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) a description and statement of the agreed value of contributions other than money made and agreed to be made 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 and affairs wound up.

48-2e-116 Dual capacity.

A person may be both a general partner and a limited partner. A person that is both a general and limited partner has the rights, powers, duties, and obligations provided by this chapter and the partnership agreement in each of those capacities. When the person acts as a general partner, the person is subject to the obligations, duties, and restrictions under this chapter and the partnership agreement for general partners. When the person acts as a limited partner, the person is subject to the obligations, duties, and restrictions under this chapter and the partnership agreement for limited partners.

~~**48-2e-117 Delivery of record.**~~
~~(1) Except as otherwise provided in this chapter, permissible means of delivery of a record include delivery by hand, the United States Postal Service, a commercial delivery service, and electronic transmission.~~
~~(2) Delivery to the division is effective only when a record is received by the division.~~

48-2e-118 Reservation of power to amend or repeal.

The Legislature of this state has power to amend or repeal all or part of this chapter at any time, and all domestic and foreign limited partnerships subject to this chapter are governed by the amendment or repeal.

Part 2
Formation -- Certificate of Limited Partnership and Other Filings

48-2e-201 Formation of limited partnership -- Certificate of limited partnership.
(1) To form a limited partnership, a person must deliver a certificate of limited partnership to the division for filing.
(2) The certificate of limited partnership must state:
(a) the name of the limited partnership, which must comply with ~~Section 48-2e-108~~Title 13, Chapter 1a, Part 4 Name of Business;
(b) the street and mailing address of the limited partnership's principal office;
(c) the information required by ~~Subsection~~ Section ~~16-17-203(1)~~13-1a-504;
(d) the name and the street and mailing addresses of each general partner; ~~and~~
(e) whether the limited partnership is a limited liability limited partnership~~.~~; and
(f) the limited partnership's North American Industry Classification System (NAICS) Code.
(3) A certificate of limited partnership may contain statements as to matters other than those required by Subsection (2), but may not vary or otherwise affect the provisions specified in Subsection 48-2e-112(3) in a manner inconsistent with that Subsection (2).
(4) A limited partnership is formed when:
(a) the certificate of limited partnership has become effective;
(b) at least two persons have become partners;
(c) at least one person has become a general partner; and
(d) at least one person has become a limited partner.

48-2e-202 Amendment of restatement of certificate of limited partnership.
(1) A certificate of limited partnership may be amended or restated at any time.
(2) To amend its certificate of limited partnership, a limited partnership must deliver to the division for filing an amendment stating:
(a) the name of the limited partnership;

(b) the date of filing of its initial certificate of limited partnership; and
(c) the changes the amendment makes to the certificate of limited partnership as most recently amended or restated.
(3) To restate its certificate of limited partnership, a limited partnership must deliver to the division for filing a restatement designated as such in its heading.
(4) A limited partnership shall promptly deliver to the division for filing an amendment to a certificate of limited partnership to reflect:
(a) the admission of a new general partner;
(b) the dissociation of a person as a general partner; or
(c) the appointment of a person to wind up the limited partnership's activities and affairs under Subsection 48-2e-802(3) or (4).
(5) If a general partner knows that any information in a filed certificate of limited partnership was inaccurate when the certificate of limited partnership was filed or has become inaccurate due to changed circumstances, the general partner shall promptly:
(a) cause the certificate of limited partnership to be amended; or
(b) if appropriate, deliver to the division for filing a statement of change under Section ~~16-17-206~~13-1a-507 or a statement of correction under Section ~~48-2e-208~~13-1a-305.

~~48-2e-203 Signing of records to be delivered for filing to division.~~
~~(1) A record delivered to the division for filing pursuant to this chapter must be signed as follows:~~
~~(a) An initial certificate of limited partnership must be signed by all general partners listed in the certificate of limited partnership.~~
~~(b) An amendment to the certificate of limited partnership adding or deleting a statement that the limited partnership is a limited liability limited partnership must be signed by all general partners listed in the certificate of limited partnership.~~
~~(c) An amendment to the certificate of limited partnership designating as general partner a person admitted under Subsection 48-2e-801(1)(c)(ii) following the dissociation of a limited partnership's last general partner must be signed by that person.~~
~~(d) An amendment to the certificate of limited partnership required by Subsection 48-2e-802(3) following the appointment of a person to wind up the dissolved limited partnership's activities and affairs must be signed by that person.~~
~~(e) Any other amendment to the certificate of limited partnership must be signed by:~~
~~(i) at least one general partner listed in the certificate of limited partnership;~~
~~(ii) each other person designated in the amendment as a new general partner; and~~
~~(iii) each person that the amendment indicates has dissociated as a general partner, unless:~~
~~(A) the person is deceased or a guardian or general conservator has been appointed for the person and the amendment so states; or~~
~~(B) the person has previously delivered to the division for filing a statement of dissociation.~~
~~(f) A restated certificate of limited partnership must be signed by at least one general partner listed in the certificate of limited partnership, and, to the extent the restated certificate of limited partnership effects a change under any other subsection of this section, the certificate of limited partnership must be signed in a manner that satisfies that subsection.~~
~~(g) A statement of termination must be signed by all general partners listed in the certificate of limited partnership or, if the certificate of a dissolved limited partnership lists no general partners, by the person appointed pursuant to Subsection 48-2e-802(3) or (4) to wind up the dissolved limited partnership's activities and affairs.~~
~~(h) Any other record delivered by a limited partnership to the division for filing must be signed by at least one general partner listed in the certificate of limited partnership.~~
~~(i) A statement by a person pursuant to Subsection 48-2e-605(1)(c) stating that the person has dissociated as a general partner must be signed by that person.~~
~~(j) A statement of negation by a person pursuant to Subsection 48-2e-306(1)(b) must be signed by that person.~~
~~(k) A record delivered on behalf of a foreign limited partnership to the division for filing must be signed by at~~

least one general partner of the foreign limited partnership.
(l) Any other record delivered on behalf of any person to the division for filing must be signed by that person.
(2) Any record filed under this chapter may be signed by an agent. Whenever this chapter requires a particular individual to sign a record and the individual is deceased or incompetent, the record may be signed by a legal representative of the individual.
(3) A person that signs a record as an agent or legal representative thereby affirms as a fact that the person is authorized to sign the record.

48-2e-204 Signing and filing pursuant to judicial order.
(1) If a person required by this chapter to sign a record or deliver a record to the division for filing under this chapter does not do so, any other person that is aggrieved may petition the district court to order:
(a) the person to sign the record;
(b) the person to deliver the record to the division for filing; or
(c) the division to file the record unsigned.
(2) If the petitioner under Subsection (1) is not the limited partnership or foreign limited partnership to which the record pertains, the petitioner shall make the limited partnership or foreign limited partnership a party to the action.
(3) A record filed under Subsection (1)(c) is effective without being signed.

48-2e-205 Filing requirements.
(1) To be filed by the division pursuant to this chapter, a record must be received by the division, comply with this chapter, and satisfy the following:
(a) The filing of the record must be required or permitted by this chapter.
(b) The record must be physically delivered in written form unless and to the extent the division permits electronic delivery of records.
(c) The record must be typewritten or computer generated.
(d) The words in the record must be in English, and numbers must be in Arabic or Roman numerals, but the name of an entity need not be in English if written in English letters or Arabic or Roman numerals.
(e) The record must be signed by a person authorized under this chapter to sign the record.
(f) The record must state the name and capacity, if any, of each individual who signed it, either on behalf of the individual or the person authorized or required to sign the record, but need not contain a seal, attestation, acknowledgment, or verification.
(2) If law other than this chapter prohibits the disclosure by the division of information contained in a record delivered to the division for filing, the division shall accept the record if the record otherwise complies with this chapter but the division may redact the information.
(3) When a record is delivered to the division for filing, any fee required under this chapter and any fee, tax, interest, or penalty required to be paid under this chapter, or law other than this chapter, must be paid in a manner permitted by the division or by that law.
(4) The division may require that a record delivered in written form be accompanied by an identical or conformed copy.

48-2e-206 Effective time and date.
Except as otherwise provided in Section 48-2e-207 and subject to Subsection 48-2e-208(4), a record filed under this chapter is effective:
(1) on the date and at the time of its filing by the division, as provided in Section 48-2e-209;
(2) on the date of filing and at the time specified in the record as its effective time, if later than the time under Subsection (1);
(3) at a specified delayed effective time and date, which may not be more than 90 days after the date of filing; or
(4) if a delayed effective date is specified, but no time is specified, at 12:01 a.m. on the date specified, which may not be more than 90 days after the date of filing.

48-2e-207 Withdrawal of filed record before effectiveness.

(1) Except as otherwise provided in Sections 48-2e-1124, 48-2e-1134, 48-2e-1144, and 48-2e-1154, a record delivered to the division for filing may be withdrawn before it takes effect by delivering to the division for filing a statement of withdrawal.

(2) A statement of withdrawal must:

(a) be signed by each person that signed the record being withdrawn, except as otherwise agreed by those persons;

(b) identify the record to be withdrawn; and

(c) if signed by fewer than all the persons that signed the record being withdrawn, state that the record is withdrawn in accordance with the agreement of all the persons that signed the record.

(3) On filing by the division of a statement of withdrawal, the action or transaction evidenced by the original record does not take effect.

48-2e-208 Correcting filed record.

(1) A person on whose behalf a filed record was delivered to the division for filing may correct the record if:

(a) the record at the time of filing was inaccurate;

(b) the record was defectively signed; or

(c) the electronic transmission of the record to the division was defective.

(2) To correct a filed record, a person on whose behalf the record was delivered to the division must deliver to the division for filing a statement of correction.

(3) A statement of correction:

(a) may not state a delayed effective date;

(b) must be signed by the person correcting the filed record;

(c) must identify the filed record to be corrected;

(d) must specify the inaccuracy or defect to be corrected; and

(e) must correct the inaccuracy or defect.

(4) A statement of correction is effective as of the effective date of the filed record that it corrects except for purposes of Subsection 48-2e-103(4) and as to persons relying on the uncorrected filed record and adversely affected by the correction. For those purposes and as to those persons, the statement of correction is effective when filed.

48-2e-209 Duty of division to file -- Review of refusal to file -- Transmission of information by the division.

(1) The division shall file a record delivered to the division for filing which satisfies this chapter. The duty of the division under this section is ministerial.

(2) When the division files a record, the division shall record it as filed on the date and at the time of its delivery. After filing a record, the division shall deliver to the person that submitted the record a copy of the record with an acknowledgment of the date and time of filing.

(3) If the division refuses to file a record, the division, not later than 15 business days after the record is delivered, shall:

(a) return the record or notify the person that submitted the record of the refusal; and

(b) provide a brief explanation in a record of the reason for the refusal.

(4) If the division refuses to file a record, the person that submitted the record may petition the district court to compel filing of the record. The record and the explanation of the division of the refusal to file must be attached to the petition. The court may decide the matter in a summary proceeding.

(5) The filing of or refusal to file a record does not create a presumption that the information contained in the filing is correct or incorrect.

(6) Except as otherwise provided by Section 16-17-301 or by law other than this chapter, the division may deliver any record to a person by delivering it:

(a) in person to the person that submitted it;

(b) to the address of the person's registered agent;

(c) to the principal office of the person; or

(d) to another address the person provides to the division for delivery.

48-2e-210 Liability for inaccurate information in filed record.

(1) If a record delivered to the division for filing under this chapter and filed by the division contains inaccurate information, a person that suffers loss by reliance on the information may recover damages for the loss from:

(a) a person that signed the record, or caused another to sign it on the person's behalf, and knew the information to be inaccurate at the time the record was signed; and

(b) a general partner if:

(i) the record was delivered for filing on behalf of the limited partnership; and

(ii) the general partner had notice of the inaccuracy for a reasonably sufficient time before the information was relied upon so that, before the reliance, the general partner reasonably could have:

(A) effected an amendment under Section 48-2e-202;

(B) filed a petition under Section 48-2e-204; or

(C) delivered to the division for filing a statement of change under Section 16-17-206 or a statement of correction under Section 48-2e-208.

(2) An individual who signs a record authorized or required to be filed under this chapter affirms under penalty of perjury that the information stated in the record is accurate.

48-2e-211 Certificate of existence or registration.

(1) On request of any person, the division shall issue a certificate of existence for a limited partnership or a certificate of registration for a registered foreign limited partnership.

(2) A certificate under Subsection (1) must state:

(a) the limited partnership's name or the registered foreign limited partnership's name used in this state;

(b) in the case of a limited partnership:

(i) that a certificate of limited partnership has been filed and has taken effect;

(ii) the date the certificate of limited partnership became effective;

(iii) the period of the limited partnership's duration if the records of the division reflect that its period of duration is less than perpetual; and

(iv) that:

(A) no statement of dissolution, statement of administrative dissolution, or statement of termination has been filed;

(B) the records of the division do not otherwise reflect that the limited partnership has been dissolved or terminated; and

(C) a proceeding is not pending under Section 48-2e-810;

(c) in the case of a registered foreign limited partnership, that it is registered to do business in this state;

(d) that all fees, taxes, interest, and penalties owed to this state by the limited partnership or the registered foreign limited partnership and collected through the division have been paid, if:

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

(ii) nonpayment affects the good standing or registration of the limited partnership or registered foreign limited partnership;

(e) that the most recent annual report required by Section 48-2e-212 has been delivered to the division for filing; and

(f) other facts reflected in the records of the division pertaining to the limited partnership or foreign limited partnership which the person requesting the certificate reasonably requests.

(3) Subject to any qualification stated in the certificate, a certificate issued by the division under Subsection (1) may be relied upon as conclusive evidence of the facts stated in the certificate.

48-2e-212 Annual report for division.

(1) A limited partnership or a registered foreign limited partnership shall deliver to the division for filing an annual 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 annual report must be current as of the date the report is signed by the limited partnership or registered foreign limited partnership.~~
~~(3) A report must be delivered to the division for each year following the calendar year in which the limited partnership's certificate of limited partnership became effective or the registered foreign limited partnership registered to do business in this state:~~
~~(a) in the case of a limited partnership, the annual report must be delivered to the division during the month in which is the anniversary date on which the limited partnership certificate of limited partnership became effective; and~~
~~(b) in the case of a registered foreign limited partnership, the annual report must be delivered to the division during the month in which is the anniversary date on which the registered foreign limited partnership registered to do business in this state.~~
~~(4) If an annual 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 an annual 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 annual report becomes effective, the differing information in the annual report is considered a statement of change under Section 16-17-206.~~

Part 3
Limited Partners

48-2e-301 Becoming limited partners.
(1) Upon formation of a limited partnership, a person becomes a limited partner as agreed among the persons that are to be the initial partners.
(2) After formation, a person becomes a limited partner:
(a) as provided in the partnership agreement;
(b) as the result of a transaction effective under Part 11, Merger, Interest Exchange, Conversion, and Domestication;
(c) with the affirmative vote or consent of all the partners; or
(d) as provided in Subsection 48-2e-801(1)(d) or (1)(e).
(3) A person may become a partner without:
(a) acquiring a transferable interest; or
(b) making or being obligated to make a contribution to the limited partnership.

48-2e-302 No agency power of limited partner as limited partner.
(1) A limited partner is not an agent of a limited partnership solely by reason of being a limited partner.
(2) A person's status as a limited partner does not prevent or restrict law other than this chapter from imposing liability on a limited partnership because of the person's conduct.

48-2e-303 No liability as limited partner for limited partnership obligations.
(1) A debt, obligation, or other liability of a limited partnership is not the debt, obligation, or other liability of a limited partner. A limited partner is not personally liable, directly or indirectly, by way of contribution or otherwise, for a debt, obligation, or other liability of the limited partnership solely by reason of being or acting as a limited partner, even if the limited partner participates in the management and control of the limited partnership.
(2) The failure of a limited partnership to observe formalities relating to the exercise of its powers or management of its activities and affairs is not a ground for imposing liability on a limited partner for a debt, obligation, or other liability of the limited partnership.

48-2e-304 Rights to information of limited partner and person dissociated as limited partner.
(1) On 10 days' demand, made in a record received by the limited partnership, a limited partner may inspect and copy required information during regular business hours in the limited partnership's principal office. The limited partner need not have any particular purpose for seeking the information.
(2) During regular business hours and at a reasonable location specified by the limited partnership, a limited partner may inspect and copy information regarding the activities, affairs, financial condition, and other circumstances of the limited partnership as is just and reasonable if:
(a) the limited partner seeks the information for a purpose reasonably related to the partner's interest as a limited partner;
(b) the limited partner makes a demand in a record received by the limited partnership, describing with reasonable particularity the information sought and the purpose for seeking the information; and
(c) the information sought is directly connected to the limited partner's purpose.
(3) Not later than 10 days after receiving a demand pursuant to Subsection (2), the limited partnership in a record shall inform the limited partner that made the demand of:
(a) the information the limited partnership will provide in response to the demand and when and where the limited partnership will provide the information; and
(b) the limited partnership's reasons for declining, if the limited partnership declines to provide any demanded information.
(4) Whenever this chapter or a partnership agreement provides for a limited partner to vote on or give or withhold consent to a matter, before the vote is cast or consent is given or withheld, the limited partnership shall, without demand, provide the limited partner with all information that is known to the limited partnership and is material to the limited partner's decision.
(5) Subject to Subsection (10), on 10 days' demand made in a record received by a limited partnership, a person dissociated as a limited partner may have access to information to which the person was entitled while a limited partner if:
(a) the information pertains to the period during which the person was a limited partner;
(b) the person seeks the information in good faith; and
(c) the person satisfies the requirements imposed on a limited partner by Subsection (2).
(6) The limited partnership shall respond to a demand made pursuant to Subsection (5) in the manner provided in Subsection (3).
(7) A limited partnership may charge a person that makes a demand under this section reasonable costs of copying, limited to the costs of labor and material.
(8) A limited partner or person dissociated as a limited partner may exercise the rights under this section through an agent or, in the case of an individual under legal disability, a legal representative. Any restriction or condition imposed by the partnership agreement or under Subsection (11) applies both to the agent or legal representative and to the limited partner or person dissociated as a limited partner.
(9) Subject to Subsection (10), the rights under this section do not extend to a person as transferee.
(10) If a limited partner dies, Section 48-2e-704 applies.
(11) In addition to any restriction or condition stated in its partnership agreement, a limited partnership, as a matter within the ordinary course of its activities and affairs, may impose reasonable restrictions and conditions on access to and use of information to be furnished under this section, including designating information confidential and imposing nondisclosure and safeguarding obligations on the recipient. In a dispute concerning the reasonableness of a restriction under this Subsection (11), the limited partnership has the burden of proving reasonableness.

48-2e-305 Limited duties of limited partners.
(1) A limited partner shall discharge any duties to the limited partnership and the other partners under the partnership agreement and exercise any rights under this chapter or the partnership agreement consistently with the contractual obligation of good faith and fair dealing.
(2) Except as otherwise provided in Subsection (1), a limited partner does not have any duty to the limited

partnership or to any other partner solely by reason of acting as a limited partner.
(3) If a limited partner enters into a transaction with a limited partnership, the limited partner's rights and obligations arising from the transaction are the same as those of a person that is not a partner.

48-2e-306 Person erroneously believing self to be limited partner.
(1) Except as otherwise provided in Subsection (2), a person that makes an investment in a business enterprise and erroneously but in good faith believes that the person has become a limited partner in the enterprise is not liable for the enterprise's obligations by reason of making the investment, receiving distributions from the enterprise, or exercising any rights of or appropriate to a limited partner, if, on ascertaining the mistake, the person:
(a) causes an appropriate certificate of limited partnership, amendment, or statement of correction to be signed and delivered to the division for filing; or
(b) withdraws from future participation as an owner in the enterprise by signing and delivering to the division for filing a statement of negation under this section.
(2) A person that makes an investment described in Subsection (1) is liable to the same extent as a general partner to any third party that enters into a transaction with the enterprise, believing in good faith that the person is a general partner, before the division files a statement of negation, certificate of limited partnership, amendment, or statement of correction to show that the person is not a general partner.
(3) If a person makes a diligent effort in good faith to comply with Subsection (1)(a) and is unable to cause the appropriate certificate of limited partnership, amendment, or statement of correction to be signed and delivered to the division for filing, the person has the right to withdraw from the enterprise pursuant to Subsection (1)(b) even if the withdrawal would otherwise breach an agreement with others that are or have agreed to become co-owners of the enterprise.

Part 4
General Partners

48-2e-401 Becoming general partner.
(1) A person becomes a general partner:
(a) upon formation of a limited partnership, as agreed among the persons that are to be the initial partners; and
(b) after formation:
(i) as provided in the partnership agreement;
(ii) under Subsection 48-2e-801(1)(c)(ii) following the dissociation of a limited partnership's last general partner;
(iii) as the result of a transaction effective under Part 11, Merger, Interest Exchange, Conversion, and Domestication; or
(iv) with the affirmative vote or consent of all the partners.
(2) A person may become a general partner without:
(a) acquiring a transferable interest; or
(b) making or being obligated to make a contribution to the limited partnership.

48-2e-402 General partner agent of limited partnership.
(1) Each general partner is an agent of the limited partnership for the purposes of its activities and affairs. An act of a general partner, including the signing of a record in the limited partnership's name, for apparently carrying on in the ordinary course the limited partnership's activities and affairs or activities and affairs of the kind carried on by the limited partnership binds the limited partnership, unless the general partner did not have authority to act for the limited partnership in the particular matter and the person with which the general partner was dealing knew or had notice that the general partner lacked authority.
(2) An act of a general partner which is not apparently for carrying on in the ordinary course the limited partnership's activities and affairs or activities and affairs of the kind carried on by the limited partnership binds the limited partnership only if the act was actually authorized by all the other partners.

48-2e-403 Limited partnership liable for general partner's actionable conduct.
(1) A limited partnership is liable for loss or injury caused to a person, or for a penalty incurred, as a result of a wrongful act or omission, or other actionable conduct, of a general partner acting in the ordinary course of activities and affairs of the limited partnership or with the actual or apparent authority of the limited partnership.
(2) If, in the course of a limited partnership's activities and affairs or while acting with actual or apparent authority of the limited partnership, a general partner receives or causes the limited partnership to receive money or property of a person not a partner, and the money or property is misapplied by a general partner, the limited partnership is liable for the loss.

48-2e-404 General partner's liability.
(1) Except as otherwise provided in Subsections (2) and (3), all general partners are liable jointly and severally for all debts, obligations, and other liabilities of the limited partnership unless otherwise agreed by the claimant or provided by law.
(2) A person that becomes a general partner of an existing limited partnership is not personally liable for a debt, obligation, or other liability of the limited partnership incurred before the person became a general partner.
(3) A debt, obligation, or other liability of a limited partnership incurred while the limited partnership is a limited liability limited partnership is solely the debt, obligation, or other liability of the limited liability limited partnership. A general partner is not personally liable, directly or indirectly, by way of contribution or otherwise, for a debt, obligation, or other liability of the limited liability limited partnership solely by reason of being or acting as a general partner. This Subsection (3) applies despite anything inconsistent in the partnership agreement that existed immediately before the vote or consent required to become a limited liability limited partnership under Subsection 48-2e-406(2)(b).
(4) The failure of a limited liability limited partnership to observe formalities relating to the exercise of its powers or management of its activities and affairs is not a ground for imposing liability on a general partner of the limited liability limited partnership for a debt, obligation, or liability of the limited partnership.
(5) An amendment of a certificate of limited partnership which deletes a statement that the limited partnership is a limited liability limited partnership does not affect the limitation in this section on liability of a general partner for a debt, obligation, or other liability of the limited partnership incurred before the amendment became effective.

48-2e-405 Actions by and against partnership and partners.
(1) To the extent not inconsistent with Section 48-2e-404, a general partner may be joined in an action against the limited partnership or named in a separate action.
(2) A judgment against a limited partnership is not by itself a judgment against a general partner. A judgment against a limited partnership may not be satisfied from a general partner's assets unless there is also a judgment against the general partner.
(3) A judgment creditor of a general partner may not levy execution against the assets of the general partner to satisfy a judgment based on a claim against the limited partnership, unless the general partner is personally liable for the claim under Section 48-2e-404, and:
(a) a judgment based on the same claim has been obtained against the limited partnership and a writ of execution on the judgment has been returned unsatisfied in whole or in part;
(b) the limited partnership is a debtor in bankruptcy;
(c) the general partner has agreed that the creditor need not exhaust limited partnership assets;
(d) a court grants permission to the judgment creditor to levy execution against the assets of a general partner based on a finding that the limited partnership assets subject to execution are clearly insufficient to satisfy the judgment, that exhaustion of assets is excessively burdensome, or that the grant of permission is an appropriate exercise of the court's equitable powers; or
(e) liability is imposed on the general partner by law or contract independent of the existence of the limited partnership.

48-2e-406 Management rights of general partner.
(1) Each general partner has equal rights in the management and conduct of the limited partnership's activities

and affairs. Except as otherwise provided in this chapter, any matter relating to the activities and affairs of the limited partnership is decided exclusively by the general partner or, if there is more than one general partner, by a majority of the general partners.
(2) The affirmative vote or consent of all partners is required to:
(a) amend the partnership agreement;
(b) amend the certificate of limited partnership to add or delete a statement that the limited partnership is a limited liability limited partnership;
(c) sell, lease, exchange, or otherwise dispose of all, or substantially all, of the limited partnership's property, with or without the good will, other than in the usual and regular course of the limited partnership's activities and affairs; and
(d) approve a transaction under Part 11, Merger, Interest Exchange, Conversion, and Domestication.
(3) A limited partnership shall reimburse a general partner for an advance to the limited partnership beyond the amount of capital the general partner agreed to contribute.
(4) A payment or advance made by a general partner which gives rise to an obligation of the limited partnership under Subsection (3) or Subsection 48-2e-408(1) constitutes a loan to the limited partnership which accrues interest from the date of the payment or advance.
(5) A general partner is not entitled to remuneration for services performed for the limited partnership.

48-2e-407 Rights to information of general partner and person dissociated as general partner.
(1) A general partner may inspect and copy required information during regular business hours in the limited partnership's principal office, without having any particular purpose for seeking the information.
(2) On reasonable notice, a general partner may inspect and copy during regular business hours, at a reasonable location specified by the limited partnership, any record maintained by the limited partnership regarding the limited partnership's activities, affairs, financial condition, and other circumstances, to the extent the information is material to the general partner's rights and duties under the partnership agreement or this chapter.
(3) A limited partnership shall furnish to each general partner:
(a) without demand, any information concerning the limited partnership's activities, affairs, financial condition, and other circumstances which the limited partnership knows and are material to the proper exercise of the general partner's rights and duties under the partnership agreement or this chapter, except to the extent the limited partnership can establish that it reasonably believes the general partner already knows the information; and
(b) on demand, any other information concerning the limited partnership's activities, affairs, financial condition, and other circumstances, except to the extent the demand or the information demanded is unreasonable or otherwise improper under the circumstances.
(4) The duty to furnish information under Subsection (2) also applies to each general partner to the extent the general partner knows any of the information described in Subsection (2).
(5) Subject to Subsection (8), on 10 days' demand made in a record received by the limited partnership, a person dissociated as a general partner may have access to the information and records described in Subsections (1) and (2) at the locations specified in those subsections if:
(a) the information or record pertains to the period during which the person was a general partner;
(b) the person seeks the information or record in good faith; and
(c) the person satisfies the requirements imposed on a limited partner by Subsection 48-2e-304(2).
(6) The limited partnership shall respond to a demand made pursuant to Subsection (3) in the manner provided in Subsection 48-2e-304(3).
(7) A limited partnership may charge a person that makes a demand under this section the reasonable costs of copying, limited to the costs of labor and material.
(8) A general partner or person dissociated as a general partner may exercise rights under this section through an agent or, in the case of an individual under legal disability, a legal representative. Any restriction or condition imposed by the partnership agreement or under Subsection (9) applies both to the agent or legal representative and the general partner or person dissociated as a general partner.
(9) The rights under this section do not extend to a person as transferee, but if:
(a) a general partner dies, Section 48-2e-704 applies; and

(b) an individual dissociates as a general partner under Subsection 48-2e-603(7)(b) or (7)(c), the legal representative of the individual may exercise the rights under Subsection (4) of a person dissociated as a general partner.
(10) In addition to any restriction or condition stated in the partnership agreement, a limited partnership, as a matter within the ordinary course of its activities and affairs, may impose reasonable restrictions and conditions on access to and use of information to be furnished under this section, including designating information confidential and imposing nondisclosure and safeguarding obligations on the recipient. In a dispute concerning the reasonableness of a restriction under this Subsection (10), the limited partnership has the burden of proving reasonableness.

48-2e-408 Reimbursement, indemnification, advancement, and insurance.
(1) A limited partnership shall reimburse a general partner for any payment made by the general partner in the course of the general partner's activities on behalf of the limited partnership, if the general partner complied with Sections 48-2e-406, 48-2e-409, and 48-2e-504 in making the payment.
(2) A limited partnership shall indemnify and hold harmless a person with respect to any claim or demand against the person and any debt, obligation, or other liability incurred by the person by reason of the person's former or present capacity as a general partner, if the claim, demand, debt, obligation, or other liability does not arise from the person's breach of Section 48-2e-406, 48-2e-409, or 48-2e-504.
(3) In the ordinary course of its activities and affairs, a limited partnership may advance reasonable expenses, including attorney's fees and costs, incurred by a person in connection with a claim or demand against the person by reason of the person's former or present capacity as a general partner, if the person promises to repay the limited partnership if the person ultimately is determined not to be entitled to be indemnified under Subsection (2).
(4) A limited partnership may purchase and maintain insurance on behalf of a general partner against liability asserted against or incurred by the general partner in that capacity or arising from that status even if, under Subsection 48-2e-112(3)(h), the partnership agreement could not eliminate or limit the person's liability to the limited partnership for the conduct giving rise to the liability.

48-2e-409 Standards of conduct for general partners.
(1) A general partner owes to the limited partnership and, subject to Subsection 48-2e-1001(1), the other partners the duties of loyalty and care stated in Subsections (2) and (3).
(2) The duty of loyalty of a general partner includes the duties:
(a) to account to the limited partnership and hold as trustee for it any property, profit, or benefit derived by the general partner:
(i) in the conduct or winding up of the limited partnership's activities and affairs;
(ii) from a use by the general partner of the limited partnership's property; or
(iii) from the appropriation of a limited partnership opportunity;
(b) to refrain from dealing with the limited partnership in the conduct or winding up of the limited partnership's activities and affairs as or on behalf of a person having an interest adverse to the limited partnership; and
(c) to refrain from competing with the limited partnership in the conduct or winding up of the limited partnership's activities and affairs.
(3) The duty of care of a general partner in the conduct or winding up of the limited partnership's activities and affairs is to refrain from engaging in grossly negligent or reckless conduct, intentional misconduct, or a knowing violation of law.
(4) A general partner shall discharge the duties and obligations under this chapter or under the partnership agreement and exercise any rights consistently with the contractual obligation of good faith and fair dealing.
(5) A general partner does not violate a duty or obligation under this chapter or under the partnership agreement solely because the general partner's conduct furthers the general partner's own interest.
(6) All the partners of a limited partnership may authorize or ratify, after full disclosure of all material facts, a specific act or transaction by a general partner that otherwise would violate the duty of loyalty.
(7) It is a defense to a claim under Subsection (2)(b) and any comparable claim in equity or at common law that the transaction was fair to the limited partnership.

(8) If, as permitted by Subsection (6) or the partnership agreement, a general partner enters into a transaction with the limited partnership which otherwise would be prohibited by Subsection (2)(b), the general partner's rights and obligations arising from the transaction are the same as those of a person that is not a general partner.

Part 5
Contributions and Distributions

48-2e-501 Form of contribution.

A contribution may consist of property transferred to, services performed for, or another benefit provided to the limited partnership or an agreement to transfer property to, perform services for, or provide another benefit to the limited partnership.

48-2e-502 Liability for contribution.

(1) A person's obligation to make a contribution to a limited partnership is not excused by the person's death, disability, dissolution, or other inability to perform personally.
(2) If a person does not fulfill an obligation to make a contribution other than money, the person is obligated at the option of the limited partnership to contribute money equal to the value, as stated in the required information, of the part of the contribution which has not been made.
(3) The obligation of a person to make a contribution may be compromised only by the affirmative vote or consent of all partners. If a creditor of a limited partnership extends credit or otherwise acts in reliance on an obligation described in Subsection (1) without notice of any compromise under this subsection, the creditor may enforce the original obligation.

48-2e-503 Sharing of and right to distributions before dissolution.

(1) Except to the extent necessary to comply with a transfer effective under Section 48-2e-702 or charging order in effect under Section 48-2e-703, any distributions made by a limited partnership before its dissolution and winding up must be in equal shares among partners and persons dissociated as partners.
(2) A person has a right to a distribution before the dissolution and winding up of a limited partnership only if the limited partnership decides to make an interim distribution. A person's dissociation does not entitle the person to a distribution.
(3) A person does not have a right to demand or receive a distribution from a limited partnership in any form other than money. Except as otherwise provided in Subsection 48-2e-813(5), a partnership may distribute an asset in kind only if each part of the asset is fungible with each other part and each person receives a percentage of the asset equal in value to the person's share of distributions.
(4) If a partner or transferee becomes entitled to receive a distribution, the partner or transferee has the status of, and is entitled to all remedies available to, a creditor of the limited partnership with respect to the distribution. However, the limited partnership's obligation to make a distribution is subject to offset for any amount owed to the limited partnership by the partner or a person dissociated as a partner on whose account the distribution is made.

48-2e-504 Limitations on distributions.

(1) A limited partnership may not make a distribution, including a distribution under Section 48-2e-813, if after the distribution:
(a) the limited partnership would not be able to pay its debts as they become due in the ordinary course of the limited partnership's activities and affairs; or
(b) the limited partnership's total assets would be less than the sum of its total liabilities plus, unless the partnership agreement permits otherwise, the amount that would be needed, if the limited partnership were to be dissolved and wound up at the time of the distribution, to satisfy the preferential rights upon dissolution and winding up of partners and transferees whose preferential rights are superior to those of persons receiving the distribution.
(2) A limited partnership may base a determination that a distribution is not prohibited under Subsection (1) on:
(a) financial statements prepared on the basis of accounting practices and principles that are reasonable in the

circumstances; or
(b) a fair valuation or other method that is reasonable under the circumstances.
(3) Except as otherwise provided in Subsection (5), the effect of a distribution under Subsection (1) is measured:
(a) in the case of distribution as defined in Subsection 48-2e-102(4)(a), as of the earlier of:
(i) the date money or other property is transferred or debt is incurred by the limited partnership; or
(ii) the date the person entitled to the distribution ceases to own the interest or right being acquired by the limited partnership in return for the distribution;
(b) in the case of any other distribution of indebtedness, as of the date the indebtedness is distributed; and
(c) in all other cases, as of the date:
(i) the distribution is authorized, if the payment occurs not later than 120 days after that date; or
(ii) the payment is made, if payment occurs more than 120 days after the distribution is authorized.
(4) A limited partnership's indebtedness to a partner or transferee incurred by reason of a distribution made in accordance with this section is at parity with the limited partnership's indebtedness to its general, unsecured creditors, except to the extent subordinated by agreement.
(5) A limited partnership's indebtedness, including indebtedness issued as a distribution, is not considered a liability for purposes of Subsection (1) if the terms of the indebtedness provide that payment of principal and interest is made only if and to the extent that payment of a distribution could then be made under this section. If the indebtedness is issued as a distribution, each payment of principal or interest is treated as a distribution, the effect of which is measured on the date the payment is made.
(6) In measuring the effect of a distribution under Section 48-2e-813, the liabilities of a dissolved limited partnership do not include any claim that has been disposed of under Section 48-2e-806, 48-2e-807, or 48-2e-808.

48-2e-505 Liability for improper distributions.
(1) If a general partner consents to a distribution made in violation of Section 48-2e-504 and in consenting to the distribution fails to comply with Section 48-2e-409, the general partner is personally liable to the limited partnership for the amount of the distribution which exceeds the amount that could have been distributed without the violation of Section 48-2e-504.
(2) A person that receives a distribution knowing that the distribution violated Section 48-2e-504 is personally liable to the limited partnership but only to the extent that the distribution received by the person exceeded the amount that could have been properly paid under Section 48-2e-504.
(3) A general partner against which an action is commenced because the general partner is liable under Subsection (1) may:
(a) implead any other person that is liable under Subsection (1) and seek to enforce a right of contribution from the person; and
(b) implead any person that received a distribution in violation of Subsection (2) and seek to enforce a right of contribution from the person in the amount the person received in violation of Subsection (2).
(4) An action under this section is barred unless commenced not later than two years after the distribution.

Part 6
Dissociation

48-2e-601 Dissociation as limited partner.
(1) A person does not have a right to dissociate as a limited partner before the completion of the winding up of the limited partnership.
(2) A person is dissociated as a limited partner when:
(a) the limited partnership has notice of the person's express will to withdraw as a limited partner, but, if the person specified a withdrawal date later than the date the limited partnership had notice, on that later date;
(b) an event stated in the partnership agreement as causing the person's dissociation as a limited partner occurs;
(c) the person is expelled as a limited partner pursuant to the partnership agreement;
(d) the person is expelled as a limited partner by the unanimous vote or consent of the other partners if:

(i) it is unlawful to carry on the limited partnership's activities and affairs with the person as a limited partner;
(ii) there has been a transfer of all of the person's transferable interest in the limited partnership, other than:
(A) a transfer for security purposes; or
(B) a charging order in effect under Section 48-2e-703 which has not been foreclosed;
(iii) the person is a corporation and:
(A) the limited partnership notifies the person that it will be expelled as a limited partner because the person has filed a statement of dissolution or the equivalent, its charter has been revoked, or its right to conduct business has been suspended by the jurisdiction of its incorporation; and
(B) not later than 90 days after the notification the statement of dissolution or the equivalent has not been revoked or its charter or right to conduct business has not been reinstated; or
(iv) the person is an unincorporated entity that has been dissolved and whose business is being wound up;
(e) on application by the limited partnership, the person is expelled as a limited partner by judicial order because the person:
(i) has engaged or is engaging in wrongful conduct that has affected adversely and materially, or will affect adversely and materially, the limited partnership's activities and affairs;
(ii) has committed willfully or persistently, or is committing willfully or persistently, a material breach of the partnership agreement or the contractual obligation of good faith and fair dealing under Subsection 48-2e-305(1); or
(iii) has engaged or is engaging in conduct relating to the limited partnership's activities and affairs which makes it not reasonably practicable to carry on the activities and affairs with the person as a limited partner;
(f) in the case of a person who is an individual, the individual dies;
(g) in the case of a person that is a testamentary or inter vivos trust or is acting as a limited partner by virtue of being a trustee of such a trust, the trust's entire transferable interest in the limited partnership is distributed;
(h) in the case of a person that is an estate or is acting as a limited partner by virtue of being a personal representative of an estate, the estate's entire transferable interest in the limited partnership is distributed;
(i) in the case of a person that is not an individual, corporation, unincorporated entity, trust, or estate, the existence of the person terminates;
(j) the limited partnership participates in a merger under Part 11, Merger, Interest Exchange, Conversion, and Domestication, and:
(i) the limited partnership is not the surviving entity; or
(ii) otherwise as a result of the merger, the person ceases to be a limited partner;
(k) the limited partnership participates in an interest exchange under Part 11, Merger, Interest Exchange, Conversion, and Domestication, and as a result of the interest exchange, the person ceases to be a limited partner;
(l) the limited partnership participates in a conversion under Part 11, Merger, Interest Exchange, Conversion, and Domestication;
(m) the limited partnership participates in a domestication under Part 11, Merger, Interest Exchange, Conversion, and Domestication, and as a result of the domestication, the person ceases to be a limited partner; or
(n) the limited partnership dissolves and completes winding up.

48-2e-602 Effect of dissociation as limited partner.
(1) If a person is dissociated as a limited partner:
(a) subject to Section 48-2e-704, the person does not have further rights as a limited partner;
(b) the person's contractual obligation of good faith and fair dealing as a limited partner under Subsection 48-2e-305(1) ends with regard to matters arising and events occurring after the person's dissociation; and
(c) subject to Section 48-2e-704 and Part 11, Merger, Interest Exchange, Conversion, and Domestication, any transferable interest owned by the person in the person's capacity as a limited partner immediately before dissociation is owned by the person solely as a transferee.
(2) A person's dissociation as a limited partner does not of itself discharge the person from any debt, obligation, or other liability to the limited partnership or the other partners which the person incurred while a limited partner.

48-2e-603 Dissociation as general partner.

A person is dissociated as a general partner when:

(1) the limited partnership has notice of the person's express will to withdraw as a general partner, but, if the person specifies a withdrawal date later than the date the limited partnership had notice, on that later date;

(2) an event stated in the partnership agreement as causing the person's dissociation as a general partner occurs;

(3) the person is expelled as a general partner pursuant to the partnership agreement;

(4) the person is expelled as a general partner by the unanimous vote or consent of the other partners if:

(a) it is unlawful to carry on the limited partnership's activities and affairs with the person as a general partner;

(b) there has been a transfer of all of the person's transferable interest in the limited partnership, other than:

(i) a transfer for security purposes; or

(ii) a charging order in effect under Section 48-2e-703 which has not been foreclosed;

(c) the person is a corporation, and:

(i) the limited partnership notifies the person that it will be expelled as a general partner because the person has filed a statement of dissolution or the equivalent, its charter has been revoked, or its right to conduct business has been suspended by the jurisdiction of its incorporation; and

(ii) not later than 90 days after the notification the statement of dissolution or the equivalent has not been revoked or its charter or right to conduct business has not been reinstated; or

(d) the person is an unincorporated entity that has been dissolved and whose business is being wound up;

(5) on application by the limited partnership or a partner in a direct action under Section 48-2e-1001, the person is expelled as a general partner by judicial order because the person:

(a) has engaged or is engaging in wrongful conduct that has affected adversely and materially, or will affect adversely and materially, the limited partnership's activities and affairs;

(b) has committed willfully or persistently, or is committing willfully or persistently, a material breach of the partnership agreement or a duty or obligation under Section 48-2e-409; or

(c) has engaged or is engaging in conduct relating to the limited partnership's activities and affairs which makes it not reasonably practicable to carry on the activities or affairs of the limited partnership with the person as a general partner;

(6) in the case of a person who is an individual:

(a) the individual dies;

(b) a guardian or general conservator for the individual is appointed; or

(c) a court orders that the individual has otherwise become incapable of performing the individual's duties as a general partner under this chapter or the partnership agreement;

(7) the person:

(a) becomes a debtor in bankruptcy;

(b) executes an assignment for the benefit of creditors; or

(c) seeks, consents to, or acquiesces in the appointment of a trustee, receiver, or liquidator of the person or of all or substantially all of the person's property;

(8) in the case of a person that is a testamentary or inter vivos trust or is acting as a general partner by virtue of being a trustee of such a trust, the trust's entire transferable interest in the limited partnership is distributed;

(9) in the case of a person that is an estate or is acting as a general partner by virtue of being a personal representative of an estate, the estate's entire transferable interest in the limited partnership is distributed;

(10) in the case of a person that is not an individual, corporation, unincorporated entity, trust, or estate, the existence of the person terminates;

(11) the limited partnership participates in a merger under Part 11, Merger, Interest Exchange, Conversion, and Domestication, and:

(a) the limited partnership is not the surviving entity; or

(b) otherwise as a result of the merger, the person ceases to be a general partner;

(12) the limited partnership participates in an interest exchange under Part 11, Merger, Interest Exchange, Conversion, and Domestication, and, as a result of the interest exchange, the person ceases to be a general partner;

(13) the limited partnership participates in a conversion under Part 11, Merger, Interest Exchange, Conversion,

and Domestication;
(14) the limited partnership participates in a domestication under Part 11, Merger, Interest Exchange, Conversion, and Domestication, and, as a result of the domestication, the person ceases to be a general partner; or
(15) the limited partnership dissolves and completes winding up.

48-2e-604 Power to dissociate as general partner -- Wrongful dissociation.
(1) A person has the power to dissociate as a general partner at any time, rightfully or wrongfully, by withdrawing as a general partner by express will under Subsection 48-2e-603(1).
(2) A person's dissociation as a general partner is wrongful only if the dissociation:
(a) is in breach of an express provision of the partnership agreement; or
(b) occurs before the completion of the winding up of the limited partnership, and:
(i) the person withdraws as a general partner by express will;
(ii) the person is expelled as a general partner by judicial order under Subsection 48-2e-603(5);
(iii) the person is dissociated as a general partner under Subsection 48-2e-603(7); or
(iv) in the case of a person that is not a trust other than a business trust, an estate, or an individual, the person is expelled or otherwise dissociated as a general partner because it willfully dissolved or terminated.
(3) A person that wrongfully dissociates as a general partner is liable to the limited partnership and, subject to Section 48-2e-1001, to the other partners for damages caused by the dissociation. The liability is in addition to any debt, obligation, or other liability of the general partner to the limited partnership or the other partners.

48-2e-605 Effect of dissociation as general partner.
(1) If a person is dissociated as a general partner:
(a) the person's right to participate as a general partner in the management and conduct of the limited partnership's activities and affairs terminates;
(b) the person's duties and obligations as a general partner under Section 48-2e-409 end with regard to matters arising and events occurring after the person's dissociation;
(c) the person may sign and deliver to the division for filing a statement of dissociation pertaining to the person and, at the request of the limited partnership, shall sign an amendment to the certificate of limited partnership which states that the person has dissociated as a general partner; and
(d) subject to Section 48-2e-704 and Part 11, Merger, Interest Exchange, Conversion, and Domestication, any transferable interest owned by the person immediately before dissociation in the person's capacity as a general partner is owned by the person solely as a transferee.
(2) A person's dissociation as a general partner does not of itself discharge the person from any debt, obligation, or other liability to the limited partnership or the other partners which the person incurred while a general partner.

48-2e-606 Power to bind and liability of person dissociated as general partner.
(1) After a person is dissociated as a general partner and before the limited partnership is merged out of existence, converted, or domesticated under Part 11, Merger, Interest Exchange, Conversion, and Domestication, or dissolved, the limited partnership is bound by an act of the person only if:
(a) the act would have bound the limited partnership under Section 48-2e-402 before the dissociation; and
(b) at the time the other party enters into the transaction:
(i) less than two years has passed since the dissociation; and
(ii) the other party does not know or have notice of the dissociation and reasonably believes that the person is a general partner.
(2) If a limited partnership is bound under Subsection (1), the person dissociated as a general partner which caused the limited partnership to be bound is liable:
(a) to the limited partnership for any damage caused to the limited partnership arising from the obligation incurred under Subsection (1); and
(b) if a general partner or another person dissociated as a general partner is liable for the obligation, to the general partner or other person for any damage caused to the general partner or other person arising from the

liability.

48-2e-607 Liability to other persons of person dissociated as general partner.
(1) A person's dissociation as a general partner does not of itself discharge the person's liability as a general partner for a debt, obligation, or other liability of the limited partnership incurred before dissociation. Except as otherwise provided in Subsections (2) and (3), the person is not liable for a limited partnership obligation incurred after dissociation.
(2) A person whose dissociation as a general partner resulted in a dissolution and winding up of the limited partnership's activities and affairs is liable to the same extent as a general partner under Section 48-2e-404 on an obligation incurred by the limited partnership under Section 48-2e-804.
(3) A person that has dissociated as a general partner but whose dissociation did not result in a dissolution and winding up of the limited partnership's activities and affairs is liable on a transaction entered into by the limited partnership after the dissociation only if:
(a) a general partner would be liable on the transaction; and
(b) at the time the other party enters into the transaction:
(i) less than two years has passed since the dissociation; and
(ii) the other party does not have knowledge or notice of the dissociation and reasonably believes that the person is a general partner.
(4) By agreement with a creditor of a limited partnership and the limited partnership, a person dissociated as a general partner may be released from liability for an obligation of the limited partnership.
(5) A person dissociated as a general partner is released from liability for an obligation of the limited partnership if the limited partnership's creditor, with knowledge or notice of the person's dissociation as a general partner but without the person's consent, agrees to a material alteration in the nature or time of payment of the obligation.

Part 7
Transferable Interest and Rights

48-2e-701 Nature of transferable interest.
The only interest of a partner which is transferable is the partner's transferable interest. A transferable interest is personal property.

48-2e-702 Transfer of transferable interest.
(1) A transfer, in whole or in part, of a transferable interest:
(a) is permissible;
(b) does not by itself cause the person's dissociation or a dissolution and winding up of the limited partnership's activities and affairs; and
(c) subject to Section 48-2e-704, does not entitle the transferee to:
(i) participate in the management or conduct of the limited partnership's activities or affairs; or
(ii) except as otherwise provided in Subsection (3), have access to required information, records, or other information concerning the limited partnership's activities and affairs.
(2) A transferee has the right to receive, in accordance with the transfer, distributions to which the transferor would otherwise be entitled.
(3) In a dissolution and winding up of a limited partnership, a transferee is entitled to an account of the limited partnership's transactions only from the date of dissolution.
(4) A transferable interest may be evidenced by a certificate of the interest issued by a limited partnership in a record, and, subject to this section, the interest represented by the certificate may be transferred by a transfer of the certificate.
(5) A limited partnership need not give effect to a transferee's rights under this section until the limited partnership knows or has notice of the transfer.
(6) A transfer of a transferable interest in violation of a restriction on transfer contained in the partnership agreement is ineffective as to a person having knowledge or notice of the restriction at the time of transfer.

(7) Except as otherwise provided in Subsections 48-2e-601(2)(d)(ii) and 48-2e-603(4)(b), if a general or limited partner transfers a transferable interest, the transferor retains the rights of a general or limited partner other than the transferable interest transferred and retains all the duties and obligations of a general or limited partner.
(8) If a general or limited partner transfers a transferable interest to a person that becomes a general or limited partner with respect to the transferred interest, the transferee is liable for the transferor's obligations under Sections 48-2e-502 and 48-2e-505 known to the transferee when the transferee becomes a partner.

48-2e-703 Charging order.
(1) On application by a judgment creditor of a partner or transferee, a court may enter a charging order against the transferable interest of the judgment debtor for the unsatisfied amount of the judgment. A charging order constitutes a lien on a judgment debtor's transferable interest and, after the limited partnership has been served with the charging order, requires the limited partnership to pay over to the person to which the charging order was issued any distribution that otherwise would be paid to the judgment debtor.
(2) To the extent necessary to effectuate the collection of distributions pursuant to a charging order in effect under Subsection (1), the court may:
(a) appoint a receiver of the distributions subject to the charging order, with the power to make all inquiries the judgment debtor might have made; and
(b) make all other orders necessary to give effect to the charging order.
(3) Upon a showing that distributions under a charging order will not pay the judgment debt within a reasonable time, the court may foreclose the lien and order the sale of the transferable interest. The purchaser at the foreclosure sale obtains only the transferable interest, does not thereby become a partner, and is subject to Section 48-2e-702.
(4) At any time before foreclosure under Subsection (3), the partner or transferee whose transferable interest is subject to a charging order under Subsection (1) may extinguish the charging order by satisfying the judgment and filing a certified copy of the satisfaction with the court that issued the charging order.
(5) At any time before foreclosure under Subsection (3), a limited partnership or one or more partners whose transferable interests are not subject to the charging order may pay to the judgment creditor the full amount due under the judgment and thereby succeed to the rights of the judgment creditor, including the charging order.
(6) This chapter does not deprive any partner or transferee of the benefit of any exemption law applicable to the transferable interest of the partner or transferee.
(7) This section provides the exclusive remedy by which a person seeking to enforce a judgment against a partner or transferee may, in the capacity of judgment creditor, satisfy the judgment from the judgment debtor's transferable interest.

48-2e-704 Power of legal representative of deceased partner.
If a partner dies, the deceased partner's legal representative may exercise:
(1) the rights of a transferee provided in Subsection 48-2e-702(3); and
(2) for the purposes of settling the estate, the rights of a current limited partner under Section 48-2e-304.

Part 8
Dissolution and Winding up

48-2e-801 Events causing dissolution.
(1) A limited partnership is dissolved, and its activities and affairs must be wound up, upon the occurrence of any of the following:
(a) an event or circumstance that the partnership agreement states causes dissolution;
(b) the affirmative vote or consent of all general partners and of limited partners owning a majority of the rights to receive distributions as limited partners at the time the vote or consent is to be effective;
(c) after the dissociation of a person as a general partner:
(i) if the limited partnership has at least one remaining general partner, the vote or consent to dissolve the limited partnership not later than 90 days after the dissociation by partners owning a majority of the rights to receive distributions as partners at the time the vote or consent is to be effective; or

(ii) if the limited partnership does not have a remaining general partner, the passage of 90 days after the dissociation, unless before the end of the period:
(A) consent to continue the activities and affairs of the limited partnership and admit at least one general partner is given by limited partners owning a majority of the rights to receive distributions as limited partners at the time the consent is to be effective; and
(B) at least one person is admitted as a general partner in accordance with the consent;
(d) the passage of 90 consecutive days after the dissociation of the limited partnership's last limited partner, unless before the end of the period the limited partnership admits at least one limited partner;
(e) the passage of 90 consecutive days during which the limited partnership has only one partner, unless before the end of the period:
(i) the limited partnership admits at least one person as a partner;
(ii) if the previously sole remaining partner is only a general partner, the limited partnership admits the person as a limited partner; and
(iii) if the previously sole remaining partner is only a limited partner, the limited partnership admits a person as a general partner;
(f) on application by a partner, the entry by the district court of an order dissolving the limited partnership on the grounds that:
(i) the conduct of all or substantially all the limited partnership's activities and affairs is unlawful; or
(ii) it is not reasonably practicable to carry on the limited partnership's activities and affairs in conformity with the partnership agreement; or
(g) the signing and filing of a statement of administrative dissolution by the division under Section ~~48-2e-810~~13-1a-702.
(2) If an event occurs that imposes a deadline on a limited partnership under Subsection (1) and before the limited partnership has met the requirements of the deadline, another event occurs that imposes a different deadline on the limited partnership under Subsection (1):
(a) the occurrence of the second event does not affect the deadline caused by the first event; and
(b) the limited partnership's meeting of the requirements of the first deadline does not extend the second deadline.

48-2e-802 Winding up.
(1) A dissolved limited partnership shall wind up its activities and affairs, and, except as otherwise provided in Section 48-2e-803, the limited partnership continues after dissolution only for the purpose of winding up.
(2) In winding up its activities and affairs, the limited partnership:
(a) shall discharge the limited partnership's debts, obligations, and other liabilities, settle and close the limited partnership's activities and affairs, and marshal and distribute the assets of the limited partnership; and
(b) may:
(i) amend its certificate of limited partnership to state that the limited partnership is dissolved;
(ii) preserve the limited partnership activities, affairs, and property as a going concern for a reasonable time;
(iii) prosecute and defend actions and proceedings, whether civil, criminal, or administrative;
(iv) transfer the limited partnership's property;
(v) settle disputes by mediation or arbitration;
(vi) deliver to the division for filing a statement of termination stating the name of the limited partnership and that the limited partnership is terminated; and
(vii) perform other acts necessary or appropriate to the winding up.
(3) If a dissolved limited partnership does not have a general partner, a person to wind up the dissolved limited partnership's activities and affairs may be appointed by the affirmative vote or consent of limited partners owning a majority of the rights to receive distributions as limited partners at the time the vote or consent is to be effective. A person appointed under this Subsection (3):
(a) has the powers of a general partner under Section 48-2e-804 but is not liable for the debts, obligations, and other liabilities of the limited partnership solely by reason of having or exercising those powers or otherwise acting to wind up the dissolved limited partnership's activities and affairs; and
(b) shall deliver promptly to the division for filing an amendment to the certificate of limited partnership

stating:
(i) that the limited partnership does not have a general partner;
(ii) the name and street and mailing addresses of the person; and
(iii) that the person has been appointed pursuant to this subsection to wind up the limited partnership.
(4) On the application of any partner, the district court may order judicial supervision of the winding up of a dissolved limited partnership, including the appointment of a person to wind up the limited partnership's activities and affairs, if:
(a) the limited partnership does not have a general partner and within a reasonable time following the dissolution no person has been appointed pursuant to Subsection (3); or
(b) the applicant establishes other good cause.

48-2e-803 Rescinding dissolution.
(1) A limited partnership may rescind its dissolution, unless a statement of termination applicable to the limited partnership is effective, the district court has entered an order under Subsection 48-2e-801(1)(f) dissolving the limited partnership, or the division has dissolved the limited partnership under Section ~~48-2e-810~~13-1a-702.
(2) Rescinding dissolution under this section requires:
(a) the affirmative vote or consent of each partner; and
(b) if the limited partnership has delivered to the division for filing an amendment to the certificate of limited partnership stating that the partnership is dissolved and if:
(i) the amendment is not effective, the filing by the limited partnership of a statement of withdrawal under Section ~~48-2e-207~~13-1a-304 applicable to the amendment; or
(ii) the amendment is effective, the delivery by the limited partnership to the division for filing of an amendment to the certificate of limited partnership stating that the dissolution has been rescinded under this section.
(3) If a limited partnership rescinds its dissolution:
(a) the limited partnership resumes carrying on its activities and affairs as if dissolution had never occurred;
(b) subject to Subsection (3)(c), any liability incurred by the limited partnership after the dissolution and before the rescission is effective is determined as if dissolution had never occurred; and
(c) the rights of a third party arising out of conduct in reliance on the dissolution before the third party knew or had notice of the rescission may not be adversely affected.

48-2e-804 Power to bind partnership after dissolution.
(1) A limited partnership is bound by a general partner's act after dissolution which:
(a) is appropriate for winding up the limited partnership's activities and affairs; or
(b) would have bound the limited partnership under Section 48-2e-402 before dissolution, if, at the time the other party enters into the transaction, the other party does not know or have notice of the dissolution.
(2) A person dissociated as a general partner binds a limited partnership through an act occurring after dissolution if:
(a) at the time the other party enters into the transaction:
(i) less than two years has passed since the dissociation; and
(ii) the other party does not have notice of the dissociation and reasonably believes that the person is a general partner; and
(b) the act:
(i) is appropriate for winding up the limited partnership's activities and affairs; or
(ii) would have bound the limited partnership under Section 48-2e-402 before dissolution and at the time the other party enters into the transaction the other party does not have notice of the dissolution.

48-2e-805 Liability after dissolution of general partner and person dissociated as general partner to limited partnership, other general partners, and persons dissociated as general partner.
(1) If a general partner having knowledge of the dissolution causes a limited partnership to incur an obligation under Subsection 48-2e-804(1) by an act that is not appropriate for winding up the limited partnership's activities and affairs, the general partner is liable:

(a) to the limited partnership for any damage caused to the limited partnership arising from the obligation; and
(b) if another general partner or a person dissociated as a general partner is liable for the obligation, to that other general partner or person for any damage caused to that other general partner or person arising from the liability.
(2) If a person dissociated as a general partner causes a limited partnership to incur an obligation under Subsection 48-2e-804(2), the person is liable:
(a) to the limited partnership for any damage caused to the limited partnership arising from the obligation; and
(b) if a general partner or another person dissociated as a general partner is liable for the obligation, to the general partner or other person for any damage caused to the general partner or other person arising from the obligation.

48-2e-806 Known claims against dissolved limited partnership.
(1) Except as otherwise provided in Subsection (4), a dissolved limited partnership may give notice of a known claim under Subsection (2), which has the effect provided in Subsection (3).
(2) A dissolved limited partnership may in a record notify its known claimants of the dissolution. The notice must:
(a) specify the information required to be included in a claim;
(b) state that a claim must be in writing and provide a mailing address to which the claim is to be sent;
(c) state the deadline for receipt of a claim, which may not be less than 120 days after the date the notice is received by the claimant;
(d) state that the claim will be barred if not received by the deadline; and
(e) unless the limited partnership has been throughout its existence a limited liability limited partnership, state that the barring of a claim against the limited partnership will also bar any corresponding claim against any general partner or person dissociated as a general partner which is based on Section 48-2e-404.
(3) A claim against a dissolved limited partnership is barred if the requirements of Subsection (2) are met, and:
(a) the claim is not received by the specified deadline; or
(b) if the claim is timely received but rejected by the limited partnership:
(i) the limited partnership causes the claimant to receive a notice in a record stating that the claim is rejected and will be barred unless the claimant commences an action against the limited partnership to enforce the claim not later than 90 days after the claimant receives the notice; and
(ii) the claimant does not commence the required action not later than 90 days after the claimant receives the notice.
(4) This section does not apply to a claim based on an event occurring after the effective date of dissolution or a liability that on that date is contingent.

48-2e-807 Other claims against dissolved limited partnership.
(1) A dissolved limited partnership may publish notice of its dissolution and request persons having claims against the dissolved limited partnership to present them in accordance with the notice.
(2) A notice under Subsection (1) must:
(a) be published at least once in a newspaper of general circulation in the county in this state in which the dissolved limited partnership's principal office is located or, if the principal office is not located in this state, in the county in which the office of the dissolved limited partnership's registered agent is or was last located and in accordance with Section 45-1-101;
(b) describe the information required to be contained in a claim, state that the claim must be in writing, and provide a mailing address to which the claim is to be sent;
(c) state that a claim against the dissolved limited partnership is barred unless an action to enforce the claim is commenced not later than three years after publication of the notice; and
(d) unless the dissolved limited partnership has been throughout its existence a limited liability limited partnership, state that the barring of a claim against the dissolved limited partnership will also bar any corresponding claim against any general partner or person dissociated as a general partner which is based on Section 48-2e-404.
(3) If a dissolved limited partnership publishes a notice in accordance with Subsection (2), the claim of each of

the following claimants is barred unless the claimant commences an action to enforce the claim against the dissolved limited partnership not later than three years after the publication date of the notice:
(a) a claimant that did not receive notice in a record under Section 48-2e-806;
(b) a claimant whose claim was timely sent to the dissolved limited partnership but not acted on; and
(c) a claimant whose claim is contingent at, or based on an event occurring after, the effective date of dissolution.
(4) A claim not barred under this section or Section 48-2e-806 may be enforced:
(a) against the dissolved limited partnership, to the extent of its undistributed assets;
(b) except as otherwise provided in Section 48-2e-808, if the assets of the dissolved limited partnership have been distributed after dissolution, against a partner or transferee to the extent of that person's proportionate share of the claim or of the dissolved limited partnership's assets distributed to the partner or transferee after dissolution, whichever is less, but a person's total liability for all claims under this subsection may not exceed the total amount of assets distributed to the person after dissolution; and
(c) against any person liable on the claim under Sections 48-2e-404 and 48-2e-607.

48-2e-808 Court proceedings.
(1) A dissolved limited partnership that has published a notice under Section 48-2e-807 may file an application with the district court in the county where the dissolved limited partnership's principal office is located, or, if the principal office is not located in this state, where the office of its registered agent is located, for a determination of the amount and form of security to be provided for payment of claims that are contingent, have not been made known to the dissolved limited partnership, or are based on an event occurring after the effective date of dissolution but which, based on the facts known to the dissolved limited partnership, are reasonably expected to arise after the effective date of dissolution. Security is not required for any claim that is or is reasonably anticipated to be barred under Subsection 48-2e-807(3).
(2) Not later than 10 days after the filing of an application under Subsection (1), the dissolved limited partnership shall give notice of the proceeding to each claimant holding a contingent claim known to the dissolved limited partnership.
(3) In a proceeding brought under this section, the court may appoint a guardian ad litem to represent all claimants whose identities are unknown. The reasonable fees and expenses of the guardian, including all reasonable expert witness fees, must be paid by the dissolved limited partnership.
(4) A dissolved limited partnership that provides security in the amount and form ordered by the court under Subsection (1) satisfies the dissolved limited partnership's obligations with respect to claims that are contingent, have not been made known to the dissolved limited partnership, or are based on an event occurring after the effective date of dissolution, and such claims may not be enforced against a partner or transferee that received assets in liquidation.

48-2e-809 Liability of general partner and person dissociated as general partner when claim against limited partnership barred.
If a claim against a dissolved limited partnership is barred under Section 48-2e-806, 48-2e-807, or 48-2e-808, any corresponding claim under Section 48-2e-404 or 48-2e-607 is also barred.

~~**48-2e-810 Administrative dissolution.**~~
~~(1) The division may commence a proceeding under Subsections (2) and (3) to dissolve a limited partnership administratively if the limited partnership does not:~~
~~(a) pay any fee, tax, or penalty required to be paid to the division not later than 60 days after it is due;~~
~~(b) deliver an annual report to the division not later than 60 days after it is due; or~~
~~(c) have a registered agent in this state for 60 consecutive days.~~
~~(2) If the division determines that one or more grounds exist for administratively dissolving a limited partnership, the division shall serve the limited partnership with notice in a record of the division's determination.~~
~~(3) If a limited partnership, not later than 60 days after service of the notice under Subsection (2), does not cure or demonstrate to the satisfaction of the division the nonexistence of each ground determined by the division,~~

~~the division shall administratively dissolve the limited partnership by signing a statement of administrative dissolution that recites the grounds for dissolution and the effective date of dissolution. The division shall file the statement and serve a copy on the limited partnership pursuant to Section 48-2e-209.~~
~~(4) A limited partnership that is administratively dissolved continues in existence as an entity but may not carry on any activities except as necessary to wind up its activities and affairs and liquidate its assets under Sections 48-2e-802, 48-2e-806, 48-2e-807, 48-2e-808, and 48-2e-813 or to apply for reinstatement under Section 48-2e-811.~~
~~(5) The administrative dissolution of a limited partnership does not terminate the authority of its registered agent.~~

~~48-2e-811 Reinstatement.~~
~~(1) A limited partnership that is administratively dissolved under Section 48-2e-810 may apply to the division for reinstatement not later than two years after the effective date of dissolution. The application must state:~~
~~(a) the name of the limited partnership at the time of its administrative dissolution and, if needed, a different name that satisfies Section 48-2e-108;~~
~~(b) the address of the principal office of the limited partnership and the name and address of its registered agent;~~
~~(c) the effective date of the limited partnership's administrative dissolution; and~~
~~(d) that the grounds for dissolution did not exist or have been cured.~~
~~(2) To be reinstated, a limited partnership must pay all fees, taxes, interest, and penalties that were due to the division at the time of its administrative dissolution and all fees, taxes, interest, and penalties that would have been due to the division while the limited partnership was administratively dissolved.~~
~~(3) If the division determines that an application under Subsection (1) contains the information required, is satisfied that the information is correct, and determines that all payments required to be made to the division by Subsection (2) have been made, the division shall:~~
~~(a) cancel the statement of administrative dissolution and prepare a statement of reinstatement that states the division's determination and the effective date of reinstatement;~~
~~(b) file the statement of reinstatement; and~~
~~(c) serve a copy of the statement of reinstatement on the limited partnership.~~
~~(4) When reinstatement under this section is effective, the following rules apply:~~
~~(a) The restatement relates back to and takes effect as of the effective date of the administrative dissolution.~~
~~(b) The limited partnership resumes carrying on its activities and affairs as if the administrative dissolution had not occurred.~~
~~(c) The rights of a person arising out of an act or omission in reliance on the dissolution before the person knew or had notice of the reinstatement are not affected.~~

~~48-2e-812 Judicial review of denial of reinstatement.~~
~~(1) If the division denies a limited partnership's application for reinstatement following administrative dissolution, the division shall serve the limited partnership with notice in a record that explains the reasons for the denial.~~
~~(2) A limited partnership may seek judicial review of denial of reinstatement in the district court not later than 30 days after service of the notice of denial.~~

48-2e-813 Disposition of assets in winding up -- When contributions required.
(1) In winding up its activities and affairs, a limited partnership shall apply its assets, including the contributions required by this section, to discharge the limited partnership's obligations to creditors, including partners that are creditors.
(2) After a limited partnership complies with Subsection (1), any surplus must be distributed in the following order, subject to any charging order in effect under Section 48-2e-703:
(a) to each person owning a transferable interest that reflects contributions made and not previously returned, an amount equal to the value of the unreturned contributions; and
(b) among partners in proportion to their respective rights to share in distributions immediately before the dissolution of the limited partnership, except to the extent necessary to comply with any transfer effective under

Section 48-2e-702.
(3) If a limited partnership's assets are insufficient to satisfy all of its obligations under Subsection (1), with respect to each unsatisfied obligation incurred when the limited partnership was not a limited liability limited partnership, the following rules apply:
(a) Each person that was a general partner when the obligation was incurred and that has not been released from the obligation under Section 48-2e-607 shall contribute to the limited partnership for the purpose of enabling the limited partnership to satisfy the obligation. The contribution due from each of those persons is in proportion to the right to receive distributions in the capacity of general partner in effect for each of those persons when the obligation was incurred.
(b) If a person does not contribute the full amount required under Subsection (3)(a) with respect to an unsatisfied obligation of the limited partnership, the other persons required to contribute by Subsection (3)(a) on account of the obligation shall contribute the additional amount necessary to discharge the obligation. The additional contribution due from each of those other persons is in proportion to the right to receive distributions in the capacity of general partner in effect for each of those other persons when the obligation was incurred.
(c) If a person does not make the additional contribution required by Subsection (3)(b), further additional contributions are determined and due in the same manner as provided in that subsection.
(d) A person that makes an additional contribution under Subsection (3)(b) or (3)(c) may recover from any person whose failure to contribute under Subsection (3)(a) or (3)(b) necessitated the additional contribution. A person may not recover under this subsection more than the amount additionally contributed. A person's liability under this subsection may not exceed the amount the person failed to contribute.
(4) If a limited partnership does not have sufficient surplus to comply with Subsection (2)(a), any surplus must be distributed among the owners of transferable interests in proportion to the value of the respective unreturned contributions.
(5) All distributions made under Subsections (2) and (4) must be paid in money.

Part 9
Foreign Limited Partnerships

~~48-2e-901 Governing law.~~
~~(1) The law of the jurisdiction of formation of a foreign limited partnership governs:~~
~~(a) the internal affairs of the foreign limited partnership; and~~
~~(b) the liability of a partner as partner for a debt, obligation, or other liability of the foreign limited partnership.~~
~~(2) A foreign limited partnership is not precluded from registering to do business in this state because of any difference between the law of its jurisdiction of formation and the law of this state.~~
~~(3) Registration of a foreign limited partnership to do business in this state does not authorize the foreign limited partnership to engage in any activities and affairs or exercise any power that a limited partnership may not engage in or exercise in this state.~~
~~(4)~~
~~(a) The division may permit a tribal limited partnership to apply for authority to transact business in the state in the same manner as a foreign limited partnership formed in another state.~~
~~(b) If a tribal limited partnership elects to apply for authority to transact business in the state, for purposes of this chapter, the tribal limited partnership shall be treated in the same manner as a foreign limited partnership formed under the laws of another state.~~

~~48-2e-902 Registration to do business in this state.~~
~~(1) A foreign limited partnership may not do business in this state until it registers with the division under this part.~~
~~(2) A foreign limited partnership doing business in this state may not maintain an action or proceeding in this state unless it is registered to do business in this state.~~
~~(3) The failure of a foreign limited partnership to register to do business in this state does not impair the validity of a contract or act of the foreign limited partnership or preclude it from defending an action or proceeding in this state.~~

(4) A limitation on the liability of a general partner or limited partners of a foreign limited partnership is not waived solely because the foreign limited partnership does business in this state without registering to do business in this state.
(5) Subsections 48-2e-901(1) and (2) apply even if the foreign limited partnership fails to register under this part.

48-2e-903 Foreign registration statement.

To register to do business in this state, a foreign limited partnership must deliver a foreign registration statement to the division for filing. The statement must state:
(1) the name of the foreign limited partnership and, if the name does not comply with Section 48-2e-108, an alternate name adopted pursuant to Subsection 48-2e-906(1);
(2) that the limited partnership is a foreign limited partnership;
(3) the name of the foreign limited partnership's jurisdiction of formation;
(4) the street and mailing addresses of the foreign limited partnership's principal office and, if the law of the foreign limited partnership's jurisdiction of formation requires the foreign limited partnership to maintain an office in that jurisdiction, the street and mailing addresses of the required office; and
(5) the information required by Subsection 16-17-203(1).

48-2e-904 Amendment of foreign registration.

A registered foreign limited partnership shall deliver to the division for filing an amendment to its foreign registration statement if there is a change in:
(1) the name of the foreign limited partnership;
(2) the foreign limited partnership's jurisdiction of formation;
(3) an address required by Subsection 48-2e-903(4); or
(4) the information required by Subsection 48-2e-903(5).

48-2e-905 Activities not constituting doing business.

(1) Activities of a foreign limited partnership which do not constitute doing business in this state under this part include:
(a) maintaining, defending, mediating, arbitrating, and settling an action or proceeding;
(b) carrying on any activity concerning its internal affairs, including holding meetings of its partners;
(c) maintaining accounts in financial institutions;
(d) maintaining offices or agencies for the transfer, exchange, and registration of securities of the foreign limited partnership or maintaining trustees or depositories with respect to those securities;
(e) selling through independent contractors;
(f) soliciting or obtaining orders by any means, if the orders require acceptance outside this state before they become contracts;
(g) creating or acquiring indebtedness, mortgages, or security interests in property;
(h) securing or collecting debts or enforcing mortgages or security interests in property securing the debts, and holding, protecting, or maintaining property;
(i) conducting an isolated transaction that is not in the course of similar transactions;
(j) owning, without more, property; and
(k) doing business in interstate commerce.
(2) A person does not do business in this state solely by being a partner of a foreign limited partnership that does business in this state. This section does not apply in determining the contacts or activities that may subject a foreign limited partnership to service of process, taxation, or regulation under law of this state other than this chapter.

48-2e-906 Noncomplying name of foreign limited partnership.

(1) A foreign limited partnership whose name does not comply with Section 48-2e-108 may not register to do business in this state until it adopts, for the purpose of doing business in this state, an alternate name that complies with Section 48-2e-108. A registered foreign limited partnership that registers under an alternate

~~name under this Subsection (1) need not comply with Title 42, Chapter 2, Conducting Business Under Assumed Name. After registering to do business in this state with an alternate name, a registered foreign limited partnership shall do business in this state under:~~
~~(a) the alternate name;~~
~~(b) the foreign limited partnership's name, with the addition of its jurisdiction of formation; or~~
~~(c) an assumed or fictitious name the foreign limited partnership is authorized to use under Title 42, Chapter 2, Conducting Business Under Assumed Name.~~
~~(2) If a registered foreign limited partnership changes its name to one that does not comply with Section 48-2e-108, it may not do business in this state until it complies with Subsection (1) by amending its registration to adopt an alternate name that complies with Section 48-2e-108.~~

~~48-2e-907 Withdrawal deemed on conversion to domestic filing entity or domestic limited liability partnership.~~

~~A registered foreign limited partnership that converts to a domestic limited liability partnership or to a domestic entity that is organized, incorporated, or otherwise formed through the delivery of a record to the division for filing is deemed to have withdrawn its registration on the effective date of the conversion.~~

~~48-2e-908 Withdrawal on dissolution or conversion to nonfiling entity other than limited liability partnership.~~

~~(1) A registered foreign limited partnership that has dissolved and completed winding up or has converted to a domestic or foreign entity that is not organized, incorporated, or otherwise formed through the public filing of a record, other than a limited liability partnership, shall deliver a statement of withdrawal to the division for filing. The statement must state:~~
~~(a) in the case of a foreign limited partnership that has completed winding up:~~
~~(i) its name and jurisdiction of formation; and~~
~~(ii) that the foreign limited partnership surrenders its registration to do business in this state as a registered foreign limited partnership; and~~
~~(b) in the case of a foreign limited partnership that has converted:~~
~~(i) the name of the converting foreign limited partnership and its jurisdiction of formation;~~
~~(ii) the type of entity to which the foreign limited partnership has converted and its jurisdiction of formation;~~
~~(iii) that the converted entity surrenders the converting partnership's registration to do business in this state and revokes the authority of the converting foreign limited partnership's registered agent to act as registered agent in this state on the behalf of the foreign limited partnership or the converted entity; and~~
~~(iv) a mailing address to which service of process may be made under Subsection (2).~~
~~(2) After a withdrawal under this section of a foreign limited partnership that has converted to another type of entity is effective, service of process in any action or proceeding based on a cause of action arising during the time the foreign limited partnership was registered to do business in this state may be made pursuant to Subsection 16-17-301(2).~~

~~48-2e-909 Transfer of registration.~~

~~(1) When a registered foreign limited partnership has merged into a foreign entity that is not registered to do business in this state or has converted to a foreign entity required to register with the division to do business in this state, the foreign entity shall deliver to the division for filing an application for transfer of registration. The application must state:~~
~~(a) the name of the registered foreign limited partnership before the merger or conversion;~~
~~(b) that before the merger or conversion the registration pertained to a foreign limited partnership;~~
~~(c) the name of the applicant foreign entity into which the foreign limited partnership has merged or to which it has been converted, and, if the name does not comply with Section 48-2e-108 or similar provision of law of this state governing an entity of the same type as the applicant foreign entity, an alternate name adopted pursuant to Subsection 48-2e-906(1) or similar provision of law of this state governing a foreign entity registered to do business in this state of the same type as the applicable foreign entity;~~
~~(d) the type of entity of the applicant foreign entity and its jurisdiction of formation;~~

~~(e) the street and mailing addresses of the principal office of the applicant foreign entity and, if the law of the entity's jurisdiction of formation requires the entity to maintain an office in that jurisdiction, the street and mailing addresses of that office; and~~
~~(f) the information required under Subsection 16-17-203(1).~~
~~(2) When an application for transfer of registration takes effect, the registration of the foreign limited partnership to do business in this state is transferred without interruption to the foreign entity into which the foreign limited partnership has merged or to which it has been converted.~~

~~48-2e-910 Termination of registration.~~
~~(1) The division may terminate the registration of a registered foreign limited partnership in the manner provided in Subsections (2) and (3) if the foreign limited partnership does not:~~
~~(a) pay, not later than 60 days after the due date, any fee, tax, interest, or penalty required to be paid to the division under this chapter or law other than this chapter;~~
~~(b) deliver to the division for filing, not later than 60 days after the due date, an annual report;~~
~~(c) have a registered agent as required by Section 48-2e-111; or~~
~~(d) deliver to the division for filing a statement of a change under Section 16-17-206 not later than 30 days after a change has occurred in the name or address of the registered agent.~~
~~(2) The division may terminate the registration of a registered foreign limited partnership by:~~
~~(a) filing a notice of termination or noting the termination in the records of the division; and~~
~~(b) delivering a copy of the notice or the information in the notation to the foreign limited partnership's registered agent, or if the foreign limited partnership does not have a registered agent, to the foreign limited partnership's principal office.~~
~~(3) The notice must state or the information in the notation under Subsection (2) must include:~~
~~(a) the effective date of the termination, which must be at least 60 days after the date the division delivers the copy; and~~
~~(b) the grounds for termination under Subsection (1).~~
~~(4) The authority of the registered foreign limited partnership to do business in this state ceases on the effective date of the notice of termination or notation under Subsection (2), unless before that date the foreign limited partnership cures each ground for termination stated in the notice or notation. If the foreign limited partnership cures each ground, the division shall file a record so stating.~~

~~48-2e-911 Withdrawal of registration of registered foreign limited partnership.~~
~~(1) A registered foreign limited partnership may withdraw its registration by delivering a statement of withdrawal to the division for filing. The statement of withdrawal must state:~~
~~(a) the name of the foreign limited partnership and its jurisdiction of formation;~~
~~(b) that the foreign limited partnership is not doing business in this state and that it withdraws its registration to do business in this state;~~
~~(c) that the foreign limited partnership revokes the authority of its registered agent to accept service on its behalf in this state; and~~
~~(d) an address to which service of process may be made under Subsection (2).~~
~~(2) After the withdrawal of the registration of a partnership, service of process in any action or proceeding based on a cause of action arising during the time the foreign limited partnership was registered to do business in this state may be made pursuant to Subsection 16-17-301(2).~~

48-2e-912 Action by attorney general.

The attorney general may maintain an action to enjoin a foreign limited partnership from doing business in this state in violation of this part.

Part 10
Actions by Partners

48-2e-1001 Direct action by partner.

(1) Subject to Subsection (2), a partner may maintain a direct action against another partner or the limited partnership, with or without an accounting as to the limited partnership's activities and affairs, to enforce the partner's rights and otherwise protect the partner's interests, including rights and interests under the partnership agreement or this chapter or arising independently of the partnership relationship.
(2) A partner maintaining a direct action under this section must plead and prove an actual or threatened injury that is not solely the result of an injury suffered or threatened to be suffered by the limited partnership.
(3) A right to an accounting upon a dissolution and winding up does not revive a claim barred by law.

48-2e-1002 Derivative action.

A partner may maintain a derivative action to enforce a right of a limited partnership if:
(1) the partner first makes a demand on the general partners, requesting that they cause the limited partnership to bring an action to enforce the right, and the general partners do not bring the action within a reasonable time; or
(2) a demand under Subsection (1) would be futile.

48-2e-1003 Proper plaintiff.

A derivative action to enforce a right of a limited partnership may be maintained only by a person that is a partner at the time the action is commenced and:
(1) which was a partner when the conduct giving rise to the action occurred; or
(2) whose status as a partner devolved on the person by operation of law or pursuant to the terms of the partnership agreement from a person that was a partner at the time of the conduct.

48-2e-1004 Pleading.

In a derivative action to enforce a right of a limited partnership, the complaint must state with particularity:
(1) the date and content of the plaintiff's demand and the response to the demand by the general partner; or
(2) why demand should be excused as futile.

48-2e-1005 Special litigation committee.

(1) If a limited partnership is named as or made a party in a derivative proceeding, the limited partnership may appoint a special litigation committee to investigate the claims asserted in the proceeding and determine whether pursuing the action is in the best interests of the limited partnership. If the limited partnership appoints a special litigation committee, on motion by the committee made in the name of the limited partnership, except for good cause shown, the court shall stay discovery for the time reasonably necessary to permit the committee to make its investigation. This subsection does not prevent the court from:
(a) enforcing a person's right to information under Section 48-2e-304 or 48-2e-407; or
(b) granting extraordinary relief in the form of a temporary restraining order or preliminary injunction.
(2) A special litigation committee must be composed of one or more disinterested and independent individuals, who may be partners.
(3) A special litigation committee may be appointed:
(a) by a majority of the general partners not named as parties in the proceeding; and
(b) if all general partners are named as parties in the proceeding, by a majority of the general partners named as defendants.
(4) After appropriate investigation, a special litigation committee may determine that it is in the best interests of the limited partnership that the proceeding:
(a) continue under the control of the plaintiff;
(b) continue under the control of the committee;
(c) be settled on terms approved by the committee; or
(d) be dismissed.
(5) After making a determination under Subsection (4), a special litigation committee shall file with the court a statement of its determination and its report supporting its determination and shall serve each party with a copy of the determination and report. The court shall determine whether the members of the committee were

disinterested and independent and whether the committee conducted its investigation and made its recommendation in good faith, independently, and with reasonable care, with the committee having the burden of proof. If the court finds that the members of the committee were disinterested and independent and that the committee acted in good faith, independently, and with reasonable care, the court shall enforce the determination of the committee. Otherwise, the court shall dissolve the stay of discovery entered under Subsection (1) and allow the action to continue under the control of the plaintiff.

48-2e-1006 Proceeds and expenses.
(1) Except as otherwise provided in Subsection (2):
(a) any proceeds or other benefits of a derivative action, whether by judgment, compromise, or settlement, belong to the limited partnership and not to the plaintiff; and
(b) if the plaintiff receives any proceeds, the plaintiff shall remit them immediately to the limited partnership.
(2) If a derivative action is successful in whole or in part, the court may award the plaintiff reasonable expenses, including reasonable attorney's fees and costs, from the recovery of the limited partnership.
(3) A derivative action on behalf of a limited partnership may not be voluntarily dismissed or settled without the court's approval.

Part 11
Merger, Interest Exchange, Conversion, and Domestication

48-2e-1101 Definitions.
In this part:
(1) "Acquired entity" means the entity, all of one or more classes or series of interests in which are acquired in an interest exchange.
(2) "Acquiring entity" means the entity that acquires all of one or more classes or series of interests of the acquired entity in an interest exchange.
(3) "Conversion" means a transaction authorized by Sections 48-2e-1141 through 48-2e-1146.
(4) "Converted entity" means the converting entity as it continues in existence after a conversion.
(5) "Converting entity" means the domestic entity that approves a plan of conversion pursuant to Section 48-2e-1143 or the foreign entity that approves a conversion pursuant to the law of its jurisdiction of formation.
(6) "Distributional interest" means the right under an unincorporated entity's organic law and organic rules to receive distributions from the entity.
(7) "Domestic," with respect to an entity, means governed as to its internal affairs by the law of this state.
(8) "Domesticated limited partnership" means the domesticating limited partnership as it continues in existence after a domestication.
(9) "Domesticating limited partnership" means the domestic limited partnership that approves a plan of domestication pursuant to Section 48-2e-1153 or the foreign limited partnership that approves a domestication pursuant to the law of its jurisdiction of formation.
(10) "Domestication" means a transaction authorized by Sections 48-2e-1151 through 48-2e-1156.
(11) "Entity":
(a) means:
(i) a business corporation;
(ii) a nonprofit corporation;
(iii) a general partnership, including a limited liability partnership;
(iv) a limited partnership, including a limited liability limited partnership;
(v) a limited liability company;
(vi) a limited cooperative association;
(vii) an unincorporated nonprofit association;
(viii) a statutory trust, business trust, or common-law business trust; or
(ix) any other person that has:
(A) a legal existence separate from any interest holder of that person; or

(B) the power to acquire an interest in real property in its own name; and
(b) does not include:
(i) an individual;
(ii) a trust with a predominantly donative purpose, or a charitable trust;
(iii) an association or relationship that is not a partnership solely by reason of Subsection 48-1d-202(3) or a similar provision of the law of another jurisdiction;
(iv) a decedent's estate; or
(v) a government or a governmental subdivision, agency, or instrumentality.
(12) "Filing entity" means an entity whose formation requires the filing of a public organic record.
(13) "Foreign," with respect to an entity, means an entity governed as to its internal affairs by the law of a jurisdiction other than this state.
(14) "Governance interest" means a right under the organic law or organic rules of an unincorporated entity, other than as a governor, agent, assignee, or proxy, to:
(a) receive or demand access to information concerning, or the books and records of, the entity;
(b) vote for or consent to the election of the governors of the entity; or
(c) receive notice of or vote on or consent to an issue involving the internal affairs of the entity.
(15) "Governor" means:
(a) a director of a business corporation;
(b) a director or trustee of a nonprofit corporation;
(c) a general partner of a general partnership;
(d) a general partner of a limited partnership;
(e) a manager of a manager-managed limited liability company;
(f) a member of a member-managed limited liability company;
(g) a director of a limited cooperative association;
(h) a manager of an unincorporated nonprofit association;
(i) a trustee of a statutory trust, business trust, or common-law business trust; or
(j) any other person under whose authority the powers of an entity are exercised and under whose direction the activities and affairs of the entity are managed pursuant to the organic law and organic rules of the entity.
(16) "Interest" means:
(a) a share in a business corporation;
(b) a membership in a nonprofit corporation;
(c) a partnership interest in a general partnership;
(d) a partnership interest in a limited partnership;
(e) a membership interest in a limited liability company;
(f) a member's interest in a limited cooperative association;
(g) a membership in an unincorporated nonprofit association;
(h) a beneficial interest in a statutory trust, business trust, or common-law business trust; or
(i) a governance interest or distributional interest in any other type of unincorporated entity.
(17) "Interest exchange" means a transaction authorized by Sections 48-2e-1131 through 48-2e-1136.
(18) "Interest holder" means:
(a) a shareholder of a business corporation;
(b) a member of a nonprofit corporation;
(c) a general partner of a general partnership;
(d) a general partner of a limited partnership;
(e) a limited partner of a limited partnership;
(f) a member of a limited liability company;
(g) a member of a limited cooperative association;
(h) a member of an unincorporated nonprofit association;
(i) a beneficiary or beneficial owner of a statutory trust, business trust, or common-law business trust; or
(j) any other direct holder of an interest.
(19) "Interest holder liability" means:
(a) personal liability for a liability of an entity which is imposed on a person:

(i) solely by reason of the status of the person as an interest holder; or
(ii) by the organic rules of the entity which make one or more specified interest holders or categories of interest holders liable in their capacity as interest holders for all or specified liabilities of the entity; or
(b) an obligation of an interest holder under the organic rules of an entity to contribute to the entity.
(20) "Jurisdiction of formation" means the jurisdiction whose law includes the organic law of an entity.
(21) "Merger" means a transaction authorized by Sections 48-2e-1121 through 48-2e-1126.
(22) "Merging entity" means an entity that is a party to a merger and exists immediately before the merger becomes effective.
(23) "Organic law" means the law of an entity's jurisdiction of formation governing the internal affairs of the entity.
(24) "Organic rules" means the public organic record and private organic rules of an entity.
(25) "Plan" means a plan of merger, plan of interest exchange, plan of conversion, or plan of domestication.
(26) "Plan of conversion" means a plan under Section 48-2e-1142.
(27) "Plan of domestication" means a plan under Section 48-2e-1152.
(28) "Plan of interest exchange" means a plan under Section 48-2e-1132.
(29) "Plan of merger" means a plan under Section 48-2e-1122.
(30) "Private organic rules" means the rules, whether or not in a record, that govern the internal affairs of an entity, are binding on all its interest holders, and are not part of its public organic record, if any. The term includes:
(a) the bylaws of a business corporation;
(b) the bylaws of a nonprofit corporation;
(c) the partnership agreement of a general partnership;
(d) the partnership agreement of a limited partnership;
(e) the operating agreement of a limited liability company;
(f) the bylaws of a limited cooperative association;
(g) the governing principles of an unincorporated nonprofit association; and
(h) the trust instrument of a statutory trust or similar rules of a business trust or a common-law business trust.
(31) "Protected agreement" means:
(a) a record evidencing indebtedness and any related agreement in effect on January 1, 2014;
(b) an agreement that is binding on an entity on January 1, 2014;
(c) the organic rules of an entity in effect on January 1, 2014; or
(d) an agreement that is binding on any of the governors or interest holders of an entity on January 1, 2014.
(32) "Public organic record" means the record, the filing of which by the division is required to form an entity, and any amendment to or restatement of that record. The term includes:
(a) the articles of incorporation of a business corporation;
(b) the articles of incorporation of a nonprofit corporation;
(c) the certificate of limited partnership of a limited partnership;
(d) the certificate of organization of a limited liability company;
(e) the articles of organization of a limited cooperative association; and
(f) the certificate of trust of a statutory trust or similar record of a business trust.
(33) "Registered foreign entity" means a foreign entity that is registered to do business in this state pursuant to a record filed by the division.
(34) "Statement of conversion" means a statement under Section 48-2e-1145.
(35) "Statement of domestication" means a statement under Section 48-2e-1155.
(36) "Statement of interest exchange" means a statement under Section 48-2e-1135.
(37) "Statement of merger" means a statement under Section 48-2e-1125.
(38) "Surviving entity" means the entity that continues in existence after or is created by a merger.
(39) "Type of entity" means a generic form of entity:
(a) recognized at common law; or
(b) formed under an organic law, whether or not some entities formed under that organic law are subject to provisions of that law that create different categories of the form of entity.

48-2e-1102 Relationship of part to other laws.

This part does not authorize an act prohibited by, and does not affect the application or requirements of, law other than this part.

48-2e-1103 Required notice or approval.

(1) A domestic or foreign entity that is required to give notice to, or obtain the approval of, a governmental agency or officer of this state to be a party to a merger must give the notice or obtain the approval to be a party to an interest exchange, conversion, or domestication.

(2) Property held for a charitable purpose under the law of this state by a domestic or foreign entity immediately before a transaction under this part becomes effective may not, as a result of the transaction, be diverted from the objects for which it was donated, granted, devised, or otherwise transferred unless, to the extent required by or pursuant to the law of this state concerning cy pres or other law dealing with nondiversion of charitable assets, the entity obtains an appropriate order of the district court specifying the disposition of the property.

(3) A bequest, devise, gift, grant, or promise contained in a will or other instrument of donation, subscription, or conveyance that is made to a merging entity that is not the surviving entity and that takes effect or remains payable after the merger inures to the surviving entity. A trust obligation that would govern property if transferred to the nonsurviving entity applies to property that is transferred to the surviving entity under this section.

48-2e-1104 Status of filings.

A filing under this part signed by a domestic entity becomes part of the public organic record of the entity if the entity's organic law provides that similar filings under that law become part of the public organic record of the entity.

48-2e-1105 Nonexclusivity.

The fact that a transaction under this part produces a certain result does not preclude the same result from being accomplished in any other manner permitted by law other than this part.

48-2e-1106 Reference to external facts.

A plan may refer to facts ascertainable outside the plan if the manner in which the facts will operate upon the plan is specified in the plan. The facts may include the occurrence of an event or a determination or action by a person, whether or not the event, determination, or action is within the control of a party to the transaction.

48-2e-1107 Alternative means of approval of transactions.

Except as otherwise provided in the organic law or organic rules of a domestic entity, approval of a transaction under this part by the unanimous vote or consent of its interest holders satisfies the requirements of this part for approval of the transaction.

48-2e-1108 Appraisal rights.

(1) An interest holder of a domestic merging, acquired, converting, or domesticating entity is entitled to appraisal rights in connection with the transaction if the interest holder would have been entitled to appraisal rights under the entity's organic law in connection with a merger in which the interest of the interest holder was changed, converted, or exchanged unless:

(a) the organic law permits the organic rules to limit the availability of appraisal rights; and

(b) the organic rules provide such a limit.

(2) An interest holder of a domestic merging, acquired, converting, or domesticating entity is entitled to contractual appraisal rights in connection with a transaction under this part to the extent provided in:

(a) the entity's organic rules; or

(b) the plan.

48-2e-1121 Merger authorized.

(1) By complying with Sections 48-2e-1121 through 48-2e-1126:
(a) one or more domestic limited partnerships may merge with one or more domestic or foreign entities into a domestic or foreign surviving entity; and
(b) two or more foreign entities may merge into a domestic limited partnership.
(2) By complying with the provisions of Sections 48-2e-1121 through 48-2e-1126 applicable to foreign entities, a foreign entity may be a party to a merger under Sections 48-2e-1121 through 48-2e-1126 or may be the surviving entity in such a merger if the merger is authorized by the law of the foreign entity's jurisdiction of formation.

48-2e-1122 Plan of merger.
(1) A domestic limited partnership may become a party to a merger under Sections 48-2e-1121 through 48-2e-1126 by approving a plan of merger. The plan must be in a record and contain:
(a) as to each merging entity, its name, jurisdiction of formation, and type of entity;
(b) if the surviving entity is to be created in the merger, a statement to that effect and the entity's name, jurisdiction of formation, and type of entity;
(c) the manner of converting the interests in each party to the merger into interests, securities, obligations, money, other property, rights to acquire interests or securities, or any combination of the foregoing;
(d) if the surviving entity exists before the merger, any proposed amendments to its public organic record, if any, or to its private organic rules that are, or are proposed to be, in a record;
(e) if the surviving entity is to be created in the merger, its proposed public organic record, if any, and the full text of its private organic rules that are proposed to be in a record;
(f) the other terms and conditions of the merger; and
(g) any other provision required by the law of a merging entity's jurisdiction of formation or the organic rules of a merging entity.
(2) In addition to the requirements of Subsection (1), a plan of merger may contain any other provision not prohibited by law.

48-2e-1123 Approval of merger.
(1) A plan of merger is not effective unless it has been approved:
(a) by a domestic merging limited partnership, by all the partners of the limited partnership entitled to vote on or consent to any matter; and
(b) in a record, by each partner of a domestic merging limited partnership that will have interest holder liability for debts, obligations, and other liabilities that arise after the merger becomes effective, unless:
(i) the partnership agreement of the limited partnership in a record provides for the approval of a merger in which some or all of its partners become subject to interest holder liability by the vote or consent of fewer than all the partners; and
(ii) the partner consented in a record to or voted for that provision of the partnership agreement or became a partner after the adoption of that provision.
(2) A merger involving a domestic merging entity that is not a limited partnership is not effective unless the merger is approved by that entity in accordance with its organic law.
(3) A merger involving a foreign merging entity is not effective unless the merger is approved by the foreign entity in accordance with the law of the foreign entity's jurisdiction of formation.

48-2e-1124 Amendment or abandonment of plan of merger.
(1) A plan of merger may be amended only with the consent of each party to the plan, except as otherwise provided in the plan.
(2) A domestic merging limited partnership may approve an amendment of a plan of merger:
(a) in the same manner as the plan was approved, if the plan does not provide for the manner in which it may be amended; or
(b) by the partners in the manner provided in the plan, but a partner that was entitled to vote on or consent to approval of the merger is entitled to vote on or consent to any amendment of the plan that will change:
(i) the amount or kind of interests, securities, obligations, money, other property, rights to acquire interests or

securities, or any combination of the foregoing, to be received by the interest holders of any party to the plan;
(ii) the public organic record, if any, or private organic rules of the surviving entity that will be in effect immediately after the merger becomes effective, except for changes that do not require approval of the interest holders of the surviving entity under its organic law or organic rules; or
(iii) any other terms or conditions of the plan, if the change would adversely affect the partner in any material respect.
(3) After a plan of merger has been approved and before a statement of merger becomes effective, the plan may be abandoned as provided in the plan. Unless prohibited by the plan, a domestic merging limited partnership may abandon the plan in the same manner as the plan was approved.
(4) If a plan of merger is abandoned after a statement of merger has been delivered to the division for filing and before the statement becomes effective, a statement of abandonment, signed by a party to the plan, must be delivered to the division for filing before the statement of merger becomes effective. The statement of abandonment takes effect on filing, and the merger is abandoned and does not become effective. The statement of abandonment must contain:
(a) the name of each party to the plan of merger;
(b) the date on which the statement of merger was delivered to the division for filing; and
(c) a statement that the merger has been abandoned in accordance with this section.

48-2e-1125 Statement of merger.
(1) A statement of merger must be signed by each merging entity and delivered to the division for filing.
(2) A statement of merger must contain:
(a) the name, jurisdiction of formation, and type of entity of each merging entity that is not the surviving entity;
(b) the name, jurisdiction of formation, and type of entity of the surviving entity;
(c) a statement that the merger was approved by each domestic merging entity, if any, in accordance with Sections 48-2e-1121 through 48-2e-1126 and by each foreign merging entity, if any, in accordance with the law of its jurisdiction of formation;
(d) if the surviving entity exists before the merger and is a domestic filing entity, any amendment to its public organic record approved as part of the plan of merger;
(e) if the surviving entity is created by the merger and is a domestic filing entity, its public organic record, as an attachment;
(f) if the surviving entity is created by the merger and is a domestic limited liability partnership, its statement of qualification, as an attachment; and
(g) if the surviving entity is a foreign entity that is not a registered foreign entity, a mailing address to which the division may send any process served on the division pursuant to Subsection 48-2e-1126(5).
(3) In addition to the requirements of Subsection (2), a statement of merger may contain any other provision not prohibited by law.
(4) If the surviving entity is a domestic entity, its public organic record, if any, must satisfy the requirements of the law of this state, but the public organic record does not need to be signed.
(5) A plan of merger that is signed by all the merging entities and meets all the requirements of Subsection (2) may be delivered to the division for filing instead of a statement of merger and on filing has the same effect. If a plan of merger is filed as provided in this Subsection (5), references in this part to a statement of merger refer to the plan of merger filed under this Subsection (5).

48-2e-1126 Effect of merger.
(1) When a merger becomes effective:
(a) the surviving entity continues or comes into existence;
(b) each merging entity that is not the surviving entity ceases to exist;
(c) all property of each merging entity vests in the surviving entity without transfer, reversion, or impairment;
(d) all debts, obligations, and other liabilities of each merging entity are debts, obligations, and other liabilities of the surviving entity;
(e) except as otherwise provided by law or the plan of merger, all the rights, privileges, immunities, powers, and purposes of each merging entity vest in the surviving entity;

(f) if the surviving entity exists before the merger:
(i) all its property continues to be vested in it without transfer, reversion, or impairment;
(ii) it remains subject to all its debts, obligations, and other liabilities; and
(iii) all its rights, privileges, immunities, powers, and purposes continue to be vested in it;
(g) the name of the surviving entity may be substituted for the name of any merging entity that is a party to any pending action or proceeding;
(h) if the surviving entity exists before the merger:
(i) its public organic record, if any, is amended as provided in the statement of merger; and
(ii) its private organic rules that are to be in a record, if any, are amended to the extent provided in the plan of merger;
(i) if the surviving entity is created by the merger:
(i) its public organic record, if any, is effective; and
(ii) its private organic rules are effective; and
(j) the interests in each merging entity which are to be converted in the merger are converted, and the interest holders of those interests are entitled only to the rights provided to them under the plan of merger and to any appraisal rights they have under Section 48-2e-1108 and the merging entity's organic law.
(2) Except as otherwise provided in the organic law or organic rules of a merging entity, the merger does not give rise to any rights that an interest holder, governor, or third party would otherwise have upon a dissolution, liquidation, or winding up of the merging entity.
(3) When a merger becomes effective, a person that did not have interest holder liability with respect to any of the merging entities and becomes subject to interest holder liability with respect to a domestic entity as a result of the merger has interest holder liability only to the extent provided by the organic law of that entity and only for those debts, obligations, and other liabilities that arise after the merger becomes effective.
(4) When a merger becomes effective, the interest holder liability of a person that ceases to hold an interest in a domestic merging entity with respect to which the person had interest holder liability is as follows:
(a) The merger does not discharge any interest holder liability under the organic law of the domestic merging entity to the extent the interest holder liability arose before the merger became effective.
(b) The person does not have interest holder liability under the organic law of the domestic merging entity for any debt, obligation, or other liability that arises after the merger becomes effective.
(c) The organic law of the domestic merging entity continues to apply to the release, collection, or discharge of any interest holder liability preserved under Subsection (4)(a) as if the merger had not occurred and the surviving entity were the domestic merging entity.
(d) The person has whatever rights of contribution from any other person as are provided by law other than this chapter, this chapter, or the organic rules of the domestic merging entity with respect to any interest holder liability preserved under Subsection (4)(a) as if the merger had not occurred.
(5) When a merger becomes effective, a foreign entity that is the surviving entity may be served with process in this state for the collection and enforcement of any debts, obligations, or other liabilities of a domestic merging entity as provided in Section ~~16-17-301~~13-1a-511.
(6) When a merger becomes effective, the registration to do business in this state of any foreign merging entity that is not the surviving entity is canceled.

48-2e-1131 Interest exchange authorized.
(1) By complying with Sections 48-2e-1131 through 48-2e-1136:
(a) a domestic limited partnership may acquire all of one or more classes or series of interests of another domestic or foreign entity in exchange for interests, securities, obligations, money, other property, rights to acquire interests or securities, or any combination of the foregoing; or
(b) all of one or more classes or series of interests of a domestic limited partnership may be acquired by another domestic or foreign entity in exchange for interests, securities, obligations, rights to acquire interests or securities, money, or other property, or any combination of the foregoing.
(2) By complying with the provisions of Sections 48-2e-1131 through 48-2e-1136 applicable to foreign entities, a foreign entity may be the acquiring or acquired entity in an interest exchange under Sections 48-2e-1131 through 48-2e-1136 if the interest exchange is authorized by the law of the foreign entity's jurisdiction of

formation.
(3) If a protected agreement contains a provision that applies to a merger of a domestic limited partnership but does not refer to an interest exchange, the provision applies to an interest exchange in which the domestic limited partnership is the acquired entity as if the interest exchange were a merger until the provision is amended after January 1, 2014.

48-2e-1132 Plan of interest exchange.
(1) A domestic limited partnership may be the acquired entity in an interest exchange under Sections 48-2e-1131 through 48-2e-1136 by approving a plan of interest exchange. The plan must be in a record and contain:
(a) the name of the acquired entity;
(b) the name, jurisdiction of formation, and type of entity of the acquiring entity;
(c) the manner of converting the interests in the acquired entity into interests, securities, obligations, money, other property, rights to acquire interests or securities, or any combination of the foregoing;
(d) any proposed amendments to the certificate of limited partnership or partnership agreement that are, or are proposed to be, in a record of the acquired entity;
(e) the other terms and conditions of the interest exchange; and
(f) any other provision required by the law of this state or the partnership agreement of the acquired entity.
(2) In addition to the requirements of Subsection (1), a plan of interest exchange may contain any other provision not prohibited by law.

48-2e-1133 Approval of interest exchange.
(1) A plan of interest exchange is not effective unless it has been approved:
(a) by all the partners of a domestic acquired limited partnership entitled to vote on or consent to any matter; and
(b) in a record, by each partner of the domestic acquired limited partnership that will have interest holder liability for debts, obligations, and other liabilities that arise after the interest exchange becomes effective, unless:
(i) the partnership agreement of the limited partnership in a record provides for the approval of an interest exchange or a merger in which some or all of its partners become subject to interest holder liability by the vote or consent of fewer than all of the partners; and
(ii) the partner consented in a record to or voted for that provision of the partnership agreement or became a partner after the adoption of that provision.
(2) An interest exchange involving a domestic acquired entity that is not a limited partnership is not effective unless it is approved by the domestic entity in accordance with its organic law.
(3) An interest exchange involving a foreign acquired entity is not effective unless it is approved by the foreign entity in accordance with the law of the foreign entity's jurisdiction of formation.
(4) Except as otherwise provided in its organic law or organic rules, the interest holders of the acquiring entity are not required to approve the interest exchange.

48-2e-1134 Amendment or abandonment of plan of interest exchange.
(1) A plan of interest exchange may be amended only with the consent of each party to the plan, except as otherwise provided in the plan.
(2) A domestic acquired limited partnership may approve an amendment of a plan of interest exchange:
(a) in the same manner as the plan was approved, if the plan does not provide for the manner in which it may be amended; or
(b) by the partners of the limited partnership in the manner provided in the plan, but a partner that was entitled to vote on or consent to approval of the interest exchange is entitled to vote on or consent to any amendment of the plan that will change:
(i) the amount or kind of interests, securities, obligations, money, other property, rights to acquire interests or securities, or any combination of the foregoing, to be received by any of the partners of the acquired limited partnership under the plan;

(ii) the certificate of limited partnership or partnership agreement of the acquired limited partnership that will be in effect immediately after the interest exchange becomes effective, except for changes that do not require approval of the partners of the acquired limited partnership under this chapter or the partnership agreement; or
(iii) any other terms or conditions of the plan, if the change would adversely affect the partner in any material respect.
(3) After a plan of interest exchange has been approved and before a statement of interest exchange becomes effective, the plan may be abandoned as provided in the plan. Unless prohibited by the plan, a domestic acquired limited partnership may abandon the plan in the same manner as the plan was approved.
(4) If a plan of interest exchange is abandoned after a statement of interest exchange has been delivered to the division for filing and before the statement becomes effective, a statement of abandonment, signed by the acquired limited partnership, must be delivered to the division for filing before the statement of interest exchange becomes effective. The statement of abandonment takes effect on filing, and the interest exchange is abandoned and does not become effective. The statement of abandonment must contain:
(a) the name of the acquired limited partnership;
(b) the date on which the statement of interest exchange was delivered to the division for filing; and
(c) a statement that the interest exchange has been abandoned in accordance with this section.

48-2e-1135 Statement of interest exchange.
(1) A statement of interest exchange must be signed by a domestic acquired limited partnership and delivered to the division for filing.
(2) A statement of interest exchange must contain:
(a) the name of the acquired limited partnership;
(b) the name, jurisdiction of formation, and type of entity of the acquiring entity;
(c) a statement that the plan of interest exchange was approved by the acquired entity in accordance with Sections 48-2e-1131 through 48-2e-1136; and
(d) any amendments to the acquired limited partnership's certificate of limited partnership approved as part of the plan of interest exchange.
(3) In addition to the requirements of Subsection (2), a statement of interest exchange may contain any other provision not prohibited by law.
(4) A plan of interest exchange that is signed by a domestic acquired limited partnership and meets all the requirements of Subsection (2) may be delivered to the division for filing instead of a statement of interest exchange and on filing has the same effect. If a plan of interest exchange is filed as provided in this Subsection (4), references in this part to a statement of interest exchange refer to the plan of interest exchange filed under this Subsection (4).

48-2e-1136 Effect of interest exchange.
(1) When an interest exchange in which the acquired entity is a domestic limited partnership becomes effective:
(a) the interests in the domestic acquired limited partnership that are the subject of the interest exchange cease to exist or are converted or exchanged, and the partners holding those interests are entitled only to the rights provided to them under the plan of interest exchange and to any appraisal rights they have under Section 48-2e-1108;
(b) the acquiring entity becomes the interest holder of the interests in the acquired limited partnership stated in the plan of interest exchange to be acquired by the acquiring entity;
(c) the certificate of limited partnership of the acquired limited partnership is amended as provided in the statement of interest exchange; and
(d) the provisions of the partnership agreement of the acquired limited partnership that are to be in a record, if any, are amended to the extent provided in the plan of interest exchange.
(2) Except as otherwise provided in the partnership agreement of a domestic acquired limited partnership, the interest exchange does not give rise to any rights that a partner or third party would have upon a dissolution, liquidation, or winding up of the acquired limited partnership.
(3) When an interest exchange becomes effective, a person that did not have interest holder liability with respect to a domestic acquired limited partnership and becomes subject to interest holder liability with respect to a

domestic entity as a result of the interest exchange has interest holder liability only to the extent provided by the organic law of the entity and only for those debts, obligations, and other liabilities that arise after the interest exchange becomes effective.
(4) When an interest exchange becomes effective, the interest holder liability of a person that ceases to hold an interest in a domestic acquired limited partnership with respect to which the person had interest holder liability is as follows:
(a) The interest exchange does not discharge any interest holder liability to the extent the interest holder liability arose before the interest exchange became effective.
(b) The person does not have interest holder liability for any debt, obligation, or other liability that arises after the interest exchange becomes effective.
(c) The person has whatever rights of contribution from any other person as are provided by other law, this chapter, or the partnership agreement of the acquired entity with respect to any interest holder liability preserved under Subsection (4)(a) as if the interest exchange had not occurred.

48-2e-1141 Conversion authorized.
(1) As used in Sections 48-2e-1141 through 48-2e-1146, the term "subject entity" includes a corporation, a business trust or association, a real estate investment trust, a common-law trust, or any other unincorporated business, including a limited liability company, a general partnership, a registered limited liability partnership, or a foreign limited partnership.
(2) A subject entity may convert to a domestic limited partnership by complying with Sections 48-2e-1141 through 48-2e-1146.
(3) By complying with Sections 48-2e-1141 through 48-2e-1146 a domestic limited partnership may become:
(a) a domestic entity that is a different type of entity; or
(b) a foreign entity that is a different type of entity, if the conversion is authorized by the law of the foreign jurisdiction.
(4) By complying with the provisions of Sections 48-2e-1141 through 48-2e-1146 applicable to foreign entities, a foreign entity that is not a foreign limited partnership may become a domestic limited partnership if the conversion is authorized by the law of the foreign entity's jurisdiction of formation.
(5) If a protected agreement contains a provision that applies to a merger of a domestic limited partnership but does not refer to a conversion, the provision applies to a conversion of the entity as if the conversion were a merger until the provision is amended after January 1, 2014.

48-2e-1142 Plan of conversion.
(1) A subject entity may convert to a domestic limited partnership or a domestic limited partnership may convert to a different type of entity under Sections 48-2e-1141 through 48-2e-1146 by approving a plan of conversion. The plan must be in a record and contain:
(a) the name of the converting subject entity or limited partnership;
(b) the name, jurisdiction of formation, and type of entity of the converted entity;
(c) the manner of converting the interests in the converting subject entity or limited partnership into interests, securities, obligations, money, other property, rights to acquire interests or securities, or any combination of the foregoing;
(d) the proposed public organic record of the converted entity if it will be a filing entity;
(e) the full text of the private organic rules of the converted entity that are proposed to be in a record;
(f) the other terms and conditions of the conversion; and
(g) any other provision required by the law of this state or the partnership agreement of the converting limited partnership.
(2) In addition to the requirements of Subsection (1), a plan of conversion may contain any other provision not prohibited by law.

48-2e-1143 Approval of conversion.
(1) A plan of conversion is not effective unless it has been approved:
(a) by a domestic converting limited partnership by all of the partners of the limited partnership entitled to vote

on or consent to any matter; and
(b) in a record, by each partner of a domestic converting limited partnership that will have interest holder liability for debts, obligations, and other liabilities that arise after the conversion becomes effective:
(i) the partnership agreement of the limited partnership provides in a record for the approval of a conversion or a merger in which some or all of its partners become subject to interest holder liability by the vote or consent of fewer than all the interest holders; and
(ii) the partner voted for or consented in a record to that provision of the partnership agreement or became a partner after the adoption of that provision.
(2) A conversion involving a domestic converting entity that is not a limited partnership, including a subject entity, is not effective unless it is approved by the domestic converting entity in accordance with its organic law.
(3) A conversion of a foreign converting entity is not effective unless it is approved by the foreign entity in accordance with the law of the foreign entity's jurisdiction of formation.

48-2e-1144 Amendment or abandonment of plan of conversion.
(1) A plan of conversion of a subject entity or domestic converting limited partnership may be amended:
(a) in the same manner as the plan was approved, if the plan does not provide for the manner in which it may be amended; or
(b) by the partners of the limited partnership in the manner provided in the plan, but a partner that was entitled to vote on or consent to approval of the conversion is entitled to vote on or consent to any amendment of the plan that will change:
(i) the amount or kind of interests, securities, obligations, money, other property, rights to acquire interests or securities, or any combination of the foregoing, to be received by any of the partners of the converting entity under the plan;
(ii) the public organic record or private organic rules of the converted entity that will be in effect immediately after the conversion becomes effective, except for changes that do not require approval of the interest holders of the converted entity under its organic law or organic rules; or
(iii) any other terms or conditions of the plan, if the change would adversely affect the partner in any material respect.
(2) After a plan of conversion has been approved and before a statement of conversion becomes effective, the plan may be abandoned as provided in the plan. Unless prohibited by the plan, a domestic converting limited partnership may abandon the plan in the same manner as the plan was approved.
(3) If a plan of conversion is abandoned after a statement of conversion has been delivered to the division for filing and before the statement becomes effective, a statement of abandonment, signed by the converting entity, must be delivered to the division for filing before the time the statement of conversion becomes effective. The statement of abandonment takes effect on filing, and the conversion is abandoned and does not become effective. The statement of abandonment must contain:
(a) the name of the converting subject entity or limited partnership;
(b) the date on which the statement of conversion was delivered to the division for filing; and
(c) a statement that the conversion has been abandoned in accordance with this section.

48-2e-1145 Statement of conversion.
(1) A statement of conversion must be signed by the converting entity and delivered to the division for filing.
(2) A statement of conversion must contain:
(a) the name, jurisdiction of formation, and type of entity of the converting entity;
(b) the name, jurisdiction of formation, and type of entity of the converted entity;
(c) if the converting entity is a domestic entity, a statement that the plan of conversion was approved in accordance with Sections 48-2e-1141 through 48-2e-1146 or, if the converting entity is a foreign entity, a statement that the conversion was approved by the foreign converting entity in accordance with the law of its jurisdiction of formation;
(d) if the converted entity is a domestic filing entity, the text of its public organic record, as an attachment;
(e) if the converted entity is a domestic limited liability partnership, the text of its statement of qualification, as an attachment; and

(f) if the converted entity is a foreign entity that is not a registered foreign entity, a mailing address to which the division may send any process served on the division pursuant to Subsection 48-2e-1146(5).
(3) In addition to the requirements of Subsection (2), a statement of conversion may contain any other provision not prohibited by law.
(4) If the converted entity is a domestic entity, its public organic record, if any, must satisfy the requirements of the law of this state, but the public organic record does not need to be signed.
(5) A plan of conversion that is signed by a domestic converting entity and meets all the requirements of Subsection (2) may be delivered to the division for filing instead of a statement of conversion and on filing has the same effect. If a plan of conversion is filed as provided in this Subsection (5), references in this part to a statement of conversion refer to the plan of conversion filed under this Subsection (5).

48-2e-1146 Effect of conversion.
(1) When a conversion in which the converted entity is a subject entity or domestic limited partnership becomes effective:
(a) the converted entity is:
(i) organized under and subject to this chapter; and
(ii) the same entity without interruption as the converting entity;
(b) all property of the converting entity continues to be vested in the converted entity without transfer, reversion, or impairment;
(c) all debts, obligations, and other liabilities of the converting entity continue as debts, obligations, and other liabilities of the converted entity;
(d) except as otherwise provided by law or the plan of conversion, all the rights, privileges, immunities, powers, and purposes of the converting entity remain in the converted entity;
(e) the name of the converted entity may be substituted for the name of the converting entity in any pending action or proceeding;
(f) the provisions of the partnership agreement of the converted entity that are to be in a record, if any, approved as part of the plan of conversion are effective; and
(g) the interests in the converting entity are converted, and the interest holders of the converting entity are entitled only to the rights provided to them under the plan of conversion and to any appraisal rights they have under Section 48-2e-1108 and the converting entity's organic law.
(2) Except as otherwise provided in the partnership agreement of a domestic converting limited partnership, the conversion does not give rise to any rights that a partner or third party would have upon a dissolution, liquidation, or winding up of the converting entity.
(3) When a conversion becomes effective, a person that did not have interest holder liability with respect to the converting entity and becomes subject to interest holder liability with respect to a domestic entity as a result of the conversion has interest holder liability only to the extent provided by the organic law of the entity and only for those debts, obligations, and other liabilities that arise after the conversion becomes effective.
(4) When a conversion becomes effective, the interest holder liability of a person that ceases to hold an interest in a domestic limited partnership with respect to which the person had interest holder liability is as follows:
(a) The conversion does not discharge any interest holder liability to the extent the interest holder liability arose before the conversion became effective.
(b) The person does not have interest holder liability for any debt, obligation, or other liability that arises after the conversion becomes effective.
(c) The person has whatever rights of contribution from any other person as are provided by law other than this chapter, this chapter, or the partnership agreement of the converting entity with respect to any interest holder liability preserved under Subsection (4)(a) as if the conversion had not occurred.
(5) When a conversion becomes effective, a foreign entity that is the converted entity may be served with process in this state for the collection and enforcement of any of its debts, obligations, and other liabilities as provided in Section ~~16-17-301~~13-1a-511.
(6) If the converting entity is a registered foreign entity, its registration to do business in this state is canceled when the conversion becomes effective.
(7) A conversion does not require the entity to wind up its affairs and does not constitute or cause the

dissolution of the entity.

48-2e-1151 Domestication authorized.
(1) By complying with Sections 48-2e-1151 through 48-2e-1156, a domestic limited partnership may become a foreign limited partnership if the domestication is authorized by the law of the foreign jurisdiction.
(2) By complying with the provisions of Sections 48-2e-1151 through 48-2e-1156 applicable to foreign limited partnerships, a foreign limited partnership may become a domestic limited partnership if the domestication is authorized by the law of the foreign limited partnership's jurisdiction of formation.
(3) If a protected agreement contains a provision that applies to a merger of a domestic limited partnership but does not refer to a domestication, the provision applies to a domestication of the limited partnership as if the domestication were a merger until the provision is amended after January 1, 2014.

48-2e-1152 Plan of domestication.
(1) A domestic limited partnership may become a foreign limited partnership in a domestication by approving a plan of domestication. The plan must be in a record and contain:
(a) the name of the domesticating limited partnership;
(b) the name and jurisdiction of formation of the domesticated limited partnership;
(c) the manner of converting the interests in the domesticating limited partnership into interests, securities, obligations, money, other property, rights to acquire interests or securities, or any combination of the foregoing;
(d) the proposed certificate of limited partnership of the domesticated limited partnership;
(e) the full text of the partnership agreement of the domesticated limited partnership rights to acquire interests or securities, that are proposed to be in a record;
(f) the other terms and conditions of the domestication; and
(g) any other provision required by the law of this state or the partnership agreement of the domesticating limited partnership.
(2) In addition to the requirements of Subsection (1), a plan of domestication may contain any other provision not prohibited by law.

48-2e-1153 Approval of domestication.
(1) A plan of domestication of a domestic domesticating limited partnership is not effective unless it has been approved:
(a) by all the partners entitled to vote on or consent to any matter; and
(b) in a record, by each partner that will have interest holder liability for debts, obligations, and other liabilities that arise after the domestication becomes effective, unless:
(i) the partnership agreement of the entity in a record provide for the approval of a domestication or merger in which some or all of its partners become subject to interest holder liability by the vote or consent of fewer than all the partners; and
(ii) the partner voted for or consented in a record to that provision of the partnership agreement or became a partner after the adoption of that provision.
(2) A domestication of a foreign domesticating limited partnership is not effective unless it is approved in accordance with the law of the foreign limited partnership's jurisdiction of formation.

48-2e-1154 Amendment or abandonment of plan of domestication.
(1) A plan of domestication of a domestic domesticating limited partnership may be amended:
(a) in the same manner as the plan was approved, if the plan does not provide for the manner in which it may be amended; or
(b) by the partners of the limited partnership in the manner provided in the plan, but a partner that was entitled to vote on or consent to approval of the domestication is entitled to vote on or consent to any amendment of the plan that will change:
(i) the amount or kind of interests, securities, obligations, money, other property, rights to acquire interests or securities, or any combination of the foregoing, to be received by any of the partners of the domesticating limited partnership under the plan;

(ii) the certificate of limited partnership or partnership agreement of the domesticated limited partnership that will be in effect immediately after the domestication becomes effective, except for changes that do not require approval of the partners of the domesticated limited partnership under its organic law or partnership agreement; or
(iii) any other terms or conditions of the plan, if the change would adversely affect the partner in any material respect.
(2) After a plan of domestication has been approved by a domestic domesticating limited partnership and before a statement of domestication becomes effective, the plan may be abandoned as provided in the plan. Unless prohibited by the plan, by a domestic domesticating limited partnership may abandon the plan in the same manner as the plan was approved.
(3) If a plan of domestication is abandoned after a statement of domestication has been delivered to the division for filing and before the statement becomes effective, a statement of abandonment, signed by the limited partnership, must be delivered to the division for filing before the time the statement of domestication becomes effective. The statement of abandonment takes effect on filing, and the domestication is abandoned and does not become effective. The statement of abandonment must contain:
(a) the name of the domesticating limited partnership;
(b) the date on which the statement of domestication was delivered to the division for filing; and
(c) a statement that the domestication has been abandoned in accordance with this section.

48-2e-1155 Statement of domestication.
(1) A statement of domestication must be signed by the domesticating limited partnership and delivered to the division for filing.
(2) A statement of domestication must contain:
(a) the name and jurisdiction of formation of the domesticating limited partnership;
(b) the name and jurisdiction of formation of the domesticated limited partnership;
(c) if the domesticating limited partnership is a domestic limited partnership, a statement that the plan of domestication was approved in accordance with Sections 48-2e-1151 through 48-2e-1156 or, if the domesticating limited partnership is a foreign limited partnership, a statement that the domestication was approved in accordance with the law of its jurisdiction of formation;
(d) the certificate of limited partnership of the domesticated limited partnership, as an attachment; and
(e) if the domesticated foreign limited partnership is not a registered foreign limited partnership, a mailing address to which the division may send any process served on the division pursuant to Subsection 48-2e-1156(5).
(3) In addition to the requirements of Subsection (2), a statement of domestication may contain any other provision not prohibited by law.
(4) The certificate of limited partnership of a domesticated domestic limited partnership must satisfy the requirements of the law of this state, but the certificate does not need to be signed.
(5) A plan of domestication that is signed by a domesticating domestic limited partnership and meets all of the requirements of Subsection (2) may be delivered to the division for filing instead of a statement of domestication and on filing has the same effect. If a plan of domestication is filed as provided in this Subsection (5), references in this part to a statement of domestication refer to the plan of domestication filed under this Subsection (5).

48-2e-1156 Effect of domestication.
(1) When a domestication becomes effective:
(a) the domesticated limited partnership is:
(i) organized under and subject to the organic law of the domesticated limited partnership; and
(ii) the same entity without interruption as the domesticating limited partnership;
(b) all property of the domesticating limited partnership continues to be vested in the domesticated limited partnership without transfer, reversion, or impairment;
(c) all debts, obligations, and other liabilities of the domesticating limited partnership continue as debts, obligations, and other liabilities of the domesticated limited partnership;

(d) except as otherwise provided by law or the plan of domestication, all the rights, privileges, immunities, powers, and purposes of the domesticating limited partnership remain in the domesticated limited partnership;
(e) the name of the domesticated limited partnership may be substituted for the name of the domesticating limited partnership in any pending action or proceeding;
(f) the certificate of limited partnership of the domesticated limited partnership is effective;
(g) the provisions of the partnership agreement of the domesticated limited partnership that are to be in a record, if any, approved as part of the plan of domestication are effective; and
(h) the interests in the domesticating limited partnership are converted to the extent and as approved in connection with the domestication, and the partners of the domesticating limited partnership are entitled only to the rights provided to them under the plan of domestication and to any appraisal rights they have under Section 48-2e-1108.
(2) Except as otherwise provided in the organic law or partnership agreement of the domesticating limited partnership, the domestication does not give rise to any rights that a partner or third party would have upon a dissolution, liquidation, or winding up of the domesticating limited partnership.
(3) When a domestication becomes effective, a person that did not have interest holder liability with respect to the domesticating limited partnership and becomes subject to interest holder liability with respect to a domestic limited partnership as a result of the domestication has interest holder liability only to the extent provided by the organic law of the domestic limited partnership and only for those debts, obligations, and other liabilities that arise after the domestication becomes effective.
(4) When a domestication becomes effective, the following rules apply:
(a) The domestication does not discharge any interest holder liability under this chapter to the extent the interest holder liability arose before the domestication became effective.
(b) A person does not have interest holder liability under this part for any debt, obligation, or other liability that arise after the domestication becomes effective.
(c) A person has whatever rights of contribution from any other person as are provided by law other than this chapter, this chapter, or the partnership agreement of a domestic domesticating limited partnership with respect to any interest holder liability preserved under Subsection (4)(a) as if the domestication had not occurred.
(5) When a domestication becomes effective, a foreign limited partnership that is the domesticated limited partnership may be served with process in this state for the collection and enforcement of any of its debts, obligations, and other liabilities as provided in Section ~~16-17-301~~13-1a-511.
(6) If the domesticating limited partnership is a registered foreign limited partnership, the registration of the foreign limited partnership is canceled when the domestication becomes effective.
(7) A domestication does not require the limited partnership to wind up its affairs and does not constitute or cause the dissolution of the limited partnership.

Part 12
Miscellaneous Provisions

48-2e-1201 Uniformity of application and construction.

In applying and construing this chapter, consideration must be given to the need to promote uniformity of the law with respect to its subject matter among states that enact the uniform act upon which this chapter is based.

48-2e-1202 Severability clause.

If any provision of this chapter or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of this chapter which can be given effect without the invalid provision or application, and to this end the provisions of this chapter are severable.

48-2e-1203 Relation to Electronic Signatures in Global and National Commerce Act.

This chapter modifies, limits, and supersedes the Electronic Signatures in Global and National Commerce Act, 15 U.S.C. Sec. 7001 et seq., but this chapter does not modify, limit, or supersede Sec. 101(c) of that act, 15 U.S.C. Sec. 7001(c), or authorize electronic delivery of any of the notices described in Sec. 103(b)

of that act, 15 U.S.C. Sec. 7003(b).

48-2e-1204 Savings clause.

This chapter does not affect an action commenced, proceeding brought, or right accrued before this chapter takes effect.

48-2e-1205 Application to existing relationships.

(1) Before January 1, 2016, this chapter governs only:
(a) a limited partnership formed on or after January 1, 2014; and
(b) except as otherwise provided in Subsections (3) and (4), a limited partnership formed before January 1, 2014, which elects, in the manner provided in its partnership agreement or by law for amending the partnership agreement, to be subject to this chapter.
(2) Except as otherwise provided in Subsection (3), on and after January 1, 2016, this chapter governs all limited partnerships.
(3) With respect to a limited partnership formed before January 1, 2014, the following rules apply except as the partners otherwise elect in the manner provided in the partnership agreement or by law for amending the partnership agreement:
(a) Subsection 48-2e-104(3) does not apply and the limited partnership has whatever duration it had under the law applicable immediately before January 1, 2014.
(b) Sections 48-2e-601 and 48-2e-602 do not apply and a limited partner has the same right and power to dissociate from the limited partnership, with the same consequences, as existed immediately before January 1, 2014.
(c) Subsection 48-2e-603(4) does not apply and the partners have the same right and power to expel a general partner as existed immediately before January 1, 2014.
(d) Subsection 48-2e-603(5) does not apply and a court has the same power to expel a general partner as the court had immediately before January 1, 2014.
(e) Subsection 48-2e-801(1)(c) does not apply and the connection between a person's dissociation as a general partner and the dissolution of the limited partnership is the same as existed immediately before January 1, 2014.
(4) With respect to a limited partnership that elects pursuant to Subsection (1)(b) to be subject to this chapter, after the election takes effect the provisions of this chapter relating to the liability of the limited partnership's general partners to third parties apply:
(a) before January 1, 2016, to:
(i) a third party that had not done business with the limited partnership in the year before the election took effect; and
(ii) a third party that had done business with the limited partnership in the year before the election took effect only if the third party knows or has received a notification of the election; and
(b) on and after January 1, 2016, to all third parties, but those provisions remain inapplicable to any obligation incurred while those provisions were inapplicable under Subsection (4)(a)(ii).

Chapter 3a
Utah Revised Uniform Limited Liability Company Act

Part 1
General Provisions

48-3a-101 Title.

This chapter may be cited as the "Utah Revised Uniform Limited Liability Company Act."

48-3a-102 Definitions.

As used in this chapter:

(1) "Certificate of organization" means the certificate required by Section 48-3a-201. The term includes the certificate as amended or restated.

(2) "Contribution," except in the phrase "right of contribution," means property or a benefit described in Section 48-3a-402, which is provided by a person to a limited liability company to become a member or in the person's capacity as a member.

(3) "Debtor in bankruptcy" means a person that is the subject of:

(a) an order for relief under Title 11 of the United States Code or a comparable order under a successor statute of general application; or

(b) a comparable order under federal, state, or foreign law governing insolvency.

(4) "Distribution" means a transfer of money or other property from a limited liability company to a person on account of a transferable interest or in the person's capacity as a member. The term:

(a) includes:

(i) a redemption or other purchase by a limited liability company of a transferable interest; and

(ii) a transfer to a member in return for the member's relinquishment of any right to participate as a member in the management or conduct of the company's activities and affairs or to have access to records or other information concerning the company's activities and affairs; and

(b) does not include amounts constituting reasonable compensation for present or past service or payments made in the ordinary course of business under a bona fide retirement plan or other bona fide benefits program.

(5) "Division" means the Division of Corporations and Commercial Code within the Utah Department of Commerce.

(6) "Foreign limited liability company" means an unincorporated entity formed under the law of a jurisdiction other than this state, which would be a limited liability company, including a low-profit limited liability company, if formed under the law of this state.

~~(7) "Governing person" means a person, alone or in concert with others, by or under whose authority the powers of the limited liability company are exercised and under whose direction the activities and affairs of the limited liability company are managed pursuant to this chapter and the limited liability company's operating agreement. The term includes:~~

~~(a) a manager of a manager-managed limited liability company;~~

~~(b) a member of a member-managed limited liability company; and~~

~~(c) the chief executive officer of a limited liability company in which officers have been appointed, regardless of the actual designated title.~~

(8) "Jurisdiction," used to refer to a political entity, means the United States, a state, a foreign country, or a political subdivision of a foreign country.

(9) "Jurisdiction of formation" means, with respect to an entity, the jurisdiction:

(a) under whose law the entity is formed; or

(b) in the case of a limited liability partnership or foreign limited liability partnership, in which the partnership's statement of qualification is filed.

(10) "Limited liability company," except in the phrase "foreign limited liability company," means an entity formed under this chapter or which becomes subject to this chapter under Part 10, Merger, Interest Exchange, Conversion, and Domestication, or Section 48-3a-1405.

(11) "Low-profit limited liability company" means a limited liability company meeting the requirements of Part

13, Low-Profit Limited Liability Companies.
(12) “Manager” means a person that under the operating agreement of a manager-managed limited liability company is responsible, alone or in concert with others, for performing the management functions stated in Subsection 48-3a-407(3).
(13) “Manager-managed limited liability company” means a limited liability company that qualifies under Subsection 48-3a-407(1).
(14) “Member” means a person that:
(a) has become a member of a limited liability company under Section 48-3a-401 or was a member in a company when the company became subject to this chapter under Section 48-3a-1405; and
(b) has not dissociated under Section 48-3a-602.
(15) “Member-managed limited liability company” means a limited liability company that is not a manager-managed limited liability company.
(16) “Operating agreement” means the agreement, whether or not referred to as an operating agreement and whether oral, implied, in a record, or in any combination thereof, of all the members of a limited liability company, including a sole member, concerning the matters described in Subsection 48-3a-112(1). The term includes the agreement as amended or restated.
(17) “Organizer” means a person that acts under Section 48-3a-201 to form a limited liability company.
(18) “Person” means an individual, business corporation, nonprofit corporation, partnership, limited partnership, limited liability company, limited cooperative association, unincorporated nonprofit association, statutory trust, business trust, common-law business trust, estate, trust, association, joint venture, public corporation, government or governmental subdivision, agency, or instrumentality, or any other legal or commercial entity.
(19) “Principal office” means the principal executive office of a limited liability company or foreign limited liability company, whether or not the office is located in this state.
(20) “Professional services company” means a limited liability company organized in accordance with Part 11, Professional Services Companies.
(21) “Property” means all property, whether real, personal, or mixed or tangible or intangible, or any right or interest therein.
(22) “Record,” used as a noun, means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.
(23) “Registered agent” means an agent of a limited liability company or foreign limited liability company which is authorized to receive service of any process, notice, or demand required or permitted by law to be served on the company.
(24) “Registered foreign limited liability company” means a foreign limited liability company that is registered to do business in this state pursuant to a ~~statement of registration~~registration statement filed by the division.
(25) “Series” means a series created in accordance with Part 12, Series Limited Liability Companies.
(26) “Sign” means, with present intent to authenticate or adopt a record:
(a) to execute or adopt a tangible symbol; or
(b) to attach to or logically associate with the record an electronic symbol, sound, or process.
(27) “State” means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States.
(28) “Transfer” includes:
(a) an assignment;
(b) a conveyance;
(c) a sale;
(d) a lease;
(e) an encumbrance, including a mortgage or security interest;
(f) a gift; and
(g) a transfer by operation of law.
(29) “Transferable interest” means the right, as initially owned by a person in the person’s capacity as a member, to receive distributions from a limited liability company in accordance with the operating agreement, whether or not the person remains a member or continues to own any part of the right. The term applies to any fraction of the interest by whomever owned.

(30) “Transferee” means a person to which all or part of a transferable interest has been transferred, whether or not the transferor is a member. The term includes a person that owns a transferable interest under Subsection 48-3a-603(1)(c).
~~(31) “Tribal limited liability company” means a limited liability company that is:~~
~~(a) formed under the law of a tribe; and~~
~~(b) at least 51% owned or controlled by the tribe under whose law the limited liability company is formed.~~
~~(32) “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.~~

48-3a-103 Knowledge -- Notice.
(1) A person knows a fact if the person:
(a) has actual knowledge of it; or
(b) is deemed to know it under Subsection (4)(a) or law other than this chapter.
(2) A person has notice of a fact if the person:
(a) has reason to know the fact from all the facts known to the person at the time in question; or
(b) is deemed to have notice of the fact under Subsection (4)(b).
(3) Subject to Subsection 48-3a-209(6), a person notifies another person of a fact by taking steps reasonably required to inform the other person in ordinary course, whether or not those steps cause the other person to know the fact.
(4) A person not a member is deemed:
(a) to know of a limitation on authority to transfer real property as provided in Subsection 48-3a-302(7); and
(b) to have notice of a limited liability company’s:
(i) dissolution 90 days after a statement of dissolution under Subsection 48-3a-703(2)(b)(i) becomes effective;
(ii) termination 90 days after a statement of termination under Subsection 48-3a-703(2)(b)(vi) becomes effective;
(iii) participation in a merger, interest exchange, conversion, or domestication 90 days after a statement of merger, interest exchange, conversion, or domestication under Part 10, Merger, Interest Exchange, Conversion, and Domestication, becomes effective; and
(iv) abandonment of a merger, interest exchange, conversion, or domestication 90 days after a statement of abandonment of merger, interest exchange, conversion, or domestication under Part 10, Merger, Interest Exchange, Conversion, and Domestication, becomes effective.

48-3a-104 Nature, purpose, and duration of limited liability company.
(1) A limited liability company is an entity distinct from its member or members.
(2) A limited liability company may have any lawful purpose, regardless of whether for profit.
(3) A limited liability company has perpetual duration.

48-3a-105 Powers.
A limited liability company has the capacity to sue and be sued in its own name and the power to do all things necessary or convenient to carry on its activities and affairs.

48-3a-106 Governing law.
The law of this state governs:
(1) the internal affairs of a limited liability company; and
(2) the liability of a member as member and a manager as manager for the debts, obligations, or other liabilities of a limited liability company.

48-3a-107 Supplemental principles of law.
Unless displaced by particular provisions of this chapter, the principles of law and equity supplement this chapter.

48-3a-108 Permitted names.

(1) Except as provided in Section 48-3a-1104 or 48-3a-1302, the name of a limited liability company shall contain the words "limited liability company" or "limited company" or the abbreviation "L.L.C.", "LLC", "L.C.", or "LC". "Limited" may be abbreviated as "Ltd.", and "company" may be abbreviated as "Co.".

(2) Except as authorized by Subsection (3), the name of a company shall be distinguishable as defined in Subsection (4) upon the records of the division from:

(a) the actual name, reserved name, or fictitious or assumed name of any entity registered with the division; or

(b) any tradename, trademark, or service mark registered with the division.

(3)

(a) A company may apply to the division for approval to file the company's certificate of organization under or to reserve a name that is not distinguishable upon the division's records from one or more of the names described in Subsection (2).

(b) The division shall approve the name for which the company applies under Subsection (3)(a) if:

(i) the other person whose name is not distinguishable from the name under which the applicant desires to file:

(A) consents to the filing in writing; and

(B) submits an undertaking in a form satisfactory to the division to change the person's name to a name that is distinguishable from the name of the applicant; or

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

(4) A name is distinguishable from other names, trademarks, and service marks registered with the division if the name contains one or more different words, letters, or numerals from other names upon the division's records.

(5) The following differences are not distinguishing:

(a) the term:

(i) "corp.";

(ii) "corporation";

(iii) "Inc.";

(iv) "incorporated";

(v) "professional corporation";

(vi) "P.C." or "PC";

(vii) "professional association";

(viii) "P.A." or "PA";

(ix) "professional limited liability company";

(x) "P.L.L.C." or "PLLC";

(xi) "company";

(xii) "limited partnership";

(xiii) "limited";

(xiv) "L.P." or "LP";

(xv) "Ltd.";

(xvi) "limited liability company";

(xvii) "limited company";

(xviii) "L.C." or "LC";

(xix) "L.L.C." or "LLC";

(xx) "registered limited liability partnership";

(xxi) "R.L.L.P." or "RLLP";

(xxii) "limited liability partnership";

(xxiii) "L.L.P." or "LLP";

(xxiv) "limited liability limited partnership";

(xxv) "L.L.L.P." or "LLLP";

(xxvi) "registered limited liability limited partnership"; or

(xxvii) "R.L.L.L.P." or "RLLLP";

(b) an abbreviation of a word listed in Subsection (5)(a);

(c) the presence or absence of the words or symbols of the words "the," "and," "a," or "plus";
(d) differences in punctuation and special characters;
(e) differences in capitalization; or
(f) for a company that is formed in this state on or after May 4, 1998, or registered as a foreign company in this state on or after May 4, 1998, differences in singular and plural forms of words.
(6) The division may not approve for filing a name that implies that a limited liability company is an agency of this state or any of the state's political subdivisions, if the limited liability company is not actually such a legally established agency or subdivision.
(7) The authorization to file a certificate under or to reserve or register a limited liability company name as granted by the division does not:
(a) abrogate or limit the law governing unfair competition or unfair trade practices;
(b) derogate from the common law, the principles of equity, or the statutes of this state or of the United States with respect to the right to acquire and protect names and trademarks; or
(c) create an exclusive right in geographic or generic terms contained within a name.
(8) The name of a limited liability company or foreign limited liability company may not contain:
(a) the term:
(i) "association";
(ii) "corporation";
(iii) "incorporated";
(iv) "partnership";
(v) "limited partnership"; or
(vi) "L.P.";
(b) any word or abbreviation that is of like import to the words listed in Subsection (8)(a);
(c) without the written consent of the United States Olympic Committee, the words:
(i) "Olympic";
(ii) "Olympiad"; or
(iii) "Citius Altius Fortius";
(d) without the written consent of the Division of Consumer Protection issued in accordance with Section 13-34-114 the words:
(i) "university";
(ii) "college"; or
(iii) "institute" or "institution"; or
(e) for a limited liability company that changes the limited liability company's name or is formed on or after May 4, 2022, the number sequence "911."
(9)
(a) A person, other than a company formed under this chapter or a foreign company authorized to transact business in this state, may not use in the person's name in this state the term:
(i) "limited liability company";
(ii) "limited company";
(iii) "L.L.C.";
(iv) "L.C.";
(v) "LLC"; or
(vi) "LC".
(b) Notwithstanding Subsection (2)(a):
(i) a foreign corporation whose actual name includes the term "limited" or "Ltd." may use the foreign corporation's actual name in this state if the foreign corporation also uses:
(A) "corporation" or "corp."; or
(B) "incorporated" or "Inc."; and
(ii) a limited liability partnership may use in the limited liability partnership's name the term:
(A) "limited liability partnership";
(B) "L.L.P."; or
(C) "LLP".

~~**48-3a-109 Reservation of name.**~~

~~(1) A person may reserve the exclusive use of a name that complies with Section 48-3a-108 by delivering an application to the division for filing. The application must state the name and address of the applicant and the name to be reserved. If the division finds that the name is available, the division shall reserve the name for the applicant's exclusive use for 120 days.~~

~~(2) The owner of a reserved name may transfer the reservation to another person by delivering to the division a signed notice in a record of the transfer, which states the name and address of the transferee.~~

~~**48-3a-110 Registration of name.**~~

~~(1) A foreign limited liability company not registered to do business in this state under Part 9, Foreign Limited Liability Companies, may register its name, or an alternate name adopted pursuant to Section 48-3a-906, if the name is distinguishable on the records of the division from the names that are not available under Section 48-3a-108.~~

~~(2) To register its name or an alternate name adopted pursuant to Section 48-3a-906, a foreign limited liability company must deliver to the division for filing an application stating the foreign limited liability company's name, the jurisdiction and date of its formation, and any alternate name adopted pursuant to Section 48-3a-906. If the division finds that the name applied for is available, the division shall register the name for the applicant's exclusive use.~~

~~(3) The registration of a name under this section is effective for one year after the date of registration.~~

~~(4) A foreign limited liability company whose name registration is effective may renew the registration for successive one-year periods by delivering, not earlier than three months before the expiration of the registration, to the division for filing a renewal application that complies with this section. When filed, the renewal application renews the registration for a succeeding one-year period.~~

~~(5) A foreign limited liability company whose name registration is effective may register as a foreign limited liability company under the registered name or consent in a signed record to the use of that name by another person that is not an individual.~~

48-3a-111 Registered agent.

(1) Each limited liability company and each registered foreign limited liability company shall designate in accordance with S~~ub~~section ~~16-17-203(1)~~13-1a-504 and maintain a registered agent in this state.

(2) A limited liability company or registered foreign limited liability company may change its registered agent or the address of its registered agent by filing with the division a statement of change in accordance with Section ~~16-17-206~~13-1a-507.

48-3a-112 Operating agreement -- Scope, functions, and limitations.

(1) Except as otherwise provided in Subsections (3) and (4), the operating agreement governs:

(a) relations among the members as members and between the members and the limited liability company;

(b) the rights and duties under this chapter of a person in the capacity of manager;

(c) the activities and affairs of the limited liability company and the conduct of those activities and affairs; and

(d) the means and conditions for amending the operating agreement.

(2) To the extent the operating agreement does not provide for a matter described in Subsection (1), this chapter governs the matter.

(3) An operating agreement may not:

(a) vary a limited liability company's capacity under Section 48-3a-105 to sue and be sued in its own name;

(b) vary the law applicable under Section 48-3a-106;

(c) vary any requirement, procedure, or other provision of this chapter pertaining to:

(i) registered agents; or

(ii) the division, including provisions pertaining to records authorized or required to be delivered to the division for filing under this chapter;

(d) vary the provisions of Section 48-3a-204;

(e) eliminate the duty of loyalty or the duty of care, except as otherwise provided in Subsection (4);

(f) eliminate the contractual obligation of good faith and fair dealing under Subsection 48-3a-409(4), but the operating agreement may prescribe the standards, if not unconscionable or against public policy, by which the performance of the obligation is to be measured;
(g) relieve or exonerate a person from liability for conduct involving bad faith, willful misconduct, or recklessness;
(h) unreasonably restrict the duties and rights under Section 48-3a-410, but the operating agreement may impose reasonable restrictions on the availability and use of information obtained under that section and may define appropriate remedies, including liquidated damages, for a breach of any reasonable restriction on use;
(i) vary the causes of dissolution specified in Subsections 48-3a-701(4)(a) and (5);
(j) vary the requirement to wind up the limited liability company's activities and affairs as specified in Subsections 48-3a-703(1), (2)(a), and (5);
(k) unreasonably restrict the right of a member to maintain an action under Part 8, Action by Members;
(l) vary the provisions of Section 48-3a-805, but the operating agreement may provide that the limited liability company may not have a special litigation committee;
(m) vary the right of a member to approve a merger, interest exchange, conversion, or domestication under Subsections 48-3a-1023(1)(b), 48-3a-1033(1)(b), 48-3a-1043(1)(b), or 48-3a-1053(1)(b); or
(n) except as otherwise provided in Section 48-3a-113 and Subsection 48-3a-114(2), restrict the rights under this chapter of a person other than a member or manager.
(4) Subject to Subsection (3)(g), without limiting other terms that may be included in an operating agreement, the following rules apply:
(a) The operating agreement may specify the method by which a specific act or transaction that would otherwise violate the duty of loyalty may be authorized or ratified by one or more disinterested and independent persons after full disclosure of all material facts.
(b) To the extent the operating agreement of a member-managed limited liability company expressly relieves a member of a responsibility that the member would otherwise have under this chapter and imposes the responsibility on one or more other members, the operating agreement may, to the benefit of the member that the operating agreement relieves of the responsibility, also eliminate or limit any fiduciary duty that would have pertained to the responsibility.
(c) If not unconscionable or against public policy, the operating agreement may:
(i) alter or eliminate the aspects of the duty of loyalty stated in Subsections 48-3a-409(2) and (9);
(ii) identify specific types or categories of activities that do not violate the duty of loyalty;
(iii) alter the duty of care, but may not authorize intentional misconduct or knowing violation of law; and
(iv) alter or eliminate any other fiduciary duty.
(5) The court shall decide as a matter of law whether a term of an operating agreement is unconscionable or against public policy under Subsection (3)(f) or (4)(c). The court:
(a) shall make its determination as of the time the challenged term became part of the operating agreement and by considering only circumstances existing at that time; and
(b) may invalidate the term only if, in light of the purposes, activities, and affairs of the limited liability company, it is readily apparent that:
(i) the objective of the term is unconscionable or against public policy; or
(ii) the means to achieve the term's objective is unconscionable or against public policy.

48-3a-113 Operating agreement -- Effect on limited liability company and person becoming member -- Preformation agreement.
(1) A limited liability company is bound by and may enforce the operating agreement, whether or not the limited liability company has itself manifested assent to the operating agreement.
(2) A person that becomes a member of a limited liability company is deemed to assent to the operating agreement.
(3) Two or more persons intending to become the initial members of a limited liability company may make an agreement providing that upon the formation of the limited liability company the agreement will become the operating agreement. One person intending to become the initial member of a limited liability company may assent to terms providing that upon the formation of the limited liability company the terms will become the

operating agreement.

48-3a-114 Operating agreement -- Effect on third parties and relationship to records effective on behalf of limited liability company.
(1) An operating agreement may specify that its amendment requires the approval of a person that is not a party to the operating agreement or the satisfaction of a condition. An amendment is ineffective if its adoption does not include the required approval or satisfy the specified condition.
(2) The obligations of a limited liability company and its members to a person in the person's capacity as a transferee or a person dissociated as a member are governed by the operating agreement. Subject only to a court order issued under Subsection 48-3a-503(2)(b) to effectuate a charging order, an amendment to the operating agreement made after a person becomes a transferee or is dissociated as a member:
(a) is effective with regard to any debt, obligation, or other liability of the limited liability company or its members to the person in the person's capacity as a transferee or person dissociated as a member; and
(b) is not effective to the extent the amendment imposes a new debt, obligation, or other liability on the transferee or person dissociated as a member.
(3) If a record delivered by a limited liability company to the division for filing becomes effective and contains a provision that would be ineffective under Subsection 48-3a-112(3) or (4)(c) if contained in the operating agreement, the provision is ineffective in the record.
(4) Subject to Subsection (3), if a record delivered by a limited liability company to the division for filing becomes effective and conflicts with a provision of the operating agreement:
(a) the operating agreement prevails as to members, persons dissociated as members, transferees, and managers; and
(b) the record prevails as to other persons to the extent they reasonably rely on the record.

~~**48-3a-115 Delivery of record.**~~
~~(1) Except as otherwise provided in this chapter, permissible means of delivery of a record include delivery by hand, the United States Postal Service, a commercial delivery service, and electronic transmission.~~
~~(2) Delivery to the division is effective only when a record is received by the division.~~

48-3a-116 Reservation of power to amend or repeal.
The Legislature of this state has power to amend or repeal all or part of this chapter at any time, and all domestic and foreign limited liability companies subject to this chapter are governed by the amendment or repeal.

Part 2
Formation -- Certificate of Organization and Other Filings

48-3a-201 Formation of limited liability company -- Certificate of organization.
(1) One or more persons may act as organizers to form a limited liability company by delivering to the division for filing a certificate of organization.
(2) A certificate of organization must state:
(a) the name of the limited liability company, which must comply with Section<u>s</u> ~~48-3a-108~~<u>13-1a-401 and 13-1a-402</u>;
(b) the street and mailing address of the limited liability company's principal office;
(c) the information required by S~~ubs~~ection ~~16-17-203(1)~~<u>13-1a-504</u>;
(d) if the limited liability company is a low-profit limited liability company, a statement that the limited liability company is a low-profit limited liability company;
(e) if the limited liability company is a professional services company, the information required by Section 48-3a-1103; and
(f) if the limited liability company is to have one or more series in which the liabilities of the series are to be limited as contemplated by Subsection 48-3a-1201(2), notice of the limitation on liability in accordance with Section 48-3a-1202.

(3) A certificate of organization may contain statements as to matters other than those required by Subsection (2), but may not vary or otherwise affect the provisions specified in Subsection 48-3a-112(3) in a manner inconsistent with that section. However, a statement in a certificate of organization is not effective as a statement of authority.
(4) A limited liability company is formed when the limited liability company's certificate of organization becomes effective and at least one person becomes a member.

48-3a-202 Amendment or restatement of certificate of organization.
(1) A certificate of organization may be amended or restated at any time, except that in accordance with Section 48-3a-1303, a low-profit limited liability company shall amend its certificate of organization if the limited liability company ceases to be a low-profit limited liability company.
(2) To amend its certificate of organization, a limited liability company must deliver to the division for filing an amendment stating:
(a) the name of the limited liability company;
(b) the date of filing of its initial certificate of organization; and
(c) the changes the amendment makes to the certificate as most recently amended or restated.
(3) To restate its certificate of organization, a limited liability company must deliver to the division for filing a restatement designated as such in its heading.
(4) If a member of a member-managed limited liability company, or a manager of a manager-managed limited liability company, knows that any information in a filed certificate of organization was inaccurate when the certificate was filed or has become inaccurate due to changed circumstances, the member or manager shall promptly:
(a) cause the certificate to be amended; or
(b) if appropriate, deliver to the division for filing a statement of change under Section ~~16-17-206~~13-1a-507 or a statement of correction under Section ~~48-3a-208~~13-1a-305.

~~**48-3a-203 Signing of records to be delivered for filing to division.**~~
~~(1) A record delivered to the division for filing pursuant to this chapter must be signed as follows:~~
~~(a) Except as otherwise provided in Subsections (1)(b) and (c), a record signed on behalf of a limited liability company must be signed by a person authorized by the limited liability company.~~
~~(b) A limited liability company's initial certificate of organization must be signed by at least one person acting as an organizer.~~
~~(c) A record delivered on behalf of a dissolved limited liability company that has no member must be signed by the person winding up the limited liability company's activities and affairs under Subsection 48-3a-703(3) or a person appointed under Subsection 48-3a-703(4) to wind up the activities and affairs.~~
~~(d) A statement of denial by a person under Section 48-3a-303 must be signed by that person.~~
~~(e) Any other record delivered on behalf of a person to the division for filing must be signed by that person.~~
~~(2) Any record filed under this chapter may be signed by an agent. Whenever this chapter requires a particular individual to sign a record and the individual is deceased or incompetent, the record may be signed by a legal representative of the individual.~~
~~(3) A person that signs a record as an agent or legal representative thereby affirms as a fact that the person is authorized to sign the record.~~

~~**48-3a-204 Signing and filing pursuant to judicial order.**~~
~~(1) If a person required by this chapter to sign a record or deliver a record to the division for filing under this chapter does not do so, any other person that is aggrieved may petition the district court to order:~~
~~(a) the person to sign the record;~~
~~(b) the person to deliver the record to the division for filing; or~~
~~(c) the division to file the record unsigned.~~
~~(2) If a petitioner under Subsection (1) is not the limited liability company or foreign limited liability company to which the record pertains, the petitioner shall make the limited liability company or foreign limited liability company a party to the action.~~

(3) A record filed under Subsection (1)(c) is effective without being signed.

48-3a-205 Filing requirements.

(1) To be filed by the division pursuant to this chapter, a record must be received by the division, comply with this chapter, and satisfy the following:

(a) The filing of the record must be required or permitted by this chapter.

(b) The record must be physically delivered in written form unless and to the extent the division permits electronic delivery of records.

(c) The record must be typewritten or computer generated.

(d) The words in the record must be in English, and numbers must be in Arabic or Roman numerals, but the name of an entity need not be in English if written in English letters or Arabic or Roman numerals.

(e) The record must be signed by a person authorized or required under this chapter to sign the record.

(f) The record must state the name and capacity, if any, of each individual who signed it, either on behalf of the individual or the person authorized or required to sign the record, but need not contain a seal, attestation, acknowledgment, or verification.

(2) If law other than this chapter prohibits the disclosure by the division of information contained in a record delivered to the division for filing, the division shall accept the record if the record otherwise complies with this chapter, but the division may redact the information.

(3) When a record is delivered to the division for filing, any fee required under this chapter and any fee, tax, interest, or penalty required to be paid under this chapter or law other than this chapter must be paid in a manner permitted by the division or by that law.

(4) The division may require that a record delivered in written form be accompanied by an identical or conformed copy.

48-3a-206 Effective time and date.

Except as otherwise provided in Section 48-3a-207 and subject to Subsection 48-3a-208(3), a record filed under this chapter is effective:

(1) on the date and at the time of its filing by the division, as provided in Section 48-3a-209;

(2) on the date of filing and at the time specified in the record as its effective time, if later than the time under Subsection (1);

(3) at a specified delayed effective date and time, which may not be more than 90 days after the date of filing; or

(4) if a delayed effective date is specified, but no time is specified, at 12:01 a.m. on the date specified, which may not be more than 90 days after the date of filing.

48-3a-207 Withdrawal of filed record before effectiveness.

(1) Except as otherwise provided in Sections 48-3a-1024, 48-3a-1034, 48-3a-1044, and 48-3a-1054, a record delivered to the division for filing may be withdrawn before it takes effect by delivering to the division for filing a statement of withdrawal.

(2) A statement of withdrawal must:

(a) be signed by each person that signed the record being withdrawn, except as otherwise agreed by those persons;

(b) identify the record to be withdrawn; and

(c) if signed by fewer than all the persons that signed the record being withdrawn, state that the record is withdrawn in accordance with the agreement of all the persons that signed the record.

(3) On filing by the division of a statement of withdrawal, the action or transaction evidenced by the original record does not take effect.

48-3a-208 Correcting filed record.

(1) A person on whose behalf a filed record was delivered to the division for filing may correct the record if:

(a) the record at the time of filing was inaccurate;

(b) the record was defectively signed; or

(c) the electronic transmission of the record to the division was defective.
(2) To correct a filed record, a person on whose behalf the record was delivered to the division must deliver to the division for filing a statement of correction.
(3) A statement of correction:
(a) may not state a delayed effective date;
(b) must be signed by the person correcting the filed record;
(c) must identify the filed record to be corrected;
(d) must specify the inaccuracy or defect to be corrected; and
(e) must correct the inaccuracy or defect.
(4) A statement of correction is effective as of the effective date of the filed record that it corrects except for purposes of Subsection 48-3a-103(4) and as to persons relying on the uncorrected filed record and adversely affected by the correction. For those purposes and as to those persons, the statement of correction is effective when filed.

48-3a-209 Duty of division to file -- Review of refusal to file -- Transmission of information by division.
(1) The division shall file a record delivered to the division for filing which satisfies this chapter. The duty of the division under this section is ministerial.
(2) When the division files a record, the division shall record it as filed on the date and at the time of its delivery. After filing a record, the division shall deliver to the person that submitted the record a copy of the record with an acknowledgment of the date and time of filing and, in the case of a statement of denial, also to the limited liability company to which the statement pertains.
(3) If the division refuses to file a record, the division shall, not later than 15 business days after the record is delivered:
(a) return the record or notify the person that submitted the record of the refusal; and
(b) provide a brief explanation in a record of the reason for the refusal.
(4) If the division refuses to file a record, the person that submitted the record may petition the district court to compel filing of the record. The record and the explanation of the division of the refusal to file must be attached to the petition. The court may decide the matter in a summary proceeding.
(5) The filing of or refusal to file a record does not create a presumption that the information contained in the record is correct or incorrect.
(6) Except as otherwise provided by Section 16-17-301 or by law other than this chapter, the division may deliver any record to a person by delivering it:
(a) in person to the person that submitted it;
(b) to the address of the person's registered agent;
(c) to the principal office of the person; or
(d) to another address the person provides to the division for delivery.

48-3a-210 Liability for inaccurate information in filed record.
(1) If a record delivered to the division for filing under this chapter and filed by the division contains inaccurate information, a person that suffers loss by reliance on the information may recover damages for the loss from:
(a) a person that signed the record, or caused another to sign it on the person's behalf, and knew the information to be inaccurate at the time the record was signed; and
(b) subject to Subsection (2), a member of a member-managed limited liability company or the manager of a manager-managed limited liability company, if:
(i) the record was delivered for filing on behalf of the limited liability company; and
(ii) the member or manager had notice of the inaccuracy for a reasonably sufficient time before the information was relied upon so that, before the reliance, the member or manager reasonably could have:
(A) effected an amendment under Section 48-3a-202;
(B) filed a petition under Section 48-3a-204; or
(C) delivered to the division for filing a statement of change under Section 16-17-206 or a statement of correction under Section 48-3a-208.
(2) To the extent that the operating agreement of a member-managed limited liability company expressly

relieves a member of responsibility for maintaining the accuracy of information contained in records delivered on behalf of the limited liability company to the division for filing under this chapter and imposes that responsibility on one or more other members, the liability stated in Subsection (1)(b) applies to those other members and not to the member that the operating agreement relieves of the responsibility.
(3) An individual who signs a record authorized or required to be filed under this chapter affirms under penalty of perjury that the information stated in the record is accurate.

48-3a-211 Certificate of existence or registration.
(1) On request of any person, the division shall issue a certificate of existence for a limited liability company or a certificate of registration for a registered foreign limited liability company.
(2) A certificate under Subsection (1) must state:
(a) the limited liability company's name or the registered foreign limited liability company's name used in this state;
(b) in the case of a limited liability company:
(i) that a certificate of organization has been filed and has taken effect;
(ii) the date the certificate of organization became effective;
(iii) the period of the limited liability company's duration if the records of the division reflect that its period of duration is less than perpetual; and
(iv) that:
(A) no statement of dissolution, statement of administrative dissolution, or statement of termination has been filed;
(B) the records of the division do not otherwise reflect that the company has been dissolved or terminated; and
(C) a proceeding is not pending under Section 48-3a-708;
(c) in the case of a registered foreign limited liability company, that it is registered to do business in this state;
(d) that all fees, taxes, interest, and penalties owed to this state by the limited liability company or foreign limited liability company and collected through the division have been paid, if:
(i) payment is reflected in the records of the division; and
(ii) nonpayment affects the status of the limited liability company or foreign limited liability company with the division;
(e) that the most recent annual report required by Section 48-3a-212 has been delivered to the division for filing; and
(f) other facts reflected in the records of the division pertaining to the limited liability company or foreign limited liability company which the person requesting the certificate reasonably requests.
(3) Subject to any qualification stated in the certificate, a certificate issued by the division under Subsection (1) may be relied upon as conclusive evidence of the facts stated in the certificate.

48-3a-212 Annual report for division.
(1) A limited liability company or a registered foreign limited liability company shall deliver to the division for filing an annual 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 annual 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 report must be delivered to the division 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:
(a) in the case of a limited liability company, the annual report must be delivered to the division during the month in which is the anniversary date on which the limited liability company's certificate of formation became

~~effective; and~~
~~(b) in the case of a registered foreign limited liability company, the annual report must be delivered to the division during the month in which is the anniversary date on which the registered foreign limited liability company registered to do business in this state.~~
~~(4) If an annual report does not contain the information required by this section, the division promptly shall notify the reporting limited liability company or registered foreign limited liability company in a record and return the report for correction.~~
~~(5) If an annual 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 annual report becomes effective, the differing information in the annual report is considered a statement of change under Section 16-17-206.~~

Part 3
Relations of Members and Managers to Persons Dealing with Limited Liability Company

48-3a-301 No agency powers of member as member.
(1) A member is not an agent of a limited liability company solely by reason of being a member.
(2) A person's status as a member does not prevent or restrict law other than this chapter from imposing liability on a limited liability company because of the person's conduct.

48-3a-302 Statement of authority.
(1) A limited liability company may deliver to the division for filing a statement of authority. The statement:
(a) must include the name of the limited liability company and the street and mailing addresses of its registered agent;
(b) with respect to any position that exists in or with respect to the limited liability company, may state the authority, or limitations on the authority, of all persons holding the position to:
(i) execute an instrument transferring real property held in the name of the limited liability company; or
(ii) enter into other transactions on behalf of, or otherwise act for or bind, the limited liability company; and
(c) may state the authority, or limitations on the authority, of a specific person to:
(i) execute an instrument transferring real property held in the name of the limited liability company; or
(ii) enter into other transactions on behalf of, or otherwise act for or bind, the limited liability company.
(2) To amend or cancel a statement of authority filed by the division, a limited liability company must deliver to the division for filing an amendment or cancellation stating:
(a) the name of the limited liability company;
(b) the street and mailing addresses of the limited liability company's registered agent;
(c) the date the statement being affected became effective; and
(d) the contents of the amendment or a declaration that the statement is canceled.
(3) A statement of authority affects only the power of a person to bind a limited liability company to persons that are not members.
(4) Subject to Subsection (3) and Subsection 48-3a-103(4), and except as otherwise provided in Subsections (6), (7), and (8), a limitation on the authority of a person or a position contained in an effective statement of authority is not by itself evidence of knowledge or notice of the limitation by any person.
(5) Subject to Subsection (3), a grant of authority not pertaining to transfers of real property and contained in an effective statement of authority is conclusive in favor of a person that gives value in reliance on the grant, except to the extent that when the person gives value:
(a) the person has knowledge to the contrary;
(b) the statement of authority has been canceled or restrictively amended under Subsection (2); or
(c) a limitation on the grant is contained in another statement of authority that became effective after the statement of authority containing the grant became effective.
(6) Subject to Subsection (3), an effective statement of authority that grants authority to transfer real property held in the name of the limited liability company and a certified copy of which is recorded in the office for recording transfers of the real property is conclusive in favor of a person that gives value in reliance on the grant without knowledge to the contrary, except to the extent that when the person gives value:

(a) the statement of authority has been canceled or restrictively amended under Subsection (2), and a certified copy of the cancellation or restrictive amendment has been recorded in the office for recording transfers of the real property; or
(b) a limitation on the grant is contained in another statement of authority that became effective after the statement of authority containing the grant became effective, and a certified copy of the later-effective statement of authority is recorded in the office for recording transfers of the real property.
(7) Subject to Subsection (3), if a certified copy of an effective statement of authority containing a limitation on the authority to transfer real property held in the name of a limited liability company is recorded in the office for recording transfers of that real property, all persons are deemed to know of the limitation.
(8) Subject to Subsection (9), an effective statement of dissolution or termination is a cancellation of any filed statement of authority for the purposes of Subsection (6) and is a limitation on authority for the purposes of Subsection (7).
(9) After a statement of dissolution becomes effective, a limited liability company may deliver to the division for filing and, if appropriate, may record a statement of authority that is designated as a postdissolution statement of authority. The postdissolution statement of authority operates as provided in Subsections (6) and (7).
(10) Unless earlier canceled, an effective statement of authority is canceled by operation of law five years after the date on which the statement of authority, or its most recent amendment, becomes effective. This cancellation operates without need for any recording under Subsection (6) or (7).
(11) An effective statement of denial operates as a restrictive amendment under this section and may be recorded by certified copy for purposes of Subsection (6)(a).

48-3a-303 Statement of denial.

A person named in a filed statement of authority granting that person authority may deliver to the division for filing a statement of denial that:
(1) provides the name of the limited liability company and the caption of the statement of authority to which the statement of denial pertains; and
(2) denies the grant of authority.

48-3a-304 Liability of members and managers.

(1) A debt, obligation, or other liability of a limited liability company is solely the debt, obligation, or other liability of the limited liability company. A member or manager is not personally liable, directly or indirectly, by way of contribution or otherwise, for a debt, obligation, or other liability of the limited liability company solely by reason of being or acting as a member or manager. This Subsection (1) applies regardless of the dissolution of the limited liability company.
(2) The failure of a limited liability company to observe formalities relating to the exercise of its powers or management of its activities and affairs is not a ground for imposing liability on a member or manager of the limited liability company for a debt, obligation, or other liability of the limited liability company.

Part 4
Relations of Members to Each Other and to Limited Liability Company

48-3a-401 Becoming a member.

(1) If a limited liability company is to have only one member upon formation, the person becomes a member as agreed by that person and the organizer of the limited liability company. That person and the organizer may be, but need not be, different persons. If different, the organizer acts on behalf of the initial member.
(2) If a limited liability company is to have more than one member upon formation, those persons become members as agreed by the persons before the formation of the limited liability company. The organizer acts on behalf of the persons in forming the limited liability company and may be, but need not be, one of the persons.
(3) After formation of a limited liability company, a person becomes a member:
(a) as provided in the operating agreement;
(b) as the result of a transaction effective under Part 10, Merger, Interest Exchange, Conversion, and

Domestication;
(c) with the consent of all the members; or
(d) as provided in Subsection 48-3a-701(3).
(4) A person may become a member without:
(a) acquiring a transferable interest; or
(b) making or being obligated to make a contribution to the limited liability company.

48-3a-402 Form of contribution.

A contribution may consist of property transferred to, services performed for, or another benefit provided to the limited liability company or an agreement to transfer property to, perform services for, or provide another benefit to the company.

48-3a-403 Liability for contributions.

(1) A person's obligation to make a contribution to a limited liability company is not excused by the person's death, disability, or other inability to perform personally.
(2) If a person does not fulfill an obligation to make a contribution other than money, the person is obligated at the option of the limited liability company to contribute money equal to the value of the part of the contribution which has not been made.
(3) The obligation of a person to make a contribution may be compromised only by consent of all members. If a creditor of a limited liability company extends credit or otherwise acts in reliance on an obligation described in Subsection (1) without notice of a compromise under this Subsection (3), the creditor may enforce the obligation.

48-3a-404 Sharing of and right to distributions before dissolution.

(1) Any distributions made by a limited liability company before its dissolution and winding up must be in equal shares among members and persons dissociated as members, except to the extent necessary to comply with a transfer effective under Section 48-3a-502 or charging order in effect under Section 48-3a-503.
(2) A person has a right to a distribution before the dissolution and winding up of a limited liability company only if the limited liability company decides to make an interim distribution. A person's dissociation does not entitle the person to a distribution.
(3) A person does not have a right to demand or receive a distribution from a limited liability company in any form other than money. Except as otherwise provided in Subsection 48-3a-711(4), a limited liability company may distribute an asset in kind only if each part of the asset is fungible with each other part and each person receives a percentage of the asset equal in value to the person's share of distributions.
(4) If a member or transferee becomes entitled to receive a distribution, the member or transferee has the status of, and is entitled to all remedies available to, a creditor of the limited liability company with respect to the distribution. However, the limited liability company's obligation to make a distribution is subject to offset for any amount owed to the limited liability company by the member or a person dissociated as a member on whose account the distribution is made.

48-3a-405 Limitation on distributions.

(1) A limited liability company may not make a distribution, including a distribution under Section 48-3a-711, if after the distribution:
(a) the limited liability company would not be able to pay its debts as they become due in the ordinary course of the limited liability company's activities and affairs; or
(b) the limited liability company's total assets would be less than the sum of its total liabilities plus, unless the operating agreement permits otherwise, the amount that would be needed, if the limited liability company were to be dissolved and wound up at the time of the distribution, to satisfy the preferential rights upon dissolution and winding up of members and transferees whose preferential rights are superior to those of persons receiving the distribution.
(2) A limited liability company may base a determination that a distribution is not prohibited under Subsection (1) on:

(a) financial statements prepared on the basis of accounting practices and principles that are reasonable in the circumstances; or
(b) a fair valuation or other method that is reasonable under the circumstances.
(3) Except as otherwise provided in Subsection (5), the effect of a distribution under Subsection (1) is measured:
(a) in the case of a distribution as defined in Subsection 48-3a-102(4)(a), as of the earlier of:
(i) the date money or other property is transferred or debt is incurred by the limited liability company; or
(ii) the date the person entitled to the distribution ceases to own the interest or right being acquired by the limited liability company in return for the distribution;
(b) in the case of any other distribution of indebtedness, as of the date the indebtedness is distributed; and
(c) in all other cases, as of the date:
(i) the distribution is authorized, if the payment occurs not later than 120 days after that date; or
(ii) the payment is made, if the payment occurs more than 120 days after the distribution is authorized.
(4) A limited liability company's indebtedness to a member or transferee incurred by reason of a distribution made in accordance with this section is at parity with the limited liability company's indebtedness to its general, unsecured creditors, except to the extent subordinated by agreement.
(5) A limited liability company's indebtedness, including indebtedness issued as a distribution, is not a liability for purposes of Subsection (1) if the terms of the indebtedness provide that payment of principal and interest is made only if and to the extent that payment of a distribution could then be made under this section. If the indebtedness is issued as a distribution, each payment of principal or interest is treated as a distribution, the effect of which is measured on the date the payment is made.
(6) In measuring the effect of a distribution under Section 48-3a-711, the liabilities of a dissolved limited liability company do not include any claim that has been disposed of under Section 48-3a-705, 48-3a-706, or 48-3a-707.

48-3a-406 Liability for improper distributions.
(1) Except as otherwise provided in Subsection (2), if a member of a member-managed limited liability company or manager of a manager-managed limited liability company consents to a distribution made in violation of Section 48-3a-405 and in consenting to the distribution fails to comply with Section 48-3a-409, the member or manager is personally liable to the limited liability company for the amount of the distribution which exceeds the amount that could have been distributed without the violation of Section 48-3a-405.
(2) To the extent the operating agreement of a member-managed limited liability company expressly relieves a member of the authority and responsibility to consent to distributions and imposes that authority and responsibility on one or more other members, the liability stated in Subsection (1) applies to the other members and not the member that the operating agreement relieves of authority and responsibility.
(3) A person that receives a distribution knowing that the distribution violated Section 48-3a-405 is personally liable to the limited liability company but only to the extent that the distribution received by the person exceeded the amount that could have been properly paid under Section 48-3a-405.
(4) A person against which an action is commenced because the person is liable under Subsection (1) may:
(a) implead any other person that is liable under Subsection (1) and seek to enforce a right of contribution from the person; and
(b) implead any person that received a distribution in violation of Subsection (3) and seek to enforce a right of contribution from the person in the amount the person received in violation of Subsection (3).
(5) An action under this section is barred unless commenced not later than two years after the distribution.

48-3a-407 Management of limited liability company.
(1) A limited liability company is a member-managed limited liability company unless the operating agreement:
(a) expressly provides that:
(i) the limited liability company is or will be "manager-managed";
(ii) the limited liability company is or will be "managed by managers"; or
(iii) management of the limited liability company is or will be "vested in managers"; or
(b) includes words of similar import.

(2) In a member-managed limited liability company, the following rules apply:
(a) Except as otherwise provided in this chapter, the management and conduct of the limited liability company are vested in the members.
(b) Each member has equal rights in the management and conduct of the limited liability company's activities and affairs.
(c) A difference arising among members as to a matter in the ordinary course of the activities of the limited liability company shall be decided by a majority of the members.
(d) An act outside the ordinary course of the activities and affairs of the limited liability company may be undertaken only with the affirmative vote or consent of all members.
(e) The affirmative vote or consent of all members is required to approve a transaction under Part 10, Merger, Interest Exchange, Conversion, and Domestication.
(f) The operating agreement may be amended only with the affirmative vote or consent of all members.
(3) In a manager-managed limited liability company, the following rules apply:
(a) Except as expressly provided in this chapter, any matter relating to the activities and affairs of the limited liability company is decided exclusively by the manager, or, if there is more than one manager, by a majority of the managers.
(b) Each manager has equal rights in the management and conduct of the limited liability company's activities and affairs.
(c) The affirmative vote or consent of all members is required to:
(i) approve a transaction under Part 10, Merger, Interest Exchange, Conversion, and Domestication;
(ii) undertake any act outside the ordinary course of the limited liability company's activities and affairs; or
(iii) amend the operating agreement.
(d) A manager may be chosen at any time by the consent of a majority of the members and remains a manager until a successor has been chosen, unless the manager at an earlier time resigns, is removed, or dies, or, in the case of a manager that is not an individual, terminates. A manager may be removed at any time by the consent of a majority of the members without notice or cause.
(e) A person need not be a member to be a manager, but the dissociation of a member that is also a manager removes the person as a manager. If a person that is both a manager and a member ceases to be a manager, that cessation does not by itself dissociate the person as a member.
(f) A person's ceasing to be a manager does not discharge any debt, obligation, or other liability to the limited liability company or members which the person incurred while a manager.
(4) An action requiring the vote or consent of members under this chapter may be taken without a meeting, and a member may appoint a proxy or other agent to vote, consent, or otherwise act for the member by signing an appointing record, personally or by the member's agent.
(5) The dissolution of a limited liability company does not affect the applicability of this section. However, a person that wrongfully causes dissolution of the limited liability company loses the right to participate in management as a member and a manager.
(6) A limited liability company shall reimburse a member for an advance to the limited liability company beyond the amount of capital the member agreed to contribute.
(7) A payment or advance made by a member which gives rise to an obligation of the limited liability company under Subsection (6) or Subsection 48-3a-408(1) constitutes a loan to the limited liability company which accrues interest from the date of the payment or advance.
(8) A member is not entitled to remuneration for services performed for a member-managed limited liability company, except for reasonable compensation for services rendered in winding up the activities of the limited liability company.

48-3a-408 Reimbursement, indemnification, advancement, and insurance.
(1) A limited liability company shall reimburse a member of a member-managed limited liability company or the manager of a manager-managed limited liability company for any payment made by the member or manager in the course of the member's or manager's activities on behalf of the limited liability company, if the member or manager complied with Sections 48-3a-407 and 48-3a-409 in making the payment.
(2) A limited liability company shall indemnify and hold harmless a person with respect to any claim or demand

against the person and any debt, obligation, or other liability incurred by the person by reason of the person's former or present capacity as a member or manager, if the claim, demand, debt, obligation, or other liability does not arise from the person's breach of Section 48-3a-405, 48-3a-407, or 48-3a-409.
(3) In the ordinary course of its activities and affairs, a limited liability company may advance reasonable expenses, including attorney's fees and costs, incurred by a person in connection with a claim or demand against the person by reason of the person's former or present capacity as a member or manager, if the person promises to repay the limited liability company if the person ultimately is determined not to be entitled to be indemnified under Subsection (2).
(4) A limited liability company may purchase and maintain insurance on behalf of a member or manager of the limited liability company against liability asserted against or incurred by the member or manager in that capacity or arising from that status even if, under Subsection 48-3a-112(3)(g), the operating agreement could not eliminate or limit the person's liability to the limited liability company for the conduct giving rise to the liability.

48-3a-409 Standards of conduct for members and managers.
(1) A member of a member-managed limited liability company owes to the limited liability company and, subject to Subsection 48-3a-801(1), the other members the duties of loyalty and care stated in Subsections (2) and (3).
(2) The duty of loyalty of a member in a member-managed limited liability company includes the duties:
(a) to account to the limited liability company and to hold as trustee for it any property, profit, or benefit derived by the member:
(i) in the conduct or winding up of the limited liability company's activities and affairs;
(ii) from a use by the member of the limited liability company's property; or
(iii) from the appropriation of a limited liability company opportunity;
(b) to refrain from dealing with the limited liability company in the conduct or winding up of the limited liability company's activities and affairs as or on behalf of a person having an interest adverse to the limited liability company; and
(c) to refrain from competing with the limited liability company in the conduct of the company's activities and affairs before the dissolution of the limited liability company.
(3) The duty of care of a member of a member-managed limited liability company in the conduct or winding up of the limited liability company's activities and affairs is to refrain from engaging in grossly negligent or reckless conduct, intentional misconduct, or a knowing violation of law.
(4) A member shall discharge the duties and obligations under this chapter or under the operating agreement and exercise any rights consistently with the contractual obligation of good faith and fair dealing.
(5) A member does not violate a duty or obligation under this chapter or under the operating agreement solely because the member's conduct furthers the member's own interest.
(6) All the members of a member-managed limited liability company or a manager-managed limited liability company may authorize or ratify, after full disclosure of all material facts, a specific act or transaction that otherwise would violate the duty of loyalty.
(7) It is a defense to a claim under Subsection (2)(b) and any comparable claim in equity or at common law that the transaction was fair to the limited liability company.
(8) If, as permitted by Subsection (6) or (9)(f) or the operating agreement, a member enters into a transaction with the limited liability company which otherwise would be prohibited by Subsection (2)(b), the member's rights and obligations arising from the transaction are the same as those of a person that is not a member.
(9) In a manager-managed limited liability company, the following rules apply:
(a) Subsections (1), (2), (3), and (7) apply to the manager or managers and not the members.
(b) The duty stated under Subsection (2)(c) continues until winding up is completed.
(c) Subsection (4) applies to managers and members.
(d) Subsection (5) applies only to members.
(e) The power to ratify under Subsection (6) applies only to the members.
(f) Subject to Subsection (4), a member does not have any duty to the limited liability company or to any other member solely by reason of being a member.

48-3a-410 Rights of member, manager, and person dissociated as member to information.
(1) In a member-managed limited liability company, the following rules apply:
(a) On reasonable notice, a member may inspect and copy during regular business hours, at a reasonable location specified by the limited liability company, any record maintained by the limited liability company regarding the limited liability company's activities, affairs, financial condition, and other circumstances, to the extent the information is material to the member's rights and duties under the operating agreement or this chapter.
(b) The limited liability company shall furnish to each member:
(i) without demand, any information concerning the limited liability company's activities, affairs, financial condition, and other circumstances which the limited liability company knows and is material to the proper exercise of the member's rights and duties under the operating agreement or this chapter, except to the extent the limited liability company can establish that it reasonably believes the member already knows the information; and
(ii) on demand, any other information concerning the limited liability company's activities, affairs, financial condition, and other circumstances, except to the extent the demand or information demanded is unreasonable or otherwise improper under the circumstances.
(c) The duty to furnish information under Subsection (1)(b) also applies to each member to the extent the member knows any of the information described in Subsection (1)(b).
(2) In a manager-managed limited liability company, the following rules apply:
(a) The informational rights stated in Subsection (1) and the duty stated in Subsection (1)(c) apply to the managers and not the members.
(b) During regular business hours and at a reasonable location specified by the limited liability company, a member may inspect and copy full information regarding the activities, affairs, financial condition, and other circumstances of the limited liability company as is just and reasonable if:
(i) the member seeks the information for a purpose reasonably related to the member's interest as a member;
(ii) the member makes a demand in a record received by the limited liability company, describing with reasonable particularity the information sought and the purpose for seeking the information; and
(iii) the information sought is directly connected to the member's purpose.
(c) Not later than 10 days after receiving a demand pursuant to Subsection (2)(b)(ii), the limited liability company shall in a record inform the member that made the demand of:
(i) the information that the limited liability company will provide in response to the demand and when and where the limited liability company will provide the information; and
(ii) the limited liability company's reasons for declining, if the limited liability company declines to provide any demanded information.
(d) Whenever this chapter or an operating agreement provides for a member to give or withhold consent to a matter, before the consent is given or withheld, the limited liability company shall, without demand, provide the member with all information that is known to the limited liability company and is material to the member's decision.
(3) Subject to Subsection (9), on 10 days' demand made in a record received by a limited liability company, a person dissociated as a member may have access to information to which the person was entitled while a member if:
(a) the information pertains to the period during which the person was a member;
(b) the person seeks the information in good faith; and
(c) the person satisfies the requirements imposed on a member by Subsection (2)(b).
(4) A limited liability company shall respond to a demand made pursuant to Subsection (3) in the manner provided in Subsection (2)(c).
(5) A limited liability company may charge a person that makes a demand under this section the reasonable costs of copying, limited to the costs of labor and material.
(6) A member or person dissociated as a member may exercise rights under this section through an agent or, in the case of an individual under legal disability, a legal representative. Any restriction or condition imposed by the operating agreement or under Subsection (9) applies both to the agent or legal representative and the

member or person dissociated as a member.
(7) Subject to Subsection (9), the rights under this section do not extend to a person as transferee.
(8) If a member dies, Section 48-3a-504 applies.
(9) In addition to any restriction or condition stated in the operating agreement, a limited liability company, as a matter within the ordinary course of its activities and affairs, may impose reasonable restrictions and conditions on access to and use of information to be furnished under this section, including designating information confidential and imposing nondisclosure and safeguarding obligations on the recipient. In a dispute concerning the reasonableness of a restriction under this Subsection (9), the limited liability company has the burden of proving reasonableness.

Part 5
Transferable Interest and Rights of Transferees and Creditors

48-3a-501 Nature of transferable interest.

A transferable interest is personal property.

48-3a-502 Transfer of transferable interest.

(1) Subject to Subsection 48-3a-503(6), a transfer, in whole or in part, of a transferable interest:
(a) is permissible;
(b) does not by itself cause a member's dissociation or a dissolution and winding up of the limited liability company's activities and affairs; and
(c) subject to Section 48-3a-504, does not entitle the transferee to:
(i) participate in the management or conduct of the limited liability company's activities and affairs; or
(ii) except as otherwise provided in Subsection (3), have access to records or other information concerning the limited liability company's activities and affairs.
(2) A transferee has the right to receive, in accordance with the transfer, distributions to which the transferor would otherwise be entitled.
(3) In a dissolution and winding up of a limited liability company, a transferee is entitled to an account of the limited liability company's transactions only from the date of dissolution.
(4) A transferable interest may be evidenced by a certificate of the interest issued by the limited liability company in a record, and, subject to this section, the interest represented by the certificate may be transferred by a transfer of the certificate.
(5) A limited liability company need not give effect to a transferee's rights under this section until the limited liability company knows or has notice of the transfer.
(6) A transfer of a transferable interest in violation of a restriction on transfer contained in the operating agreement is ineffective as to a person having knowledge or notice of the restriction at the time of transfer.
(7) Except as otherwise provided in Subsection 48-3a-602(5)(b), if a member transfers a transferable interest, the transferor retains the rights of a member other than the transferable interest transferred and retains all the duties and obligations of a member.
(8) If a member transfers a transferable interest to a person that becomes a member with respect to the transferred interest, the transferee is liable for the member's obligations under Section 48-3a-403 and Subsection 48-3a-406(3) known to the transferee when the transferee becomes a member.

48-3a-503 Charging order.

(1) On application by a judgment creditor of a member or transferee, a court may enter a charging order against the transferable interest of the judgment debtor for the unsatisfied amount of the judgment. Except as otherwise provided in Subsection (6), a charging order constitutes a lien on a judgment debtor's transferable interest and, after the limited liability company has been served with the charging order, requires the limited liability company to pay over to the person to which the charging order was issued any distribution that otherwise would be paid to the judgment debtor.
(2) To the extent necessary to effectuate the collection of distributions pursuant to a charging order in effect under Subsection (1), the court may:

(a) appoint a receiver of the distributions subject to the charging order, with the power to make all inquiries the judgment debtor might have made; and
(b) make all other orders necessary to give effect to the charging order.
(3) Upon a showing that distributions under a charging order will not pay the judgment debt within a reasonable time, the court may foreclose the lien and order the sale of the transferable interest. Except as otherwise provided in Subsection (6), the purchaser at the foreclosure sale only obtains the transferable interest, does not thereby become a member, and is subject to Section 48-3a-502.
(4) At any time before foreclosure under Subsection (3), the member or transferee whose transferable interest is subject to a charging order under Subsection (1) may extinguish the charging order by satisfying the judgment and filing a certified copy of the satisfaction with the court that issued the charging order.
(5) At any time before foreclosure under Subsection (3), a limited liability company or one or more members whose transferable interests are not subject to the charging order may pay to the judgment creditor the full amount due under the judgment and thereby succeed to the rights of the judgment creditor, including the charging order.
(6) If a court orders foreclosure of a charging order lien against the sole member of a limited liability company:
(a) the court shall confirm the sale;
(b) the purchaser at the sale obtains the member's entire interest, not only the member's transferable interest;
(c) the purchaser thereby becomes a member; and
(d) the person whose interest was subject to the foreclosed charging order is dissociated as a member.
(7) This chapter does not deprive any member or transferee of the benefit of any exemption laws applicable to the transferable interest of the member or transferee.
(8) This section provides the exclusive remedy by which a person seeking to enforce a judgment against a member or transferee may, in the capacity of judgment creditor, satisfy the judgment from the judgment debtor's transferable interest.

48-3a-504 Power of legal representative of deceased member.

If a member dies, the deceased member's legal representative may exercise:
(1) the rights of a transferee provided in Subsection 48-3a-502(3); and
(2) for the purposes of settling the estate, the rights the deceased member had under Section 48-3a-410.

Part 6
Dissociation

48-3a-601 Power to dissociate as member -- Wrongful dissociation.

(1) A person has the power to dissociate as a member at any time, rightfully or wrongfully, by withdrawing as a member by express will under Subsection 48-3a-602(1).
(2) A person's dissociation as a member is wrongful only if the dissociation:
(a) is in breach of an express provision of the operating agreement; or
(b) occurs before the completion of the winding up of the limited liability company and:
(i) the person withdraws as a member by express will;
(ii) the person is expelled as a member by judicial order under Subsection 48-3a-602(6);
(iii) the person is dissociated under Subsection 48-3a-602(8); or
(iv) in the case of a person that is not a trust other than a business trust, an estate, or an individual, the person is expelled or otherwise dissociated as a member because it willfully dissolved or terminated.
(3) A person that wrongfully dissociates as a member is liable to the limited liability company and, subject to Section 48-3a-801, to the other members for damages caused by the dissociation. The liability is in addition to any debt, obligation, or other liability of the member to the limited liability company or the other members.

48-3a-602 Events causing dissociation.

A person is dissociated as a member when:
(1) the limited liability company has notice of the person's express will to withdraw as a member, but, if the person specified a withdrawal date later than the date the limited liability company had notice, on that later date;

(2) an event stated in the operating agreement as causing the person's dissociation occurs;
(3) the person's entire interest is transferred in a foreclosure sale under Subsection 48-3a-503(6);
(4) the person is expelled as a member pursuant to the operating agreement;
(5) the person is expelled as a member by the unanimous consent of the other members if:
(a) it is unlawful to carry on the limited liability company's activities and affairs with the person as a member;
(b) there has been a transfer of all the person's transferable interest in the limited liability company, other than:
(i) a transfer for security purposes; or
(ii) a charging order in effect under Section 48-3a-503 which has not been foreclosed;
(c) the person is a corporation, and:
(i) the limited liability company notifies the person that it will be expelled as a member because the person has filed a statement of dissolution or the equivalent, its charter has been revoked, or its right to conduct business has been suspended by the jurisdiction of its incorporation; and
(ii) not later than 90 days after the notification the statement of dissolution or the equivalent has not been revoked or its charter or right to conduct business has not been reinstated; or
(d) the person is an unincorporated entity that has been dissolved and whose business is being wound up;
(6) on application by the limited liability company or a member in a direct action under Section 48-3a-801, the person is expelled as a member by judicial order because the person:
(a) has engaged or is engaging in wrongful conduct that has affected adversely and materially, or will affect adversely and materially, the limited liability company's activities and affairs;
(b) has committed willfully or persistently, or is committing willfully or persistently, a material breach of the operating agreement or a duty or obligation under Section 48-3a-409; or
(c) has engaged or is engaging in conduct relating to the limited liability company's activities and affairs which makes it not reasonably practicable to carry on the activities and affairs with the person as a member;
(7) in the case of an individual:
(a) the individual dies; or
(b) in a member-managed limited liability company:
(i) a guardian or general conservator for the individual is appointed; or
(ii) a court orders that the individual has otherwise become incapable of performing the individual's duties as a member under this chapter or the operating agreement;
(8) in a member-managed limited liability company, the person:
(a) becomes a debtor in bankruptcy;
(b) executes an assignment for the benefit of creditors; or
(c) seeks, consents to, or acquiesces in the appointment of a trustee, receiver, or liquidator of the person or of all or substantially all the person's property;
(9) in the case of a person that is a testamentary or inter vivos trust or is acting as a member by virtue of being a trustee of such a trust, the trust's entire transferable interest in the limited liability company is distributed;
(10) in the case of a person that is an estate or is acting as a member by virtue of being a personal representative of an estate, the estate's entire transferable interest in the limited liability company is distributed, but not merely by reason of substitution of a successor personal representative;
(11) in the case of a person that is not an individual, corporation, unincorporated entity, trust, or estate, the existence of the person terminates;
(12) the limited liability company participates in a merger under Part 10, Merger, Interest Exchange, Conversion, and Domestication, and:
(a) the limited liability company is not the surviving entity; or
(b) otherwise as a result of the merger, the person ceases to be a member;
(13) the limited liability company participates in an interest exchange under Part 10, Merger, Interest Exchange, Conversion, and Domestication, and, as a result of the interest exchange, the person ceases to be a member;
(14) the limited liability company participates in a conversion under Part 10, Merger, Interest Exchange, Conversion, and Domestication;
(15) the limited liability company participates in a domestication under Part 10, Merger, Interest Exchange, Conversion, and Domestication, and, as a result of the domestication, the person ceases to be a member; or
(16) the limited liability company dissolves and completes winding up.

48-3a-603 Effect of dissociation.
(1) If a person is dissociated as a member:
(a) the person's right to participate as a member in the management and conduct of the company's activities and affairs terminates;
(b) if the limited liability company is member-managed, the person's duties and obligations under Section 48-3a-409 as a member end with regard to matters arising and events occurring after the person's dissociation; and
(c) subject to Section 48-3a-504 and Part 10, Merger, Interest Exchange, Conversion, and Domestication, any transferable interest owned by the person in the person's capacity as a member immediately before dissociation as a member is owned by the person solely as a transferee.
(2) A person's dissociation as a member does not of itself discharge the person from any debt, obligation, or other liability to the limited liability company or the other members which the person incurred while a member.

Part 7
Dissolution and Winding up

48-3a-701 Events causing dissolution.
A limited liability company is dissolved, and its activities and affairs must be wound up, upon the occurrence of any of the following:
(1) an event or circumstance that the operating agreement states causes dissolution;
(2) the consent of all the members;
(3) the passage of 90 consecutive days during which the limited liability company has no members unless:
(a) consent to admit at least one specified person as a member is given by transferees owning the rights to receive a majority of distributions as transferees at the time the consent is to be effective; and
(b) at least one person becomes a member in accordance with the consent;
(4) on application by a member, the entry by the district court of an order dissolving the limited liability company on the grounds that:
(a) the conduct of all or substantially all of the limited liability company's activities and affairs is unlawful; or
(b) it is not reasonably practicable to carry on the limited liability company's activities and affairs in conformity with the certificate of organization and the operating agreement;
(5) on application by a member, the entry by the district court of an order dissolving the limited liability company on the grounds that the managers or those members in control of the limited liability company:
(a) have acted, are acting, or will act in a manner that is illegal or fraudulent; or
(b) have acted, are acting, or will act in a manner that is oppressive and was, is, or will be directly harmful to the applicant; or
(6) the signing and filing of a statement of administrative dissolution by the division under S~~ubs~~section ~~48-3a-708(3)~~13-1a-702.

48-3a-702 Election to purchase in lieu of dissolution.
(1) In a proceeding under Subsection 48-3a-701(5) to dissolve a limited liability company, the limited liability company may elect or, if it fails to elect, one or more members may elect to purchase the interest in the limited liability company owned by the applicant member at the fair market value of the interest, determined as provided in this section. An election pursuant to this Subsection (1) is irrevocable unless the district court determines that it is equitable to set aside or modify the election.
(2) An election to purchase pursuant to this section may be filed with the district court at any time within 90 days after the filing of the petition in a proceeding under Subsection 48-3a-701(5) or at any later time as the district court in its discretion may allow. If the limited liability company files an election with the district court within the 90-day period, or at any later time allowed by the district court, to purchase the interest in the limited liability company owned by the applicant member, the limited liability company shall purchase the interest in the manner provided in this section.
(3) If the limited liability company does not file an election with the district court within the time period, but an

election to purchase the interest in the limited liability company owned by the applicant member is filed by one or more members within the time period, the limited liability company shall, within 10 days after the later of the end of the time period allowed for the filing of elections to purchase under this section or notification from the district court of an election by members to purchase the interest in the limited liability company owned by the applicant member as provided in this section, give written notice of the election to purchase to all members of the limited liability company, other than the applicant member. The notice shall state the name and the percentage interest in the limited liability company owned by the applicant member and the name and the percentage interest in the limited liability company owned by each electing member. The notice shall advise any recipients who have not participated in the election of their right to join in the election to purchase the interest in the limited liability company in accordance with this section and of the date by which any notice of intent to participate must be filed with the district court.

(4) Members who wish to participate in the purchase of the interest in the limited liability company of the applicant member must file notice of their intention to join in the purchase by electing members no later than 30 days after the effective date of the limited liability company's notice of their right to join in the election to purchase.

(5) All members who have filed with the district court an election or notice of their intention to participate in the election to purchase the interest in the limited liability company of the applicant member thereby become irrevocably obligated to participate in the purchase of the interest from the applicant member upon the terms and conditions of this section, unless the district court otherwise directs.

(6) After an election has been filed by the limited liability company or one or more members, the proceedings under Subsection 48-3a-701(5) may not be discontinued or settled, nor may the applicant member sell or otherwise dispose of the applicant member's interest in the limited liability company, unless the district court determines that it would be equitable to the limited liability company and the members, other than the applicant member, to permit any discontinuance, settlement, sale, or other disposition.

(7) If, within 60 days after the earlier of the limited liability company filing of an election to purchase the interest in the limited liability company of the applicant member or the limited liability company's mailing of a notice to its members of the filing of an election by the members to purchase the interest in the limited liability company of the applicant member, the applicant member and electing limited liability company or members reach agreement as to the fair market value and terms of the purchase of the applicant member's interest, the district court shall enter an order directing the purchase of the applicant member's interest, upon the terms and conditions agreed to by the parties.

(8) If the parties are unable to reach an agreement as provided for in Subsection (7), upon application of any party, the district court shall stay the proceedings under Subsection 48-3a-701(5) and determine the fair market value of the applicant member's interest in the limited liability company as of the day before the date on which the petition under Subsection 48-3a-701(5) was filed or as of any other date the district court determines to be appropriate under the circumstances and based on the factors the district court determines to be appropriate.

(9) Upon determining the fair market value of the interest in the limited liability company of the applicant member, the district court shall enter an order directing the purchase of the interest in the limited liability company upon terms and conditions the district court determines to be appropriate. The terms and conditions may include payment of the purchase price in installments, where necessary in the interest of equity, provision for security to assure payment of the purchase price and any additional costs, fees, and expenses awarded by the district court, and an allocation of the interest in the limited liability company among members if the interest in the limited liability company is to be purchased by members.

(10) In allocating the applicant member's interest in the limited liability company among holders of different classes of members, the district court shall attempt to preserve the existing distribution of voting rights among member classes to the extent practicable. The district court may direct that holders of a specific class or classes may not participate in the purchase. The district court may not require any electing member to purchase more of the interest in the limited liability company owned by the applicant member than the percentage interest that the purchasing member may have set forth in the purchasing member's election or notice of intent to participate filed with the district court.

(11) Interest may be allowed at the rate and from the date determined by the district court to be equitable. However, if the district court finds that the refusal of the applicant member to accept an offer of payment was

arbitrary or otherwise not in good faith, interest may not be allowed.
(12) If the district court finds that the applicant member had probable ground for relief under Subsection 48-3a-701(5), the district court may award to the applicant member reasonable fees and expenses of counsel and experts employed by the applicant member.
(13) Upon entry of an order under Subsection (7) or (9), the district court shall dismiss the petition to dissolve the limited liability company under Subsection 48-3a-701(5) and the applicant member shall no longer have any rights or status as a member of the limited liability company, except the right to receive the amounts awarded to the applicant member by the district court. The award is enforceable in the same manner as any other judgment.
(14) The purchase ordered pursuant to Subsection (9) shall be made within 10 days after the date the order becomes final, unless before that time the limited liability company files with the district court a notice of its intention to file a statement of dissolution. The statement of dissolution must then be adopted and filed within 60 days after notice.
(15) Upon filing of a statement of dissolution, the limited liability company is dissolved and shall be wound up pursuant to Section 48-3a-703, and the order entered pursuant to Subsection (9) is no longer of any force or effect. However, the district court may award the applicant member reasonable fees and expenses in accordance with Subsection (12). The applicant member may continue to pursue any claims previously asserted on behalf of the limited liability company.
(16) Any payment by the limited liability company pursuant to an order under Subsection (7) or (9), other than an award of fees and expenses pursuant to Subsection (12), is subject to the provisions of Sections 48-3a-405 and 48-3a-406.

48-3a-703 Winding up.
(1) A dissolved limited liability company shall wind up its activities and affairs and, except as otherwise provided in Section 48-3a-704, the limited liability company continues after dissolution only for the purpose of winding up.
(2) In winding up its activities and affairs, a limited liability company:
(a) shall discharge the limited liability company's debts, obligations, and other liabilities, settle and close the limited liability company's activities and affairs, and marshal and distribute the assets of the limited liability company; and
(b) may:
(i) deliver to the division for filing a statement of dissolution stating the name of the limited liability company and that the limited liability company is dissolved;
(ii) preserve the limited liability company activities, affairs, and property as a going concern for a reasonable time;
(iii) prosecute and defend actions and proceedings, whether civil, criminal, or administrative;
(iv) transfer the limited liability company's property;
(v) settle disputes by mediation or arbitration;
(vi) deliver to the division for filing a statement of termination stating the name of the limited liability company and that the limited liability company is terminated; and
(vii) perform other acts necessary or appropriate to the winding up.
(3) If a dissolved limited liability company has no members, the legal representative of the last person to have been a member may wind up the activities and affairs of the limited liability company. If the person does so, the person has the powers of a sole manager under Subsection 48-3a-407(3) and is deemed to be a manager for the purposes of Subsection 48-3a-304(1).
(4) If the legal representative under Subsection (3) declines or fails to wind up the limited liability company's activities and affairs, a person may be appointed to do so by the consent of transferees owning a majority of the rights to receive distributions as transferees at the time the consent is to be effective. A person appointed under this Subsection (4):
(a) has the powers of a sole manager under Subsection 48-3a-407(3) and is deemed to be a manager for the purposes of Subsection 48-3a-304(1); and
(b) shall promptly deliver to the division for filing an amendment to the limited liability company's certificate

of organization stating:
(i) that the limited liability company has no members;
(ii) the name and street and mailing addresses of the person; and
(iii) that the person has been appointed pursuant to this subsection to wind up the limited liability company.
(5) A district court may order judicial supervision of the winding up of a dissolved limited liability company, including the appointment of a person to wind up the limited liability company's activities and affairs:
(a) on application of a member, if the applicant establishes good cause;
(b) on the application of a transferee, if:
(i) the company does not have any members;
(ii) the legal representative of the last person to have been a member declines or fails to wind up the limited liability company's activities; and
(iii) within a reasonable time following the dissolution a person has not been appointed pursuant to Subsection (4); or
(c) in connection with a proceeding under Subsection 48-3a-701(4) or (5).

48-3a-704 Rescinding dissolution.
(1) A limited liability company may rescind its dissolution, unless a statement of termination applicable to the limited liability company is effective, the district court has entered an order under Subsection 48-3a-701(4) or (5) dissolving the limited liability company, or the division has dissolved the limited liability company under Section ~~48-3a-708~~13-1a-702.
(2) Rescinding dissolution under this section requires:
(a) the consent of each member;
(b) if a statement of dissolution applicable to the limited liability company has been filed by the division but has not become effective, the delivery to the division for filing of a statement of withdrawal under Section ~~48-3a-207~~13-1a-304 applicable to the statement of dissolution; and
(c) if a statement of dissolution applicable to the limited liability company is effective, the delivery to the division for filing of a statement of correction under Section ~~48-3a-208~~13-1a-305 stating that dissolution has been rescinded under this section.
(3) If a limited liability company rescinds its dissolution:
(a) the limited liability company resumes carrying on its activities and affairs as if dissolution had never occurred;
(b) subject to Subsection (3)(c), any liability incurred by the limited liability company after the dissolution and before the rescission is effective is determined as if dissolution had never occurred; and
(c) the rights of a third party arising out of conduct in reliance on the dissolution before the third party knew or had notice of the rescission may not be adversely affected.

48-3a-705 Known claims against dissolved limited liability company.
(1) A dissolved limited liability company in winding up may dispose of the known claims against it by following the procedures described in this section.
(2) A limited liability company in winding up, electing to dispose of known claims pursuant to this section, may give written notice of the limited liability company's dissolution to known claimants at any time after the effective date of the dissolution. The written notice must:
(a) describe the information that must be included in a claim;
(b) provide an address to which written notice of any claim must be given to the limited liability company;
(c) state the deadline, which may not be fewer than 120 days after the effective date of the notice, by which the dissolved limited liability company must receive the claim; and
(d) state that, unless sooner barred by another state statute limiting actions, the claim will be barred if not received by the deadline.
(3) Unless sooner barred by another state statute limiting actions, a claim against the dissolved limited liability company is barred if:
(a) a claimant was given notice under Subsection (2) and the claim is not received by the dissolved limited liability company by the deadline; or

(b) the dissolved limited liability company delivers to the claimant written notice of rejection of the claim within 90 days after receipt of the claim and the claimant whose claim was rejected by the dissolved limited liability company does not commence a proceeding to enforce the claim within 90 days after the effective date of the rejection notice.
(4) Claims which are not rejected by the dissolved limited liability company in writing within 90 days after receipt of the claim by the dissolved limited liability company shall be considered approved.
(5) The failure of the dissolved limited liability company to give notice to any known claimant pursuant to Subsection (2) does not affect the disposition under this section of any claim held by any other known claimant.
(6) This section does not apply to a claim based on an event occurring after the effective date of dissolution or a liability that on that date is contingent.

48-3a-706 Other claims against dissolved limited liability company.
(1) A dissolved limited liability company may publish notice of its dissolution and request persons having claims against the limited liability company to present them in accordance with the notice.
(2) A notice under Subsection (1) must:
(a) be published at least once in a newspaper of general circulation in the county in this state in which the dissolved limited liability company's principal office is located or, if the principal office is not located in this state, in the county in which the office of the limited liability company's registered agent is or was last located and in accordance with Section 45-1-101;
(b) describe the information required to be contained in a claim, state that the claim must be in writing, and provide a mailing address to which the claim is to be sent; and
(c) state that a claim against the limited liability company is barred unless an action to enforce the claim is commenced not later than three years after publication of the notice.
(3) If a dissolved limited liability company publishes a notice in accordance with Subsection (2), the claim of each of the following claimants is barred unless the claimant commences an action to enforce the claim against the limited liability company not later than three years after the publication date of the notice:
(a) a claimant that did not receive notice in a record under Section 48-3a-705;
(b) a claimant whose claim was timely sent to the limited liability company but not acted on; and
(c) a claimant whose claim is contingent at, or based on an event occurring after, the effective date of dissolution.
(4) A claim not barred under this section or Section 48-3a-705 may be enforced:
(a) against a dissolved limited liability company, to the extent of its undistributed assets; and
(b) except as otherwise provided in Section 48-3a-707, if assets of the limited liability company have been distributed after dissolution, against a member or transferee to the extent of that person's proportionate share of the claim or of the limited liability company's assets distributed to the member or transferee after dissolution, whichever is less, but a person's total liability for all claims under this subsection may not exceed the total amount of assets distributed to the person after dissolution.

48-3a-707 Court proceedings.
(1) A dissolved limited liability company that has published a notice under Section 48-3a-706 may file an application with district court in the county where the dissolved limited liability company's principal office is located, or, if the principal office is not located in this state, where the office of its registered agent is located, for a determination of the amount and form of security to be provided for payment of claims that are contingent, have not been made known to the limited liability company, or are based on an event occurring after the effective date of dissolution but which, based on the facts known to the dissolved limited liability company, are reasonably expected to arise after the effective date of dissolution. Security is not required for any claim that is or is reasonably anticipated to be barred under Subsection 48-3a-706(3).
(2) Not later than 10 days after the filing of an application under Subsection (1), the dissolved limited liability company shall give notice of the proceeding to each claimant holding a contingent claim known to the limited liability company.
(3) In any proceeding under this section, the court may appoint a guardian ad litem to represent all claimants whose identities are unknown. The reasonable fees and expenses of the guardian, including all reasonable

expert witness fees, must be paid by the dissolved limited liability company.
(4) A dissolved limited liability company that provides security in the amount and form ordered by the court under Subsection (1) satisfies the limited liability company's obligations with respect to claims that are contingent, have not been made known to the limited liability company, or are based on an event occurring after the effective date of dissolution, and such claims may not be enforced against a member or transferee that received assets in liquidation.

~~48-3a-708 Administrative dissolution.~~

~~(1) The division may commence a proceeding under Subsections (2) and (3) to dissolve a limited liability company administratively if the limited liability company does not:~~
~~(a) pay any fee, tax, interest, or penalty required to be paid to the division not later than 60 days after it is due;~~
~~(b) deliver an annual report to the division not later than 60 days after it is due; or~~
~~(c) have a registered agent in this state for 60 consecutive days.~~
~~(2) If the division determines that one or more grounds exist for administratively dissolving a limited liability company, the division shall serve the limited liability company with notice in a record of division's determination.~~
~~(3) If a limited liability company, not later than 60 days after service of the notice under Subsection (2), does not cure or demonstrate to the satisfaction of the division the nonexistence of each ground determined by the division, the division shall administratively dissolve the limited liability company by signing a statement of administrative dissolution that recites the grounds for dissolution and the effective date of dissolution. The division shall file the statement and serve a copy on the limited liability company pursuant to Section 48-3a-209.~~
~~(4) A limited liability company that is administratively dissolved continues in existence as an entity but may not carry on any activities except as necessary to wind up its activities and affairs and liquidate its assets under Sections 48-3a-703, 48-3a-705, 48-3a-706, 48-3a-707, and 48-3a-711, or to apply for reinstatement under Section 48-3a-709.~~
~~(5) The administrative dissolution of a limited liability company does not terminate the authority of its registered agent.~~

~~48-3a-709 Reinstatement.~~

~~(1) A limited liability company that is administratively dissolved under Section 48-3a-708 may apply to the division for reinstatement not later than two years after the effective date of dissolution. The application must state:~~
~~(a) the name of the limited liability company at the time of its administrative dissolution and, if needed, a different name that satisfies Section 48-3a-108;~~
~~(b) the address of the principal office of the limited liability company and the name and address of its registered agent;~~
~~(c) the effective date of the limited liability company's administrative dissolution; and~~
~~(d) that the grounds for dissolution did not exist or have been cured.~~
~~(2) To be reinstated, a limited liability company must pay all fees, taxes, interest, and penalties that were due to the division at the time of its administrative dissolution and all fees, taxes, interest, and penalties that would have been due to the division while the limited liability company was administratively dissolved.~~
~~(3) If the division determines that an application under Subsection (1) contains the information required by Subsection (1), is satisfied that the information is correct, and determines that all payments required to be made to the division by Subsection (2) have been made, the division shall:~~
~~(a) cancel the statement of administrative dissolution and prepare a statement of reinstatement that states the division's determination and the effective date of reinstatement;~~
~~(b) file the statement of reinstatement; and~~
~~(c) serve a copy of the statement of reinstatement on the limited liability company.~~
~~(4) When reinstatement under this section is effective, the following rules apply:~~
~~(a) The reinstatement relates back to and takes effect as of the effective date of the administrative dissolution.~~
~~(b) The limited liability company may resume its activities and affairs as if the administrative dissolution had~~

~~not occurred.~~
~~(c) The rights of a person arising out of an act or omission in reliance on the dissolution before the person knew or had notice of the reinstatement are not affected.~~

~~**48-3a-710 Judicial review of denial of reinstatement.**~~
~~(1) If the division denies a limited liability company's application for reinstatement following administrative dissolution, the division shall serve the limited liability company with a notice in a record that explains the reasons for the denial.~~
~~(2) A limited liability company may seek judicial review of denial of reinstatement in the district court not later than 30 days after service of the notice of denial.~~

48-3a-711 Disposition of assets in winding up.
(1) In winding up its activities and affairs, a limited liability company shall apply its assets to discharge its obligations to creditors, including members that are creditors.
(2) After a limited liability company complies with Subsection (1), any surplus must be distributed in the following order, subject to any charging order in effect under Section 48-3a-503:
(a) to each person owning a transferable interest that reflects contributions made and not previously returned, an amount equal to the value of the unreturned contributions; and
(b) in equal shares among members and dissociated members, except to the extent necessary to comply with any transfer effective under Section 48-3a-502.
(3) If a limited liability company does not have sufficient surplus to comply with Subsection (2)(a), any surplus must be distributed among the owners of transferable interests in proportion to the value of the respective unreturned contributions.
(4) All distributions made under Subsections (2) and (3) must be paid in money.

Part 8
Action by Members

48-3a-801 Direct action by member.
(1) Subject to Subsection (2), a member may maintain a direct action against another member, a manager, or the limited liability company to enforce the member's rights and otherwise protect the member's interests, including rights and interests under the operating agreement or this chapter or arising independently of the membership relationship.
(2) A member maintaining a direct action under this section must plead and prove an actual or threatened injury that is not solely the result of an injury suffered or threatened to be suffered by the limited liability company.

48-3a-802 Derivative action.
A member may maintain a derivative action to enforce a right of a limited liability company if:
(1) the member first makes a demand on the other members in a member-managed limited liability company, or the managers of a manager-managed limited liability company, requesting that they cause the limited liability company to bring an action to enforce the right, and the managers or other members do not bring the action within a reasonable time; or
(2) a demand under Subsection (1) would be futile.

48-3a-803 Proper plaintiff.
A derivative action to enforce a right of a limited liability company may be maintained only by a person that is a member at the time the action is commenced and:
(1) was a member when the conduct giving rise to the action occurred; or
(2) whose status as a member devolved on the person by operation of law or pursuant to the terms of the operating agreement from a person that was a member at the time of the conduct.

48-3a-804 Pleading.

In a derivative action, the complaint must state with particularity:
(1) the date and content of plaintiff's demand and the response by the managers or other members to the demand; or
(2) why the demand should be excused as futile.

48-3a-805 Special litigation committee.
(1) If a limited liability company is named as or made a party in a derivative proceeding, the limited liability company may appoint a special litigation committee to investigate the claims asserted in the proceeding and determine whether pursuing the action is in the best interests of the limited liability company. If the limited liability company appoints a special litigation committee, on motion by the committee made in the name of the limited liability company, except for good cause shown, the court shall stay discovery for the time reasonably necessary to permit the committee to make its investigation. This Subsection (1) does not prevent the court from:
(a) enforcing a person's right to information under Section 48-3a-410; or
(b) granting extraordinary relief in the form of a temporary restraining order or preliminary injunction upon a showing of good cause.
(2) A special litigation committee must be composed of one or more disinterested and independent individuals, who may be members.
(3) A special litigation committee may be appointed:
(a) in a member-managed limited liability company:
(i) by the consent of a majority of the members not named as parties in the proceeding; and
(ii) if all members are named as parties in the proceeding, by a majority of the members named as defendants; or
(b) in a manager-managed limited liability company:
(i) by a majority of the managers not named as parties in the proceeding; and
(ii) if all managers are named as parties in the proceeding, by a majority of the managers named as defendants.
(4) After appropriate investigation, a special litigation committee may determine that it is in the best interests of the limited liability company that the proceeding:
(a) continue under the control of the plaintiff;
(b) continue under the control of the committee;
(c) be settled on terms approved by the committee; or
(d) be dismissed.
(5) After making a determination under Subsection (4), a special litigation committee shall file with the court a statement of its determination and its report supporting its determination and shall serve each party with a copy of the determination and report. The court shall determine whether the members of the committee were disinterested and independent and whether the committee conducted its investigation and made its recommendation in good faith, independently, and with reasonable care, with the committee having the burden of proof. If the court finds that the members of the committee were disinterested and independent and that the committee acted in good faith, independently, and with reasonable care, the court shall enforce the determination of the committee. Otherwise, the court shall dissolve the stay of discovery entered under Subsection (1) and allow the action to continue under the control of the plaintiff.

48-3a-806 Proceeds and expenses.
(1) Except as otherwise provided in Subsection (2):
(a) any proceeds or other benefits of a derivative action, whether by judgment, compromise, or settlement, belong to the limited liability company and not to the plaintiff; and
(b) if the plaintiff receives any proceeds, the plaintiff shall remit them immediately to the limited liability company.
(2) If a derivative action is successful in whole or in part, the court may award the plaintiff reasonable expenses, including reasonable attorney's fees and costs, from the recovery of the limited liability company.
(3) A derivative action on behalf of a limited liability company may not be voluntarily dismissed or settled without the court's approval.

Part 9
Foreign Limited Liability Companies

48-3a-901 Governing law.

(1) The law of the jurisdiction of formation of a foreign limited liability company governs:

(a) the internal affairs of the foreign limited liability company; and

(b) the liability of a member as member and a manager as manager for a debt, obligation, or other liability of the company.

(2) A foreign limited liability company is not precluded from registering to do business in this state because of any difference between the law of the jurisdiction of formation and the law of this state.

(3) Registration of a foreign limited liability company to do business in this state does not authorize the foreign limited liability company to engage in any activities or affairs or exercise any power that a limited liability company may not engage in or exercise in this state.

(4)

(a) The division may permit a tribal limited liability company to apply for authority to transact business in the state in the same manner as a foreign limited liability company formed in another state.

(b) If a tribal limited liability company elects to apply for authority to transact business in the state, for purposes of this chapter, the tribal limited liability company shall be treated in the same manner as a foreign limited liability company formed under the laws of another state.

48-3a-902 Registration to do business in this state.

(1) A foreign limited liability company may not do business in this state until it registers with the division under this chapter.

(2) A foreign limited liability company doing business in this state may not maintain an action or proceeding in this state unless it is registered to do business in this state.

(3) The failure of a foreign limited liability company to register to do business in this state does not impair the validity of a contract or act of the foreign limited liability company or preclude it from defending an action or proceeding in this state.

(4) A limitation on the liability of a member or manager of a foreign limited liability company is not waived solely because the foreign limited liability company does business in this state without registering to do business in this state.

(5) Subsections 48-3a-901(1) and (2) apply even if a foreign limited liability company fails to register under this chapter.

48-3a-903 Foreign registration statement.

To register to do business in this state, a foreign limited liability company must deliver a foreign registration statement to the division for filing. The statement must state:

(1) the name of the foreign limited liability company and, if the name does not comply with Section 48-3a-108, an alternate name adopted pursuant to Subsection 48-3a-906(1);

(2) that the company is a foreign limited liability company;

(3) the name of the foreign limited liability company's jurisdiction of formation;

(4) the street and mailing addresses of the foreign limited liability company's principal office and, if the law of the jurisdiction of formation requires the foreign limited liability company to maintain an office in that jurisdiction, the street and mailing addresses of the required office; and

(5) the information required by Subsection 16-17-203(1).

48-3a-904 Amendment of foreign registration statement.

A registered foreign limited liability company shall deliver to the division for filing an amendment to its foreign registration statement if there is a change in:

(1) the name of the foreign limited liability company;

(2) the foreign limited liability company's jurisdiction of formation;

(3) an address required by Subsection 48-3a-903(4); or
(4) the information required by Subsection 48-3a-903(5).

48-3a-905 Activities not constituting doing business.
(1) Activities of a foreign limited liability company which do not constitute doing business in this state under this part include:
(a) maintaining, defending, mediating, arbitrating, or settling an action or proceeding;
(b) carrying on any activity concerning its internal affairs, including holding meetings of its members or managers;
(c) maintaining accounts in financial institutions;
(d) maintaining offices or agencies for the transfer, exchange, and registration of the securities of the foreign limited liability company or maintaining trustees or depositories with respect to those securities;
(e) selling through independent contractors;
(f) soliciting or obtaining orders by any means if the orders require acceptance outside this state before they become contracts;
(g) creating or acquiring indebtedness, mortgages, or security interests in property;
(h) securing or collecting debts or enforcing mortgages or security interests in property securing the debts and holding, protecting, or maintaining property;
(i) conducting an isolated transaction that is not in the course of similar transactions;
(j) owning, without more, property; and
(k) doing business in interstate commerce.
(2) A person does not do business in this state solely by being a member or manager of a foreign limited liability company that does business in this state.
(3) This section does not apply in determining the contacts or activities that may subject a foreign limited liability company to service of process, taxation, or regulation under law of this state other than this chapter.

48-3a-906 Noncomplying name of foreign limited liability company.
(1) A foreign limited liability company whose name does not comply with Section 48-3a-108 may not register to do business in this state until it adopts, for the purpose of doing business in this state, an alternate name that complies with Section 48-3a-108. A registered foreign limited liability company that registers under an alternate name under this Subsection (1) need not comply with Title 42, Chapter 2, Conducting Business Under Assumed Name. After registering to do business in this state with an alternate name, a registered foreign limited liability company shall do business in this state under:
(a) the alternate name;
(b) the foreign limited liability company's name, with the addition of its jurisdiction of formation; or
(c) an assumed or fictitious name the foreign limited liability company is authorized to use under Title 42, Chapter 2, Conducting Business Under Assumed Name.
(2) If a registered foreign limited liability company changes its name to one that does not comply with Section 48-3a-108, it may not do business in this state until it complies with Subsection (1) by amending its registration to adopt an alternate name that complies with Section 48-3a-108.

48-3a-907 Withdrawal deemed on conversion to domestic filing entity or domestic limited liability partnership.
A registered foreign limited liability company that converts to a domestic limited liability partnership or to a domestic entity that is organized, incorporated, or otherwise formed through the delivery of a record to the division for filing is deemed to have withdrawn its registration on the effective date of the conversion.

48-3a-908 Withdrawal on dissolution or conversion to nonfiling entity other than limited liability partnership.
(1) A registered foreign limited liability company that has dissolved and completed winding up or has converted to a domestic or foreign entity that is not organized, incorporated, or otherwise formed through the public filing of a record, other than a limited liability partnership, shall deliver a statement of withdrawal to the division for

~~filing. The statement must state:~~
~~(a) in the case of a foreign limited liability company that has completed winding up:~~
~~(i) its name and jurisdiction of formation; and~~
~~(ii) that the foreign limited liability company surrenders its registration to do business in this state; and~~
~~(b) in the case of a foreign limited liability company that has converted:~~
~~(i) the name of the converting foreign limited liability company and its jurisdiction of formation;~~
~~(ii) the type of entity to which the foreign limited liability company has converted and its jurisdiction of formation;~~
~~(iii) that the converted entity surrenders the converting foreign limited liability company's registration to do business in this state and revokes the authority of the converting foreign limited liability company's registered agent to act as registered agent in this state on behalf of the foreign limited liability company or the converted entity; and~~
~~(iv) a mailing address to which service of process may be made under Subsection (2).~~
~~(2) After a withdrawal under this section of a foreign limited liability company that has converted to another type of entity is effective, service of process in any action or proceeding based on a cause of action arising during the time the foreign limited liability company was registered to do business in this state may be made pursuant to Subsection 16-17-301(2).~~

~~48-3a-909 Transfer of registration.~~

~~(1) When a registered foreign limited liability company has merged into a foreign entity that is not registered to do business in this state or has converted to a foreign entity required to register with the division to do business in this state, the foreign entity shall deliver to the division for filing an application for transfer of registration. The application must state:~~
~~(a) the name of the registered foreign limited liability company before the merger or conversion;~~
~~(b) that before the merger or conversion the registration pertained to a foreign limited liability company;~~
~~(c) the name of the applicant foreign entity into which the foreign limited liability company has merged or to which it has been converted, and, if the name does not comply with Section 48-3a-108 or similar provision of law of this state governing an entity of the same type as the applicant foreign entity, an alternate name adopted pursuant to Subsection 48-3a-906(1) or similar provision of law of this state governing a foreign entity registered to do business in this state of the same type as the applicable foreign entity;~~
~~(d) the type of entity of the applicant foreign entity and its jurisdiction of formation;~~
~~(e) the street and mailing addresses of the principal office of the applicant foreign entity and, if the law of the entity's jurisdiction of formation requires the entity to maintain an office in that jurisdiction, the street and mailing addresses of that office; and~~
~~(f) the information required under Subsection 16-17-203(1).~~
~~(2) When an application for transfer of registration takes effect, the registration of the foreign limited liability company to do business in this state is transferred without interruption to the foreign entity into which the foreign company has merged or to which it has been converted.~~

~~48-3a-910 Termination of registration.~~

~~(1) The division may terminate the registration of a registered foreign limited liability company in the manner provided in Subsections (2) and (3) if the foreign limited liability company does not:~~
~~(a) pay, not later than 60 days after the due date, any fee, tax, interest, or penalty required to be paid to the division under this chapter or law other than this chapter;~~
~~(b) deliver to the division for filing, not later than 60 days after the due date, an annual report required under Section 48-3a-212;~~
~~(c) have a registered agent as required by Section 48-3a-111; or~~
~~(d) deliver to the division for filing a statement of a change under Section 16-17-206 not later than 30 days after a change has occurred in the name or address of the registered agent.~~
~~(2) The division may terminate the registration of a registered foreign limited liability company by:~~
~~(a) filing a notice of termination or noting the termination in the records of the division; and~~
~~(b) delivering a copy of the notice or the information in the notation to the foreign limited liability company's~~

~~registered agent, or if the foreign limited liability company does not have a registered agent, to the foreign limited liability company's principal office.~~
~~(3) A notice must state or the information in the notation must include:~~
~~(a) the effective date of the termination, which must be at least 60 days after the date the division delivers the copy; and~~
~~(b) the grounds for termination under Subsection (1).~~
~~(4) The authority of a registered foreign limited liability company to do business in this state ceases on the effective date of the notice of termination or notation under Subsection (2), unless before that date the foreign limited liability company cures each ground for termination stated in the notice or notation. If the foreign limited liability company cures each ground, the division shall file a record so stating.~~

~~48-3a-911 Withdrawal of registration of registered foreign limited liability company.~~
~~(1) A registered foreign limited liability company may withdraw its registration by delivering a statement of withdrawal to the division for filing. The statement of withdrawal must state:~~
~~(a) the name of the foreign limited liability company and its jurisdiction of formation;~~
~~(b) that the foreign limited liability company is not doing business in this state and that it withdraws its registration to do business in this state;~~
~~(c) that the foreign limited liability company revokes the authority of its registered agent to accept service on its behalf in this state; and~~
~~(d) an address to which service of process may be made under Subsection (2).~~
~~(2) After the withdrawal of the registration of a foreign limited liability company, service of process in any action or proceeding based on a cause of action arising during the time the foreign limited liability company was registered to do business in this state may be made pursuant to Subsection 16-17-301(2).~~

48-3a-912 Action by attorney general.

The attorney general may maintain an action to enjoin a foreign limited liability company from doing business in this state in violation of this part.

Part 10
Merger, Interest Exchange, Conversion, and Domestication

48-3a-1001 Definitions.

In this part:
(1) "Acquired entity" means the entity, all of one or more classes or series of interests which are acquired in an interest exchange.
(2) "Acquiring entity" means the entity that acquires all of one or more classes or series of interests of the acquired entity in an interest exchange.
(3) "Conversion" means a transaction authorized by Sections 48-3a-1041 through 48-3a-1046.
(4) "Converted entity" means the converting entity as it continues in existence after a conversion.
(5) "Converting entity" means the domestic entity that approves a plan of conversion pursuant to Section 48-3a-1043 or the foreign entity that approves a conversion pursuant to the law of its jurisdiction of formation.
(6) "Distributional interest" means the right under an unincorporated entity's organic law and organic rules to receive distributions from the entity.
(7) "Domestic," with respect to an entity, means governed as to its internal affairs by the law of this state.
(8) "Domesticated limited liability company" means the domesticating limited liability company as it continues in existence after a domestication.
(9) "Domesticating limited liability company" means the domestic limited liability company that approves a plan of domestication pursuant to Section 48-3a-1053 or the foreign limited liability company that approves a domestication pursuant to the law of its jurisdiction of formation.
(10) "Domestication" means a transaction authorized by Sections 48-3a-1051 through 48-3a-1056.
(11) "Entity":
(a) means:

(i) a business corporation;
(ii) a nonprofit corporation;
(iii) a general partnership, including a limited liability partnership;
(iv) a limited partnership, including a limited liability limited partnership;
(v) a limited liability company;
(vi) a limited cooperative association;
(vii) an unincorporated nonprofit association;
(viii) a statutory trust, business trust, or common-law business trust; or
(ix) any other person that has:
(A) a legal existence separate from any interest holder of that person; or
(B) the power to acquire an interest in real property in its own name; and
(b) does not include:
(i) an individual;
(ii) a trust with a predominantly donative purpose or a charitable trust;
(iii) an association or relationship that is not a partnership solely by reason of Subsection 48-1d-202(3) or a similar provision of the law of another jurisdiction;
(iv) a decedent's estate; or
(v) a government or a governmental subdivision, agency, or instrumentality.
(12) "Filing entity" means an entity whose formation requires the filing of a public organic record.
(13) "Foreign," with respect to an entity, means an entity governed as to its internal affairs by the law of a jurisdiction other than this state.
(14) "Governance interest" means a right under the organic law or organic rules of an unincorporated entity, other than as a governor, agent, assignee, or proxy, to:
(a) receive or demand access to information concerning, or the books and records of, the entity;
(b) vote for or consent to the election of the governors of the entity; or
(c) receive notice of or vote on or consent to an issue involving the internal affairs of the entity.
(15) "Governor" means:
(a) a director of a business corporation;
(b) a director or trustee of a nonprofit corporation;
(c) a general partner of a general partnership;
(d) a general partner of a limited partnership;
(e) a manager of a manager-managed limited liability company;
(f) a member of a member-managed limited liability company;
(g) a director of a limited cooperative association;
(h) a manager of an unincorporated nonprofit association;
(i) a trustee of a statutory trust, business trust, or common-law business trust; or
(j) any other person under whose authority the powers of an entity are exercised and under whose direction the activities and affairs of the entity are managed pursuant to the organic law and organic rules of the entity.
(16) "Interest" means:
(a) a share in a business corporation;
(b) a membership in a nonprofit corporation;
(c) a partnership interest in a general partnership;
(d) a partnership interest in a limited partnership;
(e) a membership interest in a limited liability company;
(f) a member's interest in a limited cooperative association;
(g) a membership in an unincorporated nonprofit association;
(h) a beneficial interest in a statutory trust, business trust, or common-law business trust; or
(i) a governance interest or distributional interest in any other type of unincorporated entity.
(17) "Interest exchange" means a transaction authorized by Sections 48-3a-1031 through 48-3a-1036.
(18) "Interest holder" means:
(a) a shareholder of a business corporation;
(b) a member of a nonprofit corporation;

(c) a general partner of a general partnership;
(d) a general partner of a limited partnership;
(e) a limited partner of a limited partnership;
(f) a member of a limited liability company;
(g) a member of a limited cooperative association;
(h) a member of an unincorporated nonprofit association;
(i) a beneficiary or beneficial owner of a statutory trust, business trust, or common-law business trust; or
(j) any other direct holder of an interest.
(19) "Interest holder liability" means:
(a) personal liability for a liability of an entity which is imposed on a person:
(i) solely by reason of the status of the person as an interest holder; or
(ii) by the organic rules of the entity which make one or more specified interest holders or categories of interest holders liable in their capacity as interest holders for all or specified liabilities of the entity; or
(b) an obligation of an interest holder under the organic rules of an entity to contribute to the entity.
(20) "Merger" means a transaction authorized by Sections 48-3a-1021 through 48-3a-1026.
(21) "Merging entity" means an entity that is a party to a merger and exists immediately before the merger becomes effective.
(22) "Organic law" means the law of an entity's jurisdiction of formation governing the internal affairs of the entity.
(23) "Organic rules" means the public organic record and private organic rules of an entity.
(24) "Plan" means a plan of merger, plan of interest exchange, plan of conversion, or plan of domestication.
(25) "Plan of conversion" means a plan under Section 48-3a-1042.
(26) "Plan of domestication" means a plan under Section 48-3a-1052.
(27) "Plan of interest exchange" means a plan under Section 48-3a-1032.
(28) "Plan of merger" means a plan under Section 48-3a-1022.
(29) "Private organic rules" means the rules, whether or not in a record, that govern the internal affairs of an entity, are binding on all its interest holders, and are not part of its public organic record, if any. The term includes:
(a) the bylaws of a business corporation;
(b) the bylaws of a nonprofit corporation;
(c) the partnership agreement of a general partnership;
(d) the partnership agreement of a limited partnership;
(e) the operating agreement of a limited liability company;
(f) the bylaws of a limited cooperative association;
(g) the governing principles of an unincorporated nonprofit association; and
(h) the trust instrument of a statutory trust or similar rules of a business trust or common-law business trust.
(30) "Protected agreement" means:
(a) a record evidencing indebtedness and any related agreement in effect on January 1, 2014;
(b) an agreement that is binding on an entity on January 1, 2014;
(c) the organic rules of an entity in effect on January 1, 2014; or
(d) an agreement that is binding on any of the governors or interest holders of an entity on January 1, 2014.
(31) "Public organic record" means the record the filing of which by the division is required to form an entity and any amendment to or restatement of that record. The term includes:
(a) the articles of incorporation of a business corporation;
(b) the articles of incorporation of a nonprofit corporation;
(c) the certificate of limited partnership of a limited partnership;
(d) the certificate of organization of a limited liability company;
(e) the articles of organization of a limited cooperative association; and
(f) the certificate of trust of a statutory trust or similar record of a business trust.
(32) "Registered foreign entity" means a foreign entity that is registered to do business in this state pursuant to a record filed by the division.
(33) "Statement of conversion" means a statement under Section 48-3a-1045.

(34) “Statement of domestication” means a statement under Section 48-3a-1055.
(35) “Statement of interest exchange” means a statement under Section 48-3a-1035.
(36) “Statement of merger” means a statement under Section 48-3a-1025.
(37) “Surviving entity” means the entity that continues in existence after or is created by a merger.
(38) “Type of entity” means a generic form of entity:
(a) recognized at common law; or
(b) formed under an organic law, whether or not some entities formed under that organic law are subject to provisions of that law that create different categories of the form of entity.

48-3a-1002 Relationship of part to other laws.

This part does not authorize an act prohibited by, and does not affect the application or requirements of, law other than this chapter.

48-3a-1003 Required notice or approval.

(1) A domestic or foreign entity that is required to give notice to, or obtain the approval of, a governmental agency or officer of this state to be a party to a merger must give the notice or obtain the approval to be a party to an interest exchange, conversion, or domestication.
(2) Property held for a charitable purpose under the law of this state by a domestic or foreign entity immediately before a transaction under this part becomes effective may not, as a result of the transaction, be diverted from the objects for which it was donated, granted, devised, or otherwise transferred unless, to the extent required by or pursuant to the law of this state concerning cy pres or other law dealing with nondiversion of charitable assets, the entity obtains an appropriate order of the district court specifying the disposition of the property.
(3) A bequest, devise, gift, grant, or promise contained in a will or other instrument of donation, subscription, or conveyance that is made to a merging entity that is not the surviving entity and that takes effect or remains payable after the merger inures to the surviving entity. A trust obligation that would govern property if transferred to the nonsurviving entity applies to property that is transferred to the surviving entity under this section.

48-3a-1004 Status of filings.

A filing under this part signed by a domestic entity becomes part of the public organic record of the entity if the entity’s organic law provides that similar filings under that law become part of the public organic record of the entity.

48-3a-1005 Nonexclusivity.

The fact that a transaction under this part produces a certain result does not preclude the same result from being accomplished in any other manner permitted by law other than this part.

48-3a-1006 References to external facts.

A plan may refer to facts ascertainable outside the plan if the manner in which the facts will operate upon the plan is specified in the plan. The facts may include the occurrence of an event or a determination or action by a person, whether or not the event, determination, or action is within the control of a party to the transaction.

48-3a-1007 Alternative means of approval of transactions.

Except as otherwise provided in the organic law or organic rules of a domestic entity, approval of a transaction under this part by the unanimous vote or consent of its interest holders satisfies the requirements of this part for approval of the transaction.

48-3a-1008 Appraisal rights.

(1) An interest holder of a domestic merging, acquired, converting, or domesticating entity is entitled to appraisal rights in connection with the transaction if the interest holder would have been entitled to appraisal rights under the entity’s organic law in connection with a merger in which the interest of the interest holder was

changed, converted, or exchanged unless:
(a) the organic law permits the organic rules to limit the availability of appraisal rights; and
(b) the organic rules provide such a limit.
(2) An interest holder of a domestic merging, acquired, converting, or domesticating entity is entitled to contractual appraisal rights in connection with a transaction under this part to the extent provided in:
(a) the entity's organic rules; or
(b) the plan.

48-3a-1021 Merger authorized.
(1) By complying with Sections 48-3a-1021 through 48-3a-1026:
(a) one or more domestic limited liability companies may merge with one or more domestic or foreign entities into a domestic or foreign surviving entity; and
(b) two or more foreign entities may merge into a domestic limited liability company.
(2) By complying with the provisions of Sections 48-3a-1021 through 48-3a-1026 applicable to foreign entities, a foreign entity may be a party to a merger under Sections 48-3a-1021 through 48-3a-1026 or may be the surviving entity in such a merger if the merger is authorized by the law of the foreign entity's jurisdiction of formation.

48-3a-1022 Plan of merger.
(1) A domestic limited liability company may become a party to a merger under Sections 48-3a-1021 through 48-3a-1026 by approving a plan of merger. The plan must be in a record and contain:
(a) as to each merging entity, its name, jurisdiction of formation, and type of entity;
(b) if the surviving entity is to be created in the merger, a statement to that effect and the entity's name, jurisdiction of formation, and type of entity;
(c) the manner of converting the interests in each party to the merger into interests, securities, obligations, money, other property, rights to acquire interests or securities, or any combination of the foregoing;
(d) if the surviving entity exists before the merger, any proposed amendments to its public organic record, if any, or to its private organic rules that are, or are proposed to be, in a record;
(e) if the surviving entity is to be created in the merger, its proposed public organic record, if any, and the full text of its private organic rules that are proposed to be in a record;
(f) the other terms and conditions of the merger; and
(g) any other provision required by the law of a merging entity's jurisdiction of formation or the organic rules of a merging entity.
(2) In addition to the requirements of Subsection (1), a plan of merger may contain any other provision not prohibited by law.

48-3a-1023 Approval of merger.
(1) A plan of merger is not effective unless it has been approved:
(a) by a domestic merging limited liability company, by all the members of the limited liability company entitled to vote on or consent to any matter; and
(b) in a record, by each member of a domestic merging limited liability company that will have interest holder liability for debts, obligations, and other liabilities that arise after the merger becomes effective, unless:
(i) the operating agreement of the limited liability company in a record provides for the approval of a merger in which some or all of its members become subject to interest holder liability by the vote or consent of fewer than all the members; and
(ii) the member consented in a record to or voted for that provision of the operating agreement or became a member after the adoption of that provision.
(2) A merger involving a domestic merging entity that is not a limited liability company is not effective unless the merger is approved by that entity in accordance with its organic law.
(3) A merger involving a foreign merging entity is not effective unless the merger is approved by the foreign entity in accordance with the law of the foreign entity's jurisdiction of formation.

48-3a-1024 Amendment or abandonment of plan of merger.
(1) A plan of merger may be amended only with the consent of each party to the plan, except as otherwise provided in the plan.
(2) A domestic merging limited liability company may approve an amendment of a plan of merger:
(a) in the same manner as the plan was approved, if the plan does not provide for the manner in which it may be amended; or
(b) by the managers or members in the manner provided in the plan, but a member that was entitled to vote on or consent to approval of the merger is entitled to vote on or consent to any amendment of the plan that will change:
(i) the amount or kind of interests, securities, obligations, money, other property, rights to acquire interests or securities, or any combination of the foregoing, to be received by the interest holders of any party to the plan;
(ii) the public organic record, if any, or private organic rules of the surviving entity that will be in effect immediately after the merger becomes effective, except for changes that do not require approval of the interest holders of the surviving entity under its organic law or organic rules; or
(iii) any other terms or conditions of the plan, if the change would adversely affect the member in any material respect.
(3) After a plan of merger has been approved and before a statement of merger becomes effective, the plan may be abandoned as provided in the plan. Unless prohibited by the plan, a domestic merging limited liability company may abandon the plan in the same manner as the plan was approved.
(4) If a plan of merger is abandoned after a statement of merger has been delivered to the division for filing and before the statement becomes effective, a statement of abandonment, signed by a party to the plan, must be delivered to the division for filing before the statement of merger becomes effective. The statement of abandonment takes effect on filing, and the merger is abandoned and does not become effective. The statement of abandonment must contain:
(a) the name of each party to the plan of merger;
(b) the date on which the statement of merger was delivered to the division for filing; and
(c) a statement that the merger has been abandoned in accordance with this section.

48-3a-1025 Statement of merger.
(1) A statement of merger must be signed by each merging entity and delivered to the division for filing.
(2) A statement of merger must contain:
(a) the name, jurisdiction of formation, and type of entity of each merging entity that is not the surviving entity;
(b) the name, jurisdiction of formation, and type of entity of the surviving entity;
(c) a statement that the merger was approved by each domestic merging entity, if any, in accordance with Sections 48-3a-1021 through 48-3a-1026 and by each foreign merging entity, if any, in accordance with the law of its jurisdiction of formation;
(d) if the surviving entity exists before the merger and is a domestic filing entity, any amendment to its public organic record approved as part of the plan of merger;
(e) if the surviving entity is created by the merger and is a domestic filing entity, its public organic record, as an attachment;
(f) if the surviving entity is created by the merger and is a domestic limited liability partnership, its statement of qualification, as an attachment; and
(g) if the surviving entity is a foreign entity that is not a registered foreign entity, a mailing address to which the division may send any process served on the division pursuant to Subsection 48-3a-1026(5).
(3) In addition to the requirements of Subsection (2), a statement of merger may contain any other provision not prohibited by law.
(4) If the surviving entity is a domestic entity, its public organic record, if any, must satisfy the requirements of the law of this state, but the public organic record does not need to be signed.
(5) A plan of merger that is signed by all the merging entities and meets all the requirements of Subsection (2) may be delivered to the division for filing instead of a statement of merger and on filing has the same effect. If a plan of merger is filed as provided in this Subsection (5), references in this part to a statement of merger refer to the plan of merger filed under this Subsection (5).

48-3a-1026 Effect of merger.
(1) When a merger becomes effective:
(a) the surviving entity continues or comes into existence;
(b) each merging entity that is not the surviving entity ceases to exist;
(c) all property of each merging entity vests in the surviving entity without transfer, reversion, or impairment;
(d) all debts, obligations, and other liabilities of each merging entity are debts, obligations, and other liabilities of the surviving entity;
(e) except as otherwise provided by law or the plan of merger, all the rights, privileges, immunities, powers, and purposes of each merging entity vest in the surviving entity;
(f) if the surviving entity exists before the merger:
(i) all its property continues to be vested in it without transfer, reversion, or impairment;
(ii) it remains subject to all its debts, obligations, and other liabilities; and
(iii) all its rights, privileges, immunities, powers, and purposes continue to be vested in it;
(g) the name of the surviving entity may be substituted for the name of any merging entity that is a party to any pending action or proceeding;
(h) if the surviving entity exists before the merger:
(i) its public organic record, if any, is amended as provided in the statement of merger; and
(ii) its private organic rules that are to be in a record, if any, are amended to the extent provided in the plan of merger;
(i) if the surviving entity is created by the merger:
(i) its public organic record, if any, is effective; and
(ii) its private organic rules are effective; and
(j) the interests in each merging entity which are to be converted in the merger are converted, and the interest holders of those interests are entitled only to the rights provided to them under the plan of merger and to any appraisal rights they have under Section 48-3a-1008 and the merging entity's organic law.
(2) Except as otherwise provided in the organic law or organic rules of a merging entity, the merger does not give rise to any rights that an interest holder, governor, or third party would have upon a dissolution, liquidation, or winding up of the merging entity.
(3) When a merger becomes effective, a person that did not have interest holder liability with respect to any of the merging entities and becomes subject to interest holder liability with respect to a domestic entity as a result of the merger has interest holder liability only to the extent provided by the organic law of that entity and only for those debts, obligations, and other liabilities that arise after the merger becomes effective.
(4) When a merger becomes effective, the interest holder liability of a person that ceases to hold an interest in a domestic merging entity with respect to which the person had interest holder liability is as follows:
(a) The merger does not discharge any interest holder liability under the organic law of the domestic merging entity to the extent the interest holder liability arose before the merger became effective.
(b) The person does not have interest holder liability under the organic law of the domestic merging entity for any debt, obligation, or other liability that arises after the merger becomes effective.
(c) The organic law of the domestic merging entity continues to apply to the release, collection, or discharge of any interest holder liability preserved under Subsection (4)(a) as if the merger had not occurred and the surviving entity were the domestic merging entity.
(d) The person has whatever rights of contribution from any other person as are provided by law other than this chapter, this chapter, or the organic rules of the domestic merging entity with respect to any interest holder liability preserved under Subsection (4)(a) as if the merger had not occurred.
(5) When a merger becomes effective, a foreign entity that is the surviving entity may be served with process in this state for the collection and enforcement of any debts, obligations, or other liabilities of a domestic merging entity as provided in Section ~~16-17-301~~13-1a-511.
(6) When a merger becomes effective, the registration to do business in this state of any foreign merging entity that is not the surviving entity is canceled.

48-3a-1031 Interest exchange authorized.

(1) By complying with Sections 48-3a-1031 through 48-3a-1036:
(a) a domestic limited liability company may acquire all of one or more classes or series of interests of another domestic or foreign entity in exchange for interests, securities, obligations, money, other property, rights to acquire interests or securities, or any combination of the foregoing; or
(b) all of one or more classes or series of interests of a domestic limited liability company may be acquired by another domestic or foreign entity in exchange for interests, securities, obligations, money, other property, rights to acquire interests or securities, or any combination of the foregoing.
(2) By complying with the provisions of Sections 48-3a-1031 through 48-3a-1036 applicable to foreign entities, a foreign entity may be the acquiring or acquired entity in an interest exchange under Sections 48-3a-1031 through 48-3a-1036 if the interest exchange is authorized by the law of the foreign entity's jurisdiction of formation.
(3) If a protected agreement contains a provision that applies to a merger of a domestic limited liability company but does not refer to an interest exchange, the provision applies to an interest exchange in which the domestic limited liability company is the acquired entity as if the interest exchange were a merger until the provision is amended after January 1, 2014.

48-3a-1032 Plan of interest exchange.
(1) A domestic limited liability company may be the acquired entity in an interest exchange under Sections 48-3a-1031 through 48-3a-1036 by approving a plan of interest exchange. The plan must be in a record and contain:
(a) the name of the acquired entity;
(b) the name, jurisdiction of formation, and type of entity of the acquiring entity;
(c) the manner of converting the interests in the acquired entity into interests, securities, obligations, money, other property, rights to acquire interests or securities, or any combination of the foregoing;
(d) any proposed amendments to the certificate of organization or operating agreement that are, or are proposed to be, in a record of the acquired entity;
(e) the other terms and conditions of the interest exchange; and
(f) any other provision required by the law of this state or the operating agreement of the acquired entity.
(2) In addition to the requirements of Subsection (1), a plan of interest exchange may contain any other provision not prohibited by law.

48-3a-1033 Approval of interest exchange.
(1) A plan of interest exchange is not effective unless it has been approved:
(a) by all the members of a domestic acquired limited liability company entitled to vote on or consent to any matter; and
(b) in a record, by each member of the domestic acquired limited liability company that will have interest holder liability for debts, obligations, and other liabilities that arise after the interest exchange becomes effective, unless:
(i) the operating agreement of the limited liability company in a record provides for the approval of an interest exchange or a merger in which some or all of its members become subject to interest holder liability by the vote or consent of fewer than all the members; and
(ii) the member consented in a record to or voted for that provision of the operating agreement or became a member after the adoption of that provision.
(2) An interest exchange involving a domestic acquired entity that is not a limited liability company is not effective unless it is approved by the domestic entity in accordance with its organic law.
(3) An interest exchange involving a foreign acquired entity is not effective unless it is approved by the foreign entity in accordance with the law of the foreign entity's jurisdiction of formation.
(4) Except as otherwise provided in its organic law or organic rules, the interest holders of the acquiring entity are not required to approve the interest exchange.

48-3a-1034 Amendment or abandonment of plan of interest exchange.
(1) A plan of interest exchange may be amended only with the consent of each party to the plan, except as

otherwise provided in the plan.
(2) A domestic acquired limited liability company may approve an amendment of a plan of interest exchange:
(a) in the same manner as the plan was approved, if the plan does not provide for the manner in which it may be amended; or
(b) by the managers or members of the domestic acquired limited liability company in the manner provided in the plan, but an interest holder that was entitled to vote on or consent to approval of the interest exchange is entitled to vote on or consent to any amendment of the plan that will change:
(i) the amount or kind of interests, securities, obligations, money, other property, rights to acquire interests or securities, or any combination of the foregoing, to be received by any of the members of the acquired limited liability company under the plan;
(ii) the certificate of organization or operating agreement of the acquired limited liability company that will be in effect immediately after the interest exchange becomes effective, except for changes that do not require approval of the members of the acquired limited liability company under this chapter or the operating agreement; or
(iii) any other terms or conditions of the plan, if the change would adversely affect the member in any material respect.
(3) After a plan of interest exchange has been approved and before a statement of interest exchange becomes effective, the plan may be abandoned as provided in the plan. Unless prohibited by the plan, a domestic acquired limited liability company may abandon the plan in the same manner as the plan was approved.
(4) If a plan of interest exchange is abandoned after a statement of interest exchange has been delivered to the division for filing and before the statement becomes effective, a statement of abandonment, signed by the acquired limited liability company, must be delivered to the division for filing before the statement of interest exchange becomes effective. The statement of abandonment takes effect on filing, and the interest exchange is abandoned and does not become effective. The statement of abandonment must contain:
(a) the name of the acquired limited liability company;
(b) the date on which the statement of interest exchange was delivered to the division for filing; and
(c) a statement that the interest exchange has been abandoned in accordance with this section.

48-3a-1035 Statement of interest exchange.
(1) A statement of interest exchange must be signed by a domestic acquired limited liability company and delivered to the division for filing.
(2) A statement of interest exchange must contain:
(a) the name of the acquired limited liability company;
(b) the name, jurisdiction of formation, and type of entity of the acquiring entity;
(c) a statement that the plan of interest exchange was approved by the acquired limited liability entity in accordance with Sections 48-3a-1031 through 48-3a-1036; and
(d) any amendments to the acquired limited liability company's certificate of organization approved as part of the plan of interest exchange.
(3) In addition to the requirements of Subsection (2), a statement of interest exchange may contain any other provision not prohibited by law.
(4) A plan of interest exchange that is signed by a domestic acquired limited liability company and meets all the requirements of Subsection (2) may be delivered to the division for filing instead of a statement of interest exchange and on filing has the same effect. If a plan of interest exchange is filed as provided in this Subsection (4), references in this part to a statement of interest exchange refer to the plan of interest exchange filed under this Subsection (4).

48-3a-1036 Effect of interest exchange.
(1) When an interest exchange in which the acquired entity is a domestic limited liability company becomes effective:
(a) the interests in a domestic limited liability company that are the subject of the interest exchange cease to exist or are converted or exchanged, and the members holding those interests are entitled only to the rights provided to them under the plan of interest exchange and to any appraisal rights they have under Section

48-3a-1008;
(b) the acquiring entity becomes the interest holder of the interests in the acquired limited liability company stated in the plan of interest exchange to be acquired by the acquiring entity;
(c) the certificate of organization of the acquired limited liability company is amended as provided in the statement of interest exchange; and
(d) the provisions of the operating agreement of the acquired limited liability company that are to be in a record, if any, are amended to the extent provided in the plan of interest exchange.
(2) Except as otherwise provided in the operating agreement of a domestic acquired limited liability company, the interest exchange does not give rise to any rights that a member, manager, or third party would have upon a dissolution, liquidation, or winding up of the acquired limited liability company.
(3) When an interest exchange becomes effective, a person that did not have interest holder liability with respect to a domestic acquired limited liability company and becomes subject to interest holder liability with respect to a domestic entity as a result of the interest exchange has interest holder liability only to the extent provided by the organic law of the entity and only for those debts, obligations, and other liabilities that arise after the interest exchange becomes effective.
(4) When an interest exchange becomes effective, the interest holder liability of a person that ceases to hold an interest in a domestic acquired limited liability company with respect to which the person had interest holder liability is as follows:
(a) The interest exchange does not discharge any interest holder liability to the extent the interest holder liability arose before the interest exchange became effective.
(b) The person does not have interest holder liability for any debt, obligation, or other liability that arises after the interest exchange becomes effective.
(c) The person has whatever rights of contribution from any other person as are provided by law other than this chapter, this chapter, or the operating agreement of the acquired limited liability company with respect to any interest holder liability preserved under Subsection (4)(a) as if the interest exchange had not occurred.

48-3a-1041 Conversion authorized.
(1) As used in Sections 48-3a-1041 through 48-3a-1046, the term "subject entity" includes a corporation, a business trust or association, a real estate investment trust, a common-law trust, or any other unincorporated business, including a general partnership, a registered limited liability partnership, a limited partnership, a nonprofit corporation, or a foreign company.
(2) A subject entity may convert to a domestic company by complying with Sections 48-3a-1041 through 48-3a-1046.
(3) By complying with Sections 48-3a-1041 through 48-3a-1046, a domestic limited liability company may become:
(a) a domestic entity that is a different type of entity; or
(b) a foreign entity that is a different type of entity, if the conversion is authorized by the law of the foreign jurisdiction.
(4) By complying with the provisions of Sections 48-3a-1041 through 48-3a-1046 applicable to foreign entities, a foreign entity that is not a foreign limited liability company may become a domestic limited liability company if the conversion is authorized by the law of the foreign entity's jurisdiction of formation.
(5) If a protected agreement contains a provision that applies to a merger of a domestic limited liability company but does not refer to a conversion, the provision applies to a conversion of the entity as if the conversion were a merger until the provision is amended after January 1, 2014.

48-3a-1042 Plan of conversion.
(1) A subject entity may convert to a domestic limited liability company or a domestic limited liability company may convert to a different type of entity under Sections 48-3a-1041 through 48-3a-1046 by approving a plan of conversion. The plan must be in a record and contain:
(a) the name of the converting subject entity or limited liability company;
(b) the name, jurisdiction of formation, and type of entity of the converted entity;
(c) the manner of converting the interests in the converting subject entity or limited liability company into

interests, securities, obligations, money, other property, rights to acquire interests or securities, or any combination of the foregoing;
(d) the proposed public organic record of the converted entity if it will be a filing entity;
(e) the full text of the private organic rules of the converted entity that are proposed to be in a record;
(f) the other terms and conditions of the conversion; and
(g) any other provision required by the law of this state or the operating agreement of the converting limited liability company.
(2) In addition to the requirements of Subsection (1), a plan of conversion may contain any other provision not prohibited by law.

48-3a-1043 Approval of conversion.
(1) A plan of conversion is not effective unless it has been approved:
(a) by a domestic converting limited liability company by all the members of the limited liability company entitled to vote on or consent to any matter; and
(b) in a record, by each member of a domestic converting limited liability company that will have interest holder liability for debts, obligations, and other liabilities that arise after the conversion becomes effective:
(i) the operating agreement of the limited liability company provides in a record for the approval of a conversion or a merger in which some or all of its interest holders become subject to interest holder liability by the vote or consent of fewer than all the interest holders; and
(ii) the member voted for or consented in a record to that provision of the operating agreement or became a member after the adoption of that provision.
(2) A conversion involving a domestic converting entity that is not a limited liability company, including a subject entity, is not effective unless it is approved by the domestic converting entity in accordance with its organic law.
(3) A conversion of a foreign converting entity is not effective unless it is approved by the foreign entity in accordance with the law of the foreign entity's jurisdiction of formation.

48-3a-1044 Amendment or abandonment of plan of conversion.
(1) A plan of conversion of a subject entity or domestic converting limited liability company may be amended:
(a) in the same manner as the plan was approved, if the plan does not provide for the manner in which it may be amended; or
(b) by the managers or members of the entity in the manner provided in the plan, but a member that was entitled to vote on or consent to approval of the conversion is entitled to vote on or consent to any amendment of the plan that will change:
(i) the amount or kind of interests, securities, obligations, money, other property, rights to acquire interests or securities, or any combination of the foregoing, to be received by any of the interest holders of the converting entity under the plan;
(ii) the public organic record or private organic rules of the converted entity that will be in effect immediately after the conversion becomes effective, except for changes that do not require approval of the interest holders of the converted entity under its organic law or organic rules; or
(iii) any other terms or conditions of the plan, if the change would adversely affect the interest holder in any material respect.
(2) After a plan of conversion has been approved and before a statement of conversion becomes effective, the plan may be abandoned as provided in the plan. Unless prohibited by the plan, a subject entity or domestic converting limited liability company may abandon the plan in the same manner as the plan was approved.
(3) If a plan of conversion is abandoned after a statement of conversion has been delivered to the division for filing and before the statement of conversion becomes effective, a statement of abandonment, signed by the converting entity, must be delivered to the division for filing before the time the statement of conversion becomes effective. The statement of abandonment takes effect on filing, and the conversion is abandoned and does not become effective. The statement of abandonment must contain:
(a) the name of the converting subject entity or limited liability company;
(b) the date on which the statement of conversion was delivered to the division for filing; and

(c) a statement that the conversion has been abandoned in accordance with this section.

48-3a-1045 Statement of conversion.
(1) A statement of conversion must be signed by the converting entity and delivered to the division for filing.
(2) A statement of conversion must contain:
(a) the name, jurisdiction of formation, and type of entity of the converting entity;
(b) the name, jurisdiction of formation, and type of entity of the converted entity;
(c) if the converting entity is a domestic entity, a statement that the plan of conversion was approved in accordance with Sections 48-3a-1041 through 48-3a-1046 or, if the converting entity is a foreign entity, a statement that the conversion was approved by the foreign converting entity in accordance with the law of its jurisdiction of formation;
(d) if the converted entity is a domestic filing entity, the text of its public organic record, as an attachment;
(e) if the converted entity is a domestic limited liability partnership, the text of its statement of qualification, as an attachment; and
(f) if the converted entity is a foreign entity that is not a registered foreign entity, a mailing address to which the division may send any process served on the division pursuant to Subsection 48-3a-1046(5).
(3) In addition to the requirements of Subsection (2), a statement of conversion may contain any other provision not prohibited by law.
(4) If a converted entity is a domestic entity, its public organic record, if any, must satisfy the requirements of the law of this state, but the public organic record does not need to be signed.
(5) A plan of conversion that is signed by a domestic converting entity and meets all the requirements of Subsection (2) may be delivered to the division for filing instead of a statement of conversion and on filing has the same effect. If a plan of conversion is filed as provided in this Subsection (5), references in this part to a statement of conversion refer to the plan of conversion filed under this Subsection (5).

48-3a-1046 Effect of conversion.
(1) When a conversion in which the converted entity is a subject entity or domestic limited liability company becomes effective:
(a) the converted entity is:
(i) organized under and subject to this chapter; and
(ii) the same entity without interruption as the converting entity;
(b) all property of the converting entity continues to be vested in the converted entity without transfer, reversion, or impairment;
(c) all debts, obligations, and other liabilities of the converting entity continue as debts, obligations, and other liabilities of the converted entity;
(d) except as otherwise provided by law or the plan of conversion, all the rights, privileges, immunities, powers, and purposes of the converting entity remain in the converted entity;
(e) the name of the converted entity may be substituted for the name of the converting entity in any pending action or proceeding;
(f) the provisions of the operating agreement of the converted entity that are to be in a record, if any, approved as part of the plan of conversion are effective; and
(g) the interests in the converting entity are converted, and the interest holders of the converting entity are entitled only to the rights provided to them under the plan of conversion and to any appraisal rights they have under Section 48-3a-1008 and the converting entity's organic law.
(2) Except as otherwise provided in the operating agreement of a domestic converting limited liability company, the conversion does not give rise to any rights that a member, manager, or third party would have upon a dissolution, liquidation, or winding up of the converting entity.
(3) When a conversion becomes effective, a person that did not have interest holder liability with respect to the converting entity and becomes subject to interest holder liability with respect to a domestic entity as a result of the conversion has interest holder liability only to the extent provided by the organic law of the entity and only for those debts, obligations, and other liabilities that arise after the conversion becomes effective.
(4) When a conversion becomes effective, the interest holder liability of a person that ceases to hold an interest

in a domestic limited liability company with respect to which the person had interest holder liability is as follows:
(a) the conversion does not discharge any interest holder liability to the extent the interest holder liability arose before the conversion became effective;
(b) the person does not have interest holder liability for any debt, obligation, or other liability that arises after the conversion becomes effective; and
(c) the person has whatever rights of contribution from any other person as are provided by law other than this chapter, this chapter, or the operating agreement of the converting entity with respect to any interest holder liability preserved under Subsection (4)(a) as if the conversion had not occurred.
(5) When a conversion becomes effective, a foreign entity that is the converted entity may be served with process in this state for the collection and enforcement of any of its debts, obligations, and liabilities as provided in Section ~~16-17-301~~13-1-511.
(6) If the converting entity is a registered foreign entity, the registration to do business in this state of the converting entity is canceled when the conversion becomes effective.
(7) A conversion does not require the entity to wind up its affairs and does not constitute or cause the dissolution of the entity.

48-3a-1051 Domestication authorized.
(1) By complying with Sections 48-3a-1051 through 48-3a-1056, a domestic limited liability company may become a foreign limited liability company if the domestication is authorized by the law of the foreign jurisdiction.
(2) By complying with the provisions of Sections 48-3a-1051 through 48-3a-1056 applicable to foreign limited liability companies, a foreign limited liability company may become a domestic limited liability company if the domestication is authorized by the law of the foreign limited liability company's jurisdiction of formation.
(3) If a protected agreement contains a provision that applies to a merger of a domestic limited liability company but does not refer to a domestication, the provision applies to a domestication of the limited liability company as if the domestication were a merger until the provision is amended after January 1, 2014.

48-3a-1052 Plan of domestication.
(1) A domestic limited liability company may become a foreign limited liability company in a domestication by approving a plan of domestication. The plan must be in a record and contain:
(a) the name of the domesticating limited liability company;
(b) the name and jurisdiction of formation of the domesticated limited liability company;
(c) the manner of converting the interests in the domesticating limited liability company into interests, securities, obligations, money, other property, rights to acquire interests or securities, or any combination of the foregoing;
(d) the proposed certificate of organization of the domesticated limited liability company;
(e) the full text of the provisions of the operating agreement of the domesticated limited liability company that are proposed to be in a record;
(f) the other terms and conditions of the domestication; and
(g) any other provision required by the law of this state or the operating agreement of the domesticating limited liability company.
(2) In addition to the requirements of Subsection (1), a plan of domestication may contain any other provision not prohibited by law.

48-3a-1053 Approval of domestication.
(1) A plan of domestication of a domestic domesticating limited liability company is not effective unless it has been approved:
(a) by all the members entitled to vote on or consent to any matter; and
(b) in a record, by each member that will have interest holder liability for debts, obligations, and other liabilities that arise after the domestication becomes effective, unless:
(i) the operating agreement of the entity in a record provides for the approval of a domestication or merger in

which some or all of its members become subject to interest holder liability by the vote or consent of fewer than all the members; and
(ii) the member voted for or consented in a record to that provision of the operating agreement or became an interest holder after the adoption of that provision.
(2) A domestication of a foreign domesticating limited liability company is not effective unless it is approved in accordance with the law of the foreign limited liability company's jurisdiction of formation.

48-3a-1054 Amendment or abandonment of plan of domestication.
(1) A plan of domestication of a domestic domesticating limited liability company may be amended:
(a) in the same manner as the plan was approved, if the plan does not provide for the manner in which it may be amended; or
(b) by the managers or members of the limited liability company in the manner provided in the plan, but a member that was entitled to vote on or consent to approval of the domestication is entitled to vote on or consent to any amendment of the plan that will change:
(i) the amount or kind of interests, securities, obligations, money, other property, rights to acquire interests or securities, or any combination of the foregoing, to be received by any of the interest holders of the domesticating limited liability company under the plan;
(ii) the certificate of organization or operating agreement of the domesticated limited liability company that will be in effect immediately after the domestication becomes effective, except for changes that do not require approval of the members of the domesticated limited liability company under its organic law or operating agreement; or
(iii) any other terms or conditions of the plan, if the change would adversely affect the interest holder in any material respect.
(2) After a plan of domestication has been approved by a domestic domesticating limited liability company and before a statement of domestication becomes effective, the plan may be abandoned as provided in the plan. Unless prohibited by the plan, a domestic domesticating limited liability company may abandon the plan in the same manner as the plan was approved.
(3) If a plan of domestication is abandoned after a statement of domestication has been delivered to the division for filing and before the statement of domestication becomes effective, a statement of abandonment, signed by the domesticating limited liability company, must be delivered to the division for filing before the time the statement of domestication becomes effective. The statement of abandonment takes effect on filing, and the domestication is abandoned and does not become effective. The statement of abandonment must contain:
(a) the name of the domesticating limited liability company;
(b) the date on which the statement of domestication was delivered to the division for filing; and
(c) a statement that the domestication has been abandoned in accordance with this section.

48-3a-1055 Statement of domestication.
(1) A statement of domestication must be signed by the domesticating limited liability company and delivered to the division for filing.
(2) A statement of domestication must contain:
(a) the name and jurisdiction of formation of the domesticating limited liability company;
(b) the name and jurisdiction of formation of the domesticated limited liability company;
(c) if the domesticating limited liability company is a domestic limited liability company, a statement that the plan of domestication was approved in accordance with Sections 48-3a-1051 through 48-3a-1056 or, if the domesticating limited liability company is a foreign limited liability company, a statement that the domestication was approved in accordance with the law of its jurisdiction of formation;
(d) the certificate of organization of the domesticated limited liability company, as an attachment; and
(e) if the domesticated foreign limited liability company is not a registered foreign limited liability company, a mailing address to which the division may send any process served on the division pursuant to Subsection 48-3a-1056(5).
(3) In addition to the requirements of Subsection (2), a statement of domestication may contain any other provision not prohibited by law.

(4) The certificate of organization of a domesticated domestic limited liability company must satisfy the requirements of the law of this state, but the certificate does not need to be signed.
(5) A plan of domestication that is signed by a domesticating domestic limited liability company and meets all the requirements of Subsection (2) may be delivered to the division for filing instead of a statement of domestication and on filing has the same effect. If a plan of domestication is filed as provided in this Subsection (5), references in this part to a statement of domestication refer to the plan of domestication filed under this Subsection (5).

48-3a-1056 Effect of domestication.
(1) When a domestication becomes effective:
(a) the domesticated limited liability company is:
(i) organized under and subject to the organic law of the domesticated limited liability company; and
(ii) the same entity without interruption as the domesticating limited liability company;
(b) all property of the domesticating limited liability company continues to be vested in the domesticated limited liability company without transfer, reversion, or impairment;
(c) all debts, obligations, and other liabilities of the domesticating limited liability company continue as debts, obligations, and other liabilities of the domesticated limited liability company;
(d) except as otherwise provided by law or the plan of domestication, all the rights, privileges, immunities, powers, and purposes of the domesticating limited liability company remain in the domesticated limited liability company;
(e) the name of the domesticated limited liability company may be substituted for the name of the domesticating limited liability company in any pending action or proceeding;
(f) the certificate of organization of the domesticated limited liability company is effective;
(g) the provisions of the operating agreement of the domesticated limited liability company that are to be in a record, if any, approved as part of the plan of domestication are effective; and
(h) the interests in the domesticating limited liability company are converted to the extent and as approved in connection with the domestication, and the members of the domesticating limited liability company are entitled only to the rights provided to them under the plan of domestication and to any appraisal rights they have under Section 48-3a-1008.
(2) Except as otherwise provided in the organic law or operating agreement of the domesticating limited liability company, the domestication does not give rise to any rights that a member, manager, or third party would have upon a dissolution, liquidation, or winding up of the domesticating limited liability company.
(3) When a domestication becomes effective, a person that did not have interest holder liability with respect to the domesticating limited liability company and becomes subject to interest holder liability with respect to a domestic limited liability company as a result of the domestication has interest holder liability only to the extent provided by the organic law of the domestic limited liability company and only for those debts, obligations, and other liabilities that arise after the domestication becomes effective.
(4) When a domestication becomes effective:
(a) The domestication does not discharge any interest holder liability under this chapter to the extent the interest holder liability arose before the domestication became effective.
(b) A person does not have interest holder liability under this part for any debts, obligations, and other liabilities that arise after the domestication becomes effective.
(c) A person has whatever rights of contribution from any other person as are provided by law other than this chapter, this chapter, or the operating agreement of a domestic domesticating limited liability company with respect to any interest holder liability preserved under Subsection (4)(a) as if the domestication had not occurred.
(5) When a domestication becomes effective, a foreign limited liability company that is the domesticated limited liability company may be served with process in this state for the collection and enforcement of any of its debts, obligations, and liabilities as provided in Section ~~16-17-301~~13-1a-511.
(6) If the domesticating limited liability company is a registered foreign limited liability company, the registration of the foreign limited liability company is canceled when the domestication becomes effective.
(7) A domestication does not require the limited liability company to wind up its affairs and does not constitute

or cause the dissolution of the company.

Part 11
Professional Services Companies

48-3a-1101 Definitions.

As used in this part:

(1) "Professional services" means a personal service provided by:

(a) a public accountant holding a license under Title 58, Chapter 26a, Certified Public Accountant Licensing Act, or a subsequent law regulating the practice of public accounting;

(b) an architect holding a license under Title 58, Chapter 3a, Architects Licensing Act, or a subsequent law regulating the practice of architecture;

(c) an attorney granted the authority to practice law by the:

(i) Utah Supreme Court; or

(ii) one or more of the following that licenses or regulates the authority to practice law in a state or territory of the United States other than Utah:

(A) a supreme court;

(B) a court other than a supreme court;

(C) an agency;

(D) an instrumentality; or

(E) a regulating board;

(d) a chiropractor holding a license under Title 58, Chapter 73, Chiropractic Physician Practice Act, or any subsequent law regulating the practice of chiropractics;

(e) a doctor of dentistry holding a license under Title 58, Chapter 69, Dentist and Dental Hygienist Practice Act, or a subsequent law regulating the practice of dentistry;

(f) a professional engineer registered under Title 58, Chapter 22, Professional Engineers and Professional Land Surveyors Licensing Act, or a subsequent law regulating the practice of engineers and land surveyors;

(g) a naturopath holding a license under Title 58, Chapter 71, Naturopathic Physician Practice Act, or a subsequent law regulating the practice of naturopathy;

(h) a nurse licensed under Title 58, Chapter 31b, Nurse Practice Act, or Title 58, Chapter 44a, Nurse Midwife Practice Act, or a subsequent law regulating the practice of nursing;

(i) an optometrist holding a license under Title 58, Chapter 16a, Utah Optometry Practice Act, or a subsequent law regulating the practice of optometry;

(j) an osteopathic physician or surgeon holding a license under Title 58, Chapter 68, Utah Osteopathic Medical Practice Act, or a subsequent law regulating the practice of osteopathy;

(k) a pharmacist holding a license under Title 58, Chapter 17b, Pharmacy Practice Act, or a subsequent law regulating the practice of pharmacy;

(l) a physician, surgeon, or doctor of medicine holding a license under Title 58, Chapter 67, Utah Medical Practice Act, or a subsequent law regulating the practice of medicine;

(m) a physician assistant holding a license under Title 58, Chapter 70a, Utah Physician Assistant Act, or a subsequent law regulating the practice as a physician assistant;

(n) a physical therapist holding a license under Title 58, Chapter 24b, Physical Therapy Practice Act, or a subsequent law regulating the practice of physical therapy;

(o) a podiatric physician holding a license under Title 58, Chapter 5a, Podiatric Physician Licensing Act, or a subsequent law regulating the practice of podiatry;

(p) a psychologist holding a license under Title 58, Chapter 61, Psychologist Licensing Act, or any subsequent law regulating the practice of psychology;

(q) a principal broker, associate broker, or sales agent holding a license under Title 61, Chapter 2f, Real Estate Licensing and Practices Act, or a subsequent law regulating the sale, exchange, purchase, rental, or leasing of real estate;

(r) a clinical or certified social worker holding a license under Title 58, Chapter 60, Part 2, Social Worker Licensing Act, or a subsequent law regulating the practice of social work;

(s) a mental health therapist holding a license under Title 58, Chapter 60, Mental Health Professional Practice Act, or a subsequent law regulating the practice of mental health therapy;
(t) a veterinarian holding a license under Title 58, Chapter 28, Veterinary Practice Act, or a subsequent law regulating the practice of veterinary medicine; or
(u) an individual licensed, certified, or registered under Title 61, Chapter 2g, Real Estate Appraiser Licensing and Certification Act, or a subsequent law regulating the practice of appraising real estate.
(2) "Regulating board" means the entity organized pursuant to state law that licenses and regulates the practice of the profession that a limited liability company is organized to provide.

48-3a-1102 Application of this part.
(1) If a conflict arises between this part and another provision of this chapter, this part controls.
(2) Notwithstanding the other provisions of this part, on and after January 1, 2016:
(a) a professional services company may not designate series of transferable interests; and
(b) a limited liability company may not form a professional services company as a series of the limited liability company.

48-3a-1103 Additional requirements for certificate of organization.
The certificate of organization of a professional services company shall:
(1) comply with Section 48-3a-201; and
(2) contain the following:
(a) a name consistent with Sections ~~48-3a-1104~~13-1a-401 and 13-1a-402;
(b) a description of the profession to be practiced through the professional services company; and
(c) notwithstanding Section 48-3a-201, the name and street address of each member or manager of the professional services company.

~~**48-3a-1104 Name limitations.**~~
~~(1) The name of a domestic professional services company and of a foreign professional services company authorized to transact business in this state, in addition to complying with Sections 48-3a-108, and 48-3a-906:~~
~~(a) may not contain language stating or implying that it is formed for a purpose other than that authorized by:~~
~~(i) its certificate of organization; or~~
~~(ii) Section 48-3a-1106;~~
~~(b) must conform with any rule made by the regulating board having jurisdiction over a professional service described in the professional services company's certificate of organization; and~~
~~(c) in lieu of the requirement of Subsection 48-3a-108(1), must contain the words "professional limited liability company" or the abbreviations "P.L.L.C." or "PLLC" in:~~
~~(i) its certificate of organization; and~~
~~(ii) a report or document filed with the division.~~
~~(2) Notwithstanding Subsection (1)(c), a professional services company may hold itself out to the public under a name that does not contain the words "professional limited liability company" or the abbreviations "P.L.L.C." or "PLLC" if that name complies with Subsection 48-3a-108(1).~~
~~(3) Sections 48-3a-108 and 48-3a-906 do not prevent the use of a name otherwise prohibited by those sections if the name is:~~
~~(a) the personal name of an individual member or individual former member of the professional services company; or~~
~~(b) the name of an individual who was associated with a predecessor of the professional services company.~~

48-3a-1105 Providing a professional service.
(1) Subject to Section 48-3a-1106, a professional services company may provide a professional service in this state only through an individual licensed or otherwise authorized in this state to provide the professional service.
(2) Subsection (1) does not:
(a) require an individual employed by a professional services company to be licensed to perform a service for

the professional services company if a license is not otherwise required;
(b) prohibit a licensed individual from providing a professional service in the individual's professional capacity although the individual is a member, manager, employee, or agent of a professional services company; or
(c) prohibit an individual licensed in another state from providing a professional service for a professional services company in this state if not prohibited by the regulating board.

48-3a-1106 Limit of one profession.
(1) A professional services company organized to provide a professional service under this part may provide only:
(a) one specific type of professional service; and
(b) services ancillary to the professional service described in Subsection (1)(a).
(2) A professional services company organized to provide a professional service under this part may not engage in a business other than to provide:
(a) the professional service that it was organized to provide; and
(b) services ancillary to the professional service described in Subsection (2)(a).
(3) Notwithstanding Subsections (1) and (2), a professional services company may:
(a) own real and personal property necessary or appropriate for providing the type of professional service it was organized to provide; and
(b) invest the professional services company's money in one or more of the following:
(i) real estate;
(ii) mortgages;
(iii) stocks;
(iv) bonds; or
(v) another type of investment.

48-3a-1107 Activity limitations.
A professional services company may not do anything that an individual licensed to practice the profession that the professional services company is organized to provide is prohibited from doing.

48-3a-1108 This part does not limit regulating board.
This part does not restrict the authority or duty of a regulating board to license an individual providing a professional service or the practice of the profession that is within the jurisdiction of the regulating board, notwithstanding that the individual:
(1) is a member, manager, or employee of a professional services company; or
(2) provides the professional service or engages in the practice of the profession through a professional services company.

48-3a-1109 Member or manager of a professional services company.
A professional services company organized to provide a professional service:
(1) may include a member, manager, or employee who is authorized under the laws of the jurisdiction where the member, manager, or employee resides to provide a similar professional service;
(2) may include a member who is not licensed or registered by the state to provide the professional service to the extent allowed by the applicable licensing or registration act relating to the professional service; and
(3) may render a professional service in this state only through a member, manager, or employee who is licensed or registered by this state to render the professional service.

48-3a-1110 Restriction on transfer by member.
(1) Except as provided in Subsections (2) and (3), a member of a professional services company may sell or transfer the member's interest in the professional services company only to:
(a) the professional services company; or
(b) an individual who is licensed or registered by this state to provide the same type of professional service as the professional service for which the professional services company is organized, or who otherwise satisfies

the requirements of Subsection 48-3a-1109(1) or (2).
(2) Upon the death or incapacity of a member of a professional services company, the member's interest in the professional services company may be transferred to the personal representative or estate of the deceased or incapacitated member.
(3) The person to whom an interest is transferred under Subsection (2) may continue to hold the interest for a reasonable period, but may not participate in a decision concerning the providing of a professional service.

48-3a-1111 Purchase of interest upon death, incapacity, or disqualification of member.
(1) Subject to this part, one or more of the following may provide for the purchase of a member's interest in a professional services company upon the death, incapacity, or disqualification of the member:
(a) the certificate of organization;
(b) the operating agreement; or
(c) a private agreement.
(2) In the absence of a provision described in Subsection (1), a professional services company shall purchase the interest of a member who is deceased, incapacitated, or no longer qualified to own an interest in the professional services company within 90 days after the day on which the professional services company is notified of the death, incapacity, or disqualification.
(3) If a professional services company purchases a member's interest under Subsection (2), the professional services company shall purchase the interest at a price that is the reasonable fair market value as of the date of death, incapacity, or disqualification.
(4) If a professional services company fails to purchase a member's interest as required by Subsection (2) at the end of the 90-day period described in Subsection (2), one of the following may bring an action in the district court of the county in which the principal office or place of practice of the professional services company is located to enforce Subsection (2):
(a) the personal representative of a deceased member;
(b) the guardian or conservator of an incapacitated member; or
(c) the disqualified member.
(5) A court in which an action is brought under Subsection (4) may:
(a) award the person bringing the action the reasonable fair market value of the interest; or
(b) within its jurisdiction, order the liquidation of the professional services company.
(6) If a person described in Subsections (4)(a) through (c) is successful in an action under Subsection (4), the court shall award the person reasonable attorney's fees and costs.

48-3a-1112 Conversion to nonprofessional company.
(1) A professional services company subject to this part converts into a limited liability company subject to this chapter, but not subject to this part on the day on which:
(a) no member of the professional services company is licensed or registered for the professional service for which the professional services company is organized; or
(b) all members entitled to vote on or consent to any matter consent not to be a professional services company subject to this part.
(2) A professional services company converted as provided in Subsection (1) shall upon the event described in Subsection (1) operate as and be treated as a limited liability company subject to this chapter, but not subject to this part.
(3) A limited liability company resulting from a conversion under this section may reconvert to a professional services company:
(a) upon at least one member of the limited liability company being licensed or registered for the professional service for which the limited liability company is organized; and
(b) each member of the limited liability company entitled to vote on or consent to any matter consents to reconvert the limited liability company to a professional services company subject to this part.
(4) If a professional services company is converted or reconverted under this section, the professional services company shall file a certificate of amendment to the certificate of organization with the division within a reasonable time after the conversion or reconversion to reflect the changes.

Part 12
Series Limited Liability Companies

48-3a-1201 Series of transferable interests.
(1) An operating agreement may establish or provide for the establishment of a designated series of transferable interests having separate rights, powers, or duties with respect to specified property or obligations of the limited liability company or profits and losses associated with specified property or obligations, and, to the extent provided in the operating agreement, any such series may have a separate business purpose or investment objective. The name of each series must contain the name of the limited liability company and be distinguishable from the name of any other series.
(2) Notwithstanding contrary provisions of this chapter, the debts, liabilities, and obligations incurred, contracted for, or otherwise existing with respect to a particular series shall be enforceable against the assets of that series only, and not against the assets of the limited liability company generally or any other series, if all of the following apply:
(a) the series is established by or in accordance with the operating agreement;
(b) separate and distinct records are maintained for the series;
(c) the assets associated with the series are held and accounted for separately from the other assets of the limited liability company, including another series;
(d) the operating agreement or the agreement establishing the series provides for the limitation on liabilities of the series; and
(e) notice of the limitation on liability of the series is set forth in the limited liability company's certificate of organization in accordance with Section 48-3a-1202.
(3) A series meeting all of the conditions of Subsection (2) shall:
(a) be treated as a separate entity to the extent set forth in the certificate of organization; and
(b) have the power and capacity to, in its own name, contract, hold title to property, grant liens and security interests, and sue and be sued.
(4) Notwithstanding the other provisions of this section:
(a) property and assets of a series may not be transferred to the limited liability company generally or another series if the transfer impairs the ability of the series releasing the property or assets to pay its debts existing at the time of the transfer unless fair value is given to the transferring series for the property or assets transferred; and
(b) a tax or other liability of the limited liability company generally or of a series may not be assigned by the series against which the tax or other liability is imposed to the limited liability company generally or to another series within the limited liability company if the assignment impairs a creditor's right and ability to fully collect an amount due when owed.
(5) Notwithstanding the other provisions of this part:
(a) a professional services company may not designate a series of transferable interests; and
(b) a limited liability company may not form a professional services company as a series of the limited liability company.
(6) Except to the extent modified by this part, the provisions of this chapter which are generally applicable to a limited liability company, and its managers, members, and transferees, shall be applicable to each series with respect to the operations of such a series.

48-3a-1202 Notice of limitation on liability of a series.
(1)
(a) Notice in a limited liability company's certificate of organization of the limitation on liabilities of a series as referenced in Subsection 48-3a-1201(2)(e) is sufficient for all purposes of this part whether or not the limited liability company has established a series at the time the notice is included in the certificate of organization.
(b) For a certificate of organization or an amendment to a certificate of organization made to include notice of series that is filed on or after May 12, 2015, notice in a company's certificate of organization is sufficient for purposes of Subsection (1) only if the notice of series appears immediately following the provision stating the

name of the company.
(2) The notice of a limitation on liability of a series as referenced in Subsection 48-3a-1201(2)(e) is not required to reference a specific series.
(3) The filing by the division of the certificate of organization containing a notice of the limitation on liabilities of a series constitutes notice of the limitation on liabilities of the series.

48-3a-1203 Agreement to be liable.

Notwithstanding Section 48-3a-304, or a contrary provision in an operating agreement, a member or manager may agree to be obligated personally for any or all of the debts, obligations, or liabilities of one or more series.

48-3a-1204 Series related provisions in operating agreement.
(1) An operating agreement may provide for classes or groups of members or managers associated with a series having such relative rights, powers, and duties as the operating agreement may provide.
(2) The operating agreement may provide for the future creation of additional classes or groups of members or managers associated with the series having such relative rights, powers, and duties as may from time to time be established, including rights, powers, and duties senior to existing classes and groups of members or managers associated with the series.
(3) An operating agreement may provide for the taking of an action, including the amendment of the operating agreement, without the vote or approval of any member or manager or class or group of members or managers, including all action to create under the provisions of the operating agreement a class or group of the series of membership interests that was not previously outstanding.
(4) An operating agreement may provide that any member or class or group of members associated with a series does not have voting rights.
(5) An operating agreement may grant to all or certain identified members or managers or a specified class or group of the members or managers associated with a series the right to vote on any matter separately or with all or any class or group of the members or managers associated with the series. Voting by members or managers associated with a series may be on any basis including:
(a) a per capita basis;
(b) a number basis;
(c) on the basis of a financial interest; or
(d) by class or group.

48-3a-1205 Management of a series.
(1) A series is member-managed unless the operating agreement:
(a) expressly provides that:
(i) the series is or will be “manager-managed”;
(ii) the series is or will be “managed by managers”; or
(iii) management of the series is or will be “vested in managers”; or
(b) includes words of similar import.
(2) In a member-managed series, unless modified pursuant to Section 48-3a-1204, the following rules apply:
(a) The management and conduct of the series are vested in the members of the series.
(b) Each series member has equal rights in the management and conduct of the series’ activities.
(c) A difference arising among series members as to a matter in the ordinary course of the activities of the series shall be decided by a majority of the series members.
(d) An act outside the ordinary course of the activities of the series may be undertaken only with the consent of all members of the series.
(e) The operating agreement may be amended only with the consent of all members of the series.
(3) In a manager-managed series, the following rules apply:
(a) Except as otherwise expressly provided in this chapter, any matter relating to the activities of the series is decided exclusively by the managers of the series.
(b) Each series manager has equal rights in the management and conduct of the activities of the series.

(c) A difference arising among managers of a series as to a matter in the ordinary course of the activities of the series shall be decided by a majority of the managers of the series.
(d) Unless modified pursuant to Section 48-3a-1204, the consent of all members of the series is required to:
(i) sell, lease, exchange, or otherwise dispose of all, or substantially all, of the series' property, with or without the goodwill, outside the ordinary course of the series' activities;
(ii) approve a transaction under Part 10, Merger, Interest Exchange, Conversion, and Domestication;
(iii) undertake any other act outside the ordinary course of the series' activities; and
(iv) amend the operating agreement as it pertains to the series.
(e) A manager of the series may be chosen at any time by the consent of a majority of the members of the series and remains a manager of the series until a successor has been chosen, unless the series manager at an earlier time resigns, is removed, or dies, or, in the case of a series manager that is not an individual, terminates. A series manager may be removed at any time by the consent of a majority of the members without notice or cause.
(f) A person need not be a series member to be a manager of a series, but the dissociation of a series member that is also a series manager removes the person as a manager of the series. If a person that is both a series manager and a series member ceases to be a manager of the series, that cessation does not by itself dissociate the person as a member of the series.
(g) A person's ceasing to be a series manager does not discharge any debt, obligation, or other liability to the series or members of the series which the person incurred while a manager of the series.
(4) An action requiring the consent of members of a series under this chapter may be taken without a meeting, and a member of a series may appoint a proxy or other agent to consent or otherwise act for the series member by signing an appointing record, personally or by the series member's agent.
(5) The dissolution of a series does not affect the applicability of this section. However, a person that wrongfully causes dissolution of the series loses the right to participate in management as a series member and a series manager.
(6) This chapter does not entitle a member of a series to remuneration for services performed for a member-managed series, except for reasonable compensation for services rendered in winding up the activities of the series.

48-3a-1206 Series distributions.
(1) Any distribution made by a series before its dissolution and winding up must be in equal shares among the series members and dissociated series members, except to the extent necessary to comply with any transfer effective under Section 48-3a-502 and any charging order in effect under Section 48-3a-503.
(2) A person has a right to a distribution before the dissolution and winding up of a series only if the series decides to make an interim distribution. A person's dissociation with respect to a series does not entitle the person to a distribution.
(3) A person does not have a right to demand or receive a distribution from a series in any form other than money. Except as otherwise provided in Subsection 48-3a-711(3), a series may distribute an asset in kind if each part of the asset is fungible with each other part and each person receives a percentage of the asset equal in value to the person's share of distributions.
(4) If a series member or transferee becomes entitled to receive a distribution, the series member or transferee has the status of, and is entitled to all remedies available to, a creditor of the series with respect to the distribution. However, the series' obligation to make a distribution is subject to offset for any amounts owed to the series by the member or a person dissociated as a member on whose account the distribution is made.
(5) A series may not make a distribution if after the distribution:
(a) the series would not be able to pay its debts as they become due in the ordinary course of the series' activities; or
(b) the series' total assets would be less than the sum of its total liabilities plus the amount that would be needed, if the series were to be dissolved, wound up, and terminated at the time of the distribution, to satisfy the preferential rights upon dissolution, winding up, and termination of members whose preferential rights are superior to those of persons receiving the distribution.
(6) A series may base a determination that a distribution is not prohibited under Subsection (5) on financial

statements prepared on the basis of accounting practices and principles that are reasonable in the circumstances or on a fair valuation or other method that is reasonable under the circumstances.
(7) Except as otherwise provided in Subsection (9), the effect of a distribution under Subsection (5) is measured:
(a) in the case of a distribution by purchase, redemption, or other acquisition of a transferable interest in the series, as of the date money or other property is transferred or debt incurred by the series; or
(b) in all other cases, as of the date:
(i) the distribution is authorized, if the payment occurs within 120 days after that date; or
(ii) the payment is made, if the payment occurs more than 120 days after the distribution is authorized.
(8) A series' indebtedness to a series member incurred by reason of a distribution made in accordance with this section is at parity with the series' indebtedness to its general, unsecured creditors.
(9) A series' indebtedness, including indebtedness issued in connection with or as part of a distribution, is not a liability for purposes of Subsection (5) if the terms of the indebtedness provide that payment of principal and interest are made only to the extent that a distribution could be made to members of the series under this section. If such indebtedness is issued as a distribution, each payment of principal or interest on the indebtedness is treated as a distribution, the effect of which is measured on the date the payment is made.
(10) Except as otherwise provided in Subsection (11), if a member of a member-managed series or manager of a manager-managed series consents to a distribution made in violation of this section and in consenting to the distribution fails to comply with Section 48-3a-409, the member or manager is personally liable to the series for the amount of the distribution that exceeds the amount that could have been distributed without the violation of this section.
(11) To the extent the operating agreement of a member-managed series expressly relieves a series member of the authority and responsibility to consent to distributions and imposes that authority and responsibility on one or more other members of the series, the liability stated in Subsection (10) applies to the other members of the series and not the member of the series that the operating agreement relieves of authority and responsibility.
(12) A person that receives a distribution from a series knowing that the distribution to that person was made in violation of this section is personally liable to the limited liability company but only to the extent that the distribution received by the person exceeded the amount that could have been properly paid under this section.
(13) A person against which an action is commenced because the person is liable under Subsection (10) may:
(a) implead any other person that is liable under Subsection (10) and seek to compel contribution from the person; and
(b) implead any person that received a distribution in violation of Subsection (12) and seek to compel contribution from the person in the amount the person received in violation of Subsection (12).
(14) An action under this section is barred if not commenced within two years after the distribution.

48-3a-1207 Events causing dissociation from a series.
(1) Unless otherwise provided in the operating agreement, a member ceases to be associated with a series and to have the power to exercise a right or power of a member with respect to the series upon the assignment of all of the member's transferable interest in the limited liability company with respect to the series.
(2) Unless otherwise provided in an operating agreement, an event under this chapter or the operating agreement that causes a member to cease to be associated with a series does not, by itself:
(a) cause the member to cease to be associated with another series;
(b) terminate the continued membership of a member in the limited liability company; or
(c) cause the termination of the series, regardless of whether the member is the last remaining member associated with the series.

48-3a-1208 Dissolution of a series.
(1) Except to the extent otherwise provided in the operating agreement, a series may be dissolved and its affairs wound up without causing the dissolution of the limited liability company.
(2) The dissolution of a series does not affect the limitation on liabilities of the series under Section 48-3a-1201.
(3) A series is dissolved and its affairs shall be wound up upon the dissolution of the limited liability company under Section 48-3a-701 or upon the occurrence of any of the events described in Section 48-3a-701, as applied

to the series.
(4) Notwithstanding Section 48-3a-703, unless otherwise provided in the operating agreement, any of the following persons may wind up the affairs of a dissolved series:
(a) a manager associated with a series who has not wrongfully caused the dissolution of the series;
(b) if there is no manager that satisfies the requirements of Subsection (4)(a), the members associated with the series who have not wrongfully caused the dissolution of the series or a person approved by the members associated with the series who have not wrongfully caused the dissolution of the series; or
(c) if there is more than one class or group of members associated with the series, then by each class or group of members associated with the series, in either case, by members who have not wrongfully caused the dissolution of the series, and either:
(i) own more than 50% of the transferable interests of the series owned by members associated with the series who have not wrongfully caused the dissolution of the series; or
(ii) own more than 50% of the transferable interests of each class or group associated with the series owned by members associated with the series who have not wrongfully caused the dissolution of the series.
(5) The persons winding up the affairs of a series, in the name of the series and for and on behalf of the series, may take all actions with respect to the series as are permitted under Section 48-3a-703 for a limited liability company. The persons winding up the affairs of a series shall provide for the claims and obligations of the series as provided in Section 48-3a-711 for a limited liability company and distribute the assets of the series as provided in Section 48-3a-711 for a limited liability company. An action taken pursuant to this Subsection (5) may not affect the liability of a member and may not impose liability on a liquidating trustee.

48-3a-1209 Foreign limited liability company -- Series.

A foreign limited liability company that is registered to do business in this state that is governed by an operating agreement that establishes or provides for the establishment of a series of transferable interests having separate rights, powers, or duties with respect to specified property or obligations of the foreign limited liability company, or profits and losses associated with the specified property or obligations, shall indicate that fact on the foreign registration statement filed by the division. In addition, the foreign limited liability company shall state on the foreign registration statement whether the debts, liabilities, and obligations incurred, contracted for, or otherwise existing with respect to a particular series, if any, are enforceable against the assets of such series only, and not against the assets of the foreign limited liability company generally or any other series. Notice in a foreign limited liability company's foreign registration statement of the limitation on liability of a series as referenced in this section shall have the same effect found in Section 48-3a-1202 as a notice of limitation on liability of a series set forth in a limited liability company's certificate of organization.

Part 13
Low-Profit Limited Liability Companies

48-3a-1301 Application of this part.

If a conflict arises between this part and another provision of this chapter, this part controls.

48-3a-1302 Requirements.
(1) To be a low-profit limited liability company, a limited liability company shall:
(a) contain in its name the abbreviation "L3C" or "l3c";
(b) state in its certificate of organization that it is a low-profit limited liability company;
(c) organize under this chapter; and
(d) be organized for a business purpose that satisfies, and at all times operates to satisfy each of the requirements under Subsection (2).
(2) A low-profit limited liability company:
(a) shall significantly further the accomplishment of one or more charitable or educational purposes within the meaning of Section 170(c)(2)(B), Internal Revenue Code;
(b) shall demonstrate that it would not be formed but for the limited liability company's relationship to the accomplishment of a charitable or educational purpose;

(c) subject to Subsection (3), may not have as a significant purpose the production of income or the appreciation of property; and
(d) may not have as a purpose to accomplish one or more political or legislative purposes within the meaning of Section 170(c)(2)(D), Internal Revenue Code.
(3) Notwithstanding Subsection (2), if a low-profit limited liability company produces significant income or capital appreciation, in the absence of other factors, the fact that the low-profit limited liability company produces significant income or capital appreciation is not conclusive evidence of a significant purpose involving the production of income or the appreciation of property.

48-3a-1303 Ceasing to be a low-profit limited liability company.
(1) If a limited liability company that is a low-profit limited liability company at its formation at any time ceases to meet a requirement to be a low-profit limited liability company under Section 48-3a-1302, the limited liability company:
(a) ceases to be a low-profit limited liability company on the day on which the limited liability company no longer meets the requirement; and
(b) if it continues to meet the requirements of this chapter to be a limited liability company, continues to exist as a limited liability company that is not a low-profit limited liability company.
(2) A low-profit limited liability company's failure to meet a requirement of Section 48-3a-1302 may be:
(a) voluntary, in order to convert to a limited liability company that is not a low-profit limited liability company; or
(b) involuntary.
(3) If a low-profit limited liability company ceases to be a low-profit limited liability company in accordance with this section, the limited liability company shall:
(a) change its name to conform with Sections ~~48-3a-108~~13-1a-401 and 13-1a-402; and
(b) amend its certificate of organization in accordance with Section 48-3a-202.

48-3a-1304 Merger, interest exchange, conversion, or domestication of a low-profit limited liability company.
A low-profit limited liability company may engage in a merger, interest exchange, conversion, or domestication under Part 10, Merger, Interest Exchange, Conversion, and Domestication, to the same extent as a limited liability company that is not a low-profit limited liability company.

Part 14
Miscellaneous Provisions

48-3a-1401 Uniformity of application and construction.
In applying and construing this chapter, consideration must be given to the need to promote uniformity of the law with respect to its subject matter among states that enact the uniform act upon which this chapter is based.

48-3a-1402 Severability clause.
If any provision of this chapter or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of this chapter which can be given effect without the invalid provision or application, and to this end the provisions of this chapter are severable.

48-3a-1403 Relation to Electronic Signatures in Global and National Commerce Act.
This chapter modifies, limits, and supersedes the Electronic Signatures in Global and National Commerce Act, 15 U.S.C. Sec. 7001 et seq., but does not modify, limit, or supersede Section 101(c) of that act, 15 U.S.C. Sec. 7001(c), or authorize electronic delivery of any of the notices described in Section 103(b) of that act, 15 U.S.C. Sec. 7003(b).

48-3a-1404 Savings clause.

This chapter does not affect an action commenced, proceeding brought, or right accrued before this chapter takes effect.

48-3a-1405 Application to existing relationships.

(1) Before January 1, 2016, this chapter governs only:

(a) a limited liability company formed on or after January 1, 2014; and

(b) except as otherwise provided in Subsection (3), a limited liability company formed before January 1, 2014, which elects, in the manner provided in its operating agreement or by law for amending the operating agreement, to be subject to this chapter.

(2) Except as otherwise provided in Subsection (3), on and after January 1, 2016, this chapter governs all limited liability companies.

(3) For the purposes of applying this chapter to a limited liability company formed before January 1, 2014:

(a) the limited liability company's articles of organization are deemed to be the limited liability company's certificate of organization;

(b) for the purposes of applying Subsection 48-3a-102(15) and subject to Subsection 48-3a-114(4), language in the limited liability company's articles of organization designating the limited liability company's management structure operates as if that language were in the operating agreement; and

(c) the limited liability company has perpetual duration unless otherwise stated in the limited liability company's articles of organization.

Chapter 4
Benefit Limited Liability Company Act

Part 1
General Provisions

48-4-101 Title.

This chapter is known as the "Benefit Limited Liability Company Act."

48-4-102 Application and effect of chapter.

(1) This chapter applies to a benefit company organized under this chapter.

(2)

(a) The existence of a provision in this chapter does not itself create an implication that a contrary or different rule of law is applicable to a limited liability company that is not a benefit company.

(b) This chapter does not affect a statute or rule of law that is applicable to a limited liability company that is not a benefit company.

(3)

(a) Except as otherwise provided in this chapter, Title 48, Chapter 3a, Utah Revised Uniform Limited Liability Company Act, applies to a benefit company.

(b) The provisions of this chapter control over any inconsistent provision of Title 48, Chapter 3a, Utah Revised Uniform Limited Liability Company Act.

(4) The operating agreement of a benefit company may not limit, be inconsistent with, or supersede a provision of this chapter.

48-4-103 Definitions.

As used in this chapter:

(1) "Benefit company" means a limited liability company:

(a) that elects to become subject to this chapter; and

(b) the status of which as a benefit company has not been terminated.

(2) "Benefit enforcement proceeding" means a proceeding in a court of competent jurisdiction for:

(a) failure of a benefit company to pursue or create general public benefit or a specific public benefit described in the benefit company's certificate of organization; or

(b) a violation of an obligation, duty, or standard of conduct under this chapter.

(3) "General public benefit" means a material positive impact on society and the environment:

(a) taken as a whole;

(b) assessed against a third-party standard; and

(c) from the business of a benefit company.

(4) "Immediate family member" means a parent, spouse, surviving spouse, child, or sibling.

(5)

(a) "Independent person" means a person who has no material relationship with a benefit company or a subsidiary of the benefit company.

(b) "Independent person" does not include a person:

(i) who is, or has been within the last three years, an employee of the benefit company or a subsidiary of the benefit company;

(ii) whose immediate family member is, or has been within the last three years, an executive officer of the benefit company or a subsidiary of the benefit company;

(iii) who owns 5% or more of the outstanding interests of the benefit company, calculated as if all outstanding rights to acquire interests in the benefit company have been exercised; or

(iv) who owns 5% or more of the outstanding interests in an entity, calculated as if all outstanding rights to acquire interests in the entity have been exercised, that owns 5% or more of the outstanding interests of the benefit company, calculated as if all outstanding rights to acquire interests in the benefit company have been exercised.

(6) “Minimum status vote” means:
(a) in the case of a limited liability company, in addition to any other required approval or vote, the satisfaction of the following conditions:
(i) the members of every class or series may vote as a separate voting group on an action of the limited liability company regardless of a limitation state in the certificate of organization or operating agreement on the voting rights of any class or series; and
(ii) the action of the limited liability company is required to be approved by vote of the members of each class or series entitled to cast at least two-thirds of the votes that all members of the class or series are entitled to cast on the action; or
(b) in the case of a domestic entity other than a limited liability company, in addition to any other required approval, vote, or consent, the satisfaction of the following conditions:
(i) the holders of every class or series of interest in the entity that are entitled to receive a distribution of any kind from the entity may vote on or consent to the action regardless of any otherwise applicable limitation on voting or consent rights of the class or series; and
(ii) the action of the limited liability company is required to be approved by vote or consent of the holders described in Subsection (6)(b)(i) entitled to cast at least two-thirds of the votes or consents that all of those holders are entitled to cast on the action.
(7) “Owns” includes ownership as the owner of record or as a beneficial owner.
(8) “Specific public benefit” includes:
(a) providing low-income or underserved individuals or communities with beneficial products or services;
(b) promoting economic opportunity for individuals or communities beyond the creation of jobs in the normal course of business;
(c) protecting or restoring the environment;
(d) improving human health;
(e) promoting the arts, sciences, or advancement of knowledge;
(f) increasing the flow of capital to entities with a purpose to benefit society or the environment; and
(g) conferring any other particular benefit on society or the environment.
(9) “Subsidiary” means, in relation to a person, an entity in which the person owns beneficially or of record, 50% or more of the outstanding equity interests, calculated as if all outstanding rights to acquire equity interests in the entity have been exercised.
(10) “Third-party standard” means a standard for defining, reporting, and assessing overall social and environmental performance that:
(a) assesses the effect of a business and a business’s operations on the interests described in Subsections 48-4-301(1)(a)(ii) through (v);
(b) is developed by an entity:
(i) that is independent of the benefit company;
(ii) whose governing body is comprised of no more than one-third of members who are representatives of any of the following:
(A) an association of businesses that operate in a specific industry whose members are measured by the standard;
(B) businesses from a specific industry or an association of businesses in that industry; or
(C) businesses whose performance is assessed against the standard;
(iii) that is not materially financed by an association or business described in Subsection (10)(b)(ii);
(iv) that has access to necessary expertise to assess overall social and environmental performance;
(v) uses a balanced multistakeholder approach to develop the standard, including a public comment period of at least 30 days; and
(vi) makes the following information publically available:
(A) the criteria considered when measuring the overall social and environmental performance of a business;
(B) the relative weightings, if any, of the criteria described in Subsection (10)(b)(vi)(A);
(C) the identity of each director, officer, material owner, and governing body of the entity that developed and controls revisions to the standard;
(D) the process by which revisions to the standard and changes to the membership of the governing body are

made; and
(E) an accounting of the revenue and sources of financial support for the entity, with sufficient detail to disclose a relationship that could reasonably be considered to present a potential conflict of interest.

48-4-104 Benefit company status.
(1) A person may form a benefit company in accordance with Title 48, Chapter 3a, Utah Revised Uniform Limited Liability Company Act, except the certificate of organization shall state that the limited liability company is a benefit company.
(2)
(a) A limited liability company may elect to become a benefit company by amending, in accordance with Section 48-3a-202, the limited liability company's certificate of organization to contain a statement that the limited liability company is a benefit company.
(b) An amendment described in Subsection (2)(a) is not effective unless the amendment is adopted by at least the minimum status vote.
(3) If an entity that is not a benefit company is a party to a merger or is the exchanging entity in an interest exchange, and the surviving entity in the merger or interest exchange is a benefit company, the merger or interest exchange is not effective unless the merger or interest exchange is adopted by the entity by at least the minimum status vote.
(4)
(a) A benefit company may terminate the benefit company's status as a benefit company and cease to be subject to this chapter by amending the benefit company's certificate of organization in accordance with Section 48-3a-202 to delete the provision described in Subsection (1) or (2) that states that the limited liability company is a benefit company.
(b) An amendment described in Subsection (4)(a) is not effective unless the amendment is adopted by at least the minimum status vote.
(5)
(a) If a proposed merger or interest exchange would have the effect of terminating a benefit company's status as a benefit company, the merger or interest exchange is not effective unless the merger or interest exchange is adopted by at least the minimum status vote.
(b) Unless the transaction is in the usual and regular course of the benefit company's business, a sale, lease, exchange, or other disposition of all or substantially all of the assets of a benefit company is not effective unless the transaction is approved by at least the minimum status vote.

~~**48-4-105 Benefit company name.**~~
~~(1) The name of a benefit company may contain the words "benefit limited liability company," "benefit limited company," or "benefit company" or the abbreviation "B.L.L.C.," "BLLC," "B.L.C.," or "BLC." "Limited" may be abbreviated as "Ltd.," and "company" may be abbreviated as "Co."~~
~~(2) A benefit company that complies with Subsection (1) satisfies the requirement described in Subsection 48-3a-108(1).~~

Part 2
Company Purposes

48-4-201 Company purpose.
(1) In addition to the benefit company's purpose under Section 48-3a-104, a benefit company shall have a purpose of creating general public benefit.
(2)
(a) A benefit company's certificate of organization may identify one or more specific public benefits that are the purposes of the benefit company to create.
(b) Identifying a specific public benefit in accordance with Subsection (2)(a) does not affect a benefit company's obligation to create general public benefit in accordance with Subsection (1).
(3) The creation of general public benefit and one or more specific public benefits is in the best interests of the

benefit company.
(4)
(a) A benefit company may amend the benefit company's certificate or organization to add, amend, or delete a specific public benefit.
(b) An amendment described in Subsection (4)(a) is not effective unless adopted by at least the minimum status vote.

Part 3
Accountability

48-4-301 Standard of conduct for members.
(1) When discharging a duty under this chapter, each member of a member-managed benefit company:
(a) shall consider the effect of any action or inaction on:
(i) the members of the benefit company;
(ii) the employees and workforce of the benefit company;
(iii) the interests of customers as beneficiaries of the benefit company's general public benefit purpose or specific public benefit purpose;
(iv) community and societal considerations, including those of each community in which offices or facilities of the benefit company or the benefit company's subsidiaries or suppliers are located;
(v) the local and global environment;
(vi) the short-term and long-term interests of the benefit company, including benefits that may accrue to the benefit company from the benefit company's long-term plans and the possibility that the interests may be best served by the continued independence of the benefit company; and
(vii) the ability of the benefit company to accomplish the benefit company's general public benefit purpose and any specific public benefit purpose; and
(b) may consider other pertinent factors or the interests of any other group that the member considers appropriate.
(2) A member is not required to prioritize the interests of a person or factor described in Subsection (1)(a) or (b) over the interests of any other person or factor, unless the benefit company's certificate of organization states an intention to give priority to certain interests related to the benefit company's accomplishment of the benefit company's general public benefit purpose or a specific public benefit purpose identified in the benefit company's certificate of organization.
(3) A member's consideration of interests and factors in accordance with Subsections (1) and (2) does not constitute a violation of Section 48-3a-409.
(4) A member of a member-managed limited liability company that is a benefit company does not have a duty to a person who is a beneficiary of the benefit company's general public benefit purpose or a specific public benefit purpose arising from the person's status as a beneficiary.

48-4-302 Standard of conduct for managers and officers.
(1) Each manager of a manager-managed benefit company shall consider the interests and factors described in Subsections 48-4-301(1) and (2) when discharging the manager's duties under this chapter and the operating agreement.
(2) If a benefit company has a person serving as an officer, the person shall consider the interests and factors described in Subsections 48-4-301(1) and (2) when discharging the person's duties under this chapter and the operating agreement if:
(a) the officer has discretion to act with respect to the matter; and
(b) it reasonably appears to the officer that the matter may have a material effect on the benefit company's creation of a general public benefit or a specific public benefit identified in the benefit company's certificate of organization.
(3) A manager's consideration of the interests and factors described in Subsections 48-4-301(1) and (2) does not constitute a violation of Section 48-3a-409.
(4) A manager or officer does not have a duty to a person who is a beneficiary of the benefit company's general

public benefit purpose or a specific public benefit purpose arising from the person's status as a beneficiary.

48-4-303 Right of action.
(1) Except in a benefit enforcement proceeding, a person may not bring an action or assert a claim against a benefit company or a benefit company's member, manager, or officer with respect to:
(a) failure to pursue or create general public benefit or a specific public benefit set forth in the benefit company's certificate of organization; or
(b) violation of a duty or standard of conduct under this chapter.
(2) A benefit company is not liable for monetary damages under this chapter for a failure of the benefit company to pursue or create general public benefit or a specific public benefit.
(3) Only the following may commence or maintain a benefit enforcement proceeding:
(a) the benefit company, directly; or
(b) one or more of the following, derivatively:
(i) a member that owned at least 2% of the total number of interests of a class or series outstanding at the time of the act or omission complained of;
(ii) a manager of a manager-managed benefit company;
(iii) a person or group of persons who own beneficially or of record at least 5% of the interests in an association of which the benefit company is a subsidiary at the time of the act or omission complained of; or
(iv) any person or group of persons specified in the benefit company's certificate of organization or operating agreement.

Part 4
Transparency

48-4-401 Annual benefit report.
(1) A benefit company shall prepare an annual benefit report that includes:
(a) a narrative description of:
(i) the ways in which the benefit company pursued the benefit company's general public benefit purpose during the year and the extent to which general public benefit was created;
(ii) the ways in which the benefit company pursued any specific public benefit that the benefit company's certificate of organization states is the purpose of the benefit company to create and the extent to which the specific public benefit was created;
(iii) any circumstances that have hindered the benefit company's creation of general public benefit or any specific public benefit; and
(iv) the process and rationale for selecting or changing the third-party standard used to prepare the benefit report;
(b) an assessment of the overall social and environmental performance of the benefit company against a third-party standard:
(i) applied consistently with any application of the standard in prior benefit reports; or
(ii) accompanied by an explanation of the reasons for any inconsistent application; and
(c) any connection between the organization that established the third-party standard, or the organization's directors or officers, or a holder of 5% or more of the governance interests in the organization, and the benefit company or the benefit company's members, managers, or officers or any holder of 5% or more of the outstanding interests in the benefit company, including any financial or governance relationship that might materially affect the credibility of the use of the third-party standard.
(2) The assessment described in Subsection (1)(b) does not need to be audited or certified by a third party.

48-4-402 Availability of annual benefit report.
(1) Each year, a benefit company shall send the benefit report described in Section 48-4-401 to each member:
(a) within 120 days after the day on which the benefit company's fiscal year ends; or
(b) the day on which the benefit company delivers any other annual report to the benefit company's members.
(2)

(a) Within five days after the day on which a benefit company sends a benefit report to each member in accordance with Subsection (1), the benefit company shall:
(i) subject to Subsection (2)(b), post a copy of the benefit report on a public portion of the benefit company's website; and
(ii) deliver a copy of the benefit report to the division for filing.
(b) If a benefit company does not have a website, the benefit company shall provide a copy of the benefit report, without charge, to any person who requests a copy.
(c) The benefit company may omit any financial or proprietary information from a copy of a benefit report described in Subsection (2)(a) or (b).
(d) The division may charge a fee established by the division in accordance with Section 63J-1-504 for filing an annual benefit report in accordance with this section.

Chapter 3a
Registration and Protection of Trademarks and Service Marks Act

Part 1
General Provisions

70-3a-101 Title.

This chapter is known as the "Registration and Protection of Trademarks and Service Marks Act."

70-3a-102 Relation to federal law.

(1) This chapter shall be interpreted to provide for the registration and protection of trademarks and service marks in a manner substantially consistent with the federal system of trademark registration and protection under the Trademark Act of 1946, 15 U.S.C. Sec. 1051, et seq.
(2) In interpreting this chapter, a construction given the Trademark Act of 1946, 15 U.S.C. Sec. 1051, et seq., should be used as persuasive authority.

70-3a-103 Definitions -- Use -- Service marks.

(1) As used in this chapter:
(a) "Abandoned mark" means a mark whose:
(i) use has been discontinued with no intent to resume use; or
(ii) significance as a mark has been lost due to any course of conduct of the owner, including acts of omission or commission.
(b) "Applicant" means:
(i) the person filing an application for registration of a mark under this chapter; and
(ii) a legal representative, successor, or assign of a person described in Subsection (1)(b)(i).
(c) "Dilution" means the lessening of the capacity of a famous mark to identify and distinguish goods or services, regardless of the presence or absence of:
(i) competition between the owner of the famous mark and another person; or
(ii) the likelihood of:
(A) confusion;
(B) mistake; or
(C) deception.
(d) "Division" means the Division of Corporations and Commercial Code within the Department of Commerce.
(e) "Drawing" means a depiction of a mark that is either text only, or includes color, or has a design.
(~~e~~f) "Mark" means any trademark or service mark entitled to registration under this chapter whether or not the trademark or service mark is registered.
(~~f~~g) "Registrant" means:
(i) the person to whom the registration of a mark under this chapter is issued; and
(ii) a legal representative, successor, or assign of a person described in Subsection (1)(~~f~~g)(i).
(~~g~~h)
(i) If the conditions of Subsection (1)(~~g~~h)(ii) are met, "service mark" means:
(A) a word, term, name, symbol, design, or device; or
(B) any combination of words, terms, names, symbols, designs, or devices.
(ii) The mark described in Subsection (1)(~~g~~h)(i) is a service mark only if it is used by a person:
(A) to identify and distinguish the services of one person from the services of others, including a unique service; and
(B) to indicate the source of the services, even if that source is unknown.
(~~h~~i)
(i) If the conditions of Subsection (1)(~~h~~i)(ii) are met, "trademark" means:
(A) a word, term, name, symbol, design, or device; or
(B) any combination of words, terms, names, symbols, designs, or devices.
(ii) The mark described in Subsection (1)(~~h~~i)(i) is a trademark only if it is used by a person:

(A) to identify and distinguish the goods of that person from those manufactured or sold by others, including a unique product; and
(B) to indicate the source of the goods, even if that source is unknown.
(j) "Specimen" means a visual representation of how a mark is actually used in commerce by an applicant on or in connection with the goods or services identified in the applicant's application.
(~~i~~k) "Trade name" means any name used by a person to identify a business or vocation of that person.
(~~j~~l) "Use" means the bona fide use of a mark in the ordinary course of trade, and not made merely to reserve a right in a mark.
(2) For the purposes of this chapter, a mark is considered to be in use:
(a) on goods:
(i) when the mark is placed:
(A) in any manner on the goods or other containers;
(B) in any manner on displays associated with the goods or other containers;
(C) on the tags or labels affixed to the goods or other containers; or
(D) if the nature of the goods makes the placements referred to in Subsections (2)(a)(i)(A) through (C) impracticable, on documents associated with the goods or the sale of the goods; and
(ii) the goods are sold or transported in commerce in this state; and
(b) on services:
(i) when it is used or displayed in the sale or advertising of services; and
(ii) when the services are rendered in this state.
(3) For purposes of Subsection (1)(a):
(a) intent not to resume may be inferred from circumstances; and
(b) nonuse for two consecutive years is prima facie evidence of abandonment.
(4) Notwithstanding Subsection (1)(g), the following may be registered as service marks notwithstanding that they may advertise the goods of the sponsor:
(a) titles;
(b) character names used by a person; and
(c) other distinctive features of:
(i) a radio program;
(ii) a television program; or
(iii) a program similar to a program described in Subsection (4)(c)(i) or (ii).

70-3a-104 Common law rights.

This chapter does not adversely affect the rights or the enforcement of rights in marks acquired in good faith at any time at common law.

Part 2
Division Powers and Duties

70-3a-201 Rulemaking authority of division.

In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the division may by rule:
(1) pursuant to Subsection 70-3a-302(1), establish the filing requirements for an application for a registration of a mark;
(2) pursuant to Subsection 70-3a-303(2), establish what information in addition to the information contained in the application shall be submitted by an applicant for registration under Section 70-3a-302;
(3) pursuant to Subsection 70-3a-303(3), establish the requirements for an applicant or registrant to disclaim an unregistrable component of a mark that is otherwise registrable;
(4) pursuant to Section 70-3a-305, establish the filing requirements for an application to renew a registration of a mark; and
(5) establish the filing requirements for a filing under Section 70-3a-306.

Amended by Chapter 382, 2008 General Session

70-3a-202 Records.

The division shall ~~keep~~ retain for public examination ~~a~~ records of~~:~~

~~(1)~~ all marks registered or renewed under this chapter~~;~~ and

~~(2)~~ all documents recorded under Section 70-3a-306 in accordance with Title 63G, Chapter 2, Government Records Access and Management Act and the division's applicable retention schedules.

70-3a-203 Fees.

(1)

(a) A fee shall be determined by the division in accordance with the requirements of Section 63J-1-504, but may not exceed $250 annually for ~~electronic~~ registration of a mark in a single class.

(b) A person who pays the annual fee for the ~~electronic~~ registration of a mark may register additional classes for the same mark for an additional fee not to exceed $25 annually.

(2) A fee approved pursuant to this section shall be deposited in the Commerce Service Account created by Section 13-1-2.

Part 3
Registration

70-3a-301 Registrability.

(1) A mark by which the goods or services of an applicant for registration may be distinguished from the goods or services of others may not be registered if it:

(a) consists of or comprises immoral, deceptive, or scandalous matter;

(b) consists of or comprises matter that may:

(i) disparage or falsely suggest a connection with:

(A) a person, living or dead;

(B) an institution;

(C) a belief; or

(D) a national symbol; or

(ii) bring an item listed in Subsection (1)(b)(i) into contempt or disrepute;

(c) consists of or comprises the flag or coat of arms or other insignia of:

(i) the United States;

(ii) any state;

(iii) any municipality;

(iv) any foreign nation; or

(v) any simulation of an item listed in Subsections (1)(c)(i) through (iv);

(d) consists of or comprises the name, signature, or portrait identifying a particular living individual, except by the individual's written consent;

(e) subject to Subsection (3), consists of a mark that:

(i) when used on or in connection with the goods or services of the applicant, is:

(A) merely descriptive of the goods or services;

(B) deceptively misdescriptive of the goods or services;

(C) primarily geographically descriptive of the goods or services; or

(D) primarily geographically deceptively misdescriptive of the goods or services; or

(ii) is primarily merely a surname;

(f) consists of or comprises a mark that:

(i) resembles:

~~(A)~~ a mark registered in this state; ~~or~~

~~(B) a mark or trade name previously used by another and not abandoned;~~ and

(ii) is likely, when used on or in connection with the goods or services of the applicant, to cause confusion, mistake, or to deceive; or

(g) without the written consent of the United States Olympic Committee, contains or consists of:
(i) the symbol of the International Olympic Committee, consisting of five interlocking rings;
(ii) the emblem of the United States Olympic Committee, consisting of an escutcheon having a blue chief and vertically extending red and white bars on the base with five interlocking rings displayed on the chief;
(iii) any trademark, trade name, sign, symbol, or insignia falsely representing association with, or authorization by, the International Olympic Committee or the United States Olympic Committee;
(iv) the words "Olympic," "Olympiad," "Citius Altius Fortius"; or
(v) any combination or simulation of any item referenced in Subsections (1)(g)(i) through (iv) that:
(A) causes confusion or mistake;
(B) deceives; or
(C) falsely suggests a connection with:
(I) the International Olympic Committee;
(II) the United States Olympic Committee; or
(III) any Olympic activity.
(2)
(a) Any actual use of an item under Subsection (1)(g)(ii) or the words or any combination of the words under Subsection (1)(g)(iv), for any lawful purpose prior to September 21, 1950, is not prohibited by this section and may be continued for the same purpose and for the same goods or services.
(b) Any actual use of any other trademark, trade name, sign, symbol, or insignia under Subsections (1)(g)(iii) and (iv) for any lawful purpose prior to September 21, 1950, is not prohibited by this section and may be continued for the same purpose and for the same goods or services.
(3)
(a) Subsections (1)(e)(i)(A) through (1)(e)(i)(C) do not prevent the registration of a mark used by the applicant that has become distinctive of the applicant's goods or services.
(b) For purposes of Subsection (3)(a), the division may accept as evidence that the mark has become distinctive as used on or in connection with the applicant's goods or services, proof of continuous use of the mark as a mark by the applicant in this state for the five years before the date when the claim of distinctiveness is made.

70-3a-302 Application for registration.
(1)
(a) Subject to the limitations in this chapter, any person who uses a mark may file with the division an application for registration of that mark.
(b) The registration described in Subsection (1)(a) shall be filed in accordance with rules:
(i) made by the division in accordance with Section 70-3a-201; and
(ii) that are consistent with this section.
(c) The application shall:
(i) state:
(A) the name and business address of the person applying for registration;
(B) if a corporation, the state of incorporation; and
(C) if a partnership:
(I) the state where the partnership is organized; and
(II) the names of the general partners, as specified by the division;
<u>(D) if a limited liability company:</u>
<u>(I) the state where the limited liability company is organized; and</u>
<u>(II) the names of the members and managers, as specified by the division;</u>
(ii) specify:
(A) the goods or services on or in connection with which the mark is used;
(B) the mode or manner in which the mark is used on or in connection with those goods or services; and
(C) the class defined pursuant to Section 70-3a-308 in which those goods or services fall;
(iii) state:
(A) the date when the mark was first used anywhere;
(B) the date when the mark was first used in this state by the applicant or a predecessor in interest;

(C) that the applicant is the owner of the mark;
(D) that the mark is in use; and
(E) that to the knowledge of the person verifying the application, no other person has registered, either federally or in this state, or has the right to use that mark:
(I) in the mark's identical form; or
(II) in such near resemblance to the mark as to be likely, when applied to the goods or services of the other person, to cause confusion, mistake, or to deceive;
(iv) be signed, including by any signature consistent with the requirement for an electronic signature under 15 U.S.C. Sec. 7001, under penalty of perjury by:
(A) the applicant; or
(B) if the applicant is not an individual, an individual authorized to sign on the applicant's behalf~~:~~.
~~(I) an officer of the applicant; or~~
~~(II) a partner of a partnership;~~
(v) be filed with the division;
(vi) be accompanied by ~~two~~ a specimen~~s~~ showing the mark as actually used; and
(vii) be accompanied by a fee as determined by the division in accordance with Section 70-3a-203.
(d) In addition to the information required by Subsection (1)(c), the division may require the applicant to provide~~:~~
~~(i)~~ a statement as to whether an application to register the mark, or portions or a composite of the mark, has been filed by the applicant or a predecessor in interest in the United States Patent and Trademark Office; or
(ii) a drawing of the mark, complying with the requirements the division may specify.
(2) If the division requires the statement under Subsection (1)(d)(i), the applicant shall provide full information with respect to any application filed with the United States Patent and Trademark Office including:
(a) the filing date and serial number of the application;
(b) the status of the application; and
(c) if any application was finally refused registration or has otherwise not resulted in a registration, the reasons for the refusal or lack of registration.
(3) Any materials, information, or signatures required to file an application for a mark may be provided through the database created under Section 70-3a-501.

70-3a-303 Filing of applications.
(1) The division may examine an application to determine whether the application conforms with this chapter if:
(a) the application for registration is filed under Section 70-3a-302; and
(b) the fee required by Section 70-3a-203 is paid.
(2) If reasonably requested by the division or considered by the applicant to be advisable to respond to any rejection or objection, the applicant:
(a) shall provide any additional information requested by rule by the division, including a description of a design mark; and
(b) may make, or authorize the division to make, amendments to the application.
(3)
(a) The division may require the applicant to disclaim an unregistrable component of a mark otherwise registrable.
(b) An applicant may voluntarily disclaim a component of a mark for which the applicant has filed a registration application.
(c) A disclaimer under this Subsection (3) may not prejudice or affect the applicant's or registrant's rights:
(i) in the disclaimed matter:
(A) existing at the time of the disclaimer; or
(B) arising after the disclaimer; or
(ii) of registration on another application if the disclaimed matter is or has become distinctive of the applicant's or registrant's goods or services.
(d) The division may make rules consistent with this Subsection (3) to establish the requirements for an applicant to disclaim an unregistrable component of a mark that is otherwise registrable.

(4) The division may:
(a) amend an application filed by the applicant if the applicant agrees in writing to the amendment; or
(b) require the applicant to file a new application.
(5)
(a) If the division determines that the applicant is not qualified to register a mark, the division shall notify the applicant of:
(i) the refusal; and
(ii) the reasons for the refusal.
(b) The applicant shall have a reasonable period of time specified by the division, but not more than 60 days from the date of the notice under this Subsection (5) to:
(i) reply to the refusal; or
(ii) amend the application for reexamination.
(c) The procedure described in Subsections (5)(a) and (b) may be repeated until:
(i) the division finally refuses registration of the mark; or
(ii) the applicant fails to reply or amend within the time period specified under Subsection (5)(b).
(d) If the applicant fails to reply or to amend within the time period specified under Subsection (5)(b), the application is considered abandoned.
(6) If the division finally refuses registration of the mark, the refusal shall:
(a) be in writing; and
(b) notify the applicant of the applicant's right to a review of the agency action in accordance with Title 63G, Chapter 4, Administrative Procedures Act.
(7)
(a) An applicant may file an action to compel registration by obtaining judicial review of the final agency action in accordance with Title 63G, Chapter 4, Administrative Procedures Act.
(b) The division is not liable for damages in an action to compel registration.
(c) An action to compel registration shall only be granted on proof that:
(i) all the statements in the application for registration are true; and
(ii) the mark is otherwise entitled to registration.
(8)
(a) If more than one application is concurrently being processed by the division seeking registration of the same or confusingly similar marks for the same or related goods or services, the division shall grant priority to the applications in order of filing.
(b) If a prior-filed application is granted a registration, the division shall refuse an application filed after the prior-filed application.
(c) An applicant refused under this Subsection (8) may bring an action for cancellation of the registration upon grounds of prior or superior rights to the mark.

70-3a-304 Certification of registration.
(1) If an applicant fully complies with this chapter, the division shall:
(a) certify the registration; and
(b) provide to the applicant documentation that the registration is certified.
~~(2) The documentation described in Subsection (1) shall:~~
~~(a) be affixed to the application of the applicant; or~~
~~(b) include the information that is required to be in an application under Subsections 70-3a-302(1)(c)(i) through (iii).~~
(~~3~~2) The following are admissible in evidence as competent and sufficient proof of the registration of the particular mark in any action or judicial proceeding in any court of this state:
(a) the documentation described in Subsection (1)(b) that is provided by the division; or
(b) a copy of the documentation described in Subsection (1)(b) if the copy is certified by the division.
~~(4) Documentation of the certification of an electronically registered mark shall be provided through the database created under Section 70-3a-501.~~

70-3a-305 Duration and renewal.
(1) The registration of a mark under this chapter expires five years after the date the division certifies the registration under Section 70-3a-304.
(2) A registration may be renewed for an additional five years from the date a registration expires if the registrant:
(a) files an application with the division:
(i) no sooner than six months before the expiration of the registration and no later than six months after the expiration of the registration; and
(ii) in accordance with the requirements made by rule by the division:
(A) pursuant to Section 70-3a-201; and
(B) consistent with this section; and
(b) pays a renewal fee determined by the division in accordance with Section 70-3a-203.
(3) If a registrant complies with this section, the registrant may renew a mark at the expiration of each five-year term.
~~(4)~~
~~(a) A registration in effect before May 6, 2002:~~
~~(i) shall continue in full force and effect for the registration's unexpired term; and~~
~~(ii) may be renewed by:~~
~~(A) filing an application for renewal with the division:~~
~~(I) within the time prescribed in Subsection (2)(a)(i); and~~
~~(II) in accordance with rules made by the division pursuant to Section 70-3a-201; and~~
~~(B) paying the required renewal fee determined by the division in accordance with Section 70-3a-203.~~
~~(b) If a registration in effect before May 6, 2002, is renewed in accordance with this Subsection (4), the registration shall be renewed for a term of five years.~~
(~~5~~4) Any application for renewal under this chapter, whether a registration made under this chapter or a registration made under a prior Utah statute, shall include:
(a) a verified statement that the mark has been and is still in use; and
(b)
(i) a specimen showing actual use of the mark on or in connection with the goods or services; or
(ii) a verified statement that the mark has not changed.

70-3a-306 Assignments -- Changes of name -- Other instruments -- Security interests -- Acknowledgments.
(1)
(a) A mark and the mark's registration under this chapter is assignable with:
(i) the good will of the business in which the mark is used; or
(ii) that part of the good will of the business connected with the use of and symbolized by the mark.
(b) An assignment under this section:
(i) shall be:
(A) in writing; and
(B) properly executed; and
(ii) may be filed with the division by:
(A) filing a form provided by the division; and
(B) paying of a fee determined by the division in accordance with Section 70-3a-203.
(c) Upon the filing of an assignment, the division shall certify that the assignment has been filed.
(d) An assignment of any registration under this chapter is void as against any subsequent purchaser for valuable consideration without notice, unless the assignment is filed with the division:
(i) within three months after the date of the assignment; or
(ii) before the subsequent purchase.
(2) Any registrant or applicant may change the name of the person or business to whom the mark is issued or for whom an application is filed by:
(a) filing two copies of a certificate of change of name of the registrant or applicant with the division; and

(b) paying of a fee determined by the division in accordance with Section 70-3a-203.
(3)
(a) A person may file another instrument that relates to a mark registered or application pending under this chapter:
(i) in the discretion of the division; and
(ii) if the instrument is:
(A) in writing; and
(B) properly executed.
(b) An instrument that may be filed under this Subsection (3) includes:
(i) a license;
(ii) a security interest; or
(iii) a mortgage.
(4) An acknowledgment by the assignor or person whose interest in a mark is adversely effected by the instrument:
(a) is prima facie evidence of the execution of an assignment or other instrument; and
(b) when filed by the division, is prima facie evidence of execution of the assignment or other instrument.

70-3a-307 Cancellation.
(1) The division shall cancel, in whole or in part:
(a) a registration of mark for which the division receives a voluntary request for the registration's cancellation from:
(i) the registrant; or
(ii) the assignee of record;
(b) a registration of a mark:
(i) granted under this chapter; and
(ii) not renewed in accordance with the chapter;
(c) a registration of a mark for which a court of competent jurisdiction finds that:
(i) the registered mark has been abandoned;
(ii) the registrant is not the owner of the mark;
(iii) the registration was granted improperly;
(iv) the registration was obtained fraudulently;
(v) the mark is or has become the generic name for the goods or services, or a portion of the goods or services, for which the mark has been registered; or
(vi) subject to Subsection (2), the mark is so similar, as to be likely to cause confusion, mistake, or to deceive, to a mark:
(A) registered by another person in the United States Patent and Trademark Office prior to the date of the filing of the application for registration by the registrant; and
(B) not abandoned; or
(d) when a court of competent jurisdiction orders cancellation of a registration on any ground.
(2) Notwithstanding Subsection (1)(c)(vi), if the registrant proves the registrant is the owner of a concurrent registration of a mark in the United States Patent and Trademark Office covering an area including this state, the registration under this chapter may not be cancelled for that particular area of the state.

70-3a-308 Classification.
(1)
(a) Except as provided in Subsection (1)(b), in administering this chapter, the division shall for the purposes of classifying:
(i) goods, use the general classes of goods designated in 37 C.F.R. 6.1; and
(ii) services, use the general classes of services designated in 37 C.F.R. 6.1.
(b) If the United States Patent and Trademark Office does not use the classifications described in Subsection (1)(a), to the extent practical, the classification of goods and services under this section should conform to the classification adopted by the United States Patent and Trademark Office.

(2) A single application for registration of a mark may include any or all goods upon which, or services with which, the mark is actually being used if it indicates the appropriate one or more classes of goods or services.
(3) When a single application includes goods or services that fall within multiple classes, the division may require payment of a fee for each class.

70-3a-309 Cybersquatting.
(1)
(a) A person is liable in a civil action by the owner of a mark, including a personal name, which is a mark for purposes of this section, if, without regard to the goods or services of the person or the mark's owner, the person:
(i) has a bad faith intent to profit from the mark, including a personal name; and
(ii) for any length of time registers, acquires, traffics in, or uses a domain name in, or belonging to any person in, this state that:
(A) in the case of a mark that is distinctive at the time of registration of the domain name, is identical or confusingly similar to the mark;
(B) in the case of a famous mark that is famous at the time of registration of the domain name, is identical or confusingly similar to or dilutive of the mark; or
(C) is a trademark, word, or name protected by reason of 18 U.S.C. Sec. 706 or 36 U.S.C. Sec. 220506.
(b)
(i) In determining whether a person has a bad faith intent described in Subsection (1)(a), a court may consider all relevant factors, including:
(A) the trademark or other intellectual property rights of the person, if any, in the domain name;
(B) the extent to which the domain name consists of the legal name of the person or a name that is otherwise commonly used to identify that person;
(C) the person's prior use, if any, of the domain name in connection with the bona fide offering of any goods or services;
(D) the person's bona fide noncommercial or fair use of the mark in a site accessible under the domain name;
(E) the person's intent to divert consumers from the mark owner's online location to a site accessible under the domain name that could harm the goodwill represented by the mark, either for commercial gain or with the intent to tarnish or disparage the mark, by creating a likelihood of confusion as to the source, sponsorship, affiliation, or endorsement of the site;
(F) the person's offer to transfer, sell, or otherwise assign, or solicitation of the purchase, transfer, or assignment of the domain name to the mark owner or any third party for financial gain without having used, or having an intent to use, the domain name in the bona fide offering of any goods or services, or the person's prior conduct indicating a pattern of such conduct;
(G) the person's provision of material and misleading false contact information when applying for the registration of the domain name, the person's intentional failure to maintain accurate contact information, or the person's prior conduct indicating a pattern of such conduct;
(H) the person's registration or acquisition of multiple domain names that the person knows are identical or confusingly similar to another's mark that is distinctive at the time of registration of the domain names, or is dilutive of another's famous mark that is famous at the time of registration of the domain names, without regard to the goods or services of the person or the mark owner; and
(I) the extent to which the mark incorporated in the person's domain name registration is or is not distinctive and famous.
(ii) Bad faith intent described in Subsection (1)(a) may not be found in any case in which the court determines that the person believed and had reasonable grounds to believe that the use of the domain name was a fair use or otherwise lawful.
(c) In a civil action involving the registration, trafficking, or use of a domain name under this section, a court may order the forfeiture or cancellation of the domain name or the transfer of the domain name to the owner of the mark.
(d)
(i) A person is liable for using a domain name under Subsection (1)(a) only if that person is the domain name

registrant or that registrant's authorized licensee, affiliate, domain name registrar, domain name registry, or other domain name registration authority that knowingly assists a violation of this chapter by the registrant.
(ii) A person may not be held liable under this section absent a showing of bad faith intent to profit from the registration or maintenance of the domain name.
(iii) For purposes of this section, a "showing of bad faith intent to profit" shall be interpreted in the same manner as under 15 U.S.C. Sec. 1114(2)(D)(iii).
(e) As used in this section, the term "traffics in" refers to transactions that include sales, purchases, loans, pledges, licenses, exchanges of currency, and any other transfer for consideration or receipt in exchange for consideration.
(2)
(a) The owner of a mark registered with the U.S. Patent and Trademark Office or under this chapter may file an in rem civil action against a domain name in the district court if the owner is located in the state and if:
(i) the domain name violates any right of the owner of a mark registered in the Patent and Trademark Office or registered under this chapter; and
(ii) the court finds that the owner:
(A) is not able to obtain personal jurisdiction over a person who would be a defendant in a civil action under Subsection (1); or
(B) through due diligence was not able to find a person who would be a defendant in a civil action under Subsection (1) by:
(I) sending a notice of the alleged violation and intent to proceed under this Subsection (2)(a) to the registrant of the domain name at the postal and e-mail address provided by the registrant to the registrar; and
(II) publishing notice of the action as the court may direct promptly after filing the action.
(b) Completion of the actions required by Subsection (2)(a)(ii) constitutes service of process.
(c) In an in rem action under this Subsection (2), a domain name is considered to be located in the judicial district in which:
(i) the domain name registrar, registry, or other domain name authority that registered or assigned the domain name is located; or
(ii) documents sufficient to establish control and authority regarding the disposition of the registration and use of the domain name are deposited with the court.
(d)
(i) The remedies in an in rem action under this Subsection (2) are limited to a court order for the forfeiture or cancellation of the domain name or the transfer of the domain name to the owner of the mark.
(ii) Upon receipt of written notification of a filed, stamped copy of a complaint filed by the owner of a mark in the district court under this Subsection (2), the domain name registrar, domain name registry, or other domain name authority shall:
(A) expeditiously deposit with the court documents sufficient to establish the court's control and authority regarding the disposition of the registration and use of the domain name to the court; and
(B) not transfer, suspend, or otherwise modify the domain name during the pendency of the action, except upon order of the court.
(iii) The domain name registrar or registry or other domain name authority is not liable for injunctive or monetary relief under this section, except in the case of bad faith or reckless disregard, which includes a willful failure to comply with a court order.
(3) The civil actions and remedies established by Subsection (1) and the in rem action established in Subsection (2) do not preclude any other applicable civil action or remedy.
(4) The in rem jurisdiction established under Subsection (2) does not preclude any other jurisdiction, whether in rem or personal.

Part 4
Violations and Remedies

70-3a-401 Fraudulent registration.

(1) A person is civilly liable to pay all damages resulting from a filing or registration under this chapter if:
(a) that person procures the filing or registration of any mark:
(i) for the person who procures the filing or registration; or
(ii) on behalf of another person; and
(b) the person who procures the filing or registration procures it by:
(i) knowingly making a false or fraudulent representation or declaration, orally or in writing; or
(ii) any other fraudulent means.
(2) Damages sustained as a result of a filing or registration described in Subsection (1) may be recovered:
(a) by or on behalf of the person injured by the filing or registration; and
(b) in any court of competent jurisdiction.

70-3a-402 Infringement.
(1) Subject to Section 70-3a-104 and Subsection (2), any person is liable in a civil action brought by the registrant for any and all of the remedies provided in Section 70-3a-404, if that person:
(a) uses a reproduction, counterfeit, copy, or colorable imitation of a mark registered under this chapter:
(i) without the consent of the registrant; and
(ii) in connection with the sale, distribution, offering for sale, or advertising of any goods or services on or in connection with which that use is likely to cause confusion, mistake, or to deceive as to the source of origin, nature, or quality of those goods or services; or
(b) reproduces, counterfeits, copies, or colorably imitates any mark and applies the reproduction, counterfeit, copy, or colorable imitation to labels, signs, prints, packages, wrappers, receptacles, or advertisements intended to be used upon or in connection with the sale or other distribution in this state of goods or services.
(2) Under Subsection (1)(b), the registrant is not entitled to recover profits or damages unless the act described in Subsection (1)(b) has been committed with the intent:
(a) to cause confusion or mistake; or
(b) to deceive.
(3) In a civil action for a violation of Section 70-3a-309:
(a) the plaintiff may recover court costs and reasonable attorney fees; and
(b) the plaintiff may elect, at any time before final judgment is entered by the district court, to recover, instead of actual damages and profits, an award of statutory damages in the amount of not less than $1,000 and not more than $100,000 per domain name, as the court considers just.
(4) Statutory damages awarded under Subsection (3)(b) are presumed to be $100,000 per domain name if there is a pattern and practice of infringements committed willfully for commercial gain.

70-3a-403 Injury to business reputation -- Dilution.
(1) Subject to the principles of equity and upon the terms the court considers reasonable, the owner of a mark that is famous in this state is entitled to:
(a) an injunction against another person's commercial use of a mark, if the use:
(i) begins after the mark has become famous; and
(ii) causes dilution of the distinctive quality of the mark; and
(b) obtain other relief as is provided in this section.
(2) To determine if a mark is famous, a court may consider factors including:
(a) the degree of inherent or acquired distinctiveness of the mark in this state;
(b) the duration and extent of use of the mark in connection with the goods and services with which the mark is used;
(c) the duration and extent of advertising and publicity of the mark in this state;
(d) the geographical extent of the trading area in which the mark is used;
(e) the channels of trade for the goods or services with which the mark is used;
(f) the degree of recognition of the mark in the trading areas and channels of trade in this state that are used by:
(i) the mark's owner; and
(ii) the person against whom the injunction is sought;
(g) the nature and extent of use of the same or similar mark by third parties; and

(h) whether the mark is the subject of:
(i) a state registration in this state; or
(ii) a federal registration:
(A) under the Act of March 3, 1881, c. 138, 21 Stat. 502;
(B) under the Act of February 20, 1905, c. 592, 33 Stat. 724; or
(C) on the principal register.
(3) In an action brought under this section, the owner of a famous mark is entitled only to injunctive relief in this state, unless the person against whom the injunctive relief is sought willfully intended to:
(a) trade on the owner's reputation; or
(b) cause dilution of the famous mark.
(4) If willful intent is proven under Subsection (3)(a) or (b), in addition to injunctive relief, the owner is entitled to the remedies set forth in Section 70-3a-404, subject to:
(a) the discretion of the court; and
(b) the principles of equity.
(5) The following are not actionable under this section:
(a) fair use of a famous mark by another person in comparative commercial advertising or promotion to identify the competing goods or services of the owner of the famous mark;
(b) noncommercial use of the mark; and
(c) all forms of news reporting and news commentary.

70-3a-404 Remedies.
(1)
(a) An owner of a mark registered under this chapter may proceed by suit to enjoin the manufacture, use, display, or sale of any counterfeits or imitations of the mark.
(b) A court of competent jurisdiction may grant injunctions to restrain the manufacture, use, display, or sale as may be considered by the court just and reasonable.
(2) A court may:
(a) require the defendants to pay the owner:
(i) all profits derived from the wrongful manufacture, use, display, or sale of a registered mark; or
(ii) all damages suffered because of the wrongful manufacture, use, display, or sale of a registered mark;
(b) order that any counterfeits or imitations of a registered mark in the possession or under the control of any defendant in an action be delivered to the following to be destroyed:
(i) an officer of the court; or
(ii) the complainant; or
(c) take a combination of the actions described in Subsections (2)(a) and (b).
(3) A court may enter judgment for the prevailing party:
(a) in an action where the court finds:
(i) the other party committed the wrongful act:
(A) with knowledge;
(B) in bad faith; or
(ii) as according to the circumstances of the case; and
(b) in an amount not to exceed:
(i) three times the profits and damages of the prevailing party; and
(ii) the reasonable attorneys fees of the prevailing party.
(4) The enumeration of any right or remedy in this section does not affect a registrant's right to prosecute under any penal law of this state.

70-3a-405 Forum for actions regarding registration -- Service on out-of-state registrants.
(1)
(a) An action to require the cancellation of a mark registered under this chapter shall be brought in a district court of this state.
(b) The division may not be made a party to an action filed under Subsection (1)(a), except that the division

may intervene in an action filed under Subsection (1)(a).
(2) In any action brought against a nonresident registrant, service may be effected upon the nonresident registrant in accordance with the procedures established for service upon nonresident corporations and business entities under Section 16-10a-1511.

Part 5
Searchable Mark Database

70-3a-501 Searchable mark database.
(1) The division shall maintain a database that enables a user to:
(a) file an application to ~~electronically~~ register a mark;
(b) manage existing marks owned by the user; and
(c) search for any registered marks.
(2)
(a) The division may contract with a person to maintain and operate the database.
(b) If the division contracts with a person to maintain and operate the database, the person with whom the division contracts may, at the discretion of the division, be responsible for all costs of creating the database and readying it for use.
(3) Notwithstanding Subsections 13-1-2(3)(c) and 70-3a-203(2), the database required by Subsection (1) shall be:
(a) directly funded by fees collected for the electronic registration of marks, including funding any data storage costs related to operation of the database; and
(b) accessible online through the state's Internet website.
(4) For all registered marks, the database shall include:
(a) the date of a mark's registration;
(b) an indication of the mark's status as active or otherwise;
(c) any class for which the mark is registered; and
(d) the name of the registrant.
(5) A search of the information in the database that is listed in Subsection (4) shall be available free to any user, without regard to whether the user has an account for use of the database.
(6) The division may provide other services in connection with the database, for which the division may charge a user.
(7) A person ~~electronically~~ registering a mark shall be given an account through which the person may access the database to:
(a) review the status of a mark;
(b) pay any fee; and
(c) renew, revoke, and assign any mark.

70-3a-502 Use of funds collected under this chapter.
Notwithstanding Subsections 13-1-2(3)(c) and 70-3a-203(2), any funds collected from the registration of a mark under this chapter or the use of the database in excess of the expense of maintaining the database shall be retained as dedicated credits to be used by the division to:
(1) promote the electronic registration of marks to holders of federal trademarks;
(2) promote the state as a desirable location for business; and
(3) provide incentives to businesses considering relocation to the state.