

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.

Amended by Chapter 378, 2010 General Session

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.

Amended by Chapter 41, 1996 General Session

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as originally filed with the division, if initial directors are so named in the articles of incorporation, shall be superseded by a provision in the bylaws specifying the number of authorized directors.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.

Amended by Chapter 378, 2010 General Session

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.

Enacted by Chapter 277, 1992 General Session

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.

Amended by Chapter 85, 2007 General Session

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.

Enacted by Chapter 277, 1992 General Session

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.

Amended by Chapter 85, 2007 General Session

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.

Amended by Chapter 378, 2010 General Session

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.

Amended by Chapter 364, 2008 General Session

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.

Amended by Chapter 184, 1993 General Session

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.

Enacted by Chapter 277, 1992 General Session

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.

Enacted by Chapter 277, 1992 General Session

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.

Amended by Chapter 227, 2011 General Session

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.

Amended by Chapter 378, 2010 General Session

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.

Amended by Chapter 378, 2010 General Session

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.

Amended by Chapter 184, 1993 General Session

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.

Amended by Chapter 378, 2010 General Session

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.

Amended by Chapter 41, 1996 General Session

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.

Enacted by Chapter 277, 1992 General Session

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.

Enacted by Chapter 277, 1992 General Session

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.

Enacted by Chapter 277, 1992 General Session

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.

Amended by Chapter 439, 2017 General Session

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.

Amended by Chapter 200, 1994 General Session

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).

Enacted by Chapter 277, 1992 General Session

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.

Enacted by Chapter 277, 1992 General Session

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.

Enacted by Chapter 277, 1992 General Session

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.

Enacted by Chapter 277, 1992 General Session

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.

Enacted by Chapter 277, 1992 General Session