

1 **NONPROFIT ENTITY AMENDMENTS**

2 2006 GENERAL SESSION

3 STATE OF UTAH

4 **Chief Sponsor: Lyle W. Hillyard**

5 House Sponsor: Fred R. Hunsaker

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7 **LONG TITLE**

8 **General Description:**

9 This bill makes changes to Title 16, Chapter 6a, Utah Revised Nonprofit Corporation  
10 Act.

11 **Highlighted Provisions:**

- 12 This bill:
- 13 ▶ defines terms;
  - 14 ▶ addresses the prosecution of a derivative suit by a member or director of a nonprofit  
15 corporation;
  - 16 ▶ requires an annual meeting be held by a nonprofit corporation unless the bylaws  
17 eliminate the requirement;
  - 18 ▶ describes the effect of failure to hold an annual meeting;
  - 19 ▶ prescribes notice requirements for an annual meeting;
  - 20 ▶ provides that a director or officer of a nonprofit corporation is liable for a breach of  
21 duty if the director or officer is grossly negligent;
  - 22 ▶ allows a nonprofit corporation to avoid indemnification of a director if the nonprofit  
23 corporation's bylaws limit indemnification;
  - 24 ▶ addresses the effect of conversion of a nonprofit corporation to another form;
  - 25 ▶ addresses the amendment of a nonprofit corporation's bylaws;
  - 26 ▶ addresses the requirements for a merger of multiple entities into a domestic  
27 nonprofit corporation;



28           ▶ allows distributions of assets upon dissolution to another nonprofit corporation or a  
29 mutual benefit corporation;

30           ▶ requires that distribution of a nonprofit corporation's assets comply with the Internal  
31 Revenue Code; and

32           ▶ makes technical changes.

33 **Monies Appropriated in this Bill:**

34           None

35 **Other Special Clauses:**

36           None

37 **Utah Code Sections Affected:**

38 AMENDS:

39           **16-6a-102**, as last amended by Chapter 131, Laws of Utah 2003

40           **16-6a-612**, as enacted by Chapter 300, Laws of Utah 2000

41           **16-6a-812**, as enacted by Chapter 300, Laws of Utah 2000

42           **16-6a-814**, as enacted by Chapter 300, Laws of Utah 2000

43           **16-6a-815**, as enacted by Chapter 300, Laws of Utah 2000

44           **16-6a-822**, as enacted by Chapter 300, Laws of Utah 2000

45           **16-6a-903**, as enacted by Chapter 300, Laws of Utah 2000

46           **16-6a-905**, as enacted by Chapter 300, Laws of Utah 2000

47           **16-6a-1008**, as enacted by Chapter 300, Laws of Utah 2000

48           **16-6a-1008.7**, as enacted by Chapter 193, Laws of Utah 2002

49           **16-6a-1010**, as enacted by Chapter 300, Laws of Utah 2000

50           **16-6a-1101**, as enacted by Chapter 300, Laws of Utah 2000

51           **16-6a-1102**, as enacted by Chapter 300, Laws of Utah 2000

52           **16-6a-1103**, as enacted by Chapter 300, Laws of Utah 2000

53           **16-6a-1104**, as enacted by Chapter 300, Laws of Utah 2000

54           **16-6a-1302**, as enacted by Chapter 300, Laws of Utah 2000

55           **16-6a-1405**, as last amended by Chapter 127, Laws of Utah 2001

56           **42-2-6.6**, as last amended by Chapters 197 and 222, Laws of Utah 2002

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

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

60 **16-6a-102. Definitions.**

61 As used in this chapter:

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

64 (b) "Address" includes:

65 (i) a post office box number;

66 (ii) a rural free delivery route number; and

67 (iii) a street name and number.

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

71 (3) "Articles of incorporation" include:

72 (a) amended articles of incorporation;

73 (b) restated articles of incorporation;

74 (c) articles of merger; and

75 (d) a document of a similar import to the documents described in Subsections (3)(a)  
76 through (c).

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

78 (a) by a:

79 (i) foreign corporation pursuant to Section 16-10a-1506; or

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

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

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

85 (b) Notwithstanding Subsection (5)(a), a person may not be considered a member of  
86 the board of directors because of powers delegated to that person pursuant to Subsection  
87 16-6a-801(2).

88 (6) (a) "Bylaws" means the one or more codes of rules, other than the articles of  
89 incorporation, adopted pursuant to this chapter for the regulation or management of the affairs

90 of the domestic or foreign nonprofit corporation irrespective of the name or names by which  
91 the codes of rules are designated.

92 (b) "Bylaws" includes:

93 (i) amended bylaws; and

94 (ii) restated bylaws.

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

96 (i) legal tender;

97 (ii) a negotiable instrument; or

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

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

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

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

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

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

107 (i) italics;

108 (ii) boldface;

109 (iii) contrasting color;

110 (iv) capitals; or

111 (v) underlining.

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

114 (a) the ownership of voting shares;

115 (b) contract; or

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

117 (11) Subject to Section 16-6a-207, "cooperative nonprofit corporation" or "cooperative"  
118 means a nonprofit corporation organized or existing under this chapter.

119 (12) "Corporate name" means:

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

121 of incorporation;

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

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

125 (i) articles of incorporation; or

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

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

129 (i) articles of incorporation; or

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

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

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

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

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

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

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

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

144 (i) members;

145 (ii) directors; or

146 (iii) officers.

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

148 (i) goods sold; or

149 (ii) services received.

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

151 (19) "Effective date," when referring to a document filed by the division, means the

152 time and date determined in accordance with Section 16-6a-108.

153 (20) "Effective date of notice" means the date notice is effective as provided in Section  
154 16-6a-103.

155 (21) (a) "Employee" includes an officer of a nonprofit corporation.

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

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

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

162 (23) "Entity" includes:

163 (a) a domestic or foreign corporation;

164 (b) a domestic or foreign nonprofit corporation;

165 (c) a limited liability company;

166 (d) a profit or nonprofit unincorporated association;

167 (e) a business trust;

168 (f) an estate;

169 (g) a partnership;

170 (h) a trust;

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

172 (j) a state;

173 (k) the United States; or

174 (l) a foreign government.

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

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

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

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

180 (26) "Governmental subdivision" means:

181 (a) a county;

182 (b) a city;

- 183 (c) a town; or
- 184 (d) any other type of governmental subdivision authorized by the laws of this state.
- 185 (27) "Individual" means:
- 186 (a) a natural person;
- 187 (b) the estate of an incompetent individual; or
- 188 (c) the estate of a deceased individual.
- 189 (28) "Internal Revenue Code" means the federal "Internal Revenue Code of 1986," as
- 190 amended from time to time, or to corresponding provisions of subsequent internal revenue laws
- 191 of the United States of America.
- 192 (29) (a) "Mail," "mailed," or "mailing" means deposit, deposited, or depositing in the
- 193 United States mail, properly addressed, first-class postage prepaid.
- 194 (b) "Mail," "mailed," or "mailing" includes registered or certified mail for which the
- 195 proper fee has been paid.
- 196 (30) (a) "Member" means one or more persons identified or otherwise appointed as a
- 197 member of a domestic or foreign nonprofit corporation as provided:
- 198 (i) in the articles of incorporation;
- 199 (ii) in the bylaws;
- 200 (iii) by a resolution of the board of directors; or
- 201 (iv) by a resolution of the members of the nonprofit corporation.
- 202 (b) "Member" includes "voting member."
- 203 (31) "Membership" refers to the rights and obligations of a member or members.
- 204 (32) "Mutual benefit corporation" means a nonprofit corporation all of whose assets are
- 205 contributed or earned by or for the members of the nonprofit corporation to serve the collective
- 206 purposes of the members.
- 207 [~~32~~] (33) "Nonprofit corporation" or "domestic nonprofit corporation" means an
- 208 entity, which is not a foreign nonprofit corporation, incorporated under or subject to the
- 209 provisions of this chapter.
- 210 [~~33~~] (34) "Notice" is as provided in Section 16-6a-103.
- 211 [~~34~~] (35) "Party related to a director" means:
- 212 (a) the spouse of the director;
- 213 (b) a child of the director;

- 214 (c) a grandchild of the director;
- 215 (d) a sibling of the director;
- 216 (e) a parent of the director;
- 217 (f) the spouse of an individual described in Subsections [~~34~~] (35)(b) through (e);
- 218 (g) an individual having the same home as the director;
- 219 (h) a trust or estate of which the director or any other individual specified in this
- 220 Subsection [~~34~~] (35) is a substantial beneficiary; or
- 221 (i) any of the following of which the director is a fiduciary:
- 222 (i) a trust;
- 223 (ii) an estate;
- 224 (iii) an incompetent;
- 225 (iv) a conservatee; or
- 226 (v) a minor.
- 227 [~~35~~] (36) "Person" means an:
- 228 (a) individual; or
- 229 (b) entity.
- 230 [~~36~~] (37) "Principal office" means:
- 231 (a) the office, in or out of this state, designated by a domestic or foreign nonprofit
- 232 corporation as its principal office in the most recent document on file with the division
- 233 providing that information, including:
- 234 (i) an annual report;
- 235 (ii) an application for a certificate of authority; or
- 236 (iii) a notice of change of principal office; or
- 237 (b) if no principal office can be determined, a domestic or foreign nonprofit
- 238 corporation's registered office.
- 239 [~~37~~] (38) "Proceeding" includes:
- 240 (a) a civil suit;
- 241 (b) arbitration;
- 242 (c) mediation;
- 243 (d) a criminal action;
- 244 (e) an administrative action; or



245 (f) an investigatory action.

246 [~~(38)~~] (39) "Receive," when used in reference to receipt of a writing or other document  
247 by a domestic or foreign nonprofit corporation, means the writing or other document is actually  
248 received:

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

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

251 (ii) its principal office;

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

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

256 [~~(39)~~] (40) (a) "Record date" means the date established under Part 6, Members or 7,  
257 Member Meetings and Voting on which a nonprofit corporation determines the identity of the  
258 nonprofit corporation's members.

259 (b) The determination described in Subsection [~~(39)~~] (40)(a) shall be made as of the  
260 close of business on the record date unless another time for doing so is specified when the  
261 record date is fixed.

262 [~~(40)~~] (41) "Registered agent" means the registered agent of:

263 (a) a domestic nonprofit corporation required to be maintained pursuant to Subsection  
264 16-6a-501(1)(b); or

265 (b) a foreign nonprofit corporation required to be maintained pursuant to Subsection  
266 16-6a-1508(1)(b).

267 [~~(41)~~] (42) "Registered office" means the office within this state designated by a  
268 domestic or foreign nonprofit corporation as its registered office in the most recent document  
269 on file with the division providing that information, including:

270 (a) articles of incorporation;

271 (b) an application for a certificate of authority; or

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

273 [~~(42)~~] (43) "Secretary" means the corporate officer to whom the bylaws or the board of  
274 directors has delegated responsibility under Subsection 16-6a-818(3) for:

275 (a) the preparation and maintenance of:

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

282 [~~43~~] (44) "State," when referring to a part of the United States, includes:

- 283 (a) a state;
- 284 (b) a commonwealth;
- 285 (c) the District of Columbia;
- 286 (d) an agency or governmental and political subdivision of a state, commonwealth, or
- 287 District of Columbia;
- 288 (e) territory or insular possession of the United States; or
- 289 (f) an agency or governmental and political subdivision of a territory or insular
- 290 possession of the United States.

291 [~~44~~] (45) "Street address" means:

- 292 (a) (i) street name and number;
- 293 (ii) city or town; and
- 294 (iii) United States post office zip code designation; or
- 295 (b) if, by reason of rural location or otherwise, a street name, number, city, or town
- 296 does not exist, an appropriate description other than that described in Subsection [~~44~~] (45)(a)
- 297 fixing as nearly as possible the actual physical location but only if the information includes:
- 298 (i) the rural free delivery route;
- 299 (ii) the county; and
- 300 (iii) the United States post office zip code designation.

301 [~~45~~] (46) "United States" includes any district, authority, office, bureau, commission,

302 department, and any other agency of the United States of America.

303 [~~46~~] (47) "Vote" includes authorization by:

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

306 [~~47~~] (48) (a) "Voting group" means all the members of one or more classes of

307 members or directors that, under this chapter, the articles of incorporation, or the bylaws, are  
 308 entitled to vote and be counted together collectively on a matter.

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

311 ~~[(48)]~~ (49) (a) "Voting member" means a person entitled to vote for all matters  
 312 required or permitted under this chapter to be submitted to a vote of the members, except as  
 313 otherwise provided in the articles of incorporation or bylaws.

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

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

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

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

318 (c) Except as the bylaws may otherwise provide, "voting member" includes a  
 319 "shareholder" if the nonprofit corporation has shareholders.

320 Section 2. Section **16-6a-612** is amended to read:

321 **16-6a-612. Derivative suits.**

322 (1) Without affecting the right of a member or director to bring a proceeding against a  
 323 nonprofit corporation or its directors or officers, a proceeding may be brought in the right of a  
 324 nonprofit corporation to procure a judgment in its favor by a complainant who is:

325 (a) a voting member; or

326 (b) a director in a nonprofit corporation that does not have voting members.

327 ~~[(2) In a proceeding described in Subsection (1), each complainant shall be a voting~~  
 328 ~~member or director at the time of bringing the proceeding.]~~

329 ~~[(3) (a) A complaint in a proceeding brought in the right of a nonprofit corporation~~  
 330 ~~shall be verified and allege with particularity:]~~

331 ~~[(i) the demand made, if any, to obtain action by the directors; and]~~

332 ~~[(ii) (A) why the complainant could not obtain the action; or]~~

333 ~~[(B) why the complainant did not make the demand.]~~

334 ~~[(b) If a demand for action was made and the nonprofit corporation's investigation of~~  
 335 ~~the demand is in progress when the proceeding is filed, the court may stay the suit until the~~  
 336 ~~investigation is completed.]~~

337 ~~[(4) (a) (i) In any action instituted in the right of a nonprofit corporation by one or more~~

338 ~~voting members, the court having jurisdiction over the matter may, at any time before final~~  
339 ~~judgment, require the plaintiff to give security for the costs and reasonable expenses that may~~  
340 ~~be:]~~

341 ~~[(A) directly attributable to and incurred by the nonprofit corporation in the defense of~~  
342 ~~the action; or]~~

343 ~~[(B) incurred by other parties named as defendant for which the nonprofit corporation~~  
344 ~~may become legally liable.]]~~

345 ~~[(ii) Notwithstanding Subsection (4)(a)(i), the security for the costs and reasonable~~  
346 ~~expenses may not include fees of attorneys.]]~~

347 ~~[(b) The amount of the security permitted under this Subsection (4) may from time to~~  
348 ~~time be increased or decreased, in the discretion of the court, upon showing that the security~~  
349 ~~provided has or may become inadequate or excessive.]]~~

350 ~~[(c) If the court finds that the action was commenced without reasonable cause, the~~  
351 ~~nonprofit corporation shall have recourse to the security permitted under this Subsection (4) in~~  
352 ~~the amount the court shall determine upon the termination of the action.]]~~

353 ~~[(5) A procedure pursuant to this section shall comply with the applicable rules set~~  
354 ~~forth in the Utah Rules of Civil Procedure, as amended from time to time.]]~~

355 ~~[(6) An action may not be commenced in this state by a member of a foreign nonprofit~~  
356 ~~corporation in the right of a foreign nonprofit corporation unless the action is permitted by the~~  
357 ~~laws of the state under which the foreign nonprofit corporation is incorporated.]]~~

358 (2) A complainant may not commence or maintain a derivative proceeding unless the  
359 complainant:

360 (a) was once a voting member or a director in a nonprofit corporation that no longer  
361 has voting members at the time the proceeding is brought; and

362 (b) fairly and adequately represents the nonprofit corporation's interests in enforcing  
363 the nonprofit corporation's right.

364 (3) (a) A complainant may not commence a derivative proceeding until:

365 (i) a written demand is made upon the nonprofit corporation to take suitable action; and

366 (ii) 90 days have expired from the date the demand described in Subsection (3)(a)(i) is  
367 made, unless:

368 (A) the complainant is notified before the 90-day period expires that the demand is

369 rejected by the nonprofit corporation; or

370 (B) irreparable injury to the nonprofit corporation would result by waiting for the  
371 90-day period's expiration.

372 (b) A complaint in a derivative proceeding shall be:

373 (i) verified; and

374 (ii) allege with particularity the demand made to obtain action by the board of  
375 directors.

376 (c) A derivative proceeding shall comply with the procedures of Utah Rules of Civil  
377 Procedure, Rule 23.1.

378 (d) The court shall stay any derivative proceeding until the inquiry is completed and for  
379 an additional period as the court considers appropriate if:

380 (i) the nonprofit corporation commences an inquiry into the allegations made in the  
381 demand or complaint; and

382 (ii) a person or group described in Subsection (4) is conducting an active review of the  
383 allegations in good faith.

384 (e) If a nonprofit corporation proposes to dismiss a derivative proceeding pursuant to  
385 Subsection (4)(a), discovery by a complainant in the derivative proceeding:

386 (i) is limited to facts relating to:

387 (A) whether the person or group conducting the inquiry is independent and  
388 disinterested;

389 (B) the good faith of the inquiry; and

390 (C) the reasonableness of the procedures followed by the person or group conducting  
391 the inquiry; and

392 (ii) may not extend to any facts or substantive issues with respect to the act, omission,  
393 or other matter that is the subject matter of the derivative proceeding.

394 (4) (a) A derivative proceeding shall be dismissed by the court on motion by the  
395 corporation if a person or group specified in Subsection (4)(b) or (4)(f) determines in good  
396 faith, after conducting a reasonable inquiry upon which the person's or group's conclusions are  
397 based, that the maintenance of the derivative proceeding is not in the best interest of the  
398 nonprofit corporation.

399 (b) Unless a panel is appointed pursuant to Subsection (4)(f), the determination in

400 Subsection (4)(a) shall be made by:

401 (i) a majority vote of independent directors present at a meeting of the board of  
402 directors, if the independent directors constitute a quorum; or

403 (ii) a majority vote of a committee consisting of two or more independent directors  
404 appointed by a majority vote of independent directors present at a meeting of the board of  
405 directors, whether or not the independent directors appointing the committee constituted a  
406 quorum.

407 (c) None of the following by itself causes a director to be considered not independent  
408 for purposes of this section:

409 (i) the nomination or election of the director by persons:

410 (A) who are defendants in the derivative proceeding; or

411 (B) against whom action is demanded;

412 (ii) the naming of the director as:

413 (A) a defendant in the derivative proceeding; or

414 (B) a person against whom action is demanded; or

415 (iii) the approval by the director of the act being challenged in the derivative  
416 proceeding or demand if the act resulted in no personal benefit to the director.

417 (d) If a derivative proceeding is commenced after a determination is made rejecting a  
418 demand by a complainant, the complaint shall allege with particularity facts establishing either:

419 (i) that a majority of the board of directors did not consist of independent directors at  
420 the time the determination was made; or

421 (ii) that the requirements of Subsection (4)(a) are not met.

422 (e) (i) If a majority of the board of directors does not consist of independent directors at  
423 the time the determination is made to reject a demand by a shareholder, the corporation has the  
424 burden of proving that the requirements of Subsection (4)(a) are met.

425 (ii) If a majority of the board of directors consists of independent directors at the time  
426 the determination is made to reject a demand by a complainant, the plaintiff has the burden of  
427 proving that the requirements of Subsection (4)(a) are not met.

428 (f) (i) The court may appoint a panel of one or more independent persons upon motion  
429 by the corporation to make a determination whether the maintenance of the derivative  
430 proceeding is in the best interest of the corporation.

431 (ii) If the court appoints a panel under Subsection (4)(f)(i), the plaintiff has the burden  
432 of proving that the requirements of Subsection (4)(a) are not met.

433 (g) A person may appeal an interlocutory order of a court that grants or denies a motion  
434 to dismiss brought pursuant to Subsection (4)(a).

435 (5) On termination of a derivative proceeding the court may order:

436 (a) the nonprofit corporation to pay the plaintiff's reasonable expenses, including  
437 attorney fees, incurred in the proceeding, if it finds that the proceeding results in a substantial  
438 benefit to the nonprofit corporation;

439 (b) the plaintiff to pay a defendant's reasonable expenses, including attorney fees,  
440 incurred in defending the proceeding, if it finds that the proceeding was commenced or  
441 maintained:

442 (i) without reasonable cause; or

443 (ii) for an improper purpose; or

444 (c) a party to pay an opposing party's reasonable expenses, including attorney fees,  
445 incurred because of the filing of a pleading, motion, or other paper, if the court finds that the  
446 pleading, motion, or other paper was:

447 (i) (A) not well grounded in fact, after reasonable inquiry; or

448 (B) not warranted by existing law or a good faith argument for the extension,  
449 modification, or reversal of existing law; and

450 (ii) interposed for an improper purpose, such as to:

451 (A) harass;

452 (B) cause unnecessary delay; or

453 (C) cause needless increase in the cost of litigation.

454 Section 3. Section **16-6a-812** is amended to read:

455 **16-6a-812. Meetings.**

456 (1) Unless the bylaws eliminate the requirement for holding an annual meeting, a  
457 nonprofit corporation that does not have voting members shall hold a meeting of the directors  
458 annually:

459 (a) at a time and date stated in or fixed in accordance with the bylaws; or

460 (b) if a time and date is not stated in or fixed in accordance with the bylaws, at a time  
461 and date stated in or fixed in accordance with a resolution of the board of directors.

462           ~~[(1)]~~ (2) The board of directors may hold regular or special meetings in or out of this  
463 state.

464           ~~[(2)]~~ (3) (a) Unless otherwise provided in the bylaws, the board of directors may permit  
465 any director to participate in a ~~[regular or special]~~ meeting by, or conduct the meeting through  
466 the use of, any means of communication by which all directors participating may hear each  
467 other during the meeting.

468           (b) A director participating in a meeting by a means permitted under Subsection ~~[(1)]~~  
469 (2) is considered to be present in person at the meeting.

470           (4) The failure to hold an annual or regular meeting at the time and date determined  
471 pursuant to Subsection (1) or (2) does not:

472           (a) affect the validity of any corporate action; or

473           (b) result in forfeiture or dissolution of the nonprofit corporation.

474           Section 4. Section **16-6a-814** is amended to read:

475           **16-6a-814. Notice of meeting.**

476           (1) (a) A nonprofit corporation shall give to each director entitled to vote at an annual  
477 meeting notice in a fair and reasonable manner.

478           (b) Except as otherwise provided in the bylaws, "fair and reasonable," as used in  
479 Subsection (1)(a), has the same meaning as set forth in Subsection 16-6a-704(3)(a), as the  
480 context permits.

481           ~~[(1)]~~ (2) Unless otherwise provided in this chapter or in the bylaws, regular meetings of  
482 the board of directors may be held without notice of the date, time, place, or purpose of the  
483 meeting.

484           ~~[(2)]~~ (3) (a) Unless the bylaws provide for a longer or shorter period, special meetings  
485 of the board of directors shall be preceded by at least two days notice of the date, time, and  
486 place of the meeting.

487           (b) The notice required by Subsection ~~[(2)]~~ (3)(a) need not describe the purpose of the  
488 special meeting unless otherwise required by this chapter or the bylaws.

489           Section 5. Section **16-6a-815** is amended to read:

490           **16-6a-815. Waiver of notice.**

491           (1) (a) A director may waive any notice of a meeting before or after the time and date  
492 of the meeting stated in the notice.



493 (b) Except as provided by Subsection (2), the waiver shall:  
494 (i) be in writing;  
495 (ii) signed by the director entitled to the notice; and  
496 (iii) be delivered to the nonprofit corporation for filing with the corporate records.  
497 (c) The delivery and filing required by Subsection (1)(b) may not be conditions of the  
498 effectiveness of the waiver.

499 (2) A director's attendance at or participation in a meeting waives any required notice  
500 to that director of the meeting unless:

501 (a) (i) at the beginning of the meeting or promptly upon the director's later arrival, the  
502 director objects to holding the meeting or transacting business at the meeting because of lack of  
503 notice or defective notice; and

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

506 (b) if special notice was required of a particular purpose pursuant to Subsection  
507 ~~[16-6a-814(2)]~~ 16-6a-814(3):

508 (i) the director objects to transacting business with respect to the purpose for which the  
509 special notice was required; and

510 (ii) after objecting, the director does not vote for or assent to action taken at the  
511 meeting with respect to the purpose.

512 Section 6. Section **16-6a-822** is amended to read:

513 **16-6a-822. General standards of conduct for directors and officers.**

514 (1) (a) A director shall discharge the director's duties as a director, including the  
515 director's duties as a member of a committee of the board, in accordance with Subsection (2).

516 (b) An officer with discretionary authority shall discharge the officer's duties under that  
517 authority in accordance with Subsection (2).

518 (2) A director or an officer described in Subsection (1) shall discharge the director or  
519 officer's duties:

520 (a) in good faith;

521 (b) with the care an ordinarily prudent person in a like position would exercise under  
522 similar circumstances; and

523 (c) in a manner the director or officer reasonably believes to be in the best interests of

524 the nonprofit corporation.

525 (3) In discharging duties, a director or officer is entitled to rely on information,  
526 opinions, reports, or statements, including financial statements and other financial data, if  
527 prepared or presented by:

528 (a) one or more officers or employees of the nonprofit corporation whom the director  
529 or officer reasonably believes to be reliable and competent in the matters presented;

530 (b) legal counsel, a public accountant, or another person as to matters the director or  
531 officer reasonably believes are within the person's professional or expert competence;

532 (c) religious authorities or ministers, priests, rabbis, or other persons:

533 (i) whose position or duties in the nonprofit corporation, or in a religious organization  
534 with which the nonprofit corporation is affiliated, the director or officer believes justify  
535 reliance and confidence; and

536 (ii) who the director or officer believes to be reliable and competent in the matters  
537 presented; or

538 (d) in the case of a director, a committee of the board of directors of which the director  
539 is not a member if the director reasonably believes the committee merits confidence.

540 (4) A director or officer is not acting in good faith if the director or officer has  
541 knowledge concerning the matter in question that makes reliance otherwise permitted by  
542 Subsection (3) unwarranted.

543 (5) A director, regardless of title, may not be considered to be a trustee with respect to  
544 any property held or administered by the nonprofit corporation including property that may be  
545 subject to restrictions imposed by the donor or transferor of the property.

546 (6) A director or officer is not liable to the nonprofit corporation, its members, or any  
547 conservator or receiver, or any assignee or successor-in-interest of the nonprofit corporation or  
548 member, for any action taken, or any failure to take any action, as an officer or director, as the  
549 case may be, unless:

550 (a) the director or officer has breached or failed to perform the duties of the office as  
551 set forth in this section; and

552 ~~[(b) the breach or failure to perform constitutes:]~~

553 ~~[(i) willful misconduct, or]~~

554 ~~[(ii) intentional infliction of harm on:]~~

555 ~~[(A) the nonprofit corporation; or]~~  
556 ~~[(B) the members of the nonprofit corporation.]~~  
557 (b) the breach or failure to perform constitutes gross negligence.

558 Section 7. Section **16-6a-903** is amended to read:

559 **16-6a-903. Mandatory indemnification of directors.**

560 (1) Unless limited by its ~~[articles of incorporation]~~ bylaws, a nonprofit corporation  
561 shall indemnify a director described in Subsection (2) against reasonable expenses incurred by  
562 the director in connection with the proceeding or claim with respect to which the director has  
563 been successful.

564 (2) Subsection (1) applies to a director who was successful, on the merits or otherwise,  
565 in the defense of:

566 (a) any proceeding to which the director was a party because the director is or was a  
567 director of the nonprofit corporation; or

568 (b) any claim, issue, or matter in the proceeding, to which the director was a party  
569 because the director is or was a director of the nonprofit corporation.

570 Section 8. Section **16-6a-905** is amended to read:

571 **16-6a-905. Court-ordered indemnification of directors.**

572 (1) Unless a nonprofit corporation's ~~[articles of incorporation]~~ bylaws provide  
573 otherwise, a director of the nonprofit corporation who is or was a party to a proceeding may  
574 apply for indemnification to:

575 (a) the court conducting the proceeding; or

576 (b) another court of competent jurisdiction.

577 (2) On receipt of an application described in Subsection (1), the court, after giving any  
578 notice the court considers necessary, may order indemnification in the following manner:

579 (a) if the court determines that the director is entitled to mandatory indemnification  
580 under Section 16-6a-903, the court shall:

581 (i) order indemnification; and

582 (ii) order the nonprofit corporation to pay the director's reasonable expenses incurred to  
583 obtain court-ordered indemnification; and

584 (b) if the court determines that the director is fairly and reasonably entitled to  
585 indemnification in view of all the relevant circumstances, whether or not the director met the

586 applicable standard of conduct set forth in Section 16-6a-902 or was adjudged liable as  
587 described in Subsection 16-6a-902(4), the court may order indemnification as the court  
588 determines to be proper, except that the indemnification with respect to any proceeding in  
589 which liability has been adjudged in the circumstances described in Subsection 16-6a-902(4) is  
590 limited to reasonable expenses incurred.

591 Section 9. Section **16-6a-1008** is amended to read:

592 **16-6a-1008. Conversion to a corporation.**

593 (1) (a) A domestic nonprofit corporation may convert to a corporation subject to Title  
594 16, Chapter 10a, Utah Revised Business Corporation Act, by filing an amendment of its articles  
595 of incorporation with the division pursuant to this section.

596 (b) The day on which a nonprofit domestic corporation files an amendment under this  
597 section, the domestic nonprofit corporation becomes a corporation subject to Title 16, Chapter  
598 10a, Utah Revised Business Corporation Act.

599 (2) The amendment of the articles of incorporation to convert to a corporation shall:

600 (a) revise the statement of purpose;

601 (b) delete:

602 (i) the authorization for members; and

603 (ii) any other provisions relating to memberships;

604 (c) authorize shares:

605 (i) stating the number of shares; and

606 (ii) including the information required by Section 16-10a-601 with respect to each class  
607 of shares the corporation is to be authorized to issue;

608 (d) make such other changes as may be necessary or desired; and

609 (e) if the corporation has any members, provide for:

610 (i) the cancellation of the memberships; or

611 (ii) the conversion of the memberships to shares of the corporation.

612 (3) If the nonprofit corporation has any voting members, an amendment to convert to a  
613 corporation shall be approved by all of the members regardless of limitations or restrictions on  
614 the voting rights of the members.

615 (4) If an amendment to the articles of incorporation filed pursuant to this section is  
616 included in a merger agreement, this section applies, except that any provisions for cancellation

617 or conversion of memberships:

618 (a) shall be in the merger agreement; and

619 (b) may not be in the amendment of the articles of incorporation.

620 (5) A conversion under this section may not result in a violation, directly or indirectly,

621 of:

622 (a) Section 16-6a-1301; or

623 (b) any other provision of this chapter.

624 Section 10. Section **16-6a-1008.7** is amended to read:

625 **16-6a-1008.7. Conversion to or from a domestic limited liability company.**

626 (1) (a) A domestic nonprofit corporation may convert to a domestic limited liability  
627 company subject to Title 48, Chapter 2c, Utah Revised Limited Liability Company Act, by  
628 complying with:

629 (i) this Subsection (1); and

630 (ii) Section 48-2c-1401.

631 (b) If a domestic nonprofit corporation converts to a domestic limited liability company  
632 in accordance with this Subsection (1), the articles of conversion shall:

633 (i) comply with Section 48-2c-1402; and

634 (ii) if the corporation has any members, provide for:

635 (A) the cancellation of any membership; or

636 (B) the conversion of any membership in the domestic nonprofit corporation to a  
637 membership interest in the domestic limited liability company.

638 (c) In accordance with Section 48-2c-1404, before articles of conversion may be filed  
639 with the division, the conversion shall be approved:

640 (i) in the manner provided for the articles of incorporation or bylaws of the domestic  
641 nonprofit corporation; or

642 (ii) if the articles of incorporation or bylaws of the domestic nonprofit corporation do  
643 not provide the method for approval:

644 (A) if the domestic nonprofit corporation has voting members, by all of the members of  
645 the domestic nonprofit corporation regardless of limitations or restrictions on the voting rights  
646 of the members; or

647 (B) if the nonprofit domestic corporation does not have voting members, by a majority

648 of:

649 (I) the directors in office at the time the conversion is approved by the board of  
650 directors; or

651 (II) if directors have not been appointed or elected, the incorporators.

652 (2) A domestic limited liability company may convert to a domestic nonprofit  
653 corporation subject to this chapter by:

654 (a) filing articles of incorporation in accordance with this chapter; and

655 (b) complying with Section 48-2c-1406.

656 (3) Any conversion under this section may not result in a violation, directly or  
657 indirectly, of:

658 (a) Section 16-6a-1301; or

659 (b) any other provision of this chapter.

660 Section 11. Section **16-6a-1010** is amended to read:

661 **16-6a-1010. Amendment of bylaws by board of directors or members.**

662 (1) The board of directors may amend the bylaws at any time to add, change, or delete  
663 a provision, unless:

664 (a) this chapter or the articles of incorporation or bylaws:

665 (i) reserve the power exclusively to the members in whole or part; or

666 (ii) otherwise prohibit the board of directors from amending the bylaws to add, change,  
667 or delete a provision; or

668 (b) it would result in a change of the rights, privileges, preferences, restrictions, or  
669 conditions of a membership class as to voting, dissolution, redemption, or transfer by changing  
670 the rights, privileges, preferences, restrictions, or conditions of another class.

671 (2) (a) ~~[The]~~ Unless otherwise provided by the bylaws, the members may amend the  
672 bylaws even though the bylaws may also be amended by the board of directors.

673 (b) Amendments to the bylaws by members shall be made in accordance with Sections  
674 16-6a-1003 and 16-6a-1004 as if each reference in Sections 16-6a-1003 and 16-6a-1004 to the  
675 article of incorporation was a reference to the bylaws.

676 Section 12. Section **16-6a-1101** is amended to read:

677 **16-6a-1101. Merger.**

678 (1) One or more ~~[nonprofit corporations]~~ domestic corporations, foreign corporations,

679 domestic nonprofit corporations, or foreign nonprofit corporations may merge into another  
680 nonprofit corporation:

681 (a) if the board of directors of each [~~nonprofit corporation~~] domestic corporation,  
682 foreign corporation, domestic nonprofit corporation, or foreign nonprofit corporation party to  
683 the merger adopts a plan of merger; [~~and~~]

684 (b) if [~~required by Section 16-6a-1102;~~] the members of [~~the~~] each domestic nonprofit  
685 corporation entitled to vote on the plan of merger, approve the plan of merger[:] if required by  
686 Section 16-6a-1102;

687 (c) if the shareholders of each domestic corporation entitled to vote on the plan of  
688 merger, approve the plan of merger, if required by Section 16-10a-1103;

689 (d) if the merger is permitted by and consistent with the laws of the state or country  
690 under whose law each foreign corporation or foreign nonprofit corporation party to the merger  
691 is incorporated;

692 (e) if the shareholders of each such foreign corporation approve the plan of merger and  
693 as required by applicable law of the states or countries under whose law each foreign  
694 corporation party to the merger is incorporated; and

695 (f) if the members of each such foreign nonprofit corporation approve the plan of  
696 merger and as required by applicable law of the states or countries under whose law each  
697 foreign nonprofit corporation party to the merger is incorporated.

698 (2) The plan of merger required by Subsection (1) shall set forth:

699 (a) the name of each [~~nonprofit corporation~~] party to the merger planning to merge;

700 (b) the name of the surviving domestic nonprofit corporation into which each  
701 [~~nonprofit corporation~~] party to the merger plans to merge;

702 (c) the terms and conditions of the merger;

703 (d) the manner and basis of converting in whole or part the shares or memberships [~~of~~  
704 ~~each nonprofit corporation, if any;~~] if any, of each party to the merger into memberships,  
705 obligations, or other interests of:

706 (i) the surviving domestic nonprofit corporation;

707 (ii) any other entity; or

708 (iii) into money or other property; and

709 (e) any amendments to the articles of incorporation of the surviving domestic nonprofit

710 corporation to be effected by the merger.

711 (3) In addition to the provisions required by Subsection (2), the plan of merger may set  
712 forth other provisions relating to the merger.

713 Section 13. Section **16-6a-1102** is amended to read:

714 **16-6a-1102. Action on plan of merger.**

715 (1) After adopting the plan of merger, the board of directors of each domestic nonprofit  
716 corporation that is a party to the merger shall submit the plan of merger to its members, if any  
717 are entitled to vote on the plan of merger, for approval.

718 (2) If the domestic nonprofit corporation has members entitled to vote with respect to  
719 the approval of a plan of merger, a plan of merger is approved by the members if:

720 (a) (i) the board of directors recommends the plan of merger to the members entitled to  
721 vote on the plan of merger; or

722 (ii) (A) the board of directors determines that, because of conflict of interest or other  
723 special circumstances, it should make no recommendation; and

724 (B) communicates the basis for its determination to the members with the plan; and

725 (b) the members entitled to vote on the plan of merger approve the plan as provided in  
726 Subsection (7).

727 (3) After adopting the plan of merger, the board of directors of each domestic nonprofit  
728 corporation party to the merger shall submit the plan of merger for written approval by any  
729 person or persons:

730 (a) whose approval is required by the articles of incorporation of the domestic  
731 nonprofit corporation; and

732 (b) as required by Section 16-6a-1013 for an amendment to the articles of  
733 incorporation or bylaws.

734 (4) (a) If the domestic nonprofit corporation does not have members entitled to vote on  
735 a merger, the merger shall be approved and adopted by a majority of the directors elected and  
736 in office at the time the plan of merger is considered by the board of directors.

737 (b) The domestic nonprofit corporation shall provide notice of any meeting of the  
738 board of directors at which the approval described in Subsection (4)(a) is to be obtained in  
739 accordance with Section 16-6a-814.

740 (c) The notice required by Subsection (4)(b) shall state that the purpose, or one of the



741 purposes, of the meeting is to consider the proposed merger.

742 (5) The board of directors may condition the effectiveness of the plan of merger on any  
743 basis.

744 (6) (a) The domestic nonprofit corporation shall give notice, in accordance with  
745 Section 16-6a-704, to each member entitled to vote on the plan of merger of the members'  
746 meeting at which the plan will be voted on.

747 (b) The notice required by Subsection (6)(a) shall:

748 (i) state that the purpose, or one of the purposes, of the meeting is to consider the plan  
749 of merger; and

750 (ii) contain or be accompanied by a copy of the plan of merger or a summary of the  
751 plan of merger.

752 (7) The plan of merger shall be approved by the votes required by Sections 16-6a-714  
753 and 16-6a-715 by every voting group entitled to vote on the plan of merger unless a greater  
754 vote is required by:

755 (a) this chapter;

756 (b) the articles of incorporation;

757 (c) bylaws adopted by the members; or

758 (d) the board of directors acting pursuant to Subsection (5).

759 (8) Separate voting by voting groups is required on a plan of merger if the plan  
760 contains a provision that, if contained in an amendment to the articles of incorporation, would  
761 require action by one or more separate voting groups on the amendment.

762 Section 14. Section **16-6a-1103** is amended to read:

763 **16-6a-1103. Articles of merger.**

764 (1) After a plan of merger is approved, pursuant to Section 16-6a-1102, the surviving  
765 domestic nonprofit corporation shall deliver to the division for filing articles of merger setting  
766 forth:

767 (a) the plan of merger;

768 (b) if shareholder or member approval was not required of any party to the merger:

769 (i) a statement to the effect that [~~member~~] approval was not required; and

770 (ii) a statement that the plan of merger was approved by a sufficient vote of the board  
771 of directors of [~~the nonprofit corporation~~] each party to the merger;

772 (c) if approval of the shareholders or members of one or more [nonprofit corporations]  
773 domestic corporation, foreign corporation, domestic nonprofit corporation, or foreign nonprofit  
774 corporation party to the merger was required, a statement that the number of votes cast for the  
775 plan by each voting group entitled to vote separately on the merger was sufficient for approval  
776 by that voting group; and

777 (d) if approval of the plan by some person or persons other than the shareholders,  
778 members, or the board of directors is required pursuant to Subsection 16-6a-1102(3), or other  
779 applicable law, a statement that the approval was obtained.

780 (2) A merger takes effect upon the effective date stated in the articles of merger, which  
781 may not be prior to the date the articles of merger are filed.

782 (3) Articles of merger shall be executed by each party to the merger.

783 Section 15. Section **16-6a-1104** is amended to read:

784 **16-6a-1104. Effect of merger.**

785 (1) When a merger takes effect:

786 (a) every [~~other nonprofit corporation~~] domestic corporation, foreign corporation,  
787 domestic nonprofit corporation, or foreign nonprofit corporation party to the merger merges  
788 into the surviving domestic nonprofit corporation;

789 (b) the separate existence of every [~~nonprofit corporation~~] domestic corporation,  
790 foreign corporation, domestic nonprofit corporation, or foreign nonprofit corporation party to  
791 the merger except the surviving domestic nonprofit corporation ceases;

792 (c) the title to all real estate and other property owned by every [~~other nonprofit~~  
793 ~~corporation~~] domestic corporation, foreign corporation, domestic nonprofit corporation, or  
794 foreign nonprofit corporation party to the merger is transferred to and vested in the surviving  
795 domestic nonprofit corporation without reversion or impairment;

796 (d) the surviving domestic nonprofit corporation has all liabilities of each [~~nonprofit~~  
797 ~~corporation~~] domestic corporation, foreign corporation, domestic nonprofit corporation, or  
798 foreign nonprofit corporation party to the merger;

799 (e) (i) a proceeding pending by or against any [~~nonprofit corporation~~] party to the  
800 merger may be continued as if the merger did not occur; or

801 (ii) the surviving domestic nonprofit corporation may be substituted in the proceeding  
802 for the [~~nonprofit corporation~~] party to the merger whose existence ceased;

803 (f) the articles of incorporation of the surviving domestic nonprofit corporation are  
804 amended to the extent provided in the plan of merger; and

805 (g) the share or memberships of each [nonprofit corporation] domestic corporation,  
806 foreign corporation, domestic nonprofit corporation, or foreign nonprofit corporation party to  
807 the merger that are to be converted into memberships, obligations, or other interests of the  
808 surviving domestic nonprofit corporation or into money or other property are converted, and  
809 the former holders of the shares and memberships are entitled only to the rights provided in the  
810 articles of merger.

811 (2) (a) A transfer to and vesting in the surviving domestic nonprofit corporation  
812 described in Subsection (1)(c) occurs by operation of law.

813 (b) Consent or approval of any other person may not be required in connection with  
814 any transfer or vesting unless the consent or approval is specifically required in the event of  
815 merger by:

816 (i) law; or

817 (ii) express provision in any contract, agreement, decree, order, or other instrument to  
818 which any of the [nonprofit corporations] domestic corporations, foreign corporations,  
819 domestic nonprofit corporations, or foreign nonprofit corporations so merged is a party or by  
820 which it is bound.

821 Section 16. Section **16-6a-1302** is amended to read:

822 **16-6a-1302. Authorized distributions.**

823 (1) A nonprofit corporation may:

824 (a) make distributions [of its income] or distribute the nonprofit corporation's assets to  
825 a member that is a domestic or foreign nonprofit corporation;

826 (b) pay compensation in a reasonable amount to its members, directors, or officers for  
827 services rendered;

828 (c) if a cooperative nonprofit corporation, make distributions consistent with its  
829 purposes; and

830 (d) confer benefits upon its members in conformity with its purposes.

831 ~~[(2) A nonprofit corporation may make distributions upon dissolution in conformity~~  
832 ~~with this chapter.]~~

833 (2) A nonprofit corporation may make distributions upon dissolution:

- 834 (a) in conformity with this chapter;  
 835 (b) to a member that is a domestic or foreign nonprofit corporation; and  
 836 (c) to its members if it is a mutual benefit corporation.

837 Section 17. Section **16-6a-1405** is amended to read:

838 **16-6a-1405. Effect of dissolution.**

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

- 841 (a) collecting its assets;  
 842 (b) returning, transferring, or conveying assets held by the nonprofit corporation upon a  
 843 condition requiring return, transfer, or conveyance, which condition occurs by reason of the  
 844 dissolution, in accordance with the condition;  
 845 (c) transferring, subject to any contractual or legal requirements, its assets as provided  
 846 in or authorized by its articles of incorporation or bylaws;  
 847 (d) discharging or making provision for discharging its liabilities; and  
 848 (e) doing every other act necessary to wind up and liquidate its assets and affairs.

849 ~~[(2)(a) Upon dissolution of a nonprofit corporation described under Section 501(c)(3),~~  
 850 ~~Internal Revenue Code, and exempt from tax under Section 501(a), Internal Revenue Code, or~~  
 851 ~~the corresponding section of any future federal tax code, the assets of the nonprofit corporation~~  
 852 ~~shall be distributed:]~~

853 ~~[(i) for one or more exempt purposes under Section 501(c)(3), Internal Revenue Code;]~~

854 ~~[(ii) to the federal government for a public purpose; or]~~

855 ~~[(iii) to a state or local government, for a public purpose.]~~

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

859 ~~[(i) for one or more exempt purposes under Section 501(c)(3), Internal Revenue Code;~~  
 860 ~~or]~~

861 ~~[(ii) to organizations that are organized and operated exclusively for exempt or public~~  
 862 ~~purposes:]~~

863 ~~[(c) The conversion to a corporation under Section 16-6a-1008 of a nonprofit~~  
 864 ~~corporation described under Section 501(c)(3), Internal Revenue Code, and exempt from tax~~

865 ~~Section 501(a), Internal Revenue Code, or the corresponding section of any future federal tax~~  
866 ~~code, shall be considered to be a dissolution of that nonprofit corporation for purposes of this~~  
867 ~~Subsection (2).]~~

868 (2) Notwithstanding any other provision of this chapter, the distribution of assets of a  
869 nonprofit corporation upon its dissolution shall be consistent with all applicable requirements  
870 and limitations set forth in the Internal Revenue Code.

871 (3) Dissolution of a nonprofit corporation does not:

872 (a) transfer title to the nonprofit corporation's property;

873 (b) subject its directors or officers to standards of conduct different from those  
874 prescribed in this chapter;

875 (c) change quorum or voting requirements for its board of directors or members;

876 (d) change provisions for selection, resignation, or removal of its directors or officers,  
877 or both;

878 (e) change provisions for amending its bylaws or its articles of incorporation;

879 (f) prevent commencement of a proceeding by or against the nonprofit corporation in  
880 its corporate name; or

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

883 Section 18. Section **42-2-6.6** is amended to read:

884 **42-2-6.6. Assumed name.**

885 (1) The assumed name:

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

888 (b) shall be distinguishable from any registered name or trademark of record in the  
889 offices of the Division of Corporations and Commercial Code, as defined in Subsection  
890 16-10a-401(5), except as authorized by the Division of Corporations and Commercial Code  
891 pursuant to Subsection (2);

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

894 (i) "Olympic";

895 (ii) "Olympiad"; or

896 (iii) "Citius Altius Fortius";  
897 (d) without the written consent of the Division of Consumer Protection issued in  
898 accordance with Section 13-34-114, may not contain the words:  
899 (i) "university";  
900 (ii) "college"; or  
901 (iii) "institute"; and  
902 (e) an assumed name authorized for use in this state on or after May 1, 2000, may not  
903 contain the words:  
904 (i) "incorporated";  
905 (ii) "inc."; or  
906 (iii) a variation of "incorporated" or "inc."  
907 (2) Notwithstanding Subsection (1)(e), an assumed name may contain a word listed in  
908 Subsection (1)(e) if the Division of Corporations and Commercial Code authorizes the use of  
909 the name by a corporation as defined in:  
910 (a) Subsection 16-6a-102(25);  
911 (b) Subsection 16-6a-102[~~(32)~~](33);  
912 (c) Subsection 16-10a-102(11); or  
913 (d) Subsection 16-10a-102(20).  
914 (3) The Division of Corporations and Commercial Code shall authorize the use of the  
915 name applied for if:  
916 (a) the name is distinguishable from one or more of the names and trademarks that are  
917 on the division's records; or  
918 (b) the applicant delivers to the division a certified copy of the final judgment of a  
919 court of competent jurisdiction establishing the applicant's right to use the name applied for in  
920 this state.  
921 (4) The assumed name, for purposes of recordation, shall be either translated into  
922 English or transliterated into letters of the English alphabet if it is not in English.  
923 (5) The Division of Corporations and Commercial Code may not approve an  
924 application for an assumed name to any person violating this section.  
925 (6) The director of the Division of Corporations and Commercial Code shall have the  
926 power and authority reasonably necessary to interpret and efficiently administer this section

927 and to perform the duties imposed on the division by this section.

928 (7) A name that implies by any word in the name that it is an agency of the state or of  
929 any of its political subdivisions, if it is not actually such a legally established agency, may not  
930 be approved for filing by the Division of Corporations and Commercial Code.

931 (8) Section 16-10a-403 applies to this chapter.

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

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

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**Legislative Review Note**  
as of 2-1-06 10:26 AM

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**

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**Fiscal Note**  
**Bill Number SB0084**

**Nonprofit Entity Amendments**

*06-Feb-06*

*2:51 PM*

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**State Impact**

No fiscal impact.

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**Individual and Business Impact**

Some non-profits may be required to have annual meetings or change their bylaws.

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**Office of the Legislative Fiscal Analyst**