

**BUSINESS ORGANIZATION AND DIVISION
OF CORPORATIONS AND COMMERCIAL CODE
AMENDMENTS**

2006 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Gregory S. Bell

House Sponsor: Ross I. Romero

LONG TITLE

General Description:

This bill makes changes to certain provisions affecting business organizations and the Division of Corporations and Commercial Code.

Highlighted Provisions:

This bill:

- ▶ allows a document required to be filed by a nonprofit corporation or a corporation to be signed by an attorney in fact;
- ▶ provides that a claim against a dissolved corporation may not be made more than seven years after the dissolution;
- ▶ changes the fee that may be collected by the Division of Corporations and Commercial Code for service of process upon the division under Sections 41-12a-505 and 48-2c-310; and
- ▶ makes technical changes.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

16-6a-105, as enacted by Chapter 300, Laws of Utah 2000

16-10a-120, as enacted by Chapter 277, Laws of Utah 1992

16-10a-1407, as enacted by Chapter 277, Laws of Utah 1992

41-12a-505, as last amended by Chapter 40, Laws of Utah 1989

48-2c-310, as enacted by Chapter 260, Laws of Utah 2001

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

Section 1. Section **16-6a-105** is amended to read:

16-6a-105. Filing requirements.

(1) To be entitled to filing by the division, a document shall satisfy the requirements of:

(a) this section; and

(b) any other section of this chapter that adds to or varies the requirements of this section.

(2) This chapter shall require or permit filing the document with the division.

(3) (a) A document shall contain the information required by this chapter.

(b) In addition to the document information required by this chapter, [it] a document may contain other information.

(4) A document shall be:

(a) typewritten; or

(b) machine printed.

(5) (a) A document shall be in the English language.

(b) A corporate name need not be in English if written in:

(i) English letters; or

(ii) Arabic or Roman numerals.

(c) Notwithstanding Subsection (5)(a), a certificate of existence required of a foreign nonprofit corporation need not be in English if accompanied by a reasonably authenticated English translation.

(6) (a) A document shall be:

(i) executed by a person in Subsection (6)(b); or

(ii) a true copy made by photographic, xerographic, electronic, or other process that provides similar copy accuracy of a document that has been executed by a person listed in Subsection (6)(b).

(b) A document shall be executed by:

(i) the chair of the board of directors of a domestic or foreign nonprofit corporation;

(ii) all of the directors of a domestic or foreign nonprofit corporation;

(iii) an officer of the domestic or foreign nonprofit corporation;

(iv) if directors have not been selected or the domestic or foreign nonprofit corporation has not been formed, an incorporator;

(v) if the domestic or foreign nonprofit corporation is in the hands of a receiver, trustee, or other court-appointed fiduciary, that receiver, trustee, or court-appointed fiduciary;
[or]

(vi) if the document is that of a registered agent:

(A) the registered agent, if the person is an individual; or

(B) a person authorized by the registered agent to execute the document, if the registered agent is an entity[-]; or

(vii) an attorney in fact if a nonprofit corporation retains the power of attorney with the nonprofit corporation's records.

(7) A document shall state beneath or opposite the signature of the person executing the document:

(a) the signer's name; and

(b) the capacity in which the document is signed.

(8) A document may contain:

(a) the corporate seal;

(b) an attestation by the secretary or an assistant secretary; or

(c) an acknowledgment, verification, or proof.

(9) The signature of each person signing a document, whether or not the document contains an acknowledgment, verification, or proof permitted by Subsection (8), ~~shall~~

~~constitute~~ constitutes the affirmation or acknowledgment of the person, under penalties of perjury, that:

(a) the document is:

(i) the person's act and deed; or

(ii) the act and deed of the entity on behalf of which the document is executed; and

(b) the facts stated in the document are true.

(10) If the division has prescribed a mandatory form or cover sheet for the document under Section 16-6a-106, a document shall be:

(a) in or on the prescribed form; or

(b) have the required cover sheet.

(11) A document shall be:

(a) delivered to the division for filing; and

(b) accompanied by:

(i) one exact or conformed copy, except as provided in Sections 16-6a-503 and 16-6a-1510;

(ii) the correct filing fee; and

(iii) any franchise tax, license fee, or penalty required by this chapter or other law.

(12) Except with respect to filings pursuant to Section 16-6a-503 or 16-6a-1510, a document shall state, or be accompanied by a writing stating, the address to which the division may send a copy upon completion of the filing.

Section 2. Section **16-10a-120** is amended to read:

16-10a-120. Filing requirements.

(1) A document must satisfy the requirements of this section, and of any other section of this chapter that adds to or varies these requirements, to be entitled to filing by the division.

(2) This chapter must require or permit filing the document with the division.

(3) (a) The document must contain the information required by this chapter. ~~[It]~~

(b) A document may contain [other] information [as well] in addition to that required in Subsection (3)(a).

(4) The document must be typewritten or machine printed.

(5) (a) The document must be in the English language.

(b) A corporate name need not be in English if written in English letters, Arabic or Roman numerals~~[-and the]~~.

(c) The certificate of existence required of foreign corporations need not be in English if accompanied by a reasonably authenticated English translation.

(6) The document must be executed, or must be a true copy made by photographic, xerographic, electronic, or other process that provides similar copy accuracy of a document that has been executed:

(a) by the chairman of the board of directors of a domestic or foreign corporation, by all of its directors, or by one of its officers;

(b) if directors have not been selected or the corporation has not been formed, by an incorporator;

(c) if the corporation is in the hands of a receiver, trustee, or other court-appointed fiduciary, by that fiduciary; ~~[or]~~

(d) if the document is that of a registered agent, by the registered agent, if the person is an individual, or by a person authorized by the registered agent to execute the document, if the registered agent is an entity~~[-];~~ or

(e) by an attorney in fact if the corporation retains the power of attorney with the corporation's records.

(7) The document shall state beneath or opposite the signature of the person executing the document the signer's name and the capacity in which the document is signed.

(8) The document may, but need not, contain:

(a) the corporate seal;

(b) an attestation by the secretary or an assistant secretary; or

(c) an acknowledgment, verification, or proof.

(9) The signature of each person signing the document, whether or not the document contains an acknowledgment, verification, or proof permitted by Subsection (8), ~~shall~~

142 ~~constitute]~~ constitutes the affirmation or acknowledgment of the person, under penalties of
143 perjury, that the document is the person's act and deed or the act and deed of the entity on
144 behalf of which the document is executed, and that the facts stated in the document are true.

145 (10) If the division has prescribed a mandatory form or cover sheet for the document
146 under Section 16-10a-121, the document must be in or on the prescribed form or must have the
147 required cover sheet.

148 (11) The document must be delivered to the division for filing and must be
149 accompanied by one exact or conformed copy, except as provided in Sections 16-10a-503 and
150 16-10a-1510, the correct filing fee, and any franchise tax, license fee, or penalty required by
151 this chapter or other law.

152 (12) Except with respect to filings pursuant to Section 16-10a-503 or 16-10a-1510, the
153 document must state, or be accompanied by a writing stating, the address to which the division
154 may send a copy upon completion of the filing.

155 Section 3. Section **16-10a-1407** is amended to read:

156 **16-10a-1407. Disposition of claims by publication -- Disposition in absence of**
157 **publication.**

158 (1) A dissolved corporation may publish notice of its dissolution and request that
159 persons with claims against the corporation present them in accordance with the notice.

160 (2) The notice contemplated in Subsection (1) must:

161 (a) be published one time in a newspaper of general circulation in the county where the
162 dissolved corporation's principal office or, if it has no principal office in this state, its registered
163 office is or was last located;

164 (b) describe the information that must be included in a claim and provide an address at
165 which any claim must be given to the corporation; and

166 (c) state that unless sooner barred by any other statute limiting actions, the claim will
167 be barred if an action to enforce the claim is not commenced within five years after the
168 publication of the notice.

169 (3) If the dissolved corporation publishes a newspaper notice in accordance with

Subsection (2), then unless sooner barred under Section 16-10a-1406 or under any other statute limiting actions, the claim of any claimant against the dissolved corporation is barred unless the claimant commences an action to enforce the claim against the dissolved corporation within five years after the publication date of the notice.

(4) (a) For purposes of this section, "claim" means any claim, including claims of this state, whether known, due or to become due, absolute or contingent, liquidated or unliquidated, founded on contract, tort, or other legal basis, or otherwise.

(b) For purposes of this section, an action to enforce a claim includes any civil action, and any arbitration under any agreement for binding arbitration between the dissolved corporation and the claimant.

(5) If a dissolved corporation does not publish a newspaper notice in accordance with Subsection (2), then unless sooner barred under Section 16-10a-1406 or under any other statute limiting actions, the claim of any claimant against the dissolved corporation is barred unless the claimant commences an action to enforce the claim against the dissolved corporation within seven years after the date the corporation was dissolved.

Section 4. Section **41-12a-505** is amended to read:

41-12a-505. Effect upon nonresident of use of state highways.

(1) (a) The use and operation by a nonresident or his agent, or of a resident who has departed Utah, of a motor vehicle on Utah highways is an appointment of the Division of Corporations and Commercial Code as the true and lawful attorney for service of legal process in any action or proceeding against ~~him~~ the person arising from the use or operation of a motor vehicle over Utah highways which use or operation results in damages or loss to person or property. ~~[That]~~

(b) The use or operation referenced in Subsection (1) is an agreement that process shall, in any action against ~~him~~ the person in which there is such service, be of the same legal force and validity as if served upon him personally in Utah.

(2) (a) Service of process under Subsection (1) is made by serving a copy upon the Division of Corporations and Commercial Code or by filing a copy in that office with payment

198 of a [\$5] reasonable fee.

199 (b) The plaintiff shall, within ten days after service of process, send notice of the
200 process together with plaintiff's affidavit of compliance with this section to the defendant by
201 registered mail at [his] the defendant's last-known address.

202 (3) (a) The court in which the action is pending may order any continuance necessary
203 to afford the defendant reasonable opportunity to defend the action, but not exceeding 90 days
204 from the date of filing the action in court.

205 (b) The [\$5] reasonable fee paid by the plaintiff to the Division of Corporations and
206 Commercial Code [~~shall be~~] is taxed as costs if the plaintiff prevails.

207 (c) The division shall keep a record of all process served showing the day and hour of
208 service.

209 Section 5. Section **48-2c-310** is amended to read:

210 **48-2c-310. Service on foreign companies not authorized to do business.**

211 (1) (a) Any foreign company [~~which~~] that does business in this state without authority
212 [~~shall be~~] is considered to have thereby appointed and constituted the director of the division its
213 agent for service of process in any proceeding against it in any state or federal court in this state
214 arising or growing out of any business transacted by it within this state.

215 (b) Transacting business in this state by [~~such~~] a foreign company [~~shall be~~] is a
216 signification of the agreement of that foreign company that any such process when [~~so~~] served
217 [~~shall be~~] upon the division is of the same legal force and validity as if served upon an
218 authorized person or agent personally within this state.

219 (2) Whenever the words "transacting business", "the doing of business", or "business
220 done in this state", by any [~~such~~] foreign company are used in this section, they [~~shall~~] mean
221 the course or practice of carrying on any business activities in this state, including[, ~~without~~
222 ~~limiting the generality of the foregoing,~~] the solicitation of business or orders in this state.

223 (3) (a) In the event of service upon the director of the division in accordance with
224 Subsection (1), the director of the division shall forthwith notify the foreign company thereof
225 by letter, certified mail, return receipt requested, directed to the foreign company at the address

226 furnished to the director of the division by the plaintiff in ~~[such]~~ the action, suit, or proceeding.

227 **(b)** The letter must enclose a copy of the process and any other papers served upon the
228 director of the division.

229 **(c)** It ~~[shall be]~~ is the plaintiff's duty ~~[of the plaintiff]~~ in the event of ~~[such]~~ service to
230 serve process and any other papers in duplicate, to notify the director of the division that
231 service is being made pursuant to this Subsection (3), and to pay to the director of the division
232 ~~[the sum of \$100 for the use of this state]~~ a reasonable fee, which sum ~~[shall be]~~ is taxed as part
233 of the costs in the proceeding, if the plaintiff ~~[shall prevail therein]~~ prevails.

234 **(d)** The director of the division shall maintain an alphabetical record of any ~~[such]~~
235 process served under this section setting forth the name of the plaintiff and defendant, the title,
236 docket number, and nature of the proceeding in which process has been served upon the
237 director, the return date thereof, and the day and hour when the service was made.

238 **(e)** The director of the division ~~[shall not be]~~ is not required to retain ~~[such]~~ the
239 information required by Subsection (3)(d) for a period longer than five years from receipt of the
240 service of process by the director of the division.