

1 **FOREIGN BUSINESS ENTITIES AND**
2 **TRIBAL LAW**

3 2008 GENERAL SESSION

4 STATE OF UTAH

5 **Chief Sponsor: Kevin T. VanTassell**

6 House Sponsor: DeMar Bud Bowman

8 **LONG TITLE**

9 **General Description:**

10 This bill modifies provisions related to corporations, partnerships, and other business
11 entities to address tribal entities created by tribal law.

12 **Highlighted Provisions:**

13 This bill:

- 14 ▶ defines "tribe" and related terms for purposes of certain business entity provisions;
- 15 ▶ modifies provisions related to nonprofit and for profit corporations, partnerships,
16 and limited liability companies to provide for a tribal entity created by tribal law to
17 be treated as a foreign business entity authorized to transact business in the state;
18 and
- 19 ▶ makes technical and conforming amendments.

20 **Monies Appropriated in this Bill:**

21 None

22 **Other Special Clauses:**

23 None

24 **Utah Code Sections Affected:**

25 **AMENDS:**

26 **16-4-102**, as enacted by Laws of Utah 2007, Chapter 367

27 **16-6a-102**, as last amended by Laws of Utah 2007, Chapter 315

28 **16-6a-1503**, as enacted by Laws of Utah 2000, Chapter 300

29 **16-10a-102**, as last amended by Laws of Utah 2007, Chapter 21

- 30 **16-10a-1503**, as last amended by Laws of Utah 2005, Chapter 71
- 31 **48-1-1**, as last amended by Laws of Utah 1994, Chapter 61
- 32 **48-1-44**, as last amended by Laws of Utah 1996, Chapter 41
- 33 **48-2a-101**, as last amended by Laws of Utah 2001, Chapter 260
- 34 **48-2a-902**, as last amended by Laws of Utah 1991, Chapters 5 and 189
- 35 **48-2c-102**, as last amended by Laws of Utah 2006, Chapter 21
- 36 **48-2c-1604**, as last amended by Laws of Utah 2005, Chapter 71

37

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

39 Section 1. Section **16-4-102** is amended to read:

40 **16-4-102. Definitions.**

41 As used in this chapter:

- 42 (1) "Corporation" means a nonprofit corporation or a profit corporation.
- 43 (2) "Nonprofit corporation" means a nonprofit corporation as defined in Section
- 44 16-6a-102.
- 45 (3) "Profit corporation" means a corporation as defined in Section 16-10a-102.
- 46 (4) [~~"Shares"~~] "Share" means [~~shares~~] a share as defined in:
- 47 (a) Section 16-6a-102 for a nonprofit corporation; and
- 48 (b) Section 16-10a-102 for a profit corporation.
- 49 (5) "Water company" means a corporation in which a shareholder has the right, based
- 50 on the shareholders shares, to receive a proportionate share of water delivered by the
- 51 corporation.

52 Section 2. Section **16-6a-102** is amended to read:

53 **16-6a-102. Definitions.**

54 As used in this chapter:

- 55 (1) (a) "Address" means a location where mail can be delivered by the United States
- 56 Postal Service.
- 57 (b) "Address" includes:

- 58 (i) a post office box number;
- 59 (ii) a rural free delivery route number; and
- 60 (iii) a street name and number.
- 61 (2) "Affiliate" means a person that directly or indirectly through one or more
- 62 intermediaries controls, or is controlled by, or is under common control with, the person
- 63 specified.
- 64 (3) "Articles of incorporation" include:
- 65 (a) amended articles of incorporation;
- 66 (b) restated articles of incorporation;
- 67 (c) articles of merger; and
- 68 (d) a document of a similar import to the documents described in Subsections (3)(a)
- 69 through (c).
- 70 (4) "Assumed corporate name" means ~~the~~ a name assumed for use in this state:
- 71 (a) by a:
- 72 (i) foreign corporation pursuant to Section 16-10a-1506; or
- 73 (ii) a foreign nonprofit corporation pursuant to Section 16-6a-1506; and
- 74 (b) because the corporate name of the foreign corporation described in Subsection
- 75 (4)(a) is not available for use in this state.
- 76 (5) (a) Except as provided in Subsection (5)(b), "board of directors" means the body
- 77 authorized to manage the affairs of ~~the~~ a domestic or foreign nonprofit corporation.
- 78 (b) Notwithstanding Subsection (5)(a), a person may not be considered a member of the
- 79 board of directors because of ~~powers~~ a power delegated to that person pursuant to Subsection
- 80 16-6a-801(2).
- 81 (6) (a) "Bylaws" means the one or more codes of rules, other than the articles of
- 82 incorporation, adopted pursuant to this chapter for the regulation or management of the affairs
- 83 of ~~the~~ a domestic or foreign nonprofit corporation irrespective of the ~~name or~~ one or more
- 84 names by which the codes of rules are designated.
- 85 (b) "Bylaws" includes:

86 (i) amended bylaws; and

87 (ii) restated bylaws.

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

89 (i) legal tender;

90 (ii) a negotiable instrument; or

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

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

93 (8) (a) "Class" ~~[refers to]~~ means a group of memberships that ~~[have]~~ has the same
94 ~~[rights]~~ right with respect to voting, dissolution, redemption, transfer, or other characteristics.

95 (b) For purposes of Subsection (8)(a), ~~[rights are]~~ a right is considered the same if ~~[they~~
96 ~~are]~~ it is determined by a formula applied uniformly to a group of memberships.

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

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

100 (i) italics;

101 (ii) boldface;

102 (iii) contrasting color;

103 (iv) capitals; or

104 (v) underlining.

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

107 (a) the ownership of voting shares;

108 (b) contract; or

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

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

112 (12) "Corporate name" means:

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

114 of incorporation;

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

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

118 (i) articles of incorporation; or

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

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

122 (i) articles of incorporation; or

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

124 (13) "Corporation" or "domestic corporation" means a corporation for profit[~~,-which~~]

125 that:

126 (a) is not a foreign corporation[~~;~~]; and

127 (b) is incorporated under or subject to Chapter 10a, Utah Revised Business Corporation
128 Act.

129 (14) "Delegate" means [~~any~~] a person elected or appointed to vote in a representative
130 assembly:

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

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

133 (15) "Deliver" includes delivery by mail [~~and any other~~] or another means of
134 transmission authorized by Section 16-6a-103, except that delivery to the division means actual
135 receipt by the division.

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

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

139 (i) members;

140 (ii) directors; or

141 (iii) officers.

- 142 (b) "Distribution" does not include a fair-value [~~payments~~] payment for:
- 143 (i) [~~goods~~] a good sold; or
- 144 (ii) [~~services~~] a service received.
- 145 (18) "Division" means the Division of Corporations and Commercial Code.
- 146 (19) "Effective date," when referring to a document filed by the division, means the
- 147 time and date determined in accordance with Section 16-6a-108.
- 148 (20) "Effective date of notice" means the date notice is effective as provided in Section
- 149 16-6a-103.
- 150 (21) (a) "Employee" includes an officer of a nonprofit corporation.
- 151 (b) (i) Except as provided in Subsection (21)(b)(ii), "employee" does not include a
- 152 director of a nonprofit corporation.
- 153 (ii) Notwithstanding Subsection (21)(b)(i), a director may accept one or more duties
- 154 that make that director an employee of a nonprofit corporation.
- 155 (22) "Executive director" means the executive director of the Department of
- 156 Commerce.
- 157 (23) "Entity" includes:
- 158 (a) a domestic or foreign corporation;
- 159 (b) a domestic or foreign nonprofit corporation;
- 160 (c) a limited liability company;
- 161 (d) a profit or nonprofit unincorporated association;
- 162 (e) a business trust;
- 163 (f) an estate;
- 164 (g) a partnership;
- 165 (h) a trust;
- 166 (i) two or more persons having a joint or common economic interest;
- 167 (j) a state;
- 168 (k) the United States; or
- 169 (l) a foreign government.

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

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

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

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

175 (26) "Governmental subdivision" means:

176 (a) a county;

177 (b) a city;

178 (c) a town; or

179 (d) ~~[any other]~~ another type of governmental subdivision authorized by the laws of this
180 state.

181 (27) "Individual" means:

182 (a) a natural person;

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

184 (c) the estate of a deceased individual.

185 (28) "Internal Revenue Code" means the federal "Internal Revenue Code of 1986," as
186 amended from time to time, or to corresponding provisions of subsequent internal revenue laws
187 of the United States of America.

188 (29) (a) "Mail," "mailed," or "mailing" means deposit, deposited, or depositing in the
189 United States mail, properly addressed, first-class postage prepaid.

190 (b) "Mail," "mailed," or "mailing" includes registered or certified mail for which the
191 proper fee ~~[has been]~~ is paid.

192 (30) (a) "Member" means one or more persons identified or otherwise appointed as a
193 member of a domestic or foreign nonprofit corporation as provided:

194 (i) in the articles of incorporation;

195 (ii) in the bylaws;

196 (iii) by a resolution of the board of directors; or

197 (iv) by a resolution of the members of the nonprofit corporation.

- 198 (b) "Member" includes "voting member."
199 (31) "Membership" refers to the rights and obligations of a member or members.
200 (32) "Mutual benefit corporation" means a nonprofit corporation:
201 (a) that issues shares of stock to its members evidencing a right to receive distribution
202 of water or otherwise representing property rights; or
203 (b) all of whose assets are contributed or acquired by or for the members of the
204 nonprofit corporation or their predecessors in interest to serve the mutual purposes of the
205 members.
206 (33) "Nonprofit corporation" or "domestic nonprofit corporation" means an entity[;
207 ~~which] that:
208 (a) is not a foreign nonprofit corporation[;]; and
209 (b) is incorporated under or subject to [~~the provisions of~~] this chapter.
210 (34) "Notice" is as provided in Section 16-6a-103.
211 (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 (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~~] another individual specified in
220 this Subsection (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 (36) "Person" means an:
- 228 (a) individual; or
- 229 (b) entity.
- 230 (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 (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 (39) "Receive," when used in reference to receipt of a writing or other document by a
- 247 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~~] another person authorized by the bylaws or the board of directors to
255 receive the writing or other document, wherever that person is found.

256 (40) (a) "Record date" means the date established under Part 6, Members₂ or Part 7,
257 Member Meetings and Voting₂, on which a nonprofit corporation determines the identity of the
258 nonprofit corporation's members.

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

262 (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 (42) "Registered office" means the office within this state designated by a domestic or
268 foreign nonprofit corporation as its registered office in the most recent document on file with
269 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 (43) "Secretary" means the corporate officer to whom the bylaws or the board of
274 directors [~~has delegated~~] delegates 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 (44) "Shareholder" means [~~the~~] a person in whose name a share is registered in the
283 records of a nonprofit corporation.

284 (45) "Share" means a unit of interest in a nonprofit corporation.

285 (46) "State," when referring to a part of the United States, includes:

286 (a) a state;

287 (b) a commonwealth;

288 (c) the District of Columbia;

289 (d) an agency or governmental and political subdivision of a state, commonwealth, or
290 District of Columbia;

291 (e) territory or insular possession of the United States; or

292 (f) an agency or governmental and political subdivision of a territory or insular
293 possession of the United States.

294 (47) "Street address" means:

295 (a) (i) street name and number;

296 (ii) city or town; and

297 (iii) United States post office zip code designation; or

298 (b) if, by reason of rural location or otherwise, a street name, number, city, or town
299 does not exist, an appropriate description other than that described in Subsection (47)(a) fixing
300 as nearly as possible the actual physical location, but only if the information includes:

301 (i) the rural free delivery route;

302 (ii) the county; and

303 (iii) the United States post office zip code designation.

304 (48) "Tribe" means a tribe, band, nation, pueblo, or other organized group or
305 community of Indians, including an Alaska Native village, that is legally recognized as eligible
306 for and is consistent with a special program, service, or entitlement provided by the United
307 States to Indians because of their status as Indians.

308 (49) "Tribal nonprofit corporation" means a nonprofit corporation:

309 (a) incorporated under the law of a tribe; and

310 (b) that is at least 51% owned or controlled by the tribe.

311 [~~(48)~~] (50) "United States" includes [~~any~~] a district, authority, office, bureau,
312 commission, department, and [~~any other~~] another agency of the United States of America.

313 [~~(49)~~] (51) "Vote" includes authorization by:

314 (a) written ballot; and

315 (b) written consent.

316 [~~(50)~~] (52) (a) "Voting group" means all the members of one or more classes of
317 members or directors that, under this chapter, the articles of incorporation, or the bylaws, are
318 entitled to vote and be counted together collectively on a matter.

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

321 [~~(51)~~] (53) (a) "Voting member" means a person entitled to vote for all matters required
322 or permitted under this chapter to be submitted to a vote of the members, except as otherwise
323 provided in the articles of incorporation or bylaws.

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

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

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

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

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

330 Section 3. Section **16-6a-1503** is amended to read:

331 **16-6a-1503. Application for authority to conduct affairs.**

332 (1) A foreign nonprofit corporation may apply for authority to conduct affairs in this
333 state by delivering to the division for filing an application for authority to conduct affairs setting
334 forth:

335 (a) its corporate name and its assumed corporate name, if any;

336 (b) the name of the state or country under whose law it is incorporated;

337 (c) its date of incorporation;

- 338 (d) its period of duration;
- 339 (e) the street address of its principal office;
- 340 (f) the address of its registered office;
- 341 (g) the name of its registered agent at the office listed in Subsection (1)(f);
- 342 (h) the names and usual business addresses of its current directors and officers;
- 343 (i) the date it commenced or expects to commence conducting affairs in this state; and
- 344 (j) ~~such~~ the additional information ~~as~~ the division determines is necessary or
- 345 appropriate to determine whether the application for authority to conduct affairs should be filed.

346 (2) With the completed application required by Subsection (1) the foreign nonprofit
347 corporation shall deliver to the division for a certificate of existence, or a document of similar
348 import that is:

- 349 (a) authenticated by the division or other official having custody of corporate records in
- 350 the state or country under whose law it is incorporated; and
- 351 (b) dated within 90 days before the ~~filing of~~ day on which the application for authority
- 352 to conduct affairs is filed.

353 (3) The foreign nonprofit corporation shall include in the application for authority to
354 conduct affairs, or in an accompanying document, written consent to appointment by its
355 designated registered agent.

356 (4) (a) The division may permit a tribal nonprofit corporation to apply for authority to
357 conduct affairs in this state in the same manner as a nonprofit corporation incorporated in
358 another state.

359 (b) If a tribal nonprofit corporation elects to apply for authority to conduct affairs in
360 this state, for purposes of this chapter, the tribal nonprofit corporation shall be treated in the
361 same manner as a foreign nonprofit corporation incorporated under the laws of another state.

362 Section 4. Section **16-10a-102** is amended to read:

363 **16-10a-102. Definitions.**

364 As used in this chapter:

- 365 (1) (a) "Address" means a location where mail can be delivered by the United States

366 Postal Service.

367 (b) "Address" includes:

368 (i) a post office box number;

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

370 (iii) a street name and number.

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

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

377 (4) "Articles of incorporation" include:

378 (a) amended and restated articles of incorporation;

379 (b) articles of merger; and

380 (c) ~~documents~~ a document of a similar import to those described in Subsections (4)(a)
381 and (b).

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

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

385 (7) "Cash" and "money" are used interchangeably in this chapter and mean:

386 (a) legal tender ~~[and];~~

387 (b) a negotiable ~~[instruments]~~ instrument; and ~~[other]~~

388 (c) a cash ~~[equivalents]~~ equivalent readily convertible into legal tender.

389 (8) "Conspicuous" means so written that a reasonable person against whom the writing
390 is to operate should have noticed it, including~~[-(a)]~~ printing or typing in:

391 (a) italics;

392 (b) boldface;

393 (c) contrasting color;

- 394 (d) capitals; or
395 (e) underlining.
- 396 (9) "Control" or a "controlling interest" means the direct or indirect possession of the
397 power to direct or cause the direction of the management and policies of an entity, whether
398 through the ownership of voting shares, by contract, or otherwise.
- 399 (10) "Corporate name" means:
400 (a) the name of a domestic corporation or a domestic nonprofit corporation as stated in
401 its articles of incorporation; or
402 (b) the name of a foreign corporation or a foreign nonprofit corporation as stated in its
403 articles of incorporation or document of similar import.
- 404 (11) "Corporation" or "domestic corporation" means a corporation for profit~~[, which]~~
405 that:
406 (a) is not a foreign corporation~~[-]; and~~
407 (b) is incorporated under or subject to ~~[the provisions of]~~ this chapter.
- 408 (12) "Deliver" includes delivery by mail ~~[and any other]~~ or another means of
409 transmission authorized by Section 16-10a-103, except that delivery to the division means
410 actual receipt by the division.
- 411 (13) (a) "Distribution" means the following by a corporation to or for the benefit of its
412 shareholders in respect of any of the corporation's shares:
413 (i) a direct or indirect transfer of money or other property, other than a corporation's
414 own shares; or
415 (ii) incurrence of indebtedness by the corporation.
416 (b) A distribution may be in the form of:
417 (i) a declaration or payment of a dividend;
418 (ii) a purchase, redemption, or other acquisition of shares;
419 (iii) distribution of indebtedness; or
420 (iv) ~~[other]~~ another form.
- 421 (14) "Division" means the Division of Corporations and Commercial Code.

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

424 (16) "Effective date of notice" means the date notice is effective as provided in Section
425 16-10a-103.

426 (17) "Electronic transmission" or "electronically transmitted" means [~~any~~] a process of
427 communication not directly involving the physical transfer of paper that is suitable for the
428 receipt, retention, retrieval, and reproduction of information by the recipient, whether by e-mail,
429 facsimile, or otherwise.

430 (18) "Employee" includes an officer but not a director, unless the director accepts
431 [~~duties~~] a duty that [~~make~~] makes that director also an employee.

432 (19) "Entity" includes:

433 (a) a domestic and foreign corporation;

434 (b) a nonprofit corporation;

435 (c) a limited liability company;

436 (d) a profit or nonprofit unincorporated association;

437 (e) a business trust;

438 (f) an estate;

439 (g) a partnership;

440 (h) a trust;

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

442 (j) a state;

443 (k) the United States; and

444 (l) a foreign government.

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

447 (21) "Governmental subdivision" means:

448 (a) county;

449 (b) municipality; or

450 (c) [~~any other~~] another type of governmental subdivision authorized by the laws of this
451 state.

452 (22) "Individual" means:

- 453 (a) a natural person;
- 454 (b) the estate of an incompetent individual; or
- 455 (c) the estate of a deceased individual.

456 (23) "Mail," "mailed," or "mailing" means deposit, deposited, or depositing in the
457 United States mail, properly addressed, first class postage prepaid, and includes registered or
458 certified mail for which the proper fee [~~has been~~] is paid.

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

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

- 463 (a) an annual report;
- 464 (b) an application for a certificate of authority; or
- 465 (c) a notice of change of principal office.

466 (26) "Proceeding" includes:

- 467 (a) a civil suit;
- 468 (b) arbitration or mediation; and
- 469 (c) a criminal, administrative, or investigatory action.

470 (27) "Qualified shares" means, with respect to a director's conflicting interest
471 transaction pursuant to Section 16-10a-853, [~~any~~] one or more shares entitled to vote on the
472 transaction, except [~~shares~~] a share:

- 473 (a) that, to the knowledge, before the vote, of the secretary, other officer, or agent of
474 the corporation authorized to tabulate votes, [~~are~~] is beneficially owned; or
- 475 (b) the voting of which is controlled, by:
 - 476 (i) a director who has a conflicting interest respecting the transaction;
 - 477 (ii) a related person of that director; or

478 (iii) ~~[persons]~~ a person referred to in Subsections (27)(b)(i) and (ii).

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

481 (a) ~~[by]~~ the corporation at its:

482 (i) registered office in this state; or ~~[at its]~~

483 (ii) principal office;

484 (b) ~~[by]~~ the secretary of the corporation, wherever the secretary is found; or

485 (c) ~~[by any other]~~ another person authorized by the bylaws or the board of directors to
486 receive the writing or other document, wherever that person is found.

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

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

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

496 (a) articles of incorporation;

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

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

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

500 (a) the spouse of the director~~[, or]~~;

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

502 ~~[(b)]~~ (c) the spouse of a child, grandchild, sibling, or parent of the director;

503 ~~[(c)]~~ (d) an individual having the same home as the director;

504 ~~[(d)]~~ (e) a trust or estate of which the director or any other individual specified in this
505 Subsection (31) is a substantial beneficiary; or

506 ~~[(e)]~~ (f) a trust, estate, incompetent, conservatee, or minor of which the director is a
507 fiduciary.

508 (32) "Secretary" means the corporate officer to whom the bylaws or the board of
509 directors ~~[has delegated]~~ delegates responsibility under Subsection 16-10a-830(3) for:

510 (a) the preparation and maintenance of:

511 (i) minutes of the meetings of the board of directors and of the shareholders; and

512 (ii) the other records and information required to be kept by the corporation by Section
513 16-10a-830; and

514 (b) ~~[for]~~ authenticating records of the corporation.

515 (33) "~~[Shares]~~ Share" means the ~~[units]~~ unit into which the proprietary interests in a
516 corporation are divided.

517 (34) (a) "Shareholder" means:

518 (i) the person in whose name ~~[shares are]~~ a share is registered in the records of a
519 corporation; or

520 (ii) the beneficial owner of ~~[shares]~~ a share to the extent recognized pursuant to Section
521 16-10a-723.

522 (b) For purposes of this chapter:

523 ~~[(a)]~~ (i) the following, identified as a shareholder in a corporation's current record of
524 shareholders, constitute one shareholder:

525 ~~[(i)]~~ (A) (I) three or fewer coowners; or

526 ~~[(B)]~~ (II) in the case of more than three coowners, each coowner in excess of the first
527 three ~~[will be]~~ is counted as a separate shareholder;

528 ~~[(ii)]~~ (B) a corporation, limited liability company, partnership, trust, estate, or other
529 entity; and

530 ~~[(iii)]~~ (C) the trustees, guardians, custodians, or other fiduciaries of a single trust,
531 estate, or account;

532 ~~[(b)]~~ (ii) shareholdings registered in substantially similar names constitute one
533 shareholder if it is reasonable to believe that the names represent the same person; and

534 ~~[(c) in any case where]~~ (iii) if the record of [shareholders has not been] a shareholder is
535 not maintained in accordance with accepted practice, [any] an additional person who would be
536 identified as an owner on that record if it had been maintained in accordance with accepted
537 practice shall be included as a holder of record.

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

540 (36) "Tribe" means a tribe, band, nation, pueblo, or other organized group or
541 community of Indians, including an Alaska Native village, that is legally recognized as eligible
542 for and is consistent with a special program, service, or entitlement provided by the United
543 States to Indians because of their status as Indians.

544 (37) "Tribal corporation" means a corporation:

545 (a) incorporated under the law of a tribe; and

546 (b) that is at least 51% owned or controlled by the tribe.

547 ~~[(36)]~~ (38) (a) "Voting group" means all shares of one or more classes or series that
548 under the articles of incorporation or this chapter are entitled to vote and be counted together
549 collectively on a matter at a meeting of shareholders.

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

552 Section 5. Section **16-10a-1503** is amended to read:

553 **16-10a-1503. Application for authority to transact business.**

554 (1) A foreign corporation may apply for authority to transact business in this state by
555 delivering to the division for filing an application for authority to transact business setting forth:

556 (a) its corporate name and its assumed name, if any;

557 (b) the name of the state or country under whose law it is incorporated;

558 (c) its date of incorporation and period of its corporate duration;

559 (d) the street address of its principal office;

560 (e) the address of its registered office in this state and the name of its registered agent at
561 that office;

562 (f) the names and usual business addresses of its current directors and officers;
563 (g) the date it commenced or expects to commence transacting business in this state;
564 and
565 (h) any additional information the division may determine is necessary or appropriate to
566 determine whether the application for authority to transact business should be filed.

567 (2) The foreign corporation shall deliver with the completed application for authority to
568 transact business a certificate of existence, or a document of similar import, duly authorized by
569 the lieutenant governor or other official having custody of corporate records in the state or
570 country under whose law it is incorporated. The certificate of existence shall be dated within 90
571 days prior to the ~~[filing of]~~ day on which the application for authority to transact business by the
572 division is filed.

573 (3) The foreign corporation shall include in the application for authority to transact
574 business, or in an accompanying document, the written consent to appointment by the
575 designated registered agent.

576 (4) (a) The division may permit a tribal corporation to apply for authority to transact
577 business in this state in the same manner as a foreign corporation incorporated in another state.

578 (b) If a tribal corporation elects to apply for authority to transact business in this state,
579 for purposes of this chapter, the tribal corporation shall be treated in the same manner as a
580 foreign corporation incorporated under the laws of another state.

581 Section 6. Section **48-1-1** is amended to read:

582 **48-1-1. Definition of terms.**

583 As used in this chapter:

- 584 (1) "Bankrupt" includes "bankrupt" under the federal bankruptcy laws or "insolvent"
585 under any state insolvency law.
- 586 (2) "Business" includes every trade, occupation, or profession.
- 587 (3) "Conveyance" includes every assignment, lease, mortgage, or encumbrance.
- 588 (4) "Court" includes every court and judge having jurisdiction in the case.
- 589 (5) "Limited liability partnership" means a general partnership;

590 (a) registered under Section 48-1-42; and

591 (b) complying with Section 48-1-43.

592 (6) "Person" includes:

593 (a) an individual[-];

594 (b) a partnership[-];

595 (c) a limited liability company[-];

596 (d) a limited liability partnership[-];

597 (e) a corporation[-]; or [other]

598 (f) another association.

599 (7) "Real property" includes land and any interest or estate in land.

600 (8) "Tribe" means a tribe, band, nation, pueblo, or other organized group or community
601 of Indians, including an Alaska Native village, that is legally recognized as eligible for and is
602 consistent with a special program, service, or entitlement provided by the United States to
603 Indians because of their status as Indians.

604 (9) "Tribal limited liability partnership" means a limited liability partnership:

605 (a) formed under the law of a tribe; and

606 (b) that is at least 51% owned or controlled by the tribe.

607 Section 7. Section **48-1-44** is amended to read:

608 **48-1-44. Foreign limited liability partnerships.**

609 (1) Subject to any statute regulating a specific type of business, a limited liability
610 partnership registered and existing under the laws of another state, may do business in this state
611 if it registers with the division in accordance with Section 48-1-42.

612 (2) The internal affairs of a limited liability partnership registered and existing under the
613 laws of another jurisdiction[~~including the provisions providing for the liability of partners for~~
614 ~~debts, obligations of and liabilities chargeable to partnerships, shall be] is subject to and
615 governed by the laws of the state where the partnership is formed[-], including the provisions
616 providing for the liability of partners for debts, obligations of, and liabilities chargeable to a
617 partnership.~~

618 (3) (a) The division may permit a tribal limited liability partnership to register with the
619 division in the same manner as a foreign limited liability partnership formed in another state.

620 (b) If a tribal limited liability partnership elects to register with the division, for
621 purposes of this chapter, the tribal limited liability partnership shall be treated in the same
622 manner as a foreign limited liability partnership formed under the laws of another state.

623 Section 8. Section **48-2a-101** is amended to read:

624 **48-2a-101. Definitions.**

625 As used in this chapter, unless the context otherwise requires:

626 (1) "Certificate of limited partnership" means [~~the~~]:

627 (a) a certificate referred to in Section 48-2a-201[;]; and [~~the~~]

628 (b) a certificate as amended or restated.

629 (2) "Contribution" means any of the following that a partner contributes to a limited
630 partnership in the partner's capacity as a partner:

631 (a) cash[;];

632 (b) property[; ~~services~~];

633 (c) a service rendered[;]; or

634 (d) a promissory note or other binding obligation to:

635 (i) contribute cash [~~or~~];

636 (ii) contribute property; or [~~to perform services, which a partner contributes to a limited~~
637 partnership in his capacity as a partner.]

638 (iii) perform a service.

639 (3) "Division" means the Division of Corporations and Commercial Code of the [~~Utah~~]
640 Department of Commerce.

641 (4) "Event of withdrawal of a general partner" means an event that causes a person to
642 cease to be a general partner as provided in Section 48-2a-402.

643 (5) "Foreign limited partnership" means a partnership:

644 (a) formed under the laws of [~~any~~] a state other than this state; and

645 (b) having as partners;

- 646 (i) one or more general partners; and
647 (ii) one or more limited partners.
- 648 (6) "General partner" means a person who ~~has been~~ is:
649 (a) admitted to a limited partnership as a general partner in accordance with the
650 partnership agreement; and
651 (b) named in the certificate of limited partnership as a general partner.
- 652 (7) "Limited partner" means a person who ~~has been~~ is admitted to a limited
653 partnership as a limited partner in accordance with the partnership agreement.
- 654 (8) "Limited partnership" and "domestic limited partnership" mean a partnership;
655 (a) formed by two or more persons under the laws of this state; and
656 (b) having:
657 (i) one or more general partners; and
658 (ii) one or more limited partners.
- 659 (9) "Partner" means a limited or a general partner.
- 660 (10) "Partnership agreement" means ~~any~~ a valid agreement, written or oral, of the
661 partners as to the affairs of a limited partnership and the conduct of its business.
- 662 (11) "Partnership interest" means:
663 (a) a partner's share of the profits and losses of a limited partnership; and
664 (b) the right to receive distributions of partnership assets.
- 665 (12) "Person" means an individual, general partnership, limited partnership, limited
666 association, domestic or foreign trust, estate, association, or corporation.
- 667 (13) "State" means a state, territory, or possession of the United States, the District of
668 Columbia, or the Commonwealth of Puerto Rico.
- 669 (14) "Subject entity" means a corporation, business trust or association, a real estate
670 investment trust, a common-law trust, or ~~any other~~ another unincorporated business, including
671 a limited liability company, a general partnership, a registered limited liability partnership, or a
672 foreign limited partnership.
- 673 (15) "Tribe" means a tribe, band, nation, pueblo, or other organized group or

674 community of Indians, including an Alaska Native village, that is legally recognized as eligible
675 for and is consistent with a special program, service, or entitlement provided by the United
676 States to Indians because of their status as Indians.

677 (16) "Tribal limited partnership" means a limited partnership:

678 (a) formed under the law of a tribe; and

679 (b) that is at least 51% owned or controlled by the tribe.

680 Section 9. Section **48-2a-902** is amended to read:

681 **48-2a-902. Registration.**

682 (1) (a) Before transacting business in this state, a foreign limited partnership shall
683 register with the division. [~~In order to~~]

684 (b) To register, a foreign limited partnership shall submit to the division [~~on forms~~] in a
685 form provided by the division;

686 (i) a certificate of good standing or similar evidence of its organization and existence
687 under the laws of the state in which [~~it was formed, together with one~~] the foreign limited
688 partnership is formed; and

689 (ii) an original and one copy of an application for registration as a foreign limited
690 partnership, signed under penalty of perjury by a general partner and setting forth:

691 [~~(a)~~] (A) the name of the foreign limited partnership and, if that name is not available in
692 this state, the name under which it proposes to register and transact business in this state;

693 [~~(b)~~] (B) the state and date of its formation;

694 [~~(c)~~] (C) the name and street address of an agent for service of process on the foreign
695 limited partnership whom the foreign limited partnership elects to appoint[;], except that the
696 agent must be:

697 (I) an individual resident of this state[;];

698 (II) a domestic corporation[;]; or

699 (III) a foreign corporation having a place of business in and authorized to do business in
700 this state;

701 [~~(d)~~] (D) a statement that the director of the division is appointed the agent of the

702 foreign limited partnership for service of process if:

703 (I) the agent [~~has resigned;~~] resigns;

704 (II) the agent's authority [~~has been~~] is revoked[;]; or

705 (III) the agent cannot be found or served with the exercise of reasonable diligence;

706 [~~(E)~~] (I) the street address of the office required to be maintained in the state of its
707 organization by the laws of that state; or[;]

708 (II) if not [~~so~~] required to maintain the office, of the principal office of the foreign
709 limited partnership;

710 [~~(F)~~] (F) the name and business address of each general partner; and

711 [~~(G)~~] (G) the street address of the office at which is kept a list of the names and
712 addresses of the limited partners and their capital contributions, together with an undertaking by
713 the foreign limited partnership to keep those records until the foreign limited partnership's
714 registration in this state is canceled or withdrawn.

715 (2) Without excluding other activities [~~which~~] that may not constitute transacting
716 business in this state, a foreign limited partnership [~~shall not be~~] is not considered to be
717 transacting business in this state, for the purposes of this chapter, by reason of carrying on in
718 this state any one or more of the following activities:

719 (a) (i) maintaining or defending any action or suit or any administrative or arbitration
720 proceeding [~~or~~];

721 (ii) effecting the settlement [~~thereof~~] of an action or proceeding; or

722 (iii) effecting the settlement of [~~claims or disputes~~] a claim or dispute;

723 (b) holding [~~meetings~~] a meeting of its general partners or limited partners or carrying
724 on [~~other activities~~] another activity concerning its internal affairs;

725 (c) maintaining a bank [~~accounts~~] account;

726 (d) (i) maintaining [~~offices or agencies~~] an office or agency for the transfer, exchange,
727 and registration of its securities[;]; or

728 (ii) appointing and maintaining [~~trustees or depositaries~~] a trustee or depository with
729 relation to its securities;

- 730 (e) effecting sales through an independent [~~contractors~~] contractor;
- 731 (f) soliciting or procuring [~~orders~~] an order, whether by mail or through [~~employees or~~
732 ~~agents~~] an employee, agent, or otherwise, [~~where such orders require~~] if the order requires
733 acceptance without this state before becoming a binding [~~contracts~~] contract;
- 734 (g) creating evidences of debt, mortgages, or liens on real or personal property;
- 735 (h) securing or collecting [~~debts~~] a debt or enforcing [~~any rights~~] a right in property
736 securing [~~the same~~] the property;
- 737 (i) transacting [~~any~~] business in interstate commerce;
- 738 (j) conducting an isolated transaction completed within a period of 30 days and not in
739 the course of a number of repeated transactions of like nature; or
- 740 (k) (i) acquiring, in [~~transactions~~] a transaction outside this state or in interstate
741 commerce, of conditional sale contracts or of debts secured by mortgages or liens on real or
742 personal property in this state[;];
- 743 (ii) collecting or adjusting of principal and interest payments [~~thereon,~~] on the
744 conditional sale contract or debt described in Subsection (2)(k)(i);
- 745 (iii) enforcing or adjusting [~~any rights~~] a right in property provided for in the conditional
746 sale [~~contracts~~] contract or securing the [~~debts,~~] debt; or
- 747 (iv) taking [~~any actions~~] an action necessary to preserve and protect the interest of the
748 conditional vendor in the property covered by the conditional sales [~~contracts~~] contract or the
749 interest of the mortgagee or holder of the lien in the security, or any combination of [~~such~~] the
750 one or more transactions.
- 751 (3) (a) The division may permit a tribal limited partnership to register with the division
752 in the same manner as a foreign limited partnership formed in another state.
- 753 (b) If a tribal limited partnership elects to register with the division, for purposes of this
754 chapter, the tribal limited partnership shall be treated in the same manner as a foreign limited
755 partnership formed under the laws of another state.
- 756 Section 10. Section **48-2c-102** is amended to read:
- 757 **48-2c-102. Definitions.**

758 As used in this chapter:

759 (1) "Bankruptcy" includes bankruptcy under federal bankruptcy law or under Utah
760 insolvency law.

761 (2) "Business" includes ~~any~~ a lawful trade, occupation, profession, business,
762 investment, or other purpose or activity, whether or not that trade, occupation, profession,
763 business, investment, purpose, or activity is carried on for profit.

764 (3) "Capital account," unless otherwise provided in the operating agreement, means the
765 account, as adjusted from time to time, maintained by the company for each member to reflect:

766 (a) the value of all contributions by that member;

767 (b) the amount of all distributions to that member or the member's assignee;

768 (c) the member's share of profits, gains, and losses of the company; and

769 (d) the member's share of the net assets of the company upon dissolution and winding
770 up that are distributable to the member or the member's assignee.

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

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

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

777 (i) an interest in the company; or

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

780 (b) "Distribution" does not include amounts constituting:

781 (i) reasonable compensation for present or past services; or

782 (ii) reasonable payments made in the ordinary course of business pursuant to a bona fide
783 retirement plan or other benefits program.

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

- 786 (8) "Entity" includes:
- 787 (a) a domestic or foreign corporation;
- 788 (b) a domestic or foreign nonprofit corporation;
- 789 (c) a company or foreign company;
- 790 (d) a profit or nonprofit unincorporated association;
- 791 (e) a business trust;
- 792 (f) an estate;
- 793 (g) a general partnership or a domestic or foreign limited partnership;
- 794 (h) a trust;
- 795 (i) a state;
- 796 (j) the United States; or
- 797 (k) a foreign government.
- 798 (9) (a) "Filed with the division" means that a statement, document, or report:
- 799 (i) complies with the requirements of Section 48-2c-207; and
- 800 (ii) ~~has been~~ is accepted for filing by the division.
- 801 (b) "Filed with the division" includes filing by electronic means approved by the
- 802 division.
- 803 (10) "Foreign company" means a limited liability company organized under a law other
- 804 than the laws of this state.
- 805 (11) "Interest in the company" means a member's economic rights in the company
- 806 including the right to receive:
- 807 (a) ~~[the right to receive distributions]~~ a distribution from the company; and
- 808 (b) ~~[the right to receive]~~ a portion of the net assets of the company upon dissolution
- 809 and winding up of the company.
- 810 (12) "Manager" means a person elected or otherwise designated by the members to
- 811 manage a manager-managed company pursuant to Part 8, Management.
- 812 (13) "Manager-managed company" means a company whose management is vested in
- 813 managers pursuant to Part 8, Management.

814 (14) "Member" means a person with:

815 (a) an ownership interest in a company; and ~~with~~

816 (b) the rights and obligations specified under this chapter.

817 (15) "Member-managed company" means a company whose management is vested in its
818 members pursuant to Part 8, Management.

819 (16) (a) "Operating agreement" means ~~any~~ a written agreement of the members:

820 (i) concerning the business or purpose of the company and the conduct of its affairs;

821 and

822 (ii) which complies with Part 5, Operating Agreements.

823 (b) "Operating agreement" includes ~~any~~ a written ~~amendments~~ amendment agreed to
824 by all members or other writing adopted in any other manner as may be provided in the
825 operating agreement.

826 (17) "Person" means an individual or entity.

827 (18) "Proceeding" means ~~any~~ an administrative, judicial or other trial, hearing, or
828 other action, whether civil, criminal, or investigative, the result of which may be that a court,
829 arbitrator, or governmental agency may enter a judgment, order, decree, or other determination
830 which, if not appealed or reversed, would be binding upon any person subject to the jurisdiction
831 of that court, arbitrator, or governmental agency.

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

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

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

837 (22) "Signed," "signs," or "signature" means:

838 (a) a manual signature or authorized facsimile of the signature; or

839 (b) ~~any~~ an electronic signature approved by the division.

840 (23) "State" means:

841 (a) a state, territory, or possession of the United States;

842 (b) the District of Columbia; or

843 (c) the Commonwealth of Puerto Rico.

844 (24) "Tribe" means a tribe, band, nation, pueblo, or other organized group or
845 community of Indians, including an Alaska Native village, that is legally recognized as eligible
846 for and is consistent with a special program, service, or entitlement provided by the United
847 States to Indians because of their status as Indians.

848 (25) "Tribal limited liability company" means a limited liability company:

849 (a) formed under the law of a tribe; and

850 (b) that is at least 51% owned or controlled by the tribe.

851 Section 11. Section **48-2c-1604** is amended to read:

852 **48-2c-1604. Application for authority to transact business.**

853 (1) A foreign company may apply for authority to transact business in this state by
854 delivering to the division for filing an application for authority to transact business setting forth:

855 (a) its name and its assumed name, if any;

856 (b) the name of the state or country under whose law it is formed or organized;

857 (c) the nature of the business or purposes to be conducted or promoted in this state;

858 (d) its date of formation or organization and period of its duration;

859 (e) the street address of its principal office;

860 (f) the address of its registered office in this state and the name of its registered agent at
861 that office;

862 (g) (i) the names and street addresses of its current managers, if it is a
863 manager-managed company[;]; or

864 (ii) the names and street addresses of its members, if it is a member-managed company;

865 (h) the date it commenced or expects to commence transacting business in this state;

866 and

867 (i) any additional information the division may determine is necessary or appropriate to
868 determine whether the application for authority to transact business should be filed.

869 (2) The foreign company shall deliver with the completed application for authority to

870 transact business a certificate of existence, or a document of similar import, duly authorized by
871 the lieutenant governor or other official having custody of records in the state or country under
872 whose law it is formed or organized. The certificate of existence shall be dated within 90 days
873 prior to the filing of the application for authority to transact business by the division.

874 (3) The foreign company shall include in the application for authority to transact
875 business, or in an accompanying document, the written consent to appointment by the
876 designated registered agent in this state.

877 (4) (a) The division may permit a tribal limited liability company to apply for authority
878 to transact business in the state in the same manner as a foreign company formed in another
879 state.

880 (b) If a tribal limited liability company elects to apply for authority to transact business
881 in the state, for purposes of this chapter, the tribal limited liability company shall be treated in
882 the same manner as a foreign company formed under the laws of another state.