

**ELECTRONIC PROXY VOTING FOR
CORPORATIONS**

2001 GENERAL SESSION

STATE OF UTAH

Sponsor: Stephen H. Urquhart

This act modifies provisions relating to corporations. The act defines electronic transmission. The act allows proxy voting for corporations to be conducted by electronic transmission. The act makes technical changes.

This act affects sections of Utah Code Annotated 1953 as follows:

AMENDS:

16-10a-102, as last amended by Chapter 41, Laws of Utah 1996

16-10a-722, as enacted by Chapter 277, Laws of Utah 1992

31A-5-101 (Effective 04/30/01), as last amended by Chapter 300, Laws of Utah 2000

42-2-6.6 (Effective 04/30/01), as last amended by Chapters 131 and 300, Laws of Utah 2000

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

Section 1. Section **16-10a-102** is amended to read:

16-10a-102. Definitions.

As used in this chapter:

(1) "Address" means a location where mail can be delivered by the United States Postal Service. "Address" includes post office box numbers, rural free delivery route numbers, and street names and numbers.

(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 the 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.



28 (4) "Articles of incorporation" include amended and restated articles of incorporation,
29 articles of merger, and documents of a similar import.

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

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

33 (7) "Cash" and "money" are used interchangeably in this chapter and mean legal tender and
34 negotiable instruments and other cash equivalents readily convertible into legal tender.

35 (8) "Conspicuous" means so written that a reasonable person against whom the writing is
36 to operate should have noticed it. For example, printing or typing in italics, boldface, contrasting
37 color, capitals, or underlining is conspicuous.

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

41 (10) "Corporate name" means:

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

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

46 (11) "Corporation" or "domestic corporation" means a corporation for profit, which is not
47 a foreign corporation, incorporated under or subject to the provisions of this chapter.

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

50 (13) "Distribution" means a direct or indirect transfer of money or other property, except
51 a corporation's own shares, or incurrence of indebtedness by a corporation to or for the benefit of
52 its shareholders in respect of any of its shares. A distribution may be in the form of a declaration
53 or payment of a dividend, a purchase, redemption, or other acquisition of shares, distribution of
54 indebtedness, or otherwise.

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

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

58 (16) "Effective date of notice" means the date notice is effective as provided in Section

59 16-10a-103.

60 (17) "Electronic transmission" or "electronically transmitted" means any process of
61 communication not directly involving the physical transfer of paper that is suitable for the
62 retention, retrieval, and reproduction of information by the recipient.

63 [~~(17)~~] (18) "Employee" includes an officer but not a director. A director may accept duties
64 that make that director also an employee.

65 [~~(18)~~] (19) "Entity" includes a domestic and foreign corporation, a nonprofit corporation,
66 a limited liability company, a profit or nonprofit unincorporated association, a business trust, an
67 estate, a partnership, a trust, two or more persons having a joint or common economic interest,
68 state, the United States, and a foreign government.

69 [~~(19)~~] (20) "Foreign corporation" means a corporation for profit incorporated under a law
70 other than the law of this state.

71 [~~(20)~~] (21) "Governmental subdivision" means county, municipality, and any other types
72 of governmental subdivision authorized by the laws of this state.

73 [~~(21)~~] (22) "Individual" means a natural person, the estate of an incompetent individual,
74 or the estate of a deceased individual.

75 [~~(22)~~] (23) "Mail," "mailed," or "mailing" means deposit, deposited, or depositing in the
76 United States mail, properly addressed, first class postage prepaid, and includes registered or
77 certified mail for which the proper fee has been paid.

78 [~~(23)~~] (24) "Notice" is as provided in Section 16-10a-103.

79 [~~(24)~~] (25) "Principal office" means the office, in or out of this state, designated by a
80 domestic or foreign corporation as its principal office in the most recent document on file with the
81 division providing [~~such~~] the information, including an annual report, an application for a
82 certificate of authority, or a notice of change of principal office.

83 [~~(25)~~] (26) "Proceeding" includes a civil suit, arbitration or mediation, and a criminal,
84 administrative, or investigatory action.

85 [~~(26)~~] (27) "Qualified shares" means, with respect to a director's conflicting interest
86 transaction pursuant to Section 16-10a-853, any shares entitled to vote on the transaction, except
87 shares that, to the knowledge, before the vote, of the secretary, other officer, or agent of the
88 corporation authorized to tabulate votes, are beneficially owned, or the voting of which is
89 controlled, by a director who has a conflicting interest respecting the transaction, or by a related

90 person of that director, or both.

91 ~~[(27)]~~ (28) "Receive," when used in reference to receipt of a writing or other document by
92 a domestic or foreign corporation, means the writing or other document is actually received:

93 (a) by the corporation at its registered office in this state or at its principal office;

94 (b) by the secretary of the corporation, wherever the secretary is found; or

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

97 ~~[(28)]~~ (29) "Record date" means the date established under Part 6 or 7 of this chapter on
98 which a corporation determines the identity of its shareholders. The determination shall be made
99 as of the close of business on the record date unless another time for doing so is specified when
100 the record date is fixed.

101 ~~[(29)]~~ (30) "Registered office" means the office within this state designated by a domestic
102 or foreign corporation as its registered office in the most recent document on file with the division
103 providing that information, including articles of incorporation, an application for a certificate of
104 authority, or a notice of change of registered office.

105 ~~[(30)]~~ (31) "Related person" of a director means:

106 (a) the spouse of the director, or a child, grandchild, sibling, or parent of the director;

107 (b) the spouse of a child, grandchild, sibling, or parent of the director;

108 (c) an individual having the same home as the director;

109 (d) a trust or estate of which the director or any other individual specified in this

110 Subsection ~~[(30)]~~ (31) is a substantial beneficiary; or

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

112 ~~[(31)]~~ (32) "Secretary" means the corporate officer to whom the bylaws or the board of
113 directors has delegated responsibility under Subsection 16-10a-830(3) for the preparation and
114 maintenance of minutes of the meetings of the board of directors and of the shareholders and of
115 the other records and information required to be kept by the corporation by Section 16-10a-830,
116 and for authenticating records of the corporation.

117 ~~[(32)]~~ (33) "Shares" means the units into which the proprietary interests in a corporation
118 are divided.

119 ~~[(33)]~~ (34) "Shareholder" means the person in whose name shares are registered in the
120 records of a corporation or the beneficial owner of shares to the extent recognized pursuant to

121 Section 16-10a-723. For purposes of this chapter:

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

124 (i) (A) three or fewer coowners;

125 (B) in the case of more than three coowners each coowner in excess of the first three will
126 be counted as a separate shareholder;

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

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

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

132 (c) in any case where the record of shareholders has not been maintained in accordance
133 with accepted practice, any additional person who would be identified as an owner on that record
134 if it had been maintained in accordance with accepted practice shall be included as a holder of
135 record.

136 [~~(34)~~] (35) "Subscriber" means a person who subscribes for shares in a corporation,
137 whether before or after incorporation.

138 [~~(35)~~] (36) "Voting group" means all shares of one or more classes or series that under the
139 articles of incorporation or this chapter are entitled to vote and be counted together collectively on
140 a matter at a meeting of shareholders. All shares entitled by the articles of incorporation or this
141 chapter to vote generally on the matter are for that purpose a single voting group.

142 Section 2. Section **16-10a-722** is amended to read:

143 **16-10a-722. Proxies.**

144 (1) A shareholder may vote his shares in person or by proxy.

145 [~~(2) Without limiting the manner in which a shareholder may appoint a proxy to vote or~~
146 ~~otherwise act for that shareholder, the following constitute valid means of appointment:]~~

147 [~~(a)~~] (2) A shareholder, his agent, or attorney-in-fact, may appoint a proxy to vote or
148 otherwise act for the shareholder by signing an appointment form[~~, either personally or by the~~
149 ~~shareholder's attorney-in-fact~~] or by an electronic transmission. An electronic transmission must
150 contain or be accompanied by information that indicates that the shareholder, the shareholder's
151 agent, or the shareholder's attorney-in-fact authorized the transmission.

152 ~~[(b) A shareholder may appoint a proxy by transmitting or authorizing the transmission~~
153 ~~of a telegram, teletype, or other electronic transmission providing a written statement of the~~
154 ~~appointment to the proxy, to a proxy solicitor, proxy support service organization, or other person~~
155 ~~duly authorized by the proxy to receive appointments as agent for the proxy, or to the corporation,~~
156 ~~provided that the transmitted appointment shall set forth or be transmitted with written evidence~~
157 ~~from which it can be determined that the shareholder transmitted or authorized the transmission~~
158 ~~of the appointment.]~~

159 (3) An appointment of a proxy is effective when a signed appointment form or an
160 electronic transmission of the appointment is received by the [corporation, including receipt by the
161 corporation of an appointment transmitted pursuant to Subsection (2)(b)] inspector of election or
162 the officer or agent of the corporation authorized to tabulate votes. An appointment is valid for
163 11 months unless a longer period is expressly provided in the appointment form.

164 ~~[(4) Any complete copy, including an electronically transmitted facsimile, of an~~
165 ~~appointment of a proxy may be substituted for or used in lieu of the original appointment for any~~
166 ~~purpose for which the original appointment could be used.]~~

167 ~~[(5)] (4) An appointment of a proxy is revocable [by the shareholder, and is revoked upon~~
168 ~~the death or incapacity of the shareholder upon receipt of notice of either event as provided in~~
169 ~~Subsection (6);] unless the appointment form [conspicuously] or electronic transmission states that~~

170 it is irrevocable and the appointment is coupled with an interest. Appointments coupled with an
171 interest include the appointment of any of the following persons or their designees:

172 (a) a pledgee;

173 (b) a person who purchased or agreed to purchase the shares;

174 (c) a creditor of the corporation who extended its credit under terms requiring the
175 appointment;

176 (d) an employee of the corporation whose employment contract requires the appointment;
177 or

178 (e) a party to a voting agreement created under Section 16-10a-731.

179 ~~[(6)] (5) The death or incapacity of the shareholder appointing a proxy does not affect the~~
180 ~~right of the corporation to accept the proxy's authority unless the appointment is not irrevocable~~
181 ~~and coupled with an interest, and notice of the death or incapacity is received by the secretary or~~
182 ~~other officer or agent authorized to tabulate votes before the proxy exercises the authority under~~

183 the appointment.

184 ~~[(7)]~~ (6) An appointment made irrevocable under Subsection ~~[(5)]~~ (4) is revoked when the
185 interest with which it is coupled is extinguished but the revocation does not affect the right of the
186 corporation to accept the proxy's authority unless:

187 (a) the corporation had notice that the appointment was coupled with that interest and
188 notice that the interest is extinguished is received by the secretary or other officer or agent
189 authorized to tabulate votes before the proxy exercises the authority under the appointment; or

190 (b) other notice of the revocation of the appointment is received by the secretary or other
191 officer or agent authorized to tabulate votes before the proxy exercises the authority under the
192 appointment.

193 ~~[(8)]~~ (7) The corporation is not required to recognize an appointment made irrevocable
194 under Subsection ~~[(5)]~~ (4) if it has received a writing revoking the appointment signed by the
195 shareholder either personally or by ~~[such]~~ the shareholder's attorney-in-fact, notwithstanding that
196 the revocation may be a breach of an obligation of the shareholder to another person not to revoke
197 the appointment. This provision shall not affect any claim ~~[such]~~ the other person may have
198 against the shareholder with respect to the revocation.

199 ~~[(9)]~~ (8) A transferee for value of shares subject to an irrevocable appointment may revoke
200 the appointment if ~~[such]~~ the transferee did not know of its existence when acquiring the shares
201 and the existence of the irrevocable appointment was not noted conspicuously on the certificate
202 representing the shares or on the information statement for shares without certificates.

203 ~~[(10)]~~ (9) Subject to Section 16-10a-724 and to any express limitation on the proxy's
204 authority ~~[appearing on the face of]~~ stated in the appointment form or electronic transmission, a
205 corporation is entitled to accept the proxy's vote or other action as that of the shareholder making
206 the appointment.

207 Section 3. Section **31A-5-101 (Effective 04/30/01)** is amended to read:

208 **31A-5-101 (Effective 04/30/01). Definitions.**

209 In this chapter, unless the context requires otherwise:

210 (1) The definitions applicable to the Utah Revised Business Corporation Act in
211 Subsections 16-10a-102(2), ~~[(22), and]~~ (23), and (24) apply to stock corporations.

212 (2) The definitions applicable to nonprofit corporations in Subsections 16-6a-102(4), (6),
213 and ~~[(30)]~~ (31) apply to mutuals.

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

217 Section 4. Section **42-2-6.6 (Effective 04/30/01)** is amended to read:

218 **42-2-6.6 (Effective 04/30/01). Assumed name.**

219 (1) The assumed name:

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

222 (b) shall be distinguishable from any registered name or trademark of record in the offices
223 of the Division of Corporations and Commercial Code, as defined in Subsection 16-10a-401(5),
224 except as authorized by the Division of Corporations and Commercial Code pursuant to Subsection
225 (2);

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

228 (i) "Olympic";

229 (ii) "Olympiad"; or

230 (iii) "Citius Altius Fortius";

231 (d) without the written consent of the State Board of Regents issued in accordance with
232 Section 53B-5-114, may not contain the words:

233 (i) "university";

234 (ii) "college"; or

235 (iii) "institute"; and

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

238 (i) "incorporated";

239 (ii) "inc."; or

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

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

244 (a) Subsection 16-6a-102[(25)](26);

245 (b) Subsection 16-6a-102[~~(32)~~](33);

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

247 (d) Subsection 16-10a-102[~~(19)~~](20).

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

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

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

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

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

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

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

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

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

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

Legislative Review Note
as of 2-2-01 10:41 AM

A limited legal review of this legislation raises no obvious constitutional or statutory concerns.

Office of Legislative Research and General Counsel