

## UTAH REVISED NONPROFIT CORPORATION

## ACT AMENDMENTS

2001 FIRST SPECIAL SESSION

STATE OF UTAH

**Sponsor: Lyle W. Hillyard**

**This act modifies the Utah Revised Nonprofit Corporations Act to address issues related to a quorum of a nonprofit corporation and taking action by written ballot. The act addresses issues related to transition between the old and revised law. The act has an immediate effective date and portions of the act have retrospective operation to April 30, 2001.**

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

AMENDS:

**16-6a-709**, as last amended by Chapter 127, Laws of Utah 2001

**16-6a-714**, as enacted by Chapter 300, Laws of Utah 2000

**16-6a-1704**, as enacted by Chapter 300, Laws of Utah 2000

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

Section 1. Section **16-6a-709** is amended to read:

**16-6a-709. Action by written ballot.**

(1) Unless otherwise provided by the bylaws, any action that may be taken at any annual, regular, or special meeting of members may be taken without a meeting if the nonprofit corporation delivers a written ballot to every member entitled to vote on the matter.

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

(a) set forth each proposed action; and

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

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

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

(i) the time by which all ballots must be received by the nonprofit corporation has passed so that a quorum can be determined; and

~~[(b)]~~ (ii) the number of approvals equals or exceeds the number of votes that would be

required to approve the matter at a meeting at which the total number of votes cast was the same as the number of votes cast by ballot.

(b) Unless otherwise provided in this chapter or in accordance with Section 16-6a-716, for purposes of taking action by written ballot the number of votes cast by written ballot pursuant to this section constitute a quorum for action on the matter.

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

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

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

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

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

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

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

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

Section 2. Section **16-6a-714** is amended to read:

**16-6a-714. Quorum and voting requirements for voting groups.**

(1) (a) Members entitled to vote as a separate voting group may take action on a matter at a meeting only if a quorum of those members exists with respect to that matter.

(b) Unless otherwise provided in this chapter or ~~[the bylaws, a majority of the votes entitled~~

~~to be cast on the matter by the voting group constitutes a quorum of that voting group for action on that matter]~~ in accordance with Section 16-6a-716, at a meeting of the voting group, the members of the voting group that are represented for any purpose at the meeting constitute a quorum of that voting group for action on a matter.

(2) Once a member is represented for any purpose at a meeting, including the purpose of determining that a quorum exists, the member is considered present for quorum purposes:

(a) for the remainder of the meeting; and

(b) for any adjournment of that meeting, unless:

(i) otherwise provided in the bylaws; or

(ii) a new record date is or shall be set for that adjourned meeting.

(3) Action on a matter other than the election of directors by a voting group is approved if:

(a) a quorum exists;

(b) the votes cast within the voting group favoring the action exceed the votes cast within the voting group opposing the action; and

(c) a greater number of affirmative votes is not required by this chapter or the bylaws.

(4) The election of directors is governed by Section 16-6a-717.

Section 3. Section **16-6a-1704** is amended to read:

**16-6a-1704. Saving provisions.**

(1) (a) Except as provided in Subsection (2), the repeal of any statute by this act does not affect:

(i) the operation of the statute or any action taken under it before its repeal;

(ii) any ratification, right, remedy, privilege, obligation, or liability acquired, accrued, or incurred under the statute before its repeal;

(iii) any violation of the statute, or any penalty, forfeiture, or punishment incurred because of the violation of the statute before its repeal; or

(iv) any proceeding, reorganization, or dissolution commenced under the statute before its repeal.

(b) A proceeding, reorganization, or dissolution described in Subsection (1)(a)(iv) may be

completed in accordance with the repealed statute as if the statute had not been repealed.

(2) If a penalty or punishment imposed for violation of a statute repealed by this act is reduced by this act, the penalty or punishment if not already imposed shall be imposed in accordance with this act.

(3) Section 16-6a-707 does not operate to permit a nonprofit corporation in existence prior to April 30, 2001, to take action by the written consent of fewer than all of the members entitled to vote with respect to the subject matter of the action, until the date a resolution providing otherwise is approved either:

(a) by a consent in writing:

(i) setting forth the proposed resolution; and

(ii) signed by all of the members entitled to vote with respect to the subject matter of the resolution; or

(b) at a duly convened meeting of members, by the vote of the same percentage of members of each voting group as would be required to include the resolution in an amendment to the nonprofit corporation's articles of incorporation.

(4) Indemnification for an act or omission of a director or officer of a nonprofit corporation if the act or omission occurs prior to April 30, 2001, is governed by Title 16, Chapter 6, Utah Nonprofit Corporation and Co-operative Association Act, in effect as of April 29, 2001.

(5) A nonprofit corporation is not required to amend the nonprofit corporation's articles of incorporation to state whether its members are voting members if:

(a) the nonprofit corporation was:

(i) formed prior to April 30, 2001;

(ii) formed under the laws of this state; and

(iii) existing on April 30, 2001; and

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

**Section 4. Effective date.**

If approved by two-thirds of all the members elected to each house, this act takes effect upon

approval by the governor, or the day following the constitutional time limit of Utah Constitution Article VII, Section 8, without the governor's signature, or in the case of a veto, the date of veto override.

**Section 5. Retrospective operation.**

The amendments to Section 16-6a-1704 in this act have retrospective operation to April 30, 2001.