

CORPORATION LAW AMENDMENTS

2007 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Kevin S. Garn

Senate Sponsor: Sheldon L. Killpack

LONG TITLE

General Description:

This bill makes changes relating to the election and service of corporate directors.

Highlighted Provisions:

This bill:

- ▶ addresses the resignation of a director;
- ▶ allows a corporation to require that a nominee receive a majority of votes to serve a full term as a director;
- ▶ provides for a nominee's brief service as a director despite the failure to receive a majority of votes; and
- ▶ makes technical changes.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

16-10a-805, as enacted by Chapter 277, Laws of Utah 1992

16-10a-807, as enacted by Chapter 277, Laws of Utah 1992

16-10a-1021, as enacted by Chapter 277, Laws of Utah 1992

ENACTS:

16-10a-1023, Utah Code Annotated 1953

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

31 Section 1. Section **16-10a-805** is amended to read:

32 **16-10a-805. Terms of directors generally.**

33 (1) Except as provided in Section 16-10a-806, the terms of the initial directors of a
34 corporation expire at the first shareholders' meeting at which directors are elected.

35 (2) [~~Except as provided in Section 16-10a-806, the~~] The terms of all other directors
36 expire at the next annual shareholders' meeting following their election[-]:

37 (a) except as provided in:

38 (i) Section 16-10a-806; or

39 (ii) Section 16-10a-1023, if a bylaw electing to be governed by Section 16-10a-1023
40 applies; or

41 (b) unless a shorter term is specified in the articles of incorporation in the event a
42 director nominee fails to receive a specified vote for election.

43 (3) A decrease in the number of directors does not shorten an incumbent director's
44 term.

45 (4) (a) A director elected to fill a vacancy created other than by an increase in the
46 number of directors shall be elected for the unexpired term of the director's predecessor in
47 office, or for any lesser period as may be prescribed by the board of directors.

48 (b) If a director is elected to fill a vacancy created by reason of an increase in the
49 number of directors, then the term of the director so elected expires at the next shareholders'
50 meeting at which directors are elected, unless the vacancy is filled by a vote of the
51 shareholders, in which case the term shall expire on the later of:

52 (i) the next meeting of shareholders at which directors are elected; or

53 (ii) the term designated for the director at the time of the creation of the position being
54 filled.

55 (5) [~~Despite~~] Except as otherwise provided in the articles of incorporation, or Section
56 16-10a-1023, if a bylaw electing to be governed by Section 16-10a-1023 applies, despite the
57 expiration of a director's term, the director continues to serve until the election and

58 qualification of a successor or ~~until~~ there is a decrease in the number of directors.

59 (6) A director whose term has ended may deliver to the division for filing a statement
60 to that effect pursuant to Section 16-10a-1608.

61 Section 2. Section **16-10a-807** is amended to read:

62 **16-10a-807. Resignation of directors.**

63 (1) A director may resign at any time by giving a written notice of resignation to the
64 ~~corporation~~ board of directors, the board's chair, or the corporation's secretary.

65 (2) (a) A resignation of a director is effective when the notice is received by the
66 corporation unless the notice specifies a later effective date or an effective date determined by
67 the happening of an event.

68 (b) A notice of resignation that is conditioned upon failing to receive a specified vote
69 for election as a director may provide that it is irrevocable.

70 (3) A director who resigns may deliver to the division for filing a statement of ~~his~~ the
71 director's resignation pursuant to Section 16-10a-1608.

72 Section 3. Section **16-10a-1021** is amended to read:

73 **16-10a-1021. Bylaw changing quorum or voting requirement for shareholders.**

74 (1) If authorized by the articles of incorporation or this chapter, the shareholders may
75 adopt, amend, or repeal a bylaw that fixes a greater quorum or voting requirement for
76 shareholders, or voting groups of shareholders, than is required by this chapter. Such action is
77 subject to the provisions of Part 7, Shareholders.

78 (2) A bylaw that fixes a greater quorum or voting requirement for shareholders under
79 Subsection (1) may not be adopted, amended, or repealed by the board of directors.

80 Section 4. Section **16-10a-1023** is enacted to read:

81 **16-10a-1023. Bylaw provisions relating to election of directors.**

82 (1) A corporation that has shares listed on a national securities exchange or regularly
83 traded in a market maintained by one or more members of a national or affiliated securities
84 association may elect in its bylaws to be governed in the election of directors by Subsection (2)
85 unless the articles of incorporation:

86 (a) specifically prohibit the adoption of a bylaw electing to be governed by this section;

87 (b) alter the vote required by Subsection 16-10a-728(2); or

88 (c) provide for cumulative voting.

89 (2) A corporation may elect to be governed in the election of directors as follows:

90 (a) Each vote entitled to be cast may be voted for or against up to that number of
91 candidates that is equal to the number of directors to be elected, or the shareholder may
92 indicate abstention, but without cumulating the votes.

93 (b) To be elected, a nominee must receive a plurality of the votes cast by shareholders
94 of shares entitled to vote in the election at a meeting at which a quorum is present.

95 (c) Notwithstanding Subsection (2)(b), a nominee who is elected but receives more
96 votes against than for election shall serve as a director for a term that terminates on the earlier
97 of:

98 (i) 90 days after the day on which the corporation certifies the voting results; or

99 (ii) the day on which a person is selected by the board of directors to fill the office held
100 by the director, which selection constitutes the filling of a vacancy by the board for the purpose
101 of Section 16-10a-810.

102 (d) Subject to Subsection (2)(e), a nominee who is elected but receives more votes
103 against than for election may not serve as a director beyond the 90-day period allowed by
104 Subsection (2)(c).

105 (e) The board of directors may select any qualified person to fill the office held by a
106 director who receives more votes against than for election.

107 (3) (a) Subsection (2) does not apply to an election of a director by a voting group if
108 there are more candidates for election by the voting group than the number of directors to be
109 elected, one or more of whom are properly proposed by shareholders.

110 (b) The determination of the number of candidates under Subsection (3)(a) is made:

111 (i) at the expiration of a time fixed by the articles of incorporation or bylaws for the
112 advance notification of director candidates; or

113 (ii) if there is no provision under Subsection (3)(b)(i), at a time fixed by the board of

114 directors not more than 14 days before notice is given of the meeting at which the election is to
115 occur.

116 (4) A person may not be considered a candidate for the purpose of Subsection (3) if the
117 board of directors determines before the notice of meeting is given that the person's candidacy
118 does not create a bona fide election contest.

119 (5) A bylaw electing to be governed by this section may be repealed:

120 (a) by the shareholders if originally adopted by the shareholders, unless otherwise
121 provided by the bylaws; or

122 (b) by the board of directors or the shareholders, if originally adopted by the board of
123 directors.