

## 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.

Amended by Chapter 240, 2015 General Session

### **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.

Enacted by Chapter 300, 2000 General Session

### **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.

Enacted by Chapter 300, 2000 General Session

**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.

Enacted by Chapter 300, 2000 General Session

**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.

Amended by Chapter 127, 2001 General Session

**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.

Enacted by Chapter 300, 2000 General Session

**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.

Amended by Chapter 240, 2015 General Session

**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).

Amended by Chapter 240, 2015 General Session

***Superseded 7/1/2024***

**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.

Amended by Chapter 9, 2001 General Session  
Amended by Chapter 127, 2001 General Session

***Effective 7/1/2024***

**16-6a-809 Removal of directors by judicial proceeding.**

- (1)
- (a) A court may remove a director, in an action brought 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.
- (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.

Amended by Chapter 401, 2023 General Session

**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.

Enacted by Chapter 300, 2000 General Session

**16-6a-811 Compensation of directors.**

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

Enacted by Chapter 300, 2000 General Session

**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.

Amended by Chapter 228, 2006 General Session

**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.

Amended by Chapter 69, 2016 General Session

**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.



Amended by Chapter 240, 2015 General Session

**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.

Amended by Chapter 240, 2015 General Session

**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.

Amended by Chapter 386, 2009 General Session

**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.

Amended by Chapter 240, 2015 General Session

**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.

Enacted by Chapter 300, 2000 General Session

**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.

Enacted by Chapter 300, 2000 General Session

**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.

Enacted by Chapter 300, 2000 General Session

**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.

Enacted by Chapter 300, 2000 General Session

**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.

Amended by Chapter 306, 2007 General Session

**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.

Amended by Chapter 386, 2009 General Session

**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.

Amended by Chapter 197, 2002 General Session

**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.

Amended by Chapter 240, 2015 General Session

**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.

Amended by Chapter 127, 2001 General Session