

1 **BUSINESS ENTITY AMENDMENTS**

2 2005 GENERAL SESSION

3 STATE OF UTAH

4 **Sponsor: Ross I. Romero**

5

LONG TITLE

6 **General Description:**

7 This bill modifies provisions addressing business entities under the Utah Revised
8 Business Corporation Act, Utah Revised Uniform Limited Partnership Act, and Utah
9 Revised Limited Liability Company Act.
10

11 **Highlighted Provisions:**

12 This bill:

- 13 ▶ clarifies definitions in the Utah Revised Business Corporation Act;
14 ▶ clarifies notice requirements in the Utah Revised Business Corporation Act;
15 ▶ addresses who may be a registered agent under the Utah Revised Uniform Limited
16 Partnership Act;
17 ▶ addresses the duration of a limited partnership under the Utah Revised Uniform
18 Limited Partnership Act;
19 ▶ modifies provisions of the Utah Revised Limited Liability Company Act, including
20 provisions:
21 • defining terms;
22 • addressing limitations on a company's articles of organization and operating
23 agreement;
24 • addressing the effect of certain filings as to third persons, members, and
25 managers;
26 • addressing powers of a company;
27 • related to annual reports;



- 28 • related to organization of a company under the act;
- 29 • related to the duration of a company;
- 30 • related to amending articles of organization;
- 31 • related to an initial operating agreement of a company;
- 32 • related to membership of a company;
- 33 • related to management by members of a company;
- 34 • related to the calculation of a member's profits interest;
- 35 • related to management by managers;
- 36 • related to duties of managers and members;
- 37 • related to capital accounts;
- 38 • related to the rights of a creditor or a member;
- 39 • related to dissolution of a company; and
- 40 • related to company conversion; and
- 41 ▶ makes technical changes.

42 **Monies Appropriated in this Bill:**

43 None

44 **Other Special Clauses:**

45 None

46 **Utah Code Sections Affected:**

47 AMENDS:

- 48 **16-10a-102**, as last amended by Chapter 218, Laws of Utah 2001
- 49 **16-10a-103**, as enacted by Chapter 277, Laws of Utah 1992
- 50 **48-2a-104**, as last amended by Chapter 193, Laws of Utah 2002
- 51 **48-2a-201**, as last amended by Chapter 189, Laws of Utah 1991
- 52 **48-2c-102**, as enacted by Chapter 260, Laws of Utah 2001
- 53 **48-2c-110**, as last amended by Chapter 193, Laws of Utah 2002
- 54 **48-2c-120**, as enacted by Chapter 260, Laws of Utah 2001
- 55 **48-2c-121**, as enacted by Chapter 260, Laws of Utah 2001
- 56 **48-2c-203**, as enacted by Chapter 260, Laws of Utah 2001
- 57 **48-2c-401**, as last amended by Chapter 193, Laws of Utah 2002
- 58 **48-2c-403**, as enacted by Chapter 260, Laws of Utah 2001

- 59 **48-2c-408**, as last amended by Chapter 193, Laws of Utah 2002
- 60 **48-2c-501**, as enacted by Chapter 260, Laws of Utah 2001
- 61 **48-2c-702**, as enacted by Chapter 260, Laws of Utah 2001
- 62 **48-2c-803**, as enacted by Chapter 260, Laws of Utah 2001
- 63 **48-2c-804**, as last amended by Chapter 193, Laws of Utah 2002
- 64 **48-2c-807**, as enacted by Chapter 260, Laws of Utah 2001
- 65 **48-2c-903**, as enacted by Chapter 260, Laws of Utah 2001
- 66 **48-2c-1103**, as last amended by Chapter 193, Laws of Utah 2002
- 67 **48-2c-1201**, as enacted by Chapter 260, Laws of Utah 2001
- 68 **48-2c-1204**, as enacted by Chapter 260, Laws of Utah 2001
- 69 **48-2c-1207**, as last amended by Chapter 193, Laws of Utah 2002
- 70 **48-2c-1211**, as enacted by Chapter 260, Laws of Utah 2001
- 71 **48-2c-1404**, as enacted by Chapter 260, Laws of Utah 2001
- 72 **48-2c-1406**, as enacted by Chapter 260, Laws of Utah 2001

73 ENACTS:

74 **48-2c-803.1**, Utah Code Annotated 1953



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

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

78 **16-10a-102. Definitions.**

79 As used in this chapter:

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

82 (b) "Address" includes:

- 83 (i) a post office box [~~numbers;~~] number;
- 84 (ii) a rural free delivery route [~~numbers;~~] number; and
- 85 (iii) a street [~~names and numbers~~] name and number.

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

89 (3) "Assumed corporate name" means the name assumed for use in this state by a

90 foreign corporation pursuant to Section 16-10a-1506 because its corporate name is not
91 available for use in this state.

92 (4) "Articles of incorporation" include:

93 (a) amended and restated articles of incorporation[;];

94 (b) articles of merger[;]; and

95 (c) documents of a similar import to those described in Subsections (4)(a) and (b).

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

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

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

101 (8) "Conspicuous" means so written that a reasonable person against whom the writing
102 is to operate should have noticed it[~~For example~~], including:

103 (a) printing or typing in italics[;];

104 (b) boldface[;];

105 (c) contrasting color[;];

106 (d) capitals[;]; or

107 (e) underlining [~~is conspicuous~~].

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

111 (10) "Corporate name" means:

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

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

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

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

121 (13) (a) "Distribution" means a direct or indirect transfer of money or other property,
122 except:

123 (i) a corporation's own shares[;]; or

124 (ii) incurrence of indebtedness by a corporation to or for the benefit of its shareholders

125 in respect of any of [its] the corporation's shares.

126 (b) A distribution may be in the form of:

127 (i) a declaration or payment of a dividend[;];

128 (ii) a purchase, redemption, or other acquisition of shares[;];

129 (iii) distribution of indebtedness[;]; or [~~otherwise~~]

130 (iv) other form.

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

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

134 (16) "Effective date of notice" means the date notice is effective as provided in Section
135 16-10a-103.

136 (17) "Electronic transmission" or "electronically transmitted" means any process of
137 communication not directly involving the physical transfer of paper that is suitable for the
138 receipt, retention, retrieval, and reproduction of information by the recipient, whether by
139 e-mail, facsimile, or otherwise.

140 (18) "Employee" includes an officer but not a director[~~—A~~], unless the director [may
141 accept] accepts duties that make that director also an employee.

142 (19) "Entity" includes:

143 (a) a domestic and foreign corporation[;];

144 (b) a nonprofit corporation[;];

145 (c) a limited liability company[;];

146 (d) a profit or nonprofit unincorporated association[;];

147 (e) a business trust[;];

148 (f) an estate[;];

149 (g) a partnership[;];

150 (h) a trust[;];

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

152 (j) a state[;];

153 (k) the United States[;]; and

154 (l) a foreign government.

155 (20) "Foreign corporation" means a corporation for profit incorporated under a law
156 other than the law of this state.

157 (21) "Governmental subdivision" means:

158 (a) county[;];

159 (b) municipality[~~;~~and]; or

160 (c) any other [~~types~~] type of governmental subdivision authorized by the laws of this
161 state.

162 (22) "Individual" means:

163 (a) a natural person[;];

164 (b) the estate of an incompetent individual[;]; or

165 (c) the estate of a deceased individual.

166 (23) "Mail," "mailed," or "mailing" means deposit, deposited, or depositing in the
167 United States mail, properly addressed, first class postage prepaid, and includes registered or
168 certified mail for which the proper fee has been paid.

169 (24) "Notice" is as provided in Section 16-10a-103.

170 (25) "Principal office" means the office, in or out of this state, designated by a
171 domestic or foreign corporation as its principal office in the most recent document on file with
172 the division providing the information, including:

173 (a) an annual report[;];

174 (b) an application for a certificate of authority[;]; or

175 (c) a notice of change of principal office.

176 (26) "Proceeding" includes:

177 (a) a civil suit[;];

178 (b) arbitration or mediation[;]; and

179 (c) a criminal, administrative, or investigatory action.

180 (27) "Qualified shares" means, with respect to a director's conflicting interest
181 transaction pursuant to Section 16-10a-853, any shares entitled to vote on the transaction,
182 except shares:

183 (a) that, to the knowledge, before the vote, of the secretary, other officer, or agent of
184 the corporation authorized to tabulate votes, are beneficially owned[;]; or

185 (b) the voting of which is controlled, by:

186 (i) a director who has a conflicting interest respecting the transaction[~~, or by~~];

187 (ii) a related person of that director[;]; or [~~both~~]

188 (iii) persons referred to in Subsections (27)(b)(i) and (ii).

189 (28) "Receive," when used in reference to receipt of a writing or other document by a
190 domestic or foreign corporation, means the writing or other document is actually received:

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

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

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

195 (29) "Record date" means the date established under Part 6, Shares and Distributions,
196 or 7 [~~of this chapter~~], Shareholders, on which a corporation determines the identity of its
197 shareholders. The determination shall be made as of the close of business on the record date
198 unless another time for doing so is specified when the record date is fixed.

199 (30) "Registered office" means the office within this state designated by a domestic or
200 foreign corporation as its registered office in the most recent document on file with the division
201 providing that information, including:

202 (a) articles of incorporation[;];

203 (b) an application for a certificate of authority[;]; or

204 (c) a notice of change of registered office.

205 (31) "Related person" of a director means:

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

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

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

209 (d) a trust or estate of which the director or any other individual specified in this
210 Subsection (31) is a substantial beneficiary; or

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

213 (32) "Secretary" means the corporate officer to whom the bylaws or the board of

214 directors has delegated responsibility under Subsection 16-10a-830(3) for:

215 (a) the preparation and maintenance of:

216 (i) minutes of the meetings of the board of directors and of the shareholders; and [~~of~~]

217 (ii) the other records and information required to be kept by the corporation by Section

218 16-10a-830[~~7~~]; and

219 (b) for authenticating records of the corporation.

220 (33) "Shares" means the units into which the proprietary interests in a corporation are
221 divided.

222 (34) "Shareholder" means the person in whose name shares are registered in the
223 records of a corporation or the beneficial owner of shares to the extent recognized pursuant to
224 Section 16-10a-723. For purposes of this chapter:

225 (a) the following, [~~which are~~] identified as a shareholder in a corporation's current
226 record of shareholders, constitute one shareholder:

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

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

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

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

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

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

240 (35) "Subscriber" means a person who subscribes for shares in a corporation, whether
241 before or after incorporation.

242 (36) "Voting group" means all shares of one or more classes or series that under the
243 articles of incorporation or this chapter are entitled to vote and be counted together collectively
244 on a matter at a meeting of shareholders. All shares entitled by the articles of incorporation or

245 this chapter to vote generally on the matter are for that purpose a single voting group.

246 Section 2. Section **16-10a-103** is amended to read:

247 **16-10a-103. Notice.**

248 (1) (a) Notice given under this chapter must be in writing unless oral notice is
249 reasonable under the circumstances.

250 (b) Notice by electronic transmission is written notice.

251 (2) (a) ~~[Notice]~~ Subject to compliance with any requirement that notice be in writing,

252 notice may be communicated in person, by telephone, by any form of electronic

253 ~~[communication]~~ transmission, or by mail or private carrier.

254 (b) If ~~[these]~~ the forms of personal notice listed in Subsection (2)(a) are impracticable,
255 notice may be communicated by:

256 (i) a newspaper of general circulation in the county, or similar subdivision, in which

257 the corporation's principal or registered office is located~~[-or by];~~ ~~§~~→ or ←~~§~~

258 (ii) ~~§~~→ [radio[,];

259 ~~—— (iii) television[,]; or~~

260 ~~—— (iv)] radio, television, or~~ ←~~§~~ other form of public broadcast communication in the county
260a or subdivision.

261 (3) (a) Written notice by a domestic or foreign corporation to its shareholders or

262 directors, if in a comprehensible form, is effective as to each shareholder or director:

263 (i) when mailed, if addressed to the shareholder's or director's address shown in the

264 corporation's current record of ~~[shareholders:]~~ the shareholder or director; or

265 (ii) when electronically transmitted to the shareholder or director, in a manner and to

266 an address provided by the shareholder or director in an unrevoked consent.

267 (b) Consent under Subsection (3)(a)(ii) is considered revoked if:

268 (i) the corporation is unable to deliver by electronic transmission two consecutive

269 notices transmitted by the corporation based on that consent; and

270 (ii) the corporation's inability to deliver notice by electronic transmission under

271 Subsection (3)(b)(i) is known by the:

272 (A) corporation's secretary;

273 (B) an assistant secretary or transfer agent of the corporation; or

274 (C) any other person responsible for providing notice.

275 (c) Notwithstanding Subsection (3)(b), a corporation's failure to treat consent under

276 Subsection (3)(a) as revoked does not invalidate any meeting or other act.

277 (d) Delivery of a notice to shareholders may be excused in accordance with Subsection
278 16-10a-705(5).

279 (4) Written notice to a domestic or foreign corporation authorized to transact business
280 in this state may be addressed to ~~[its]~~ the corporation's:

281 (a) registered agent at its registered office; ~~or [to the corporation's]~~

282 (b) secretary at its principal office.

283 (5) Except as provided in Subsection (3), written notice, if in a comprehensible form, is
284 effective at the earliest of the following:

285 (a) when received;

286 (b) five days after it is mailed; or

287 (c) on the date shown on the return receipt if sent by registered or certified mail, return
288 receipt requested, and the receipt is signed by or on behalf of the addressee.

289 (6) Oral notice is effective when communicated if communicated in a comprehensible
290 manner.

291 (7) Notice by publication is effective on the date of first publication.

292 (8) (a) If this chapter prescribes notice requirements for particular circumstances, those
293 requirements govern.

294 (b) If articles of incorporation or bylaws prescribe notice requirements, not inconsistent
295 with this section or other provisions of this chapter, those requirements govern.

296 Section 3. Section **48-2a-104** is amended to read:

297 **48-2a-104. Registered agent.**

298 (1) (a) A limited partnership shall continuously maintain in this state an agent for
299 service of process on the limited partnership.

300 (b) The agent required by this Subsection (1) shall be:

301 (i) an individual resident of this state;

302 (ii) a domestic corporation; ~~or~~

303 (iii) a domestic limited liability company;

304 ~~[(iii)]~~ (iv) a foreign corporation authorized to do business in this state; or

305 (v) a foreign limited liability company authorized to do business in this state.

306 (2) (a) The registered agent of a limited partnership may resign by filing with the

307 division a notice of resignation signed by the resigning agent.

308 (b) After receipt of the notice of resignation under Subsection (2)(a), the division shall
309 provide a copy of the notice of resignation to each general partner of the limited partnership at
310 the address set forth in the limited partnership's certificate for each general partner.

311 (c) The appointment of a registered agent ends 30 days after the division receives the
312 notice of resignation required by this Subsection (2).

313 (3) (a) A limited partnership may change the limited partnership's registered agent in
314 this state by filing with the division a notice of change of registered agent.

315 (b) The notice of change of registered agent required by this Subsection (3) shall:

316 (i) state:

317 (A) the name of the limited partnership;

318 (B) the name of the limited partnership's registered agent before the change of
319 registered agent; and

320 (C) the name of the limited partnership's registered agent after the change of registered
321 agent; and

322 (ii) include the new registered agent's written consent to the appointment:

323 (A) on the notice of change of registered agent; or

324 (B) in a document accompanying the notice of change of registered agent.

325 (c) A registered agent may change the registered agent's street address by:

326 (i) notifying the limited partnership in writing of the change; and

327 (ii) filing with the division a notice of change of address that:

328 (A) is signed by the registered agent;

329 (B) includes the information required by Subsection (3)(b); and

330 (C) states that the registered agent notified the limited partnership as required by
331 Subsection (3)(c)(i).

332 (d) A notice that is required under this section to be filed with the division shall be
333 filed no later than 30 days after the change for which notice under this section is required.

334 Section 4. Section **48-2a-201** is amended to read:

335 **48-2a-201. Certificate of limited partnerships.**

336 (1) In order to form a limited partnership a certificate of limited partnership must be
337 executed and filed with the division [~~The certificate shall set~~], setting forth:

- 338 (a) the name of the limited partnership;
- 339 (b) the name, street address, and signature of the agent for service of process required
- 340 to be maintained by Section 48-2a-104;
- 341 (c) a statement that the director of the division is appointed the agent of the limited
- 342 partnership for service of process if:
 - 343 (i) the agent has resigned[;];
 - 344 (ii) the agent's authority has been revoked[;]; or
 - 345 (iii) the agent cannot be found or served with the exercise of reasonable diligence;
- 346 (d) the street address of the limited partnership's principal place of business where the
- 347 records required to be maintained by Section 48-2a-105 are to be kept;
- 348 (e) the name and business address of each general partner;
- 349 (f) (i) the latest date upon which the limited partnership is to dissolve, if the duration of
- 350 the limited partnership is to be limited; or
- 351 (ii) a statement to the effect that the limited partnership is to have perpetual duration;
- 352 and
- 353 (g) any other matters the general partners determine to include.

- 354 (2) A limited partnership is formed:
 - 355 (a) at the time of the filing of the certificate of limited partnership with the division as
 - 356 evidenced by the stamped copy returned by the division pursuant to Subsection 48-2a-206
 - 357 (1)[;]; or
 - 358 (b) at any later time specified in the certificate of limited partnership.

359 Section 5. Section **48-2c-102** is amended to read:

360 **48-2c-102. Definitions.**

361 As used in this chapter:

- 362 (1) "Bankruptcy" includes bankruptcy under federal bankruptcy law or under Utah
- 363 insolvency law.
- 364 (2) "Business" includes any lawful trade, occupation, profession, business, investment,
- 365 or other purpose or activity, whether or not that trade, occupation, profession, business,
- 366 investment, purpose, or activity is carried on for profit.
- 367 (3) "Capital account," unless otherwise provided in the operating agreement, means the
- 368 account, as adjusted from time to time, maintained by the company for each member to reflect;

- 369 (a) the value of all contributions by that member[;];
370 (b) the amount of all distributions to that member or the member's assignee[;];
371 (c) the member's share of profits, gains, and losses of the company[;]; and
372 (d) the member's share of the net assets of the company upon dissolution and winding
373 up that are distributable to the member or the member's assignee.

374 (4) "Company," "limited liability company," or "domestic company" means a limited
375 liability company organized under or subject to this chapter.

376 (5) "Designated office" means the street address in this state where the records required
377 to be maintained by Section 48-2c-112 are kept.

378 (6) (a) "Distribution" means a direct or indirect transfer by a company of money or
379 other property, except:

380 (i) an interest in the company[;]; or

381 (ii) incurrence of indebtedness by a company, to or for the benefit of members in the
382 company in respect of any interest in the company.

383 (b) "Distribution" does not include amounts constituting reasonable compensation for
384 present or past services or reasonable payments made in the ordinary course of business
385 pursuant to a bona fide retirement plan or other benefits program.

386 (7) "Division" means the Division of Corporations and Commercial Code of the Utah
387 Department of Commerce.

388 (8) "Entity" includes:

389 (a) a domestic or foreign corporation;

390 (b) a domestic or foreign nonprofit corporation;

391 (c) a company or foreign company;

392 (d) a profit or nonprofit unincorporated association;

393 (e) a business trust;

394 (f) an estate;

395 (g) a general partnership or a domestic or foreign limited partnership;

396 (h) a trust;

397 (i) a state;

398 (j) the United States; or

399 (k) a foreign government.

- 400 (9) (a) "Filed with the division" means that a statement, document, or report;
401 (i) complies with the requirements of Section 48-2c-207; and
402 (ii) has been accepted for filing by the division [~~and~~].
403 (b) "Filed with the division" includes filing by electronic means approved by the
404 division.
- 405 (10) "Foreign company" means a limited liability company organized under a law other
406 than the laws of this state.
- 407 (11) "Interest in the company" means a member's economic rights in the company
408 including:
409 (a) the right to receive distributions from the company; and
410 (b) the right to receive a portion of the net assets of the company upon dissolution and
411 winding up of the company.
- 412 (12) "Manager" means a person elected or otherwise designated by the members to
413 manage a manager-managed company pursuant to Part 8, Management.
- 414 (13) "Manager-managed company" means a company whose management is vested in
415 managers pursuant to Part 8, Management.
- 416 (14) "Member" means a person with an ownership interest in a company and with the
417 rights and obligations specified under this chapter.
- 418 (15) "Member-managed company" means a company whose management is vested in
419 its members pursuant to Part 8, Management.
- 420 (16) (a) "Operating agreement" means any written agreement of the members;
421 (i) concerning the business or purpose of the company and the conduct of its affairs[;];
422 and
423 (ii) which complies with Part 5[~~. An operating~~], Operating Agreements.
- 424 (b) "Operating agreement" includes any written amendments agreed to by all members
425 or other writing adopted in any other manner as may be provided in the operating agreement.
- 426 (17) "Person" means an individual or entity.
- 427 (18) "Proceeding" means any administrative, judicial or other trial, hearing, or other
428 action, whether civil, criminal, or investigative, the result of which may be that a court,
429 arbitrator, or governmental agency may enter a judgment, order, decree, or other determination
430 which, if not appealed or reversed, would be binding upon any person subject to the

431 jurisdiction of that court, arbitrator, or governmental agency.

432 (19) "Professional services" is as defined in Part 15, Professions.

433 (20) "Profits interest" means that portion of the company's profits to be allocated to an
434 individual member upon any allocation of profits.

435 (21) "Profits interests" or "interests in profits" with respect to a company means the
436 total interests of all of the company's members in the company's profits.

437 [~~(20)~~] (22) "Signed," "signs," or "signature" means a manual signature or authorized
438 facsimile [thereof] of the signature and any electronic or digital signature approved by the
439 division.

440 [~~(21)~~] (23) "State" means:

441 (a) a state, territory, or possession of the United States[;];

442 (b) the District of Columbia[;]; or

443 (c) the Commonwealth of Puerto Rico.

444 Section 6. Section **48-2c-110** is amended to read:

445 **48-2c-110. Powers.**

446 Each company organized and existing under this chapter may:

447 (1) sue or be sued, institute or defend any action, or participate in any proceeding in its
448 own name;

449 (2) purchase, take, receive, lease, or otherwise acquire, own, hold, improve, use, or
450 otherwise deal in or with real or personal property or an interest in real or personal property,
451 wherever situated;

452 (3) sell, convey, assign, encumber, mortgage, pledge, create a security interest in, lease,
453 exchange or transfer, or otherwise dispose of all or any part of its property or assets;

454 (4) lend money to and otherwise assist its members, managers, and employees;

455 (5) purchase, take, receive, subscribe for, or otherwise acquire, own, hold, vote, use,
456 employ, sell, mortgage, lend, pledge, or otherwise dispose of, or otherwise use or deal in or
457 with:

458 (a) shares or other interests in any entity or obligations of any person; or

459 (b) direct or indirect obligations of the United States or any other government, state,
460 territory, governmental district, or municipality or of any instrumentality of any of them;

461 (6) (a) make contracts or guarantees or incur liabilities[;];

- 462 (b) borrow money at such rates of interest as the company may determine[;];
- 463 (c) issue its notes, bonds, or other obligations[;]; or
- 464 (d) secure any of its obligations by mortgage or pledge of all or any part of its property,
- 465 franchises, and income;
- 466 (7) (a) lend money for any lawful purpose[;];
- 467 (b) invest or reinvest its funds[;]; or
- 468 (c) take and hold real or personal property as security for the payment of funds so
- 469 loaned or invested;
- 470 (8) conduct its business and maintain offices and exercise the powers granted by this
- 471 chapter within this state, and in any state, territory, district, or possession of the United States,
- 472 or in any foreign country;
- 473 (9) elect or appoint managers and agents of the company, define their duties, and fix
- 474 their compensation;
- 475 (10) make and alter an operating agreement as allowed by Part 5, Operating
- 476 Agreements;
- 477 (11) make donations for the public welfare or for charitable, scientific, religious, or
- 478 educational purposes;
- 479 (12) indemnify or hold harmless any person;
- 480 (13) cease its activities and cancel its certificate of organization;
- 481 (14) transact any lawful business [~~which~~] that the members or the managers find to be
- 482 in aid of governmental policy;
- 483 (15) pay pensions and establish pension plans, profit-sharing plans, and other incentive
- 484 plans for any or all of its members, managers, and employees;
- 485 (16) be a promoter, incorporator, organizer, general partner, limited partner, member,
- 486 associate, or manager of any corporation, partnership, limited partnership, limited liability
- 487 company, joint venture, trust, or other enterprise or entity;
- 488 (17) render professional services, if each member of a company who renders
- 489 professional services in Utah is licensed or registered to render those professional services
- 490 pursuant to applicable Utah law; and
- 491 (18) have and exercise the same powers as an individual, and all powers necessary or
- 492 convenient to effect or carry out any or all of the purposes for which the company is organized.

493 Section 7. Section **48-2c-120** is amended to read:

494 **48-2c-120. Articles of organization and operating agreement.**

495 (1) A company's articles of organization or operating agreement may not:

496 (a) restrict a right to inspect and copy records under Section 48-2c-113;

497 (b) reduce the duties of members or managers under Section 48-2c-807;

498 (c) eliminate the obligation of good faith and fair dealing, except that the members by
499 written agreement may determine the standards by which the performance of the obligation is
500 to be measured, if the standards are not manifestly unreasonable;

501 (d) vary any filing requirement under this chapter;

502 (e) vary any requirement under this chapter that a particular action or provision be
503 reflected in a writing;

504 (f) vary the right to expel a member based on any event specified in Subsection
505 48-2c-710(3);

506 (g) vary the remedies under Section 48-2c-1210 for judicial dissolution of a company;

507 (h) except as allowed by Section 48-2c-1103 or any other provision of law, restrict
508 rights of, or impose duties on, persons other than the members, their assignees and transferees,
509 the managers, and the company, without the consent of those persons; or

510 (i) eliminate or limit the personal liability of [~~a manager~~] any person vested with
511 management authority to the company or its members for damages for any breach of duty in the
512 capacity where a judgment or other final adjudication adverse to the manager establishes that
513 the manager's acts or omissions;

514 (A) were in bad faith [~~or~~];

515 (B) involved gross negligence [~~or~~];

516 (C) involved willful misconduct; or [~~that~~]

517 (D) the manager personally gained a financial profit or other advantage to which the
518 manager was not legally entitled.

519 (2) The articles of organization and operating agreement may:

520 (a) vary the requirement under Section 48-2c-1104 that, if all of the other members of
521 the company other than the member proposing to dispose of the member's interest do not
522 approve of the proposed transfer or assignment by unanimous written consent, the transferee of
523 the member's interest shall have no right to participate in the management of the business or

524 affairs of the company or to become a member; and

525 (b) vary the requirement under Section 48-2c-703 that, after the filing of the original
526 articles of organization, a person may be admitted as an additional member only upon the
527 written consent of all members.

528 Section 8. Section **48-2c-121** is amended to read:

529 **48-2c-121. Scope of notice.**

530 (1) Articles of organization that have been filed with the division constitute notice to a
531 third ~~to~~ [f] persons, [f] ~~as well as~~ ~~to~~ [person] ~~and~~ to members and managers of the
531a company:

532 (a) that the company is a limited liability company formed under the laws of this state;
533 and

534 (b) of all statements set forth in the articles of organization [~~which~~] that are:

535 (i) required by Subsection 48-2c-403(1) to be set forth in articles of organization; and

536 (ii) expressly permitted to be set forth in the articles of organization by Subsection
537 48-2c-403(4).

538 (2) The filing with the division of any annual report required by Section 48-2c-203
539 constitutes notice to ~~to~~ [a] ~~third~~ ~~to~~ [f] persons [person] ~~as well as~~ to members and
539a managers of the
540 company, of the information set forth in the annual report which is required by Section
541 48-2c-203 to be set forth in an annual report.

542 (3) The filing with the division of any statement allowed by Section 48-2c-122 is
543 notice to ~~to~~ [a] ~~third~~ ~~to~~ [f] persons [person] ~~, as well as~~ to members and managers
543a of the company, of the
544 information set forth in that statement which is expressly permitted to be set forth in that
545 statement by Section 48-2c-122.

546 (4) The filing with the division of a certified copy of a court order under Subsection
547 48-2c-809(5) is notice of the contents of the order to:

548 (a) ~~to~~ [a third person] third persons ~~;~~

549 (b) members of the company; and

550 (c) managers of the company.

551 Section 9. Section **48-2c-203** is amended to read:

552 **48-2c-203. Annual report.**

553 (1) (a) Each company and each foreign company authorized to transact business in this
554 state shall file an annual report with the division:

555 (i) during the month of its anniversary date of formation, in the case of domestic
556 companies; or

557 (ii) during the month of the anniversary date of being granted authority to transact
558 business in this state, in the case of foreign companies authorized to transact business in this
559 state.

560 (b) The annual report required by Subsection (1)(a) shall set forth:

561 ~~(i)~~ the name of the company; ~~and~~

562 ~~(ii)~~ the state or country under the laws of which it is formed; and ~~[shall set forth]~~

563 ~~(iii)~~ any change in:

564 ~~(i)~~ (A) for a domestic company only, the street address of its designated office;

565 ~~(ii)~~ (B) for a foreign company only, the street address of its principal office;

566 ~~(iii)~~ (C) the street address of its registered office in this state;

567 ~~(iv)~~ (D) the name of the agent for service of process at the address listed in

568 Subsection (1)(b)(iii)~~(c)~~;

569 ~~(v)~~ (E) if the street address or legal name of any manager in a manager-managed
570 company ~~[or]~~, any member in a member-managed company, or any person with management
571 authority of a foreign company~~;~~ has changed, the new street address or legal name of the
572 manager, member, or other person; and

573 ~~(vi)~~ (F) the identity of the persons constituting the managers in a manager-managed
574 company or members in a member-managed company or other person with management
575 authority of a foreign company.

576 (2) (a) The annual report required by Subsection (1) shall:

577 (i) be made on forms prescribed and furnished by the division; and

578 (ii) contain information that is given as of the date of signing the annual report.

579 (b) The annual report forms shall include a statement notifying the company that
580 failure to file the annual report will result in:

581 (i) the dissolution of the ~~[organization]~~ company, in the case of a domestic company;

582 or

583 (ii) the revocation of authority to transact business in this state in the case of a foreign
584 company.

585 (3) The annual report shall be signed by:

586 (a) (i) any manager in a manager-managed company [~~or members~~];
587 (ii) any member in a member-managed company; or
588 (iii) any other person with management authority; and
589 (b) if the registered agent has changed since the filing of the articles of organization or
590 last annual report, by the new registered agent.

591 (4) (a) If the annual report conforms to the requirements of this chapter, the division
592 shall file the report.

593 (b) If the annual report does not conform to the requirements of this chapter, the
594 division shall mail the report, first class postage prepaid, to the registered agent of the company
595 for any necessary corrections at the street address for the registered agent most recently
596 furnished to the division by notice, annual report, or other document.

597 (c) If the division returns an annual report in accordance with Subsection (4)(b), the
598 penalties for failure to file the report within the time prescribed in this section do not apply, as
599 long as the annual report is corrected and returned to the division within 30 days from the date
600 the nonconforming report was mailed to the registered agent of the company.

601 Section 10. Section **48-2c-401** is amended to read:

602 **48-2c-401. Organizer.**

603 (1) (a) One or more [~~individuals 18 years of age or older may form a company under~~
604 ~~this chapter by~~] persons may act as organizers of a company by signing and filing with the
605 division articles of organization that meet the requirements of Section 48-2c-403.

606 (b) An organizer who is a natural person must be 18 years of age or older.

607 (c) The [~~individuals~~] persons acting as [~~organizer~~] organizers may[~~, but need not,~~] be
608 members or managers of the company at the time of formation or after formation has occurred.

609 (2) (a) The signing of the articles of organization constitutes an affirmation by the
610 organizers that:

611 (i) the company has one or more members; and[;]

612 (ii) if the company is manager-managed, the person or persons named as managers in
613 the articles of organization have consented to serve as managers of the company.

614 (b) At or prior to filing articles of organization for a company, the organizer or
615 organizers shall prepare a writing to be held with the records of the company [~~which~~] that sets
616 forth[~~:(a)~~] for each company that is not to be member-managed, the name and street address of

617 each initial member of the company[~~;~~ and].

618 [~~(b) if the articles of organization provide that the company is manager-managed, the~~
619 ~~name and street address of each initial manager.~~]

620 Section 11. Section **48-2c-403** is amended to read:

621 **48-2c-403. Articles of organization.**

622 (1) The articles of organization of a company shall set forth:

623 (a) the name of the company;

624 (b) the business purpose for which the company is organized;

625 (c) the name and street address of its initial registered agent as required by Section
626 48-2c-302;

627 (d) the signature of [its] the company's initial registered agent;

628 (e) a statement that the director of the division is appointed the agent of the company
629 for service of process if:

630 (i) the agent has resigned[~~;~~];

631 (ii) the agent's authority has been revoked[~~;~~]; or

632 (iii) the agent cannot be found or served with the exercise of reasonable diligence;

633 (f) the street address of the company's designated office or a statement that the
634 company's registered office shall be its designated office;

635 (g) the name and street address of each organizer who is not a member or manager;

636 (h) if the company is to be manager-managed:

637 (i) a statement that the company is to be managed by a manager or managers; and

638 (ii) the names and street addresses of the initial managers; and

639 (i) if the company is to be member-managed:

640 (i) a statement that the company is to be managed by its members; and

641 (ii) the names and street addresses of the initial members.

642 (2) If the company is to be manager-managed, the articles of organization do not need
643 to state the name or address of any member, except as required by Part 15, Professions.

644 (3) It is not necessary to include in the articles of organization any of the powers
645 enumerated in this chapter.

646 (4) The articles of organization may contain any other provision not inconsistent with
647 law, including[~~;~~ but not limited to]:

- 648 (a) a provision limiting or restricting:
- 649 (i) the business in which the company may engage [~~or~~];
- 650 (ii) the powers that the company may exercise[~~;~~]; or
- 651 (iii) both Subsections (4)(a)(i) and (ii);
- 652 (b) a statement of whether there are limitations on the authority of managers or
- 653 members to bind the company and, if so, what the limitations are, set out in detail and not with
- 654 reference to any other document; or
- 655 (c) a statement of the period of duration of the company, which may be as long as 99
- 656 years from the date the articles of organization, or the latest of any amendments to the articles
- 657 of organization effecting a change in the period of duration, were filed with the division.
- 658 (5) If the articles of organization of a company do not specify a period of duration, the
- 659 period of duration for that company is 99 years from the date the articles of organization were
- 660 filed with the division, unless the period of duration is extended by an amendment to the
- 661 articles of organization as permitted by this chapter.
- 662 Section 12. Section ~~48-2c-408~~ is amended to read:
- 663 **48-2c-408. Certificate of amendment to articles of organization.**
- 664 (1) A company amending its articles of organization shall deliver to the division for
- 665 filing a certificate of amendment [~~which~~] that includes:
- 666 (a) the name of the company;
- 667 (b) the text of each amendment adopted;
- 668 (c) if the amendment provides for restructuring the ownership of the company or an
- 669 exchange or reclassification of the members' interests in the company, provisions for
- 670 implementing the amendment if not contained in the text of the amendment itself;
- 671 (d) the date each amendment was adopted by the members;
- 672 (e) a statement that each amendment was adopted by the members and any managers,
- 673 as required by Section [~~48-2c-802~~] 48-2c-803 or 48-2c-804, or as otherwise required by the
- 674 articles of organization or operating agreement; and
- 675 (f) the signature required by Section 48-2c-204.
- 676 (2) Unless otherwise provided in the articles of organization [~~or~~], the operating
- 677 agreement, or in Section 48-2c-803 or 48-2c-804, each amendment to the articles of
- 678 organization of a company must be approved by all [~~of the~~] members and any managers and, if

679 there are classes of members, by all of the members of each class.

680 (3) A company shall deliver the certificate of amendment required by Subsection (1) to
681 the division for filing within 60 days after adoption of the amendment.

682 (4) Upon the filing with the division of a certificate of amendment, the articles of
683 organization shall be amended as set forth in the certificate of amendment.

684 Section 13. Section **48-2c-501** is amended to read:

685 **48-2c-501. Initial agreement.**

686 The initial operating agreement of a company, if one is adopted, shall be adopted by
687 unanimous consent of the members.

688 Section 14. Section **48-2c-702** is amended to read:

689 **48-2c-702. Initial members.**

690 (1) In connection with the formation of a company, a person becomes a member of the
691 company upon the earliest to occur of the following:

692 (a) when the person signs the articles of organization as a member;

693 (b) when the person signs the operating agreement as a member; or

694 (c) when:

695 (i) the person evidences the intent to become a member, either orally, in writing, or by
696 other action such as transferring property or paying money to the company for an interest in the
697 company; and

698 (ii) the person's admission as a member is reflected in the records of the company or is
699 otherwise acknowledged by the company.

700 (2) Notwithstanding [~~the provisions of~~] Subsection (1), a person [~~shall~~] may not
701 become a member of a company prior to formation of the company.

702 Section 15. Section **48-2c-803** is amended to read:

703 **48-2c-803. Management by members.**

704 In a member-managed company, each member shall be subject to the duties described
705 in Section 48-2c-807 and, unless otherwise provided in this chapter [~~or~~], in the articles of
706 organization, or an operating agreement:

707 (1) the affirmative vote, approval, or consent of members holding a majority of profits
708 interests in the company shall be required to decide any matter connected with the business of
709 the company;

- 710 (2) the affirmative vote, approval, or consent of all members shall be required to:
- 711 (a) amend the articles of organization, except to make ministerial amendments
- 712 including:
- 713 (i) amendments made only to reflect actions previously taken with the requisite
- 714 approval, such as a change in managers ~~§~~→ ~~[under Section 48-2c-804]~~ ←~~§~~ ; or
- 715 (ii) to change an address;
- 716 (b) amend the operating agreement, except to make ministerial amendments, including:
- 717 (i) amendments made only to reflect actions previously taken with the requisite
- 718 approval, such as a change in managers ~~§~~→ ~~[under Section 48-2c-804]~~ ←~~§~~ ; or
- 719 (ii) to change an address; or
- 720 (c) (i) authorize a member or any other person to do any act on behalf of the company
- 721 that contravenes the articles of organization or operating agreement; and ~~[thereafter]~~
- 722 (ii) after authorizing an act under Subsection (2)(c)(i) to terminate the authority so
- 723 granted; and
- 724 (3) the affirmative vote, approval, or consent of members holding 2/3 of the profits
- 725 interests in the company shall be required to bind the company to any of the following actions:
- 726 (a) (i) authorizing a member or any other person to do any act on behalf of the
- 727 company that is not in the ordinary course of the company's business, or business of the kind
- 728 carried on by the company[;]; and ~~[thereafter]~~
- 729 (ii) after authorizing an act under Subsection (3)(a)(i) to terminate the authority so
- 730 granted;
- 731 (b) making a current distribution to members;
- 732 (c) resolving any dispute connected with ~~[carrying on in the usual way the business of~~
- 733 ~~the company]~~ the usual and regular course of the company's business;
- 734 (d) making a substantial change in the business purpose of the company;
- 735 (e) a conversion of the company to another entity;
- 736 (f) a merger in which the company is a party to the merger;
- 737 (g) any sale, lease, exchange, or other disposition of all or substantially all of the
- 738 company's property other than in the usual and regular course of the company's business;
- 739 (h) any mortgage, pledge, dedication to the repayment of indebtedness, whether with or
- 740 without recourse, or other encumbering of all or substantially all of the company's property

741 [~~whether or not~~] other than in the usual and regular course of the company's business; or

742 (i) any waiver of a liability of a member under Section 48-2c-603.

743 Section 16. Section **48-2c-803.1** is enacted to read:

744 **48-2c-803.1. Individual profits interest.**

745 For the purpose of determining compliance with a provision of this chapter that
746 conditions rights, consents, or actions on the participation of members holding a certain
747 percentage of the company's profits interests, unless otherwise provided in the articles of
748 organization or the operating agreement, each member's profits interest shall be determined
749 based on the members' capital account balances on the date on which compliance is measured.

750 Section 17. Section **48-2c-804** is amended to read:

751 **48-2c-804. Management by managers.**

752 In a manager-managed company, each manager and each member shall be subject to
753 [~~the provisions of~~] Section 48-2c-807 and:

754 (1) (a) the initial managers shall be designated in the articles of organization;

755 [~~thereafter;~~] and

756 (b) after the initial managers, the managers shall be those persons identified in
757 documents filed with the division including:

758 (i) amendments to the articles of organization [~~as well as~~];

759 (ii) the annual reports required under Section 48-2c-203; and

760 (iii) the statements required or permitted under Section 48-2c-122;

761 (2) when there is a change in the management structure from a member-managed
762 company to a manager-managed company, the managers shall be those persons identified in the
763 certificate of amendment to the articles of organization that makes the change;

764 (3) each manager who is a natural person must have attained the age of majority under
765 the laws of this state;

766 (4) no manager shall have authority to do any act in contravention of the articles of
767 organization or the operating agreement, except as provided in Subsection (6)(g);

768 (5) a manager who is also a member shall have all of the rights of a member;

769 (6) unless otherwise provided in the articles of organization or operating agreement of
770 the company:

771 (a) except for the initial managers, each manager shall be elected at any time by the

772 members holding at least a majority of the profits interests in the company, and any vacancy
773 occurring in the position of manager shall be filled in the same manner;

774 (b) the number of managers;

775 (i) shall be fixed by the members in the operating agreement; ~~or [if the operating~~
776 ~~agreement fails to designate the number of managers, the number of managers]~~

777 (ii) shall be the number designated by members holding at least a majority of the
778 profits interests in the company if the operating agreement fails to designate the number of
779 managers;

780 (c) each manager shall serve until the earliest to occur of;

781 (i) the manager's death, withdrawal, or removal [~~or~~];

782 (ii) an event described in Subsection 48-2c-708(1)(f); ~~or~~;

783 (iii) if membership in the company is a condition to being a manager, an event
784 described in Subsection 48-2c-708(1)(d) or (e);

785 (d) a manager need not be a member of the company or a resident of this state;

786 (e) any manager may be removed with or without cause by the members, at any time,
787 by the decision of members owning a majority of the profits interests in the company;

788 (f) there shall be only one class of managers; and

789 (g) approval by ~~[the requisite number of members, as well as all of the managers, shall~~
790 ~~be required as to all matters described in Subsections 48-2c-803(2) and (3)];~~

791 (i) all of the members and all of the managers shall be required for matters described in
792 Subsection 48-2c-803(2); and

793 (ii) members holding 2/3 of the profits interests in the company, and 2/3 of the
794 managers shall be required for all matters described in Subsection 48-2c-803(3).

795 Section 18. Section **48-2c-807** is amended to read:

796 **48-2c-807. Duties of managers and members.**

797 (1) ~~[Unless otherwise provided in the articles of organization or an operating~~
798 ~~agreement, a] A~~ member or manager shall not be liable or accountable in damages or otherwise
799 to the company or the members for any action taken or failure to act on behalf of the company
800 unless the act or omission constitutes;

801 (a) gross negligence [~~or~~];

802 (b) willful misconduct~~[-];~~ or

803 (c) a breach of a higher standard of conduct that would result in greater exposure to
804 liability for the member or manager that is established in the company's articles of organization
805 or operating agreement.

806 (2) [~~Unless otherwise provided in an operating agreement, each~~] Each member and
807 manager [~~must~~] shall account to the company and hold as trustee for it any profit or benefit
808 derived by that person without the consent of members holding a majority interest in profits in
809 the company, or a higher percentage of interests in profits provided for in the company's
810 articles of organization or operating agreement, from:

811 (a) any transaction connected with the conduct of the company's business or winding
812 up of the company; or

813 (b) any use by the member or manager of company property, including[~~, but not limited~~
814 ~~to,~~] confidential or proprietary information of the company or other matters entrusted to the
815 person in the capacity of a member or manager.

816 (3) [~~A~~] Unless otherwise provided in a company's articles of organization or operating
817 agreement, a member of a manager-managed company who is not also a manager owes no
818 fiduciary duties to the company or to the other members solely by reason of acting in the
819 capacity of a member.

820 Section 19. Section **48-2c-903** is amended to read:

821 **48-2c-903. Capital accounts.**

822 (1) (a) A capital account shall be maintained for each member.

823 (b) The capital account of each member represents that member's share of the net assets
824 of the company.

825 (c) Except as otherwise provided in the articles of organization or operating agreement,
826 the capital accounts of all members shall be adjusted, either increased or decreased, to reflect
827 the revaluation of company assets, including intangible assets such as goodwill, on the
828 company's books in connection with any of the following events:

829 [~~(a)~~] (i) a capital contribution, other than a de minimis contribution, made by or on
830 behalf of a new member or an additional capital contribution, other than a de minimis
831 contribution, made by or on behalf of an existing member;

832 [~~(b)~~] (ii) a distribution, other than a de minimis amount, made in partial or complete
833 redemption of a member's interest in the company; [~~or~~]

834 ~~(e)~~ (iii) the dissolution and winding up of the company[-];
835 (iv) a merger of the company; or
836 (v) the grant of an interest in the company other than a de minimis interest, on or after
837 May 6, 2004, as consideration for the provision of services to or for the benefit of the company
838 by:
839 (A) an existing member acting in the capacity of a member; or
840 (B) a new member acting in a member capacity or in anticipation of becoming a
841 member.

842 (2) Upon any [~~such~~] revaluation event[-] under Subsection (1):
843 (a) the book value of company assets shall be adjusted to fair market value; and
844 (b) unrealized income, gain, loss, or deduction inherent in [~~such~~] those company assets
845 that have not been previously reflected in the members' capital accounts shall be allocated to
846 the members' capital accounts.

847 Section 20. Section **48-2c-1103** is amended to read:

848 **48-2c-1103. Rights of creditor of member.**

849 (1) (a) On application to a court of competent jurisdiction by any judgment creditor of
850 a member or of a member's assignee, the court may charge the interest in the company of the
851 member or assignee with payment of the unsatisfied amount of the judgment plus interest.

852 [~~The court~~]

853 (b) A court charging the interest of a member or assignee under Subsection (1)(a) may
854 then or later appoint a receiver of the share of distributions due or to become due to the
855 judgment debtor in respect of the interest in the company. [~~The~~]

856 (c) A judgment creditor and receiver under this section shall have only the rights of an
857 assignee. [~~The~~]

858 (d) A court may make all other orders, directions, accounts, and inquiries [the] a
859 judgment debtor might [have made] make or [which] that the circumstances of the case may
860 require.

861 (2) (a) A charging order constitutes a lien on the judgment debtor's interest in the
862 company. [~~The~~]

863 (b) A court may order a foreclosure of the interest subject to [the] a charging order
864 entered under this section at any time.

865 (c) The purchaser at [the] a foreclosure sale under Subsection (2)(b) has only the rights
866 of an assignee[-] if there are other members in the company.

867 (d) Notwithstanding Subsection (2)(c), if the member whose interest is charged under
868 this section is the sole member of the company when the ~~§~~→ [judgment creditor's claim first arose]
868a charging order was entered ←~~§~~ :

869 (i) the purchaser at a foreclosure sale acquires all rights of the member, including
870 voting rights; and

871 (ii) the member is considered to have consented to the admission of the purchaser as a
872 member of the company.

873 (3) Unless otherwise provided in the articles of organization or operating agreement for
874 the company, at any time before foreclosure an interest charged may be redeemed:

875 (a) by the judgment debtor;

876 (b) with property other than company property, by one or more of the other members;

877 or

878 (c) by the company with the consent of all of the members whose interests are not so
879 charged.

880 (4) This section does not deprive a member of a right under exemption laws with
881 respect to the member's interest in a company.

882 (5) This section provides the exclusive remedy by which a judgment creditor of a
883 member or a member's assignee may satisfy a judgment out of the judgment debtor's interest in
884 a company.

885 (6) No creditor of a member shall have any right to obtain possession of, or otherwise
886 exercise legal or equitable remedies with respect to, the property of the company.

887 Section 21. Section **48-2c-1201** is amended to read:

888 **48-2c-1201. Events of dissolution.**

889 A company organized under this chapter shall be dissolved upon the occurrence of any
890 of the following events:

891 (1) when the period fixed for the duration of the company, pursuant to Subsection
892 48-2c-403(4)(c) or (5), expires;

893 (2) at such times as the company fails to have at least one member;

894 (3) by written agreement signed by all members;

895 (4) upon the occurrence of a dissolution event specified in the articles of organization

896 or operating agreement;

897 [~~(5)~~ when the company is not the successor company in the merger or consolidation of
898 two or more companies;]

899 [~~(6)~~] (5) upon administrative dissolution under Section 48-2c-1207, subject to right of
900 reinstatement under Section 48-2c-1208; or

901 [~~(7)~~] (6) upon entry of a decree of judicial dissolution under Section 48-2c-1213.

902 Section 22. Section **48-2c-1204** is amended to read:

903 **48-2c-1204. Articles of dissolution.**

904 (1) After any event of dissolution, other than the events described in Subsection
905 48-2c-1201[~~(6)~~ or ~~(7)~~] (5) or (6), the company, or a person acting for the company, shall deliver
906 to the division for filing articles of dissolution setting forth:

907 (a) the name of the company;

908 (b) (i) the address of the company's designated office; or[;]

909 (ii) if [~~none~~] a designated office is ~~H~~→ **not** ←~~H~~ to be maintained, a statement that the
909a company will
910 not maintain a designated office[;]; and[;]

911 (iii) if different from the address of the designated office or if no designated office is to
912 be maintained, the address to which service of process may be mailed pursuant to Section
913 48-2c-308;

914 (c) the effective date of the dissolution;

915 (d) the event causing the dissolution;

916 (e) if dissolution occurred by written agreement of the members, a statement to that
917 effect; and

918 (f) any additional information the division determines is necessary or appropriate.

919 (2) A company is dissolved upon the effective date of dissolution set forth in its articles
920 of dissolution.

921 Section 23. Section **48-2c-1207** is amended to read:

922 **48-2c-1207. Procedure for and effect of administrative dissolution.**

923 (1) If the division determines that one or more grounds exist under Section 48-2c-1206
924 for dissolving a company, it shall mail to the company written notice of:

925 (a) the division's determination that one or more grounds exist for dissolving the
926 company; and

927 (b) the grounds for dissolving the company.

928 (2) (a) If the company does not correct each ground for dissolution, or demonstrate to
929 the reasonable satisfaction of the division that each ground does not exist, within 60 days after
930 mailing the notice provided in Subsection (1), the division shall administratively dissolve the
931 company.

932 (b) If a company is dissolved under Subsection (2)(a), the division shall mail written
933 notice of the administrative dissolution to the dissolved company at its designated office,
934 stating the date of dissolution specified in Subsection (2)(d).

935 (c) The division shall mail a copy of the notice of administrative dissolution including
936 a statement of the grounds for the administrative dissolution, to:

937 (i) the registered agent of the dissolved company; or

938 (ii) if there is no registered agent of record, or if the mailing to the registered agent is
939 returned as undeliverable, at least one member if the company is member-managed or one
940 manager of the company if the company is manager-managed, at their addresses as reflected on
941 the notice, annual report, or document most recently filed with the division.

942 (d) A company's effective date of administrative dissolution is five days after the date
943 the division mails the written notice of dissolution under Subsection (2)(b).

944 (e) On the effective date of dissolution, any assumed names filed on behalf of the
945 dissolved company under Title 42, Chapter 2, Conducting Business Under Assumed Name, are
946 canceled.

947 (f) Notwithstanding Subsection (2)(e), the name of the company that is dissolved and
948 any assumed names filed on its behalf are not available for two years from the effective date of
949 dissolution for use by any other person:

950 (i) transacting business in this state; or

951 (ii) doing business under an assumed name under Title 42, Chapter 2, Conducting
952 Business Under Assumed Name.

953 (g) Notwithstanding Subsection (2)(e), if the company that is dissolved is reinstated in
954 accordance with Section 48-2c-1208, the registration of the name of the company and any
955 assumed names filed on its behalf are reinstated back to the effective date of dissolution.

956 (3) (a) Except as provided in Subsection (3)(b), a company administratively dissolved
957 under this section continues its existence but may not carry on any business except:

958 (i) the business necessary to wind up and liquidate its business and affairs under Part
959 13 [~~of this chapter~~], Winding Up; and

960 (ii) to give notice to claimants in the manner provided in Sections 48-2c-1305 and
961 48-2c-1306.

962 (b) If the company is reinstated in accordance with Section 48-2c-1208, business
963 conducted by the company during a period of administrative dissolution is unaffected by the
964 dissolution.

965 (4) The administrative dissolution of a company does not terminate the authority of its
966 registered agent.

967 (5) (a) Upon the administrative dissolution of a company, the director of the division
968 shall be an additional agent of the dissolved company for purposes of service of process.

969 (b) Service of process on the director of the division under this Subsection (5) is
970 service on the dissolved company.

971 (c) Upon receipt of process under this Subsection (5), the director of the division shall
972 send a copy of the process to the dissolved company at its designated office and a copy of the
973 process to the registered agent of the dissolved company.

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

975 (a) mailed first-class, postage prepaid; and

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

978 (i) the designated office of the company, if the notice is required to be mailed to the
979 company;

980 (ii) the registered agent of the company, if the notice is required to be mailed to the
981 registered agent; or

982 (iii) any member if the company is member-managed, or to any manager of the
983 company if the company is manager-managed, if the notice is required to be mailed to a
984 member or manager of the company.

985 Section 24. Section **48-2c-1211** is amended to read:

986 **48-2c-1211. Procedure for judicial dissolution.**

987 (1) (a) A proceeding by the attorney general or director of the division to dissolve a
988 company shall be brought in [~~either~~]:

989 (i) the district court of the county in this state in which the designated office or, if it has
990 no designated office in this state, its registered office is or was last located[;]; or

991 (ii) the district court of Salt Lake County.

992 (b) A proceeding brought by any other party named in Section 48-2c-1210 shall be
993 brought in the district court of the county in this state where the company's designated office
994 or, if it has no designated office in this state, its registered office is or was last located.

995 (2) It is not necessary to make any member or manager a party to a proceeding to
996 dissolve a company unless relief is sought against them [~~individually~~] personally.

997 (3) A court in a proceeding brought to dissolve a company may:

998 (a) issue [~~injunctions,~~] an injunction;

999 (b) appoint a receiver or custodian pendente lite with all powers and duties the court
1000 directs[;];

1001 (c) take other action required to preserve the company's assets wherever located[;]; and

1002 (d) carry on the business of the company until a full hearing can be held.

1003 Section 25. Section **48-2c-1404** is amended to read:

1004 **48-2c-1404. Approval of conversion.**

1005 (1) Any conversion involving a foreign subject entity must be permitted by the laws
1006 governing the foreign subject entity.

1007 (2) Any filing required to effect the conversion and the change in domicile of a
1008 surviving domestic company under the laws of each jurisdiction governing the foreign subject
1009 entity shall be timely made.

1010 (3) Prior to filing articles of conversion with the division[;];

1011 (a) the conversion must first be approved in the manner provided for by applicable law
1012 or by the document, instrument, agreement, or other writing[~~, as the case may be,~~] that governs
1013 the internal affairs of the subject entity, as appropriate[;]; and

1014 (b) the new operating agreement, if any, for the domestic company must be approved
1015 by the same authorization required to approve the conversion.

1016 (4) If applicable law, or the document, instrument, agreement, or other writing[~~, as the~~
1017 ~~case may be,~~] that governs the internal affairs of the subject entity, does not provide for the
1018 manner of approving the conversion, [~~then~~] unanimous consent of the owners of the subject
1019 entity shall be required to approve the conversion and the new operating agreement.

1020 Section 26. Section **48-2c-1406** is amended to read:

1021 **48-2c-1406. Approval of company conversion to other entity.**

1022 (1) (a) A domestic company may convert to any subject entity upon the authorization
1023 of the conversion in accordance with this section.

1024 (b) If ~~the~~ an operating agreement specifies the manner of authorizing a conversion of
1025 ~~the~~ a company, the conversion shall be authorized as specified in the operating agreement.

1026 (c) If the operating agreement does not specify the manner of authorizing a conversion
1027 of the company and does not prohibit a conversion of the company, the conversion shall be
1028 authorized in the same manner as specified in the operating agreement for authorizing a merger
1029 that involves the company as a constituent party to the merger.

1030 (d) If the operating agreement does not specify the manner of authorizing a conversion
1031 of the company or a merger that involves the company as a constituent party and does not
1032 prohibit a conversion of the company, the conversion must be authorized by unanimous
1033 consent of all members.

1034 (2) A converted domestic company shall, upon conversion to a subject entity, be
1035 considered the same entity as the subject entity and the rights, privileges, powers, and interests
1036 in property of the domestic company, as well as the debts, liabilities, and duties of the domestic
1037 company, ~~shall~~ may not, for any purpose of the laws of this state, be considered, as a
1038 consequence of the conversion, to have been transferred to the subject entity to which the
1039 domestic company has converted.

1040 (3) (a) Unless otherwise agreed, the conversion of a domestic company to another
1041 entity, pursuant to this section, ~~shall~~ does not require the domestic company to wind up its
1042 affairs or to pay its liabilities or distribute its assets under this chapter.

1043 (b) In connection with conversion of a domestic company to another entity under this
1044 section, all interests in, or securities of or rights in the domestic company which is to be
1045 converted may be:

1046 (i) exchanged for or converted into cash, property, interests in, or securities of or rights
1047 in the entity into which the domestic company is converted; or~~;~~

1048 (ii) in addition to or in lieu ~~thereof~~ of an exchange or conversion described in
1049 Subsection (3)(b)(i), may be exchanged for or converted into cash, property, interests in, or
1050 securities of or rights in another entity.

- 1051 (4) A conversion of a domestic company into a foreign subject entity must be:
1052 (a) permitted by the statutes governing the foreign subject entity;
1053 (b) approved in the manner required by the statutes described in Subsection (4)(a); and
1054 (c) accompanied by any filing in the foreign jurisdiction required by the statutes
1055 described in Subsection (4)(a).

Legislative Review Note
as of 2-7-05 4:51 PM

Based on a limited legal review, this legislation has not been determined to have a high probability of being held unconstitutional.

Office of Legislative Research and General Counsel

Fiscal Note
Bill Number HB0275

Business Entity Amendments

10-Feb-05

1:01 PM

State Impact

No fiscal impact.

Individual and Business Impact

No fiscal impact.

Office of the Legislative Fiscal Analyst