

1 **REVISED BUSINESS CORPORATIONS ACT**

2 **AMENDMENTS**

3 2007 GENERAL SESSION

4 STATE OF UTAH

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

6 House Sponsor: Fred R. Hunsaker

7

8 **LONG TITLE**

9 **General Description:**

10 This bill clarifies a definition concerning corporate distributions.

11 **Highlighted Provisions:**

12 This bill:

- 13 ▶ clarifies the definition of "distribution" in Title 16, Chapter 10a, Utah Revised
14 Business Corporation Act; and
15 ▶ makes technical changes.

16 **Monies Appropriated in this Bill:**

17 None

18 **Other Special Clauses:**

19 This bill provides an immediate effective date.

20 **Utah Code Sections Affected:**

21 AMENDS:

22 **16-10a-102**, as last amended by Chapter 141, Laws of Utah 2005

23

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

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

26 **16-10a-102. Definitions.**

27 As used in this chapter:

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

30 (b) "Address" includes:

- 31 (i) a post office box number;
- 32 (ii) a rural free delivery route number; and
- 33 (iii) a street name and number.

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

37 (3) "Assumed corporate name" means the name assumed for use in this state by a
38 foreign corporation pursuant to Section 16-10a-1506 because its corporate name is not
39 available for use in this state.

40 (4) "Articles of incorporation" include:

- 41 (a) amended and restated articles of incorporation;
- 42 (b) articles of merger; and
- 43 (c) documents of a similar import to those described in Subsections (4)(a) and (b).

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

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

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

49 (8) "Conspicuous" means so written that a reasonable person against whom the writing
50 is to operate should have noticed it, including:

- 51 (a) printing or typing in italics;
- 52 (b) boldface;
- 53 (c) contrasting color;
- 54 (d) capitals; or
- 55 (e) underlining.

56 (9) "Control" or a "controlling interest" means the direct or indirect possession of the
57 power to direct or cause the direction of the management and policies of an entity, whether

58 through the ownership of voting shares, by contract, or otherwise.

59 (10) "Corporate name" means:

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

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

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

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

69 (13) (a) "Distribution" means the following by a corporation to or for the benefit of its
70 shareholders in respect of any of the corporation's shares:

71 (i) a direct or indirect transfer of money or other property, [~~except: (i)~~] other than a
72 corporation's own shares; or

73 (ii) incurrence of indebtedness by [a] the corporation [~~to or for the benefit of its~~
74 ~~shareholders in respect of any of the corporation's shares~~].

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

76 (i) a declaration or payment of a dividend;

77 (ii) a purchase, redemption, or other acquisition of shares;

78 (iii) distribution of indebtedness; or

79 (iv) other form.

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

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

83 (16) "Effective date of notice" means the date notice is effective as provided in Section
84 16-10a-103.

85 (17) "Electronic transmission" or "electronically transmitted" means any process of

86 communication not directly involving the physical transfer of paper that is suitable for the
87 receipt, retention, retrieval, and reproduction of information by the recipient, whether by
88 e-mail, facsimile, or otherwise.

89 (18) "Employee" includes an officer but not a director, unless the director accepts
90 duties that make that director also an employee.

91 (19) "Entity" includes:

92 (a) a domestic and foreign corporation;

93 (b) a nonprofit corporation;

94 (c) a limited liability company;

95 (d) a profit or nonprofit unincorporated association;

96 (e) a business trust;

97 (f) an estate;

98 (g) a partnership;

99 (h) a trust;

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

101 (j) a state;

102 (k) the United States; and

103 (l) a foreign government.

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

106 (21) "Governmental subdivision" means:

107 (a) county;

108 (b) municipality; or

109 (c) any other type of governmental subdivision authorized by the laws of this state.

110 (22) "Individual" means:

111 (a) a natural person;

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

113 (c) the estate of a deceased individual.

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

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

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

- 121 (a) an annual report;
- 122 (b) an application for a certificate of authority; or
- 123 (c) a notice of change of principal office.

124 (26) "Proceeding" includes:

- 125 (a) a civil suit;
- 126 (b) arbitration or mediation; and
- 127 (c) a criminal, administrative, or investigatory action.

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

- 131 (a) that, to the knowledge, before the vote, of the secretary, other officer, or agent of
132 the corporation authorized to tabulate votes, are beneficially owned; or
- 133 (b) the voting of which is controlled, by:
 - 134 (i) a director who has a conflicting interest respecting the transaction;
 - 135 (ii) a related person of that director; or
 - 136 (iii) persons referred to in Subsections (27)(b)(i) and (ii).

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

- 139 (a) by the corporation at its registered office in this state or at its principal office;
- 140 (b) by the secretary of the corporation, wherever the secretary is found; or
- 141 (c) by any other person authorized by the bylaws or the board of directors to receive the

142 writing or other document, wherever that person is found.

143 (29) (a) "Record date" means the date established under Part 6, Shares and
144 Distributions, or Part 7, Shareholders, on which a corporation determines the identity of its
145 shareholders.

146 (b) The determination under Subsection (29)(a) shall be made as of the close of
147 business on the record date unless another time for doing so is specified when the record date is
148 fixed.

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

- 152 (a) articles of incorporation;
- 153 (b) an application for a certificate of authority; or
- 154 (c) a notice of change of registered office.

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

- 156 (a) the spouse of the director, or a child, grandchild, sibling, or parent of the director;
- 157 (b) the spouse of a child, grandchild, sibling, or parent of the director;
- 158 (c) an individual having the same home as the director;
- 159 (d) a trust or estate of which the director or any other individual specified in this

160 Subsection (31) is a substantial beneficiary; or

- 161 (e) a trust, estate, incompetent, conservatee, or minor of which the director is a
162 fiduciary.

163 (32) "Secretary" means the corporate officer to whom the bylaws or the board of
164 directors has delegated responsibility under Subsection 16-10a-830(3) for:

- 165 (a) the preparation and maintenance of:
 - 166 (i) minutes of the meetings of the board of directors and of the shareholders; and
 - 167 (ii) the other records and information required to be kept by the corporation by Section
168 16-10a-830; and

- 169 (b) for authenticating records of the corporation.

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

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

175 (a) the following, identified as a shareholder in a corporation's current record of
176 shareholders, constitute one shareholder:

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

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

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

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

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

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

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

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

195 (b) All shares entitled by the articles of incorporation or this chapter to vote generally
196 on the matter are for that purpose a single voting group.

197 Section 2. **Effective date.**

198 If approved by two-thirds of all the members elected to each house, this bill takes effect
199 upon approval by the governor, or the day following the constitutional time limit of Utah
200 Constitution Article VII, Section 8, without the governor's signature, or in the case of a veto,
201 the date of veto override.