

1                                   **UTAH REVISED NONPROFIT CORPORATION**

2                                   **ACT AMENDMENTS**

3                                   2002 GENERAL SESSION

4                                   STATE OF UTAH

5                                   **Sponsor: Lyle W. Hillyard**

6   **This act modifies the Utah Revised Nonprofit Corporation Act. The act amends definitions.**

7   **This act addresses provisions related to private foundations. The act addresses issues related**

8   **to members and directors. This act addresses penalty provisions. This act addresses**

9   **interrogatories by the division. This act corrects cross references and references to nonprofit**

10 **domestic and foreign corporations. This act makes technical changes.**

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

12 AMENDS:

13       **16-6a-102**, as last amended by Chapter 127, Laws of Utah 2001

14       **16-6a-107**, as enacted by Chapter 300, Laws of Utah 2000

15       **16-6a-116**, as enacted by Chapter 300, Laws of Utah 2000

16       **16-6a-202**, as last amended by Chapter 127, Laws of Utah 2001

17       **16-6a-401**, as enacted by Chapter 300, Laws of Utah 2000

18       **16-6a-501**, as enacted by Chapter 300, Laws of Utah 2000

19       **16-6a-503**, as enacted by Chapter 300, Laws of Utah 2000

20       **16-6a-603**, as enacted by Chapter 300, Laws of Utah 2000

21       **16-6a-706**, as enacted by Chapter 300, Laws of Utah 2000

22       **16-6a-707**, as last amended by Chapter 127, Laws of Utah 2001

23       **16-6a-816**, as enacted by Chapter 300, Laws of Utah 2000

24       **16-6a-824**, as enacted by Chapter 300, Laws of Utah 2000

25       **16-6a-825**, as last amended by Chapter 127, Laws of Utah 2001

26       **16-6a-907**, as enacted by Chapter 300, Laws of Utah 2000

27       **16-6a-1105**, as enacted by Chapter 300, Laws of Utah 2000



- 28           **16-6a-1411**, as enacted by Chapter 300, Laws of Utah 2000
- 29           **16-6a-1412**, as enacted by Chapter 300, Laws of Utah 2000
- 30           **16-6a-1502**, as enacted by Chapter 300, Laws of Utah 2000
- 31           **16-6a-1506**, as enacted by Chapter 300, Laws of Utah 2000
- 32           **16-6a-1507**, as enacted by Chapter 300, Laws of Utah 2000
- 33           **16-6a-1606**, as enacted by Chapter 300, Laws of Utah 2000
- 34           **16-6a-1609**, as enacted by Chapter 300, Laws of Utah 2000
- 35           **31A-5-101**, as last amended by Chapter 218, Laws of Utah 2001
- 36           **42-2-6.6**, as last amended by Chapter 218, Laws of Utah 2001

37 ENACTS:

38           **16-6a-1610**, Utah Code Annotated 1953

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

40           Section 1. Section **16-6a-102** is amended to read:

41           **16-6a-102. Definitions.**

42           As used in this chapter:

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

45           (b) "Address" includes:

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

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

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

52           (a) by a:

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

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

57           (4) "Articles of incorporation" include:

- 58           (a) amended articles of incorporation;

59 (b) restated articles of incorporation;

60 (c) articles of merger; and

61 (d) a document of a similar import to the documents described in ~~[Subsection]~~ Subsections

62 (4)(a) ~~[or (b)]~~ through (c).

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

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

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

71 (b) "Bylaws" includes:

72 (i) amended bylaws; and

73 (ii) restated bylaws.

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

75 (i) legal tender;

76 (ii) a negotiable instrument; or

77 (iii) other cash equivalent readily convertible into legal tender.

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

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

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

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

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

86 (i) italics;

87 (ii) boldface;

88 (iii) contrasting color;

89 (iv) capitals; or

90 (v) underlining.

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

93 (a) the ownership of voting shares;

94 (b) contract; or

95 (c) means other than those specified in Subsection (10)(a) or (b).

96 (11) [~~"Cooperative"~~ Subject to Section 16-6a-207, "cooperative nonprofit corporation" or  
97 "cooperative" means a nonprofit corporation organized or existing under this chapter [~~subject to~~  
98 ~~Section 16-6a-207~~].

99 (12) "Corporate name" means:

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

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

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

105 (i) articles of incorporation; or

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

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

109 (i) articles of incorporation; or

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

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

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

116 (a) for the election of a director; or

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

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

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

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

123 (i) members;

124 (ii) directors; or

125 (iii) officers.

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

127 (i) goods sold; or

128 (ii) services received.

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

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

132 (20) "Effective date of notice" means the date notice is effective as provided in Section  
133 16-6a-103.

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

135 (b) (i) Except as provided in Subsection (21)(b)(ii), "employee" does not include a director  
136 of a nonprofit corporation.

137 [~~(b)~~] (ii) Notwithstanding Subsection (21)[~~(a)~~] (b)(i), a director may accept duties that  
138 make that director an employee of a nonprofit corporation.

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

140 (23) "Entity" includes:

141 (a) a domestic or foreign corporation;

142 (b) a domestic or foreign nonprofit corporation;

143 (c) a limited liability company;

144 (d) a profit or nonprofit unincorporated association;

145 (e) a business trust;

146 (f) an estate;

147 (g) a partnership;

148 (h) a trust;

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

150 (j) a state;

151 (k) the United States; or

152 (l) a foreign government.

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

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

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

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

158 (26) "Governmental subdivision" means:

159 (a) a county;

160 (b) a city;

161 (c) a town; or

162 (d) any other type of governmental subdivision authorized by the laws of this state.

163 (27) "Individual" means:

164 (a) a natural person;

165 (b) the estate of an incompetent individual; or

166 (c) the estate of a deceased individual.

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

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

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

174 (30) (a) "Member" means one or more persons identified or otherwise appointed as a  
175 member of a domestic or foreign nonprofit corporation [~~in the articles of incorporation or bylaws~~  
176 ~~of the nonprofit corporation pursuant to a procedure set forth~~] as provided:

177 (i) in the articles of incorporation;

178 (ii) in the bylaws; [~~or~~]

179 (iii) by a resolution of the board of directors[-]; or

180 (iv) by a resolution of the members of the nonprofit corporation.

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

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

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

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

187 (34) "Party related to a director" means:

188 (a) the spouse of the director;

189 (b) a child of the director;

190 (c) a grandchild of the director;

191 (d) a sibling of the director;

192 (e) a parent of the director;

193 (f) the spouse of an individual described in Subsections (34)(b) through (e);

194 (g) an individual having the same home as the director;

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

196 Subsection (34) is a substantial beneficiary; or

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

198 (i) a trust;

199 (ii) an estate;

200 (iii) an incompetent;

201 (iv) a conservatee; or

202 (v) a minor.

203 (35) "Person" means an:

204 (a) individual; or

205 (b) entity.

206 (36) "Principal office" means:

207 (a) the office, in or out of this state, designated by a domestic or foreign nonprofit

208 corporation as its principal office in the most recent document on file with the division providing

209 that information, including:

210 (i) an annual report;

211 (ii) an application for a certificate of authority; or

212 (iii) a notice of change of principal office; or

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

214 registered office.

215 (37) "Proceeding" includes:

216 (a) a civil suit;

217 (b) arbitration;

218 (c) mediation;

219 (d) a criminal action;

220 (e) an administrative action; or

221 (f) an investigatory action.

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

225 (a) by the domestic or foreign nonprofit corporation at:

226 (i) its registered office in this state; or

227 (ii) its principal office;

228 (b) by the secretary of the domestic or foreign nonprofit corporation, wherever the  
229 secretary is found; or

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

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

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

237 (40) "Registered agent" means the registered agent of:

238 (a) a domestic nonprofit corporation required to be maintained pursuant to Subsection  
239 16-6a-501(1)(b); or

240 (b) a foreign nonprofit corporation required to be maintained pursuant to Subsection  
241 16-6a-1508(1)(b).

242 (41) "Registered office" means the office within this state designated by a domestic or  
243 foreign nonprofit corporation as its registered office in the most recent document on file with the  
244 division providing that information, including:



- 245 (a) articles of incorporation;
- 246 (b) an application for a certificate of authority; or
- 247 (c) a notice of change of registered office.
- 248 (42) "Secretary" means the corporate officer to whom the bylaws or the board of directors
- 249 has delegated responsibility under Subsection 16-6a-818(3) for:
  - 250 (a) the preparation and maintenance of:
    - 251 (i) minutes of the meetings of:
      - 252 (A) the board of directors; or
      - 253 (B) the members; and
    - 254 (ii) the other records and information required to be kept by the nonprofit corporation
    - 255 pursuant to Section 16-6a-1601; and
  - 256 (b) authenticating records of the nonprofit corporation.
- 257 (43) "State," when referring to a part of the United States, includes:
  - 258 (a) a state;
  - 259 (b) a commonwealth;
  - 260 (c) the District of Columbia;
  - 261 (d) an agency or governmental and political subdivision of a state, commonwealth, or
  - 262 District of Columbia;
  - 263 (e) territory or insular possession of the United States; or
  - 264 (f) an agency or governmental and political subdivision of a territory or insular possession
  - 265 of the United States.
- 266 (44) "Street address" means:
  - 267 (a) (i) street name and number;
  - 268 (ii) city or town; and
  - 269 (iii) United States post office zip code designation; or
  - 270 (b) if, by reason of rural location or otherwise, a street name, number, city, or town does
  - 271 not exist, an appropriate description other than that described in Subsection (44)(a) fixing as nearly
  - 272 as possible the actual physical location but only if the information includes:
    - 273 (i) the rural free delivery route;
    - 274 (ii) the county; and
    - 275 (iii) the United States post office zip code designation.

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

278 (46) "Vote" includes authorization by:

279 (a) written ballot; and

280 (b) written consent.

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

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

286 (48) (a) "Voting member" means a person entitled to vote for all matters required or  
287 permitted under this chapter to be submitted to a vote of the members, except as otherwise  
288 provided in the articles of incorporation or bylaws.

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

290 (i) a right the person has as a delegate;

291 (ii) a right the person has to designate a director; or

292 (iii) a right the person has as a director.

293 Section 2. Section **16-6a-107** is amended to read:

294 **16-6a-107. Fees.**

295 (1) Unless otherwise provided by statute, the division shall charge and collect a fee for  
296 services established by the division in accordance with Section 63-38-3.2 including fees:

297 (a) for furnishing a certified copy of any document, instrument, or paper relating to a  
298 domestic or foreign nonprofit corporation; and

299 (b) for the certificate and affixing the seal to a certified copy described in Subsection  
300 (1)(a).

301 (2) (a) The division shall provide expedited, 24-hour processing of any item under this  
302 section upon request.

303 (b) The division shall charge and collect additional fees established by the division in  
304 accordance with Section 63-38-3.2 for expedited service provided under Subsection (2)(a).

305 (3) (a) The division shall charge and collect a fee determined by the division in accordance  
306 with Section 63-38-3.2 at the time of any service of process on the director of the division as

307 resident agent of a domestic or foreign nonprofit corporation.

308 (b) The fee paid under Subsection (3)(a) may be recovered as taxable costs by the party  
309 to the suit or action causing the service to be made if the party prevails in the suit or action.

310 Section 3. Section **16-6a-116** is amended to read:

311 **16-6a-116. Private foundations.**

312 Except as otherwise specified in the articles of incorporation or as provided by a court of  
313 competent jurisdiction, a nonprofit corporation that is a private foundation as defined in Section  
314 509(a), Internal Revenue Code:

315 (1) shall make distributions for each taxable year at the time and in the manner as not to  
316 subject the nonprofit corporation to tax under Section 4942, Internal Revenue Code;

317 (2) may not engage in any act of self-dealing as defined in Section 4941(d), Internal  
318 Revenue Code;

319 (3) may not retain any excess business holdings as defined in Section 4943(c), Internal  
320 Revenue Code;

321 (4) may not make any investments that would subject the nonprofit corporation to taxation  
322 under Section 4944, Internal Revenue Code; and

323 (5) may not make any taxable expenditures as defined in Section 4945(d), Internal  
324 Revenue Code.

325 Section 4. Section **16-6a-202** is amended to read:

326 **16-6a-202. Articles of incorporation.**

327 (1) The articles of incorporation shall set forth:

328 (a) one or more purposes for which the nonprofit corporation is organized;

329 (b) a corporate name for the nonprofit corporation that satisfies the requirements of Section  
330 16-6a-401;

331 (c) the street address of the nonprofit corporation's initial registered office;

332 (d) the name and signature of its initial registered agent at the office listed in Subsection  
333 (1)(c), which registered agent shall meet the requirements of Section 16-6a-501;

334 (e) the name and address of each incorporator;

335 (f) whether or not the nonprofit corporation will have voting members;

336 (g) if the nonprofit corporation is to issue shares of stock evidencing membership in the  
337 nonprofit corporation or interests in water or other property rights:

- 338 (i) the aggregate number of shares that the nonprofit corporation has authority to issue; and  
339 (ii) if the shares are to be divided into classes:
- 340 (A) the number of shares of each class;  
341 (B) the designation of each class; and  
342 (C) a statement of the preferences, limitations, and relative rights of the shares of each  
343 class; and
- 344 (h) provisions not inconsistent with law regarding the distribution of assets on dissolution.
- 345 (2) The articles of incorporation may but need not set forth:
- 346 (a) the names and addresses of the individuals who are to serve as the initial directors;  
347 (b) provisions not inconsistent with law regarding:
- 348 (i) managing the business and regulating the affairs of the nonprofit corporation;  
349 (ii) defining, limiting, and regulating the powers of:
- 350 (A) the nonprofit corporation;  
351 (B) the board of directors of the nonprofit corporation; and  
352 (C) the members of the nonprofit corporation or any class of members;
- 353 (iii) whether cumulative voting will be permitted; and  
354 (iv) the characteristics, qualifications, rights, limitations, and obligations attaching to each  
355 or any class of members; and
- 356 (c) any provision that under this chapter is permitted to be in the articles of incorporation  
357 or required or permitted to be set forth in the bylaws, including elective provisions that in  
358 accordance with this chapter shall be included in the articles of incorporation to be effective.
- 359 (3) (a) It is sufficient under Subsection (1)(a) to state, either alone or with other purposes,  
360 that the purpose of the nonprofit corporation is to engage in any lawful act for which a nonprofit  
361 corporation may be organized under this chapter.
- 362 (b) If the articles of incorporation include the statement described in Subsection (3)(a), all  
363 lawful acts and activities shall be within the purposes of the nonprofit corporation, except for  
364 express limitations, if any.
- 365 (4) The articles of incorporation need not set forth any corporate power enumerated in this  
366 chapter.
- 367 (5) The articles of incorporation shall:
- 368 (a) be signed by each incorporator; and

- 369 (b) meet the filing requirements of Section 16-6a-105.
- 370 (6) The appointment of the registered agent shall be signed by the registered agent on:
- 371 (a) the articles of incorporation; or
- 372 (b) an acknowledgment attached to the articles of incorporation.
- 373 (7) (a) If this chapter conditions any matter upon the presence of a provision in the bylaws,
- 374 the condition is satisfied if the provision is present either in:
- 375 (i) the articles of incorporation; or
- 376 (ii) the bylaws.
- 377 (b) If this chapter conditions any matter upon the absence of a provision in the bylaws, the
- 378 condition is satisfied only if the provision is absent from both:
- 379 (i) the articles of incorporation; and
- 380 (ii) the bylaws.
- 381 Section 5. Section **16-6a-401** is amended to read:
- 382 **16-6a-401. Corporate name.**
- 383 (1) The corporate name of a nonprofit corporation:
- 384 (a) may, but need not contain:
- 385 (i) the word "corporation," "incorporated," or "company"; or
- 386 (ii) an abbreviation of "corporation," "incorporated," or "company";
- 387 (b) may not contain any word or phrase that indicates or implies that it is organized for any
- 388 purpose other than one or more of the purposes contained in Section 16-6a-301 and its articles of
- 389 incorporation;
- 390 (c) except as authorized by the division under Subsection (2), shall be distinguishable, as
- 391 defined in Section 16-10a-401, from:
- 392 (i) the name of any domestic corporation incorporated in this state;
- 393 (ii) the name of any foreign corporation authorized to conduct affairs in this state;
- 394 (iii) the name of any domestic nonprofit corporation incorporated in this state;
- 395 (iv) the name of any foreign nonprofit corporation authorized to conduct affairs in this
- 396 state;
- 397 (v) the name of any domestic limited liability company formed in this state;
- 398 (vi) the name of any foreign limited liability company authorized to conduct affairs in this
- 399 state;

- 400 (vii) the name of any limited partnership formed or authorized to conduct affairs in this  
401 state;
- 402 (viii) any name that is reserved under Section 16-6a-402 or 16-10a-402;
- 403 (ix) the name of any entity that has registered its name under Section 42-2-5;
- 404 (x) the name of any trademark or service mark registered by the division; or
- 405 (xi) any assumed name filed under Section 42-2-5;
- 406 (d) shall be, for purposes of recordation, either translated into English or transliterated into  
407 letters of the English alphabet if it is not in English;
- 408 (e) without the written consent of the United States Olympic Committee, may not contain  
409 the words:
- 410 (i) "Olympic";
- 411 (ii) "Olympiad"; or
- 412 (iii) "Citius Altius Fortius"; and
- 413 (f) without the written consent of the State Board of Regents issued in accordance with  
414 Section 53B-5-114, may not contain the words:
- 415 (i) "university";
- 416 (ii) "college"; or
- 417 (iii) "institute."
- 418 (2) The division may authorize the use of the name applied for if:
- 419 (a) the name is distinguishable from one or more of the names and trademarks described  
420 in Subsection (1)(c) that are on the division's records; or
- 421 (b) if the applicant delivers to the division a certified copy of the final judgment of a court  
422 of competent jurisdiction establishing the applicant's right to use the name applied for in this state  
423 registered or reserved with the division pursuant to the laws of this state.
- 424 (3) A nonprofit corporation may use the name of another domestic or foreign corporation  
425 that is used in this state if:
- 426 (a) the other corporation is incorporated or authorized to conduct affairs in this state; and
- 427 (b) the proposed user corporation:
- 428 (i) has merged with the other corporation;
- 429 (ii) has been formed by reorganization of the other corporation; or
- 430 (iii) has acquired all or substantially all of the assets, including the corporate name, of the

431 other corporation.

432 (4) (a) A nonprofit corporation may apply to the division for authorization to file its  
433 articles of incorporation under, or to register or reserve, a name that is not distinguishable upon  
434 the division's records from one or more of the names described in Subsection (1).

435 (b) The division shall approve the application filed under Subsection (4)(a) if:

436 (i) the other person whose name is not distinguishable from the name under which the  
437 applicant desires to file, or which the applicant desires to register or reserve:

438 (A) consents to the filing, registration, or reservation in writing; and

439 (B) submits an undertaking in a form satisfactory to the division to change its name to a  
440 name that is distinguishable from the name of the applicant; or

441 (ii) the applicant delivers to the division a certified copy of the final judgment of a court  
442 of competent jurisdiction establishing the applicant's right to make the requested filing in this state  
443 under the name applied for.

444 (5) Only names of corporations may contain the:

445 (a) words "corporation," or "incorporated"; or

446 (b) abbreviation "corp." or "inc."

447 (6) The division may not issue a certificate of incorporation to any association violating  
448 the provisions of this section.

449 Section 6. Section **16-6a-501** is amended to read:

450 **16-6a-501. Registered office and registered agent.**

451 (1) A nonprofit corporation shall continuously maintain in this state:

452 (a) a registered office; and

453 (b) a registered agent.

454 (2) The registered agent required under Subsection (1) shall be:

455 (a) an individual:

456 (i) who resides in this state; and

457 (ii) whose business office is identical with the registered office;

458 (b) a domestic corporation or domestic nonprofit corporation whose business office is  
459 identical with the registered office;

460 (c) a foreign corporation or foreign nonprofit corporation:

461 (i) authorized to conduct affairs in this state; and

- 462 (ii) whose business office is identical with the registered office; or  
463 (iii) a domestic limited liability company or foreign limited liability company:  
464 (A) authorized to conduct affairs in this state; and  
465 (B) whose business office is identical with the registered office.  
466 (3) A nonprofit corporation may not serve as [its] the nonprofit corporation's own  
467 registered agent.

468 Section 7. Section **16-6a-503** is amended to read:

469 **16-6a-503. Resignation of registered agent.**

470 (1) (a) A registered agent of a nonprofit corporation may resign the agency appointment  
471 by delivering to the division for filing a statement of resignation pursuant to this section.

472 (b) The statement of resignation required by Subsection (1)(a) shall be:

- 473 (i) signed by the resigning registered agent; and  
474 (ii) accompanied by two exact or conformed copies of the statement of resignation.

475 (c) The statement of resignation may include a statement that the registered office is also  
476 discontinued.

477 (d) The statement of resignation shall include a declaration that notice of the resignation  
478 has been given to the nonprofit corporation at the principal office shown on the most recent annual  
479 report of the nonprofit corporation on file with the division.

480 (2) After filing the statement of resignation required by Subsection (1), the division shall  
481 mail:

482 (a) one copy of the statement of resignation to the registered office of the nonprofit  
483 corporation; and

484 (b) one copy of the statement of resignation to the nonprofit corporation at the principal  
485 office if known by the division.

486 (3) Thirty-one days after the date on which the statement of resignation is filed:

- 487 (a) the agency appointment is terminated; and  
488 (b) the registered office is discontinued, if so provided.

489 Section 8. Section **16-6a-603** is amended to read:

490 **16-6a-603. Admission.**

491 (1) The bylaws may establish:

492 (a) criteria or procedures for admission of members[-]; and



493 (b) the procedure for replacing:

494 (i) a member; or

495 (ii) a membership interest.

496 (2) A person may not be admitted as a member without the person's consent.

497 [~~(3) A nonprofit corporation may issue certificates evidencing membership in the nonprofit~~  
498 ~~corporation.]~~

499 Section 9. Section **16-6a-706** is amended to read:

500 **16-6a-706. Record date -- Determining members entitled to notice and vote.**

501 (1) (a) The bylaws may fix or provide the manner of fixing a date as the record date for  
502 determining the members entitled to notice of a members' meeting.

503 (b) If the bylaws do not fix or provide for fixing a record date described in Subsection  
504 (1)(a), the board of directors may fix a future date as the record date.

505 (c) If a record date is not fixed in accordance with Subsection (1)(a) or (b), members  
506 entitled to notice of the meeting are the members of the nonprofit corporation:

507 (i) at the close of business on the business day preceding the day on which notice is given;  
508 or

509 (ii) if notice is waived, at the close of business on the business day preceding the day on  
510 which the meeting is held.

511 (2) (a) The bylaws may fix or provide the manner of fixing a date as the record date for  
512 determining the members entitled to vote at a members' meeting.

513 (b) If the bylaws do not fix or provide for fixing a record date described in Subsection  
514 (2)(a), the board may fix a future date as the record date.

515 (c) If a record date is not fixed in accordance with Subsection (2)(a) or (b), members  
516 entitled to vote at the meeting are the members of the nonprofit corporation:

517 (i) on the date of the meeting; and

518 (ii) who are otherwise eligible to vote.

519 (3) (a) The bylaws may fix or provide the manner for determining a date as the record date  
520 for the purpose of determining the members entitled to exercise any rights in respect of any other  
521 lawful action.

522 (b) If the bylaws do not fix or provide for fixing a record date described in Subsection  
523 (3)(a), the board of directors may fix a future date as the record date.

524 (c) If a record date is not fixed in accordance with Subsection (3)(a) or (b), members  
525 entitled to exercise the right are members of the nonprofit corporation at the later of:

526 (i) the close of business on the day on which the board adopts the resolution relating to the  
527 exercise of the right; or

528 (ii) the close of business on the 60th day before the date of the exercise of the right.

529 (4) A record date fixed under this section may not be more than 70 days before the meeting  
530 or action requiring a determination of members occurs.

531 (5) (a) A determination of members entitled to notice of or to vote at a meeting of  
532 members is effective for any adjournment of the meeting unless the board of directors fixes a new  
533 date for determining the right to notice or the right to vote.

534 (b) The board of directors shall fix a new date for determining the right to notice or the  
535 right to vote if the meeting is adjourned to a date more than 120 days after the record date for  
536 determining members entitled to notice of the original meeting.

537 (6) If a court orders a meeting adjourned to a date more than 120 days after the date fixed  
538 for the original meeting, the court may:

539 (a) provide that the original record date for notice or voting continues in effect; or

540 (b) fix a new record date for notice or voting.

541 Section 10. Section **16-6a-707** is amended to read:

542 **16-6a-707. Action without meeting.**

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

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

552 (i) those members entitled to vote who have not consented in writing; and

553 (ii) those members:

554 (A) not entitled to vote; and

555 (B) to whom this chapter requires that notice of the proposed action be given.

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

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

562 (a) describing the action;

563 (b) stating that the member's prior consent is revoked; and

564 (c) that is received by the nonprofit corporation prior to the effectiveness of the action.

565 (4) (a) A member action taken pursuant to this section is not effective unless all written  
566 consents on which the nonprofit corporation relies for the taking of an action pursuant to  
567 Subsection (1) are:

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

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

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

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

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

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

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

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

585 (6) If not otherwise determined under Section 16-6a-703 or 16-6a-706, the record date for

586 determining the members entitled to take action without a meeting or entitled to be given notice  
587 under Subsection (2) of action taken without a meeting is the date the first member delivers to the  
588 nonprofit corporation a writing upon which the action is taken pursuant to Subsection (1).

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

591 Section 11. Section **16-6a-816** is amended to read:

592 **16-6a-816. Quorum and voting.**

593 (1) Unless a greater or lesser number is required by the bylaws, a quorum of a board of  
594 directors consists of a majority of the number of directors in office immediately before the meeting  
595 begins.

596 (2) The bylaws may authorize a quorum of a board of directors to consist of:

597 (a) no fewer than 1/3 of the number of directors fixed if the nonprofit corporation has a  
598 fixed board size; or

599 (b) if a range for the size of the board is established pursuant to Subsection 16-6a-803(2),  
600 no fewer than 1/3 of the number of directors:

601 (i) fixed in accordance with Subsection 16-6a-803(2); or

602 (ii) in office immediately before the meeting begins, if no number is fixed in accordance  
603 with Subsection 16-6a-803(2).

604 (3) If a quorum is present when a vote is taken, the affirmative vote of a majority of  
605 directors present is the act of the board of directors unless the vote of a greater number of directors  
606 is required by this chapter or the bylaws.

607 (4) (a) If provided in the bylaws, for purposes of determining a quorum with respect to a  
608 particular proposal, and for purposes of casting a vote for or against a particular proposal, a  
609 director may be considered to be present at a meeting and to vote if the director has granted a  
610 signed written proxy:

611 (i) to another director who is present at the meeting; and

612 (ii) authorizing the other director to cast the vote that is directed to be cast by the written  
613 proxy with respect to the particular proposal that is described with reasonable specificity in the  
614 proxy.

615 (b) Except as provided in this Subsection (4) and as permitted by Section 16-6a-813,  
616 directors may not vote or otherwise act by proxy.

617 (c) Notwithstanding Subsection (4)(a), a director may grant a proxy to a person who is not  
618 a director if:

619 (i) permitted by the bylaws; and

620 (ii) the proxy meets all other requirements of Subsection (4)(a).

621 (5) A director who is present at a meeting of the board of directors when corporate action  
622 is taken is considered to have assented to all action taken at the meeting unless:

623 (a) (i) the director objects at the beginning of the meeting, or promptly upon the director's  
624 arrival, to holding the meeting or transacting business at the meeting; and

625 (ii) after objecting, the director does not vote for or assent to any action taken at the  
626 meeting;

627 (b) the director contemporaneously requests that the director's dissent or abstention as to  
628 any specific action taken be entered in the minutes of the meeting; or

629 (c) the director causes written notice of the director's dissent or abstention as to any  
630 specific action to be received by:

631 (i) the presiding officer of the meeting before adjournment of the meeting; or

632 (ii) the nonprofit corporation promptly after adjournment of the meeting.

633 (6) The right of dissent or abstention pursuant to Subsection (5) as to a specific action is  
634 not available to a director who votes in favor of the action taken.

635 Section 12. Section **16-6a-824** is amended to read:

636 **16-6a-824. Liability of directors for unlawful distributions.**

637 (1) (a) A director who votes for or assents to a distribution made in violation of Section  
638 16-6a-1301 or the articles of incorporation is personally liable to the nonprofit corporation for the  
639 amount of the distribution that exceeds what could have been distributed without violating Section  
640 16-6a-1301 or the articles of incorporation, if it is established that the director's duties were not  
641 performed in compliance with Section 16-6a-822.

642 (b) In any proceeding commenced under this section, a director has all of the defenses  
643 ordinarily available to a director.

644 (2) A director held liable under Subsection (1) for an unlawful distribution is entitled to  
645 contribution:

646 (a) from every other director who could be held liable under Subsection (1) for the  
647 unlawful distribution; and

648 (b) from each member who accepted the distribution knowing the distribution was made  
649 in violation of Section 16-6a-1301 or the articles of incorporation.

650 (3) The amount of the contribution from each member under Subsection (2)(b) is the  
651 amount of the distribution to the member multiplied by the percentage of the amount of  
652 distribution to all members that exceeded what could have been distributed to members without  
653 violating Section 16-6a-1301 or the articles of incorporation.

654 Section 13. Section **16-6a-825** is amended to read:

655 **16-6a-825. Conflicting interest transaction.**

656 (1) As used in this section, "conflicting interest transaction" means a contract, transaction,  
657 or other financial relationship between a nonprofit corporation and:

- 658 (a) a director of the nonprofit corporation;
- 659 (b) a party related to a director; or
- 660 (c) an entity in which a director of the nonprofit corporation:
  - 661 (i) is a director or officer; or
  - 662 (ii) has a financial interest.

663 (2) Except as otherwise provided in this section, upon the finding of a conflicting interest  
664 transaction, in an action properly brought before it, a court may:

- 665 (a) rule that the conflicting interest transaction is void or voidable;
- 666 (b) enjoin or set aside the conflict of interest transaction; or
- 667 (c) determine that the conflicting interest transaction gives rise to an award of damages or  
668 other sanctions.

669 (3) (a) A loan may not be made by a nonprofit corporation to its directors or officers.

670 (b) A director or officer who assents to or participates in the making of a loan in violation  
671 of Subsection (3)(a) shall be liable to the nonprofit corporation for the amount of the loan until the  
672 repayment of the loan.

673 (4) (a) If the conditions of Subsection (4)(b) are met, a conflicting interest transaction may  
674 not be void or voidable or be enjoined, set aside, or give rise to an award of damages or other  
675 sanctions in a proceeding by a member or by or in the right of the nonprofit corporation, solely  
676 because:

- 677 (i) the conflicting interest transaction involves:
  - 678 (A) a director of the nonprofit corporation;

679 (B) a party related to a director; or

680 (C) an entity in which a director of the nonprofit corporation is a director or officer or has  
681 a financial interest;

682 (ii) the director is present at or participates in the meeting of the nonprofit corporation's  
683 board of directors or of the committee of the board of directors that authorizes, approves, or ratifies  
684 the conflicting interest transaction; or

685 (iii) the director's vote is counted for the purpose described in Subsection (4)(a)(ii).

686 (b) Subsection (4)(a) applies if:

687 (i) (A) the material facts as to the director's relationship or interest and as to the conflicting  
688 interest transaction are disclosed or are known to the board of directors or the committee; and

689 (B) the board of directors or committee in good faith authorizes, approves, or ratifies the  
690 conflicting interest transaction by the affirmative vote of a majority of the disinterested directors,  
691 even though the disinterested directors are less than a quorum;

692 (ii) (A) the material facts as to the director's relationship or interest and as to the  
693 conflicting interest transaction are disclosed or are known to the members entitled to vote on the  
694 conflicting interest transaction; and

695 (B) the conflicting interest transaction is specifically authorized, approved, or ratified in  
696 good faith by a vote of the members entitled to vote thereon;

697 (iii) the conflicting interest transaction is consistent with a provision in the articles of  
698 incorporation or bylaws which:

699 (A) commits the nonprofit corporation to support one or more other nonprofit  
700 corporations, charitable trusts, or charitable entities; or

701 (B) authorizes one or more directors to exercise discretion in making gifts or contributions  
702 to one or more other nonprofit corporations, charitable trusts, or charitable entities; or

703 (iv) the conflicting interest transaction is fair as to the nonprofit corporation.

704 (5) Common or interested directors may be counted in determining the presence of a  
705 quorum at a meeting of the board of directors or of a committee that authorizes, approves, or  
706 ratifies the conflicting interest transaction.

707 Section 14. Section **16-6a-907** is amended to read:

708 **16-6a-907. Indemnification of officers, employees, fiduciaries, and agents.**

709 Unless a nonprofit corporation's articles of incorporation provide otherwise:

710 (1) to the same extent as a director, an officer of the nonprofit corporation is entitled to:

711 (a) mandatory indemnification under Section 16-6a-903; and

712 (b) apply for court-ordered indemnification under Section 16-6a-905;

713 (2) ~~the~~ a nonprofit corporation may indemnify and advance expenses to an officer,

714 employee, fiduciary, or agent of the nonprofit corporation to the same extent as to a director; and

715 (3) a nonprofit corporation may indemnify and advance expenses to an officer, employee,

716 fiduciary, or agent who is not a director to a greater extent if:

717 (a) not inconsistent with public policy; and

718 (b) provided for by:

719 (i) its articles of incorporation or bylaws;

720 (ii) general or specific action of its board of directors; or

721 (iii) contract.

722 Section 15. Section **16-6a-1105** is amended to read:

723 **16-6a-1105. Merger with foreign nonprofit corporation.**

724 (1) One or more domestic nonprofit corporations may merge with one or more foreign  
725 nonprofit corporations if:

726 (a) the merger is permitted by the law of the state or country under whose law each foreign  
727 nonprofit corporation is incorporated;

728 (b) each foreign nonprofit corporation complies with the provisions of the law described  
729 in Subsection (1)(a) in effecting the merger;

730 (c) if the foreign nonprofit corporation is the surviving nonprofit corporation of the merger,  
731 the foreign nonprofit corporation:

732 (i) complies with Section 16-6a-1103; and

733 (ii) in addition to the information required by Section 16-6a-1103, provides the address  
734 of its principal office; and

735 (d) each domestic nonprofit corporation complies with:

736 (i) the applicable provisions of Sections 16-6a-1101 and 16-6a-1102; and

737 (ii) if it is the surviving nonprofit corporation of the merger, with Section 16-6a-1103.

738 (2) Upon the merger taking effect, a surviving foreign nonprofit corporation of a merger  
739 shall:

740 (a) (i) maintain a registered agent to accept service in any proceeding based on a cause of



741 action arising with respect to any domestic nonprofit corporation that is merged into the foreign  
742 nonprofit corporation; or

743 (ii) be considered to have authorized service of process on it in connection with any  
744 proceeding described in Subsection (2)(a)(i) by registered or certified mail, return receipt  
745 requested, to the address of its principal office as:

746 (A) set forth in the articles of merger; or

747 (B) as last changed in a notice delivered to the division; and

748 (b) shall comply with this chapter if it is to conduct affairs in this state.

749 (3) Service effected pursuant to Subsection (2)(a)(ii) is perfected at the earliest of:

750 (a) the date the foreign nonprofit corporation receives the process, notice, or demand;

751 (b) the date shown on the return receipt, if signed on behalf of the foreign nonprofit  
752 corporation; or

753 (c) five days after mailing.

754 (4) Subsection (2) does not prescribe the only means, or necessarily the required means,  
755 of serving a surviving foreign nonprofit corporation of a merger.

756 Section 16. Section **16-6a-1411** is amended to read:

757 **16-6a-1411. Procedure for and effect of administrative dissolution.**

758 (1) If the division determines that one or more grounds exist under Section 16-6a-1410 for  
759 dissolving a nonprofit corporation, the division shall mail to the nonprofit corporation written  
760 notice of the determination, stating the one or more grounds for administrative dissolution.

761 (2) (a) If the nonprofit corporation does not correct each ground for dissolution, or  
762 demonstrate to the reasonable satisfaction of the division that each ground determined by the  
763 division does not exist, within 60 days after mailing of the notice contemplated in Subsection (1),  
764 the division shall administratively dissolve the nonprofit corporation.

765 (b) If a nonprofit corporation is dissolved under Subsection (2)(a), the division shall mail  
766 written notice of the administrative dissolution to the dissolved nonprofit corporation stating the  
767 date of dissolution specified in Subsection (2)(d).

768 (c) The division shall mail written notice of the administrative dissolution to:

769 (i) the last registered agent of the dissolved nonprofit corporation; or

770 (ii) if there is no registered agent of record, at least one officer of the nonprofit corporation.

771 (d) A nonprofit corporation's date of dissolution is five days after the date the division

772 mails written notice of dissolution under Subsection (2)(b).

773 (3) (a) Except as provided in Subsection (3)(b), a nonprofit corporation administratively  
774 dissolved continues its corporate existence but may not carry on any activities except as is  
775 appropriate to:

776 (i) wind up and liquidate its affairs under Section 16-6a-1405; and

777 (ii) to give notice to claimants in the manner provided in Sections 16-6a-1406 and  
778 16-6a-1407.

779 (b) If the nonprofit corporation is reinstated in accordance with Section 16-6a-1412,  
780 business conducted by the nonprofit corporation during a period of administrative dissolution is  
781 unaffected by the dissolution.

782 (4) The administrative dissolution of a nonprofit corporation does not terminate the  
783 authority of its registered agent.

784 (5) (a) Upon the administrative dissolution of a nonprofit corporation, the division shall  
785 be the dissolved nonprofit corporation's agent for service of process.

786 (b) Service of process on the division under this Subsection (5) is service on the dissolved  
787 nonprofit corporation.

788 (c) Upon receipt of process, the division shall deliver a copy of the process to the dissolved  
789 nonprofit corporation at its principal office.

790 (6) A notice mailed under this section shall be:

791 (a) mailed first class, postage prepaid; and

792 (b) addressed to the most current mailing address appearing on the records of the division  
793 for:

794 (i) the registered agent of the nonprofit corporation, if the notice is required to be mailed  
795 to the registered agent; or

796 (ii) the officer of the nonprofit corporation that is mailed the notice if the notice is required  
797 to be mailed to an officer of the nonprofit corporation.

798 Section 17. Section **16-6a-1412** is amended to read:

799 **16-6a-1412. Reinstatement following administrative dissolution -- Reinstatement**  
800 **after voluntary dissolution.**

801 (1) A nonprofit corporation administratively dissolved under Section 16-6a-1411 may  
802 apply to the division for reinstatement within two years after the effective date of dissolution by

803 delivering to the division for filing an application for reinstatement that states:

804 (a) the effective date of its administrative dissolution and its corporate name on the  
805 effective date of dissolution;

806 (b) that the ground or grounds for dissolution:

807 (i) did not exist; or

808 (ii) have been eliminated;

809 (c) (i) the corporate name under which the nonprofit corporation is being reinstated; and

810 (ii) the corporate name that satisfies the requirements of Section 16-6a-401;

811 (d) that all taxes, fees, or penalties imposed pursuant to this chapter, otherwise owed by  
812 the nonprofit corporation to the State Tax Commission, or otherwise imposed by the applicable  
813 laws of this state have been paid;

814 (e) the address of its registered office;

815 (f) the name of its registered agent at the office stated in Subsection (1)(e); and

816 (g) the additional information as the division determines is necessary or appropriate.

817 (2) The nonprofit corporation shall include in or with the application for reinstatement:

818 (a) the written consent to appointment by the designated registered agent; and

819 (b) a certificate from the State Tax Commission reciting that all taxes owed by the  
820 nonprofit corporation have been paid.

821 (3) (a) The division shall revoke the administrative dissolution if:

822 (i) the division determines that the application for reinstatement contains the information  
823 required by Subsections (1) and (2); and

824 (ii) that the information is correct.

825 (b) The division shall mail written notice of the revocation to the nonprofit corporation in  
826 the manner provided in Subsection 16-6a-1411(6) stating the effective date of the dissolution.

827 (4) When the reinstatement is effective:

828 (a) the reinstatement relates back to and takes effect as of the effective date of the  
829 administrative dissolution;

830 (b) the nonprofit corporation may carry on its activities, under the name stated pursuant  
831 to Subsection (1)(c), as if the administrative dissolution had never occurred; and

832 (c) an act of the nonprofit corporation during the period of dissolution is effective and  
833 enforceable as if the administrative dissolution had never occurred.

834 (5) (a) The division may make rules for the reinstatement of a nonprofit corporation  
835 voluntarily dissolved.

836 (b) The rules made under Subsection (5)(a) shall be substantially similar to the  
837 requirements of this section for reinstatement of a nonprofit corporation that is administratively  
838 dissolved.

839 Section 18. Section **16-6a-1502** is amended to read:

840 **16-6a-1502. Consequences of conducting affairs without authority.**

841 (1) A foreign nonprofit corporation, its successor, or anyone acting on its behalf,  
842 conducting affairs in this state without authority may not be permitted to maintain a proceeding  
843 in any court in this state until an application for authority to conduct affairs is filed.

844 (2) (a) A foreign nonprofit corporation or successor that conducts affairs in this state  
845 without authority shall be liable to this state in an amount equal to the sum of:

846 (i) all fees imposed by this chapter or prior law that would have been paid for all years or  
847 portions of years during which it conducted affairs in this state without authority; and

848 (ii) all penalties imposed by the division for failure to pay the fees described in Subsection  
849 (2)(a)(i).

850 (b) An application for authority to conduct affairs may not be filed until payment of the  
851 amounts due under this Subsection (2) is made.

852 (3) (a) A court may stay a proceeding commenced by a foreign nonprofit corporation, its  
853 successor, or assignee until it determines whether the foreign nonprofit corporation, its successor,  
854 or assignee is required to file an application for authority to conduct affairs.

855 (b) If the court determines that a foreign nonprofit corporation, its successor, or assignee  
856 is required to file an application for authority to conduct affairs, the court may further stay the  
857 proceeding until the required application for authority to conduct affairs has been filed with the  
858 division.

859 (4) (a) A foreign nonprofit corporation that conducts affairs in this state without authority  
860 is subject to a civil penalty, payable to this state, of \$100 for each day in which it transacts business  
861 in this state without authority.

862 (b) Notwithstanding Subsection (4)(a), the civil penalty imposed under Subsection (4)(a)  
863 may not exceed a total of \$5,000 for each year.

864 (c) The following are subject to a civil penalty payable to the state not exceeding \$1,000:

865 (i) each officer of a foreign nonprofit corporation who authorizes, directs, or participates  
866 in the conducting of affairs in this state without authority; and

867 (ii) each agent of a foreign nonprofit corporation who transacts business in this state on  
868 behalf of a foreign nonprofit corporation that is not authorized.

869 (d) The division may make rules to carry out the provisions of this Subsection (4),  
870 including procedures to request the division to abate for reasonable cause a penalty imposed under  
871 this Subsection (4).

872 (e) If the division imposes a civil penalty under this Subsection (4) on a foreign nonprofit  
873 corporation, in accordance with Title 63, Chapter 46b, Administrative Procedures Act, the  
874 following may appeal the civil penalty to the executive director:

875 (i) the foreign nonprofit corporation; or

876 (ii) the representative of the foreign nonprofit corporation.

877 (5) (a) The civil penalties set forth in Subsection (4) may be recovered in an action  
878 brought:

879 (i) in an appropriate court in Salt Lake County; or

880 (ii) in any other county in this state in which the foreign nonprofit corporation:

881 (A) has a registered, principal, or business office; or

882 (B) has conducted affairs.

883 (b) Upon a finding by the court that a foreign nonprofit corporation or any of its officers  
884 or agents have conducted affairs in this state in violation of this part, in addition to or instead of  
885 a civil penalty, the court shall issue an injunction restraining:

886 (i) the further conducting of affairs of the foreign nonprofit corporation; and

887 (ii) the further exercise of any corporate rights and privileges in this state.

888 (c) Upon issuance of the injunction described in Subsection (5)(b), the foreign nonprofit  
889 corporation shall be enjoined from conducting affairs in this state until:

890 (i) all civil penalties have been paid, plus any interest and court costs assessed by the court;  
891 and

892 (ii) the foreign nonprofit corporation has otherwise complied with the provisions of this  
893 part.

894 (6) Notwithstanding Subsections (1) and (2), the failure of a foreign nonprofit corporation  
895 to have authority to conduct affairs in this state does not:

- 896 (a) impair the validity of its corporate acts; or  
897 (b) prevent the foreign nonprofit corporation from defending any proceeding in this state.

898 Section 19. Section **16-6a-1506** is amended to read:

899 **16-6a-1506. Corporate name and assumed corporate name of foreign nonprofit**  
900 **corporation.**

901 (1) (a) Except as provided in Subsection (2), if the corporate name of a foreign nonprofit  
902 corporation does not satisfy the requirements of Section 16-6a-401, to obtain authority to conduct  
903 affairs in this state, the foreign nonprofit corporation shall assume for use in this state a name that  
904 satisfies the requirements of Section 16-6a-401.

905 (b) Section 16-6a-401 applies to a domestic [~~corporations~~] nonprofit corporation.

906 (2) A foreign nonprofit corporation may obtain authority to conduct affairs in this state  
907 with a name that does not meet the requirements of Subsection (1) because it is not distinguishable  
908 as required under Subsection 16-6a-401(2), if the foreign nonprofit corporation delivers to the  
909 division for filing either:

910 (a) (i) a written consent to the foreign nonprofit corporation's use of the name, given and  
911 signed by the other person entitled to the use of the name; and

912 (ii) a written undertaking by the other person, in a form satisfactory to the division, to  
913 change its name to a name that is distinguishable from the name of the applicant; or

914 (b) a certified copy of a final judgment of a court of competent jurisdiction establishing  
915 the prior right of the foreign nonprofit corporation to use the requested name in this state.

916 (3) A foreign nonprofit corporation may use in this state the name, including the fictitious  
917 name, of another domestic or foreign nonprofit corporation that is used or registered in this state  
918 if:

919 (a) the other corporation is incorporated or authorized to conduct affairs in this state; and

920 (b) the foreign nonprofit corporation:

921 (i) has merged with the other corporation; or

922 (ii) has been formed by reorganization of the other corporation.

923 (4) If a foreign nonprofit corporation authorized to conduct affairs in this state, whether  
924 under its corporate name or an assumed corporate name, changes its corporate name to one that  
925 does not satisfy the requirements of Subsections (1) through (3), or the requirements of Section  
926 16-6a-401, the foreign nonprofit corporation:

- 927 (a) may not conduct affairs in this state under the changed name;
- 928 (b) shall use an assumed corporate name that does meet the requirements of this section;
- 929 and
- 930 (c) shall deliver to the division for filing an amended application for authority to conduct
- 931 affairs pursuant to Section 16-6a-1504.

932 Section 20. Section **16-6a-1507** is amended to read:

933 **16-6a-1507. Registered name of foreign nonprofit corporation.**

934 (1) (a) A foreign nonprofit corporation may register its corporate name as provided in this

935 section if the name would be available for use as a corporate name for a domestic nonprofit

936 corporation under Section 16-6a-401.

937 (b) If the foreign nonprofit corporation's corporate name would not be available for use

938 as a corporate name for a domestic nonprofit corporation, the foreign nonprofit corporation may

939 register its corporate name modified by the addition of any of the following words or

940 abbreviations, if the modified name would be available for use under Section 16-6a-401:

- 941 (i) "corporation";
- 942 (ii) "incorporated";
- 943 (iii) "company";
- 944 (iv) "corp.";
- 945 (v) "inc."; or
- 946 (vi) "co."

947 (2) A foreign nonprofit corporation registers its corporate name, or its corporate name with

948 any addition permitted by Subsection (1), by delivering to the division for filing an application for

949 registration:

- 950 (a) setting forth:
- 951 (i) its corporate name;
- 952 (ii) the name to be registered that shall meet the requirements of Section 16-6a-401 that
- 953 apply to domestic nonprofit corporations;
- 954 (iii) the state or country and date of incorporation; and
- 955 (iv) a brief description of the nature of the business in which it is engaged; and
- 956 (b) accompanied by a certificate of existence, or a document of similar import from the
- 957 state or country of incorporation as evidence that the foreign nonprofit corporation is in existence

958 or has authority to conduct affairs under the laws of the state or country in which it is organized.

959 (3) (a) A name is registered for the applicant upon the effective date of the application.

960 (b) An initial registration is effective for one year.

961 (4) (a) A foreign nonprofit corporation that has in effect a registration of its corporate  
962 name as permitted by Subsection (1) may renew the registration by delivering to the division for  
963 filing a renewal application for registration, that complies with the requirements of Subsection (2).

964 (b) When filed, the renewal application for registration renews the registration for the year  
965 following filing.

966 (5) (a) A foreign nonprofit corporation that has in effect registration of its corporate name  
967 may:

968 (i) apply for authority to conduct affairs in this state under the registered name in  
969 accordance with the procedure set forth in this part; or

970 (ii) assign the registration to another foreign nonprofit corporation by delivering to the  
971 division for filing an assignment of the registration that states:

972 (A) the registered name;

973 (B) the name of the assigning foreign nonprofit corporation;

974 (C) the name of the assignee; and

975 (D) the assignee's application for registration of the name.

976 (b) The assignee's application for registration of the name required by Subsection (5)(a)  
977 shall meet the requirements of this part.

978 (6) (a) A foreign nonprofit corporation that has in effect registration of its corporate name  
979 may terminate the registration at any time by delivering to the division for filing a statement of  
980 termination:

981 (i) setting forth the corporate name; and

982 (ii) stating that the registration is terminated.

983 (b) A registration automatically terminates upon the filing of an application for authority  
984 to conduct affairs in this state under the registered name.

985 (7) The registration of a corporate name under Subsection (1) constitutes authority by the  
986 division to file an application meeting the requirements of this part for authority to conduct affairs  
987 in this state under the registered name, but the authorization is subject to the limitations applicable  
988 to corporate names as set forth in Section 16-6a-403.



989 Section 21. Section **16-6a-1606** is amended to read:

990 **16-6a-1606. Financial statements.**

991 ~~Upon the~~ By no later than 15 days after the day on which the nonprofit corporation  
992 receives a written request of any member, a nonprofit corporation shall mail to the member the  
993 following that show in reasonable detail the assets and liabilities and results of the operations of  
994 the nonprofit corporation:

995 (1) ~~its~~ the nonprofit corporation's most recent annual financial statements, if any; and

996 (2) ~~its~~ the nonprofit corporation's most recently published financial statements, if any.

997 Section 22. Section **16-6a-1609** is amended to read:

998 **16-6a-1609. Interrogatories by division.**

999 (1) (a) The division may give interrogatories reasonably necessary to ascertain whether  
1000 ~~the~~ a nonprofit corporation has complied with the provisions of this chapter applicable to the  
1001 nonprofit corporation to:

1002 (i) any domestic or foreign nonprofit corporation subject to the provisions of this chapter;

1003 and

1004 (ii) to any officer or director of a nonprofit corporation described in Subsection (1)(a)(i).

1005 (b) The interrogatories described in this Subsection (1) shall be answered within:

1006 (i) 30 days after the mailing of the interrogatories; or

1007 (ii) additional time as fixed by the division.

1008 (c) The answers to the interrogatories shall be:

1009 (i) full and complete; and

1010 (ii) made in writing.

1011 (d) (i) If the interrogatories are directed to an individual, the interrogatories shall be  
1012 answered by the individual.

1013 (ii) If directed to a nonprofit corporation, the interrogatories shall be answered by:

1014 (A) the chair of the board of directors of the nonprofit corporation;

1015 (B) all of ~~its~~ the nonprofit corporation's directors;

1016 (C) one of ~~its~~ the nonprofit corporation's officers; or

1017 (D) any other person authorized to answer the interrogatories as the nonprofit corporation's  
1018 agent.

1019 (e) (i) The division need not file any document to which the interrogatories relate until the

1020 interrogatories are answered as provided in this section.

1021 (ii) Notwithstanding Subsection (1)(e)(i), the division need not file a document to which  
1022 the interrogatory relates if the answers to the interrogatory disclose that the document is not in  
1023 conformity with the provisions of this chapter.

1024 (f) The division shall certify to the attorney general, for such action as the attorney general  
1025 considers appropriate, all interrogatories and answers to interrogatories that disclose a violation  
1026 of this chapter.

1027 (2) (a) Interrogatories given by the division under Subsection (1), and the answers to  
1028 interrogatories, may not be open to public inspection.

1029 (b) The division may not disclose any facts or information obtained from the  
1030 interrogatories or answers to the interrogatories, except:

1031 (i) as the official duties of the division may require the facts or information to be made  
1032 public; or

1033 (ii) in the event the interrogatories or the answers to the interrogatories are required for  
1034 evidence in any criminal proceedings or in any other action by this state.

1035 (3) Each domestic or foreign nonprofit corporation that knowingly fails or refuses to  
1036 answer truthfully and fully, within the time prescribed by Subsection (1), interrogatories given to  
1037 the domestic or foreign nonprofit corporation by the division in accordance with Subsection (1)  
1038 is guilty of a class C misdemeanor and, upon conviction, shall be punished by a fine of not more  
1039 than \$500.

1040 (4) Each officer and director of a domestic or foreign nonprofit corporation who knowingly  
1041 fails or refuses to answer truthfully and fully, within the time prescribed by Subsection (1),  
1042 interrogatories given to the officer or director by the division in accordance with Subsection (1)  
1043 is guilty of a class B misdemeanor and, upon conviction, shall be punished by a fine of not more  
1044 than \$1,000.

1045 (5) The attorney general may enforce this section in an action brought in:

1046 (a) the district court of the county in this state where the nonprofit corporation's principal  
1047 office or registered office is located; or

1048 (b) if the nonprofit corporation has no principal or registered office in this state, in the  
1049 district court in and for Salt Lake County.

1050 Section 23. Section **16-6a-1610** is enacted to read:

1051 **16-6a-1610. Scope of a member's right to inspect or receive copies.**

1052 Notwithstanding the other provisions of this part, unless otherwise provided in the bylaws,  
1053 a right of a member to inspect or receive information from a nonprofit corporation that is created  
1054 by this part applies only to a voting member of the nonprofit corporation.

1055 Section 24. Section **31A-5-101** is amended to read:

1056 **31A-5-101. Definitions.**

1057 In this chapter, unless the context requires otherwise:

1058 (1) The definitions applicable to the Utah Revised Business Corporation Act in  
1059 Subsections 16-10a-102(2), (23), and (24) apply to stock corporations.

1060 (2) The definitions applicable to nonprofit corporations in Subsections 16-6a-102(4), (6),  
1061 and [~~31~~] (30) apply to mutuals.

1062 (3) "Promoter securities" are securities issued by a stock insurer to the incorporators,  
1063 directors, officers, or their families or nominees at any time prior to, and up to one year following,  
1064 the issuance of a certificate of authority to the stock insurer.

1065 Section 25. Section **42-2-6.6** is amended to read:

1066 **42-2-6.6. Assumed name.**

1067 (1) The assumed name:

1068 (a) may not contain any word or phrase that indicates or implies that the business is  
1069 organized for any purpose other than one or more of the purposes contained in its application;

1070 (b) shall be distinguishable from any registered name or trademark of record in the offices  
1071 of the Division of Corporations and Commercial Code, as defined in Subsection 16-10a-401(5),  
1072 except as authorized by the Division of Corporations and Commercial Code pursuant to Subsection  
1073 (2);

1074 (c) without the written consent of the United States Olympic Committee, may not contain  
1075 the words:

1076 (i) "Olympic";

1077 (ii) "Olympiad"; or

1078 (iii) "Citius Altius Fortius";

1079 (d) without the written consent of the State Board of Regents issued in accordance with  
1080 Section 53B-5-114, may not contain the words:

1081 (i) "university";

- 1082           (ii) "college"; or
- 1083           (iii) "institute"; and
- 1084           (e) an assumed name authorized for use in this state on or after May 1, 2000, may not
- 1085 contain the words:
- 1086           (i) "incorporated";
- 1087           (ii) "inc."; or
- 1088           (iii) a variation of "incorporated" or "inc."
- 1089           (2) Notwithstanding Subsection (1)(e), an assumed name may contain a word listed in
- 1090 Subsection (1)(e) if the Division of Corporations and Commercial Code authorizes the use of the
- 1091 name by a corporation as defined in:
- 1092           (a) Subsection 16-6a-102[~~(26)~~] (25);
- 1093           (b) Subsection 16-6a-102[~~(33)~~] (32);
- 1094           (c) Subsection 16-10a-102(11); or
- 1095           (d) Subsection 16-10a-102(20).
- 1096           (3) The Division of Corporations and Commercial Code shall authorize the use of the
- 1097 name applied for if:
- 1098           (a) the name is distinguishable from one or more of the names and trademarks that are on
- 1099 the division's records; or
- 1100           (b) the applicant delivers to the division a certified copy of the final judgment of a court
- 1101 of competent jurisdiction establishing the applicant's right to use the name applied for in this state.
- 1102           (4) The assumed name, for purposes of recordation, shall be either translated into English
- 1103 or transliterated into letters of the English alphabet if it is not in English.
- 1104           (5) The Division of Corporations and Commercial Code may not approve an application
- 1105 for an assumed name to any person violating this section.
- 1106           (6) The director of the Division of Corporations and Commercial Code shall have the
- 1107 power and authority reasonably necessary to interpret and efficiently administer this section and
- 1108 to perform the duties imposed on the division by this section.
- 1109           (7) A name that implies by any word in the name that it is an agency of the state or of any
- 1110 of its political subdivisions, if it is not actually such a legally established agency, may not be
- 1111 approved for filing by the Division of Corporations and Commercial Code.
- 1112           (8) Section 16-10a-403 applies to this chapter.

1113           (9) (a) The requirements of Subsection (1)(d) do not apply to a person who filed a  
1114 certificate of assumed and of true name with the Division of Corporations and Commercial Code  
1115 on or before May 4, 1998, until December 31, 1998.

1116           (b) On or after January 1, 1999, any person who carries on, conducts, or transacts business  
1117 in this state under an assumed name shall comply with the requirements of Subsection (1)(d).

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**Legislative Review Note**  
**as of 2-21-02 10:49 AM**

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

**Office of Legislative Research and General Counsel**