

NONPROFIT CORPORATION ACT AMENDMENTS

2001 GENERAL SESSION

STATE OF UTAH

Sponsor: Lyle W. Hillyard

This act modifies the Utah Revised Nonprofit Corporation Act. The act makes various technical changes. The act amends provisions relating to ballots. The act amends provisions relating to voting on directors. The act amends provisions relating to the removal of directors. The act amends provisions relating to conflict of interest transactions. The act adds a severability clause.

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

AMENDS:

- 16-6a-102 (Effective 04/30/01)**, as enacted by Chapter 300, Laws of Utah 2000
- 16-6a-202 (Effective 04/30/01)**, as enacted by Chapter 300, Laws of Utah 2000
- 16-6a-302 (Effective 04/30/01)**, as enacted by Chapter 300, Laws of Utah 2000
- 16-6a-707 (Effective 04/30/01)**, as enacted by Chapter 300, Laws of Utah 2000
- 16-6a-709 (Effective 04/30/01)**, as enacted by Chapter 300, Laws of Utah 2000
- 16-6a-717 (Effective 04/30/01)**, as enacted by Chapter 300, Laws of Utah 2000
- 16-6a-805 (Effective 04/30/01)**, as enacted by Chapter 300, Laws of Utah 2000
- 16-6a-808 (Effective 04/30/01)**, as enacted by Chapter 300, Laws of Utah 2000
- 16-6a-809 (Effective 04/30/01)**, as enacted by Chapter 300, Laws of Utah 2000
- 16-6a-817 (Effective 04/30/01)**, as enacted by Chapter 300, Laws of Utah 2000
- 16-6a-825 (Effective 04/30/01)**, as enacted by Chapter 300, Laws of Utah 2000
- 16-6a-826 (Effective 04/30/01)**, as enacted by Chapter 300, Laws of Utah 2000
- 16-6a-1405 (Effective 04/30/01)**, as enacted by Chapter 300, Laws of Utah 2000
- 16-6a-1607 (Effective 04/30/01)**, as enacted by Chapter 300, Laws of Utah 2000

ENACTS:

16-6a-1705, Utah Code Annotated 1953

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

Section 1. Section **16-6a-102 (Effective 04/30/01)** is amended to read:

16-6a-102 (Effective 04/30/01). Definitions.

As used in this chapter:

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

(b) "Address" includes:

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

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

(3) "Assumed corporate name" means the name assumed for use in this state:

(a) by a:

- (i) foreign corporation pursuant to Section 16-10a-1506; or
- (ii) a foreign nonprofit corporation pursuant to Section 16-6a-1506; and

(b) because the corporate name of the foreign corporation described in Subsection (3)(a) is not available for use in this state.

(4) "Articles of incorporation" include:

- (a) amended articles of incorporation;
- (b) restated articles of incorporation;
- (c) articles of merger; and
- (d) a document of a similar import to the documents described in Subsection (4)(a) or (b).

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

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

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

rules are designated.

(b) "Bylaws" includes:

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

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

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

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

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

(b) For purposes of Subsection (8)(a), rights are considered the same if they are determined by a formula applied uniformly to a group of memberships.

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

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

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

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

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

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

(12) "Corporate name" means:

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

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

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

(i) articles of incorporation; or

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

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

(i) articles of incorporation; or

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

(13) "Corporation" or "domestic corporation" means a corporation for profit, which is not a foreign corporation, incorporated under or subject to Chapter 10a, Utah Revised Business Corporation Act.

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

(a) for the election of a director; or

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

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

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

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

(i) members;

(ii) directors; or

(iii) officers.

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

(i) goods sold; or

(ii) services received.

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

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

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

(21) (a) "Employee" includes an officer but not a director of a nonprofit corporation.

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

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

(23) "Entity" includes:

(a) a domestic or foreign corporation;

(b) a domestic or foreign nonprofit corporation;

(c) a limited liability company;

(d) a profit or nonprofit unincorporated association;

(e) a business trust;

(f) an estate;

(g) a partnership;

(h) a trust;

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

(j) a state;

(k) the United States; or

(l) a foreign government.

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

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

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

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

(26) "Governmental subdivision" means:

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

(27) "Individual" means:

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

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

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

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

(30) (a) "Member" means one or more persons identified as a member of a domestic or foreign nonprofit corporation in the articles of incorporation or bylaws of the nonprofit corporation pursuant to a procedure set forth:

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

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

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

(32) "Nonprofit corporation" or "domestic nonprofit corporation" means an entity, which is not a foreign nonprofit corporation, incorporated under or subject to the provisions of this chapter.

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

~~[(41)]~~ (34) "~~[Related party]~~ Party related to a director" means:

- (a) the spouse of the director;
- (b) a child of the director;
- (c) a grandchild of the director;
- (d) a sibling of the director;
- (e) a parent of the director;
- (f) the spouse of an individual described in Subsections [~~(41)~~] (34)(b) through (e);
- (g) an individual having the same home as the director;
- (h) a trust or estate of which the director or any other individual specified in this Subsection [~~(41)~~] (34) is a substantial beneficiary; or

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

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

[~~(34)~~] (35) "Person" means an:

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

[~~(35)~~] (36) "Principal office" means:

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

- (i) an annual report;
- (ii) an application for a certificate of authority; or
- (iii) a notice of change of principal office; or

(b) if no principal office can be determined, a domestic or foreign nonprofit corporation's registered office.

[~~(36)~~] (37) "Proceeding" includes:

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

~~[(37)]~~ (38) "Receive," when used in reference to receipt of a writing or other document by a domestic or foreign nonprofit corporation, means the writing or other document is actually received:

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

~~[(38)]~~ (39) (a) "Record date" means the date established under Part 6 or 7 on which a nonprofit corporation determines the identity of its members.

(b) The determination described in Subsection ~~[(38)]~~ (39)(a) shall be made as of the close of business on the record date unless another time for doing so is specified when the record date is fixed.

~~[(39)]~~ (40) "Registered agent" means the registered agent of:

- (a) a domestic nonprofit corporation required to be maintained pursuant to Subsection 16-6a-501(1)(b); or
- (b) a foreign nonprofit corporation required to be maintained pursuant to Subsection 16-6a-1508(1)(b).

~~[(40)]~~ (41) "Registered office" means the office within this state designated by a domestic or foreign nonprofit corporation as its registered office in the most recent document on file with the

division providing that information, including:

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

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

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

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

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

(44) "Street address" means:

- (a) (i) street name and number;
- (ii) city or town; and
- (iii) United States post office zip code designation; or
- (b) if, by reason of rural location or otherwise, a street name, number, city, or town does not exist, an appropriate description other than that described in Subsection (44)(a) fixing as nearly as

possible the actual physical location but only if the information includes:

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

(45) "United States" includes any district, authority, office, bureau, commission, department, and any other agency of the United States of America.

(46) "Vote" includes authorization by:

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

(47) (a) "Voting group" means all the members of one or more classes of members or directors that, under this chapter, the articles of incorporation, or the bylaws, are entitled to vote and be counted together collectively on a matter.

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

(48) (a) "Voting member" means [~~one or more persons who are~~] a person entitled to vote for all matters required or permitted under this chapter to be submitted to a vote of the members, except as otherwise provided in the articles of incorporation or bylaws.

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

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

Section 2. Section **16-6a-202 (Effective 04/30/01)** is amended to read:

16-6a-202 (Effective 04/30/01). Articles of incorporation.

(1) The articles of incorporation shall set forth:

- (a) one or more purposes for which the nonprofit corporation is organized;
- (b) a corporate name for the nonprofit corporation that satisfies the requirements of Section 16-6a-401;
- (c) the street address of the nonprofit corporation's initial registered office;

- (d) the name and signature of its initial registered agent at the office listed in Subsection (1)(c), which registered agent shall meet the requirements of Section 16-6a-501;
 - (e) the name and address of each incorporator;
 - (f) whether or not the nonprofit corporation will have voting members;
 - (g) if the nonprofit corporation is to issue shares of stock evidencing membership in the nonprofit corporation or interests in water or other property rights:
 - (i) the aggregate number of shares that the nonprofit corporation has authority to issue; and
 - (ii) if the shares are to be divided into classes:
 - (A) the number of shares of each class;
 - (B) the designation of each class; and
 - (C) a statement of the preferences, limitations, and relative rights of the shares of each class;
- and
- (h) provisions not inconsistent with law regarding the distribution of assets on dissolution.
- (2) The articles of incorporation may but need not set forth:
- (a) the names and addresses of the [~~one or more~~] individuals who are to serve as the initial directors;
 - (b) provisions not inconsistent with law regarding:
 - (i) managing the business and regulating the affairs of the nonprofit corporation;
 - (ii) defining, limiting, and regulating the powers of:
 - (A) the nonprofit corporation;
 - (B) the board of directors of the nonprofit corporation; and
 - (C) the members of the nonprofit corporation or any class of members;
 - (iii) whether cumulative voting will be permitted; and
 - (iv) the characteristics, qualifications, rights, limitations, and obligations attaching to each or any class of members; and
 - (c) any provision that under this chapter is permitted to be in the articles of incorporation or required or permitted to be set forth in the bylaws, including elective provisions that in accordance with this chapter shall be included in the articles of incorporation to be effective.

(3) (a) It is sufficient under Subsection (1)(a) to state, either alone or with other purposes, that the purpose of the corporation is to engage in any lawful act for which a nonprofit corporation may be organized under this chapter.

(b) If the articles of incorporation include the statement described in Subsection (3)(a), all lawful acts and activities shall be within the purposes of the nonprofit corporation, except for express limitations, if any.

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

(5) The articles of incorporation shall:

(a) be signed by each incorporator; and

(b) meet the filing requirements of Section 16-6a-105.

(6) The appointment of the registered agent shall be signed by the registered agent on:

(a) the articles of incorporation; or

(b) an acknowledgment attached to the articles of incorporation.

(7) (a) If this chapter conditions any matter upon the presence of a provision in the bylaws, the condition is satisfied if the provision is present either in:

(i) the articles of incorporation; or

(ii) the bylaws.

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

(i) the articles of incorporation; and

(ii) the bylaws.

Section 3. Section **16-6a-302 (Effective 04/30/01)** is amended to read:

16-6a-302 (Effective 04/30/01). General powers.

Unless its articles of incorporation provide otherwise, and except as restricted by the Utah Constitution, every nonprofit corporation has:

(1) perpetual duration and succession in its corporate name; and

(2) the same powers as an individual to do all things necessary or convenient to carry out its

permitted activities and affairs, including without limitation the power to:

- (a) sue and be sued, complain and defend in its corporate name;
- (b) (i) have a corporate seal, that may be altered at will; and
(ii) use the corporate seal, or a facsimile of the corporate seal, by impressing or affixing it or in any other manner reproducing it;
- (c) make and amend bylaws, not inconsistent with its articles of incorporation or with the laws of this state, for managing and regulating the affairs of the nonprofit corporation;
- (d) purchase, receive, lease, or otherwise acquire, and own, hold, improve, use, and otherwise deal with, real or personal property, or any legal or equitable interest in property, wherever located;
- (e) sell, convey, mortgage, pledge, lease, exchange, and otherwise dispose of all or any part of its property and assets;
- (f) purchase, receive, subscribe for, or otherwise acquire, own, hold, vote, use, sell, mortgage, lend, pledge, or otherwise dispose of, and deal in and with shares or other interests in, or obligations of, any other entity;
- (g) make contracts and guarantees, incur liabilities, borrow money, issue its notes, bonds, and other obligations and secure any of its obligations by mortgage or pledge of any of its property, assets, franchises, or income;
- (h) lend money, invest and reinvest its funds, and receive and hold real and personal property as security for repayment, except that a nonprofit corporation may not lend money to or guarantee the obligation of a director or officer of the nonprofit corporation;
- (i) be an agent, associate, fiduciary, manager, member, partner, promoter, or trustee of, or to hold any similar position with, any entity;
- (j) conduct its business, locate offices, and exercise the powers granted by this chapter within or without this state;
- (k) (i) elect directors and appoint officers, employees, and agents of the nonprofit corporation;
(ii) define the duties of the directors, officers, employees, and agents; and

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

- (i) membership in the nonprofit corporation; or
- (ii) interests in water or other property rights.

Section 4. Section **16-6a-707 (Effective 04/30/01)** is amended to read:

16-6a-707 (Effective 04/30/01). Action without meeting.

(1) Unless otherwise provided in the articles of incorporation and Subsection (5), and subject to the limitations of Subsection 16-6a-1704(3), any action that may be taken at any annual or special meeting of members may be taken without a meeting and without prior notice, if one or more consents in writing, setting forth the action taken, are signed by the members having not less than the minimum voting power that would be necessary to authorize or take the action at a meeting at which all members entitled to vote on the action were present and voted.

(2) (a) Unless the written consents of all members entitled to vote have been obtained, notice of any member approval without a meeting shall be given at least ten days before the consummation of the transaction, action, or event authorized by the member action to:

- (i) those members entitled to vote who have not consented in writing; and
- (ii) those members:
 - (A) not entitled to vote; and
 - (B) to whom this chapter requires that notice of the proposed action be given.

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

(3) Any member giving a written consent, or the member's proxyholder or a personal representative of the member or their respective proxyholder, may revoke the consent by a signed writing:

- (a) describing the action;
- (b) stating that the member's prior consent is revoked; and
- (c) that is received by the nonprofit corporation prior to the effectiveness of the action.

(4) (a) A member action taken pursuant to this section is not effective unless all written consents on which the nonprofit corporation relies for the taking of an action pursuant to Subsection

(1) are:

(i) received by the nonprofit corporation within a 60-day period; and

(ii) not revoked pursuant to Subsection (3).

(b) Action taken by the members pursuant to this section is effective:

(i) as of the date the last written consent necessary to effect the action is received by the nonprofit corporation; or

(ii) if all of the written consents necessary to effect the action specify a later date as the effective date of the action, the later date specified in the consents.

(c) If the nonprofit corporation has received written consents in accordance with Subsection (1) signed by all members entitled to vote with respect to the action, the effective date of the member action may be any date that is specified in all the written consents as the effective date of the member action.

(d) Unless otherwise provided by the bylaws, a written consent under this Subsection (4) may be received by the nonprofit corporation by electronically transmitted facsimile or other form of communication providing the corporation with a complete copy of the written consent, including a copy of the signature to the written consent.

(5) Notwithstanding Subsection (1), directors may not be elected by written consent except by unanimous written consent of all [~~shares~~] members entitled to vote for the election of directors.

(6) If not otherwise determined under Section 16-6a-703 or 16-6a-706, the record date for determining the members entitled to take action without a meeting or entitled to be given notice under Subsection (2) of action taken without a meeting is the date the first member delivers to the nonprofit corporation a writing upon which the action is taken pursuant to Subsection (1).

(7) Action taken under this section has the same effect as action taken at a meeting of members and may be so described in any document.

Section 5. Section **16-6a-709 (Effective 04/30/01)** is amended to read:

16-6a-709 (Effective 04/30/01). Action by written ballot.

(1) Unless otherwise provided by the bylaws, any action that may be taken at any annual, regular, or special meeting of members may be taken without a meeting if the nonprofit corporation

delivers a written ballot to every member entitled to vote on the matter.

(2) A written ballot described in Subsection (1) shall:

(a) set forth each proposed action; and

(b) provide an opportunity to vote for or against each proposed action.

(3) Approval by written ballot pursuant to this section shall be valid only when:

(a) the number of votes cast by ballot equals or exceeds the quorum required to be present at a meeting authorizing the action; and

(b) the number of approvals equals or exceeds the number of votes that would be required to approve the matter at a meeting at which the total number of votes cast was the same as the number of votes cast by ballot.

(4) All solicitations for votes by written ballot shall:

(a) indicate the number of responses needed to meet the quorum requirements;

(b) state the percentage of approvals necessary to approve each matter other than election of directors;

(c) specify the time by which a ballot must be received by the nonprofit corporation in order to be counted; and

(d) be accompanied by written information sufficient to permit each person casting the ballot to reach an informed decision on the matter.

(5) Unless otherwise provided by the bylaws, a written ballot may not be revoked.

(6) Action taken under this section has the same effect as action taken at a meeting of members and may be described as such in any document.

(7) Unless otherwise provided by the bylaws, a written ballot delivered to every member entitled to vote on the matter or matters therein, as described in this section, may also be used in connection with any annual, regular, or special meeting of members, thereby allowing members the choice of either voting in person or by written ballot delivered by a member to the nonprofit corporation in lieu of attendance at such meeting. Any written ballot shall comply with the requirements of Subsection (2) and shall be counted equally with the votes of members in attendance at any meeting for every purpose, including satisfaction of a quorum requirement.

Section 6. Section **16-6a-717 (Effective 04/30/01)** is amended to read:

16-6a-717 (Effective 04/30/01). Voting for directors -- Cumulative voting.

(1) If the bylaws provide for cumulative voting for directors by the voting members, voting members may cumulatively vote, by:

(a) multiplying the number of votes the voting members are entitled to cast by the number of directors for whom they are entitled to vote; and

(b) (i) casting the product for a single candidate; or

(ii) distributing the product among two or more candidates.

(2) Cumulative voting is not authorized at a particular meeting unless:

(a) the meeting notice or statement accompanying the notice states that cumulative voting will take place; or

(b) (i) a voting member gives notice during the meeting and before the vote is taken of the voting member's intent to cumulate votes; and

(ii) if one voting member gives this notice, all other voting members participating in the election are entitled to cumulate their votes without giving further notice.

(3) (a) ~~[In]~~ Unless otherwise provided in the bylaws, in an election of multiple directors, that number of candidates equaling the number of directors to be elected, having the highest number of votes cast in favor of their election, are elected to the board of directors.

(b) ~~[When]~~ Unless otherwise provided in the bylaws, when only one director is being voted upon, the ~~[affirmative vote of a majority of the members constituting a quorum at the meeting at which the election occurs shall be required for election]~~ candidate having the highest number of votes cast in his or her favor is elected to the board of directors.

Section 7. Section **16-6a-805 (Effective 04/30/01)** is amended to read:

16-6a-805 (Effective 04/30/01). 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) ~~Despite~~ 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.

Section 8. Section **16-6a-808 (Effective 04/30/01)** is amended to read:

16-6a-808 (Effective 04/30/01). Removal of directors.

(1) Directors elected by voting members or directors may be removed as provided in Subsections (1)(a) through (g).

(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) A director may be removed only if the number of votes cast to remove the director would be sufficient to elect the director at a meeting to elect directors.

(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) Notwithstanding Subsections (1)(a) through (f), if provided in the bylaws, any director no longer qualified to serve, under standards set forth in the bylaws, may be removed by a vote of a majority of the directors then in office or such greater number as set forth in the bylaws.

~~[(g)]~~ (h) 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 shall not be affected by Subsection 16-6a-805(5).

Section 9. Section **16-6a-809 (Effective 04/30/01)** is amended to read:

16-6a-809 (Effective 04/30/01). 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 ~~[Part 4]~~ 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.

Section 10. Section **16-6a-817 (Effective 04/30/01)** is amended to read:

16-6a-817 (Effective 04/30/01). Committees of the board.

(1) Unless otherwise provided in the bylaws and subject to the provisions of Section 16-6a-906, the board of directors may:

(a) create one or more committees of the board; and

(b) appoint [~~one~~] 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 specified in the bylaws or by the board of directors, and subject to Subsection (6)(b), each committee of the board shall have the authority of the board of directors under Section 16-6a-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 16-6a-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.

Section 11. Section **16-6a-825 (Effective 04/30/01)** is amended to read:

16-6a-825 (Effective 04/30/01). 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 by a corporation to its directors or officers.

(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 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; [or]

(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
[(iii)] (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.

Section 12. Section **16-6a-826 (Effective 04/30/01)** is amended to read:

16-6a-826 (Effective 04/30/01). 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 [~~one~~] 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.

Section 13. Section **16-6a-1405 (Effective 04/30/01)** is amended to read:

16-6a-1405 (Effective 04/30/01). Effect of dissolution.

(1) A dissolved nonprofit corporation continues its corporate existence but may not carry on any activities except as is appropriate to wind up and liquidate its affairs, including:

(a) collecting its assets;

(b) returning, transferring, or conveying assets held by the nonprofit corporation upon a condition requiring return, transfer, or conveyance, which condition occurs by reason of the dissolution, in accordance with the condition;

(c) transferring, subject to any contractual or legal requirements, its assets as provided in or authorized by its articles of incorporation or bylaws;

(d) discharging or making provision for discharging its liabilities; and

(e) doing every other act necessary to wind up and liquidate its assets and affairs.

(2) (a) [~~Unless otherwise provided in the articles of incorporation or bylaws, upon~~] Upon dissolution of a nonprofit corporation described under Section 501(c)(3), Internal Revenue Code, and exempt from tax under Section 501(a), Internal Revenue Code, or the corresponding section of any future federal tax code, the assets of the nonprofit corporation shall be distributed:

- (i) for one or more exempt purposes under Section 501(c)(3), Internal Revenue Code;
- (ii) to the federal government for a public purpose; or
- (iii) to a state or local government, for a public purpose.

(b) Any assets not disposed of under Subsection (2)(a) shall be disposed of by the district court for the county in which the principal office of the nonprofit corporation is then located, exclusively as determined by the court:

- (i) for one or more exempt purposes under Section 501(c)(3), Internal Revenue Code; or
- (ii) to organizations that are organized and operated exclusively for exempt or public purposes.

(c) The conversion to a corporation under Section 16-6a-1008 of a nonprofit corporation described under Section 501(c)(3), Internal Revenue Code, and exempt from tax Section 501(a), Internal Revenue Code, or the corresponding section of any future federal tax code, shall be considered to be a dissolution of that nonprofit corporation for purposes of this Subsection (2).

(3) Dissolution of a nonprofit corporation does not:

- (a) transfer title to the nonprofit corporation's property;
- (b) subject its directors or officers to standards of conduct different from those prescribed in this chapter;
- (c) change quorum or voting requirements for its board of directors or members;
- (d) change provisions for selection, resignation, or removal of its directors or officers, or both;
- (e) change provisions for amending its bylaws or its articles of incorporation;
- (f) prevent commencement of a proceeding by or against the nonprofit corporation in its corporate name; or

(g) abate or suspend a proceeding pending by or against the nonprofit corporation on the effective date of dissolution.

Section 14. Section **16-6a-1607 (Effective 04/30/01)** is amended to read:

16-6a-1607 (Effective 04/30/01). Annual report for division.

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

- (a) (i) the corporate name of the domestic or foreign nonprofit corporation; and
- (ii) any assumed corporate name of the foreign nonprofit corporation;
- (b) the state or country under whose law it is incorporated;
- (c) the street address of its registered office in this state;
- (d) the name of its registered agent at the office listed in Subsection (1)(c);
- (e) the street address of its principal office; and
- (f) the names and addresses of its directors and principal officers.

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

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

(4) (a) The annual report of a domestic or foreign nonprofit corporation shall be delivered annually to the division no later than ~~[the end of the second calendar month following the calendar month in which the report form is mailed by the division]~~ 60 days past the date the report was mailed by the division.

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

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

(b) If an annual report does not contain the information required by this section, the division

shall promptly notify the reporting domestic or foreign nonprofit corporation in writing and return the annual report to it for correction.

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

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

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

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

Section 15. Section **16-6a-1705** is enacted to read:

16-6a-1705. Severability clause.

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