

Senator Lyle W. Hillyard proposes the following substitute bill:

CORPORATION AND BUSINESS ENTITY

RELATED AMENDMENTS

2009 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Lyle W. Hillyard

House Sponsor: Fred R Hunsaker

LONG TITLE

General Description:

This bill modifies provisions related to business entities to address corporations and nonprofit corporations.

Highlighted Provisions:

This bill:

- ▶ modifies definitions;
 - ▶ addresses voting by boards of directors of nonprofit corporations;
 - ▶ addresses liability of directors of nonprofit corporations;
 - ▶ establishes the effect of conversions between corporations and nonprofit corporations;
 - ▶ addresses authorized distributions;
 - ▶ addresses conversions between limited liability companies and nonprofit corporations;
 - ▶ addresses affect of administrative dissolutions of nonprofit corporations, corporations, and limited liability companies;
 - ▶ modifies signature requirement for annual reports of limited liability companies;
- and



26 ▶ makes technical changes.

27 **Monies Appropriated in this Bill:**

28 None

29 **Other Special Clauses:**

30 ~~H~~→ [None] This bill has an immediate effective date. ←~~H~~

31 **Utah Code Sections Affected:**

32 AMENDS:

33 **16-6a-102**, as last amended by Laws of Utah 2008, Chapters 249 and 364

34 **16-6a-816**, as last amended by Laws of Utah 2002, Chapter 197

35 **16-6a-823**, as enacted by Laws of Utah 2000, Chapter 300

36 **16-6a-1008**, as last amended by Laws of Utah 2006, Chapter 228

37 **16-6a-1302**, as last amended by Laws of Utah 2007, Chapter 315

38 **16-6a-1411**, as last amended by Laws of Utah 2002, Chapter 197

39 **16-6a-1412**, as last amended by Laws of Utah 2002, Chapter 197

40 **16-6a-1413**, as last amended by Laws of Utah 2008, Chapter 382

41 **16-6a-1516**, as enacted by Laws of Utah 2000, Chapter 300

42 **16-10a-1008.5**, as enacted by Laws of Utah 2000, Chapter 300

43 **16-10a-1421**, as last amended by Laws of Utah 2000, Chapter 131

44 **16-10a-1422**, as last amended by Laws of Utah 2000, Chapter 131

45 **16-10a-1423**, as last amended by Laws of Utah 2008, Chapter 382

46 **16-10a-1531**, as last amended by Laws of Utah 2000, Chapter 131

47 **31A-5-101**, as last amended by Laws of Utah 2003, Chapter 131

48 **31A-9-101**, as last amended by Laws of Utah 2003, Chapter 131

49 **42-2-6.6**, as last amended by Laws of Utah 2006, Chapter 228

50 **48-2c-203**, as last amended by Laws of Utah 2008, Chapter 364

51 **48-2c-1207**, as last amended by Laws of Utah 2008, Chapter 364

52 **48-2c-1208**, as last amended by Laws of Utah 2008, Chapter 364

53 **48-2c-1209**, as last amended by Laws of Utah 2008, Chapter 382

54 **48-2c-1401**, as enacted by Laws of Utah 2001, Chapter 260

55 **48-2c-1613**, as enacted by Laws of Utah 2001, Chapter 260

56

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

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

59 **16-6a-102. Definitions.**

60 As used in this chapter:

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

63 (b) "Address" includes:

64 (i) a post office box number;

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

66 (iii) a street name and number.

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

70 (3) "Articles of incorporation" include:

71 (a) amended articles of incorporation;

72 (b) restated articles of incorporation;

73 (c) articles of merger; and

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

76 (4) "Assumed corporate name" means a name assumed for use in this state:

77 (a) by a:

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

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

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

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

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

87 (6) (a) "Bylaws" means the one or more codes of rules, other than the articles of

88 incorporation, adopted pursuant to this chapter for the regulation or management of the affairs
89 of a domestic or foreign nonprofit corporation irrespective of the one or more names by which
90 the codes of rules are designated.

91 (b) "Bylaws" includes:

92 (i) amended bylaws; and

93 (ii) restated bylaws.

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

95 (i) legal tender;

96 (ii) a negotiable instrument; or

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

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

99 (8) (a) "Class" means a group of memberships that has the same right with respect to
100 voting, dissolution, redemption, transfer, or other characteristics.

101 (b) For purposes of Subsection (8)(a), a right is considered the same if it is determined
102 by a formula applied uniformly to a group of memberships.

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

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

106 (i) italics;

107 (ii) boldface;

108 (iii) contrasting color;

109 (iv) capitals; or

110 (v) underlining.

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

113 (a) the ownership of voting shares;

114 (b) contract; or

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

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

118 (12) "Corporate name" means:

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

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

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

124 (i) articles of incorporation; or

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

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

128 (i) articles of incorporation; or

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

130 (13) "Corporation" or "domestic corporation" means a corporation for profit that:

131 (a) is not a foreign corporation; and

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

134 (14) "Delegate" means a 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 or another means of transmission authorized
139 by Section 16-6a-103, except that delivery to the division means actual receipt by the division.

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

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

143 (i) members;

144 (ii) directors; or

145 (iii) officers.

146 (b) "Distribution" does not include a fair-value payment for:

147 (i) a good sold; or

148 (ii) a service received.

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

150 (19) "Effective date," when referring to a document filed by the division, means the
151 time and date determined in accordance with Section 16-6a-108.

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

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

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

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

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

161 (23) "Entity" includes:

162 (a) a domestic or foreign corporation;

163 (b) a domestic or foreign nonprofit corporation;

164 (c) a limited liability company;

165 (d) a profit or nonprofit unincorporated association;

166 (e) a business trust;

167 (f) an estate;

168 (g) a partnership;

169 (h) a trust;

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

171 (j) a state;

172 (k) the United States; or

173 (l) a foreign government.

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

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

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

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

179 (26) "Governmental entity" means:

180 (a) (i) the executive branch of the state;

- 181 (ii) the judicial branch of the state;
- 182 (iii) the legislative branch of the state;
- 183 (iv) an independent entity as defined in Section 63E-1-102;
- 184 (v) a political subdivision of the state;
- 185 (vi) a state institution of higher education, as defined in Section 53B-3-102;
- 186 (vii) an entity within the state system of public education; or
- 187 (viii) the National Guard; or
- 188 (b) any of the following that is established or controlled by a governmental entity listed

189 in Subsection (26)(a) to carry out the public's business:

- 190 (i) an office;
- 191 (ii) a division;
- 192 (iii) an agency;
- 193 (iv) a board;
- 194 (v) a bureau;
- 195 (vi) a committee;
- 196 (vii) a department;
- 197 (viii) an advisory board;
- 198 (ix) an administrative unit; or
- 199 (x) a commission.

200 [~~(26)~~] (27) "Governmental subdivision" means:

- 201 (a) a county;
- 202 (b) a city;
- 203 (c) a town; or
- 204 (d) another type of governmental subdivision authorized by the laws of this state.

205 [~~(27)~~] (28) "Individual" means:

- 206 (a) a natural person;
- 207 (b) the estate of an incompetent individual; or
- 208 (c) the estate of a deceased individual.

209 [~~(28)~~] (29) "Internal Revenue Code" means the federal "Internal Revenue Code of
210 1986," as amended from time to time, or to corresponding provisions of subsequent internal
211 revenue laws of the United States of America.

212 [~~29~~] (30) (a) "Mail," "mailed," or "mailing" means deposit, deposited, or depositing
213 in the United States mail, properly addressed, first-class postage prepaid.

214 (b) "Mail," "mailed," or "mailing" includes registered or certified mail for which the
215 proper fee is paid.

216 [~~30~~] (31) (a) "Member" means one or more persons identified or otherwise appointed
217 as a member of a domestic or foreign nonprofit corporation as provided:

218 (i) in the articles of incorporation;

219 (ii) in the bylaws;

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

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

222 (b) "Member" includes "voting member."

223 [~~31~~] (32) "Membership" refers to the rights and obligations of a member or members.

224 [~~32~~] (33) "Mutual benefit corporation" means a nonprofit corporation:

225 (a) that issues shares of stock to its members evidencing a right to receive distribution
226 of water or otherwise representing property rights; or

227 (b) all of whose assets are contributed or acquired by or for the members of the
228 nonprofit corporation or their predecessors in interest to serve the mutual purposes of the
229 members.

230 [~~33~~] (34) "Nonprofit corporation" or "domestic nonprofit corporation" means an
231 entity that:

232 (a) is not a foreign nonprofit corporation; and

233 (b) is incorporated under or subject to this chapter.

234 [~~34~~] (35) "Notice" is as provided in Section 16-6a-103.

235 [~~35~~] (36) "Party related to a director" means:

236 (a) the spouse of the director;

237 (b) a child of the director;

238 (c) a grandchild of the director;

239 (d) a sibling of the director;

240 (e) a parent of the director;

241 (f) the spouse of an individual described in Subsections [~~35~~] (36)(b) through (e);

242 (g) an individual having the same home as the director;

243 (h) a trust or estate of which the director or another individual specified in this
244 Subsection [~~(35)~~] (36) is a substantial beneficiary; or
245 (i) any of the following of which the director is a fiduciary:
246 (i) a trust;
247 (ii) an estate;
248 (iii) an incompetent;
249 (iv) a conservatee; or
250 (v) a minor.
251 [~~(36)~~] (37) "Person" means an:
252 (a) individual; or
253 (b) entity.
254 [~~(37)~~] (38) "Principal office" means:
255 (a) the office, in or out of this state, designated by a domestic or foreign nonprofit
256 corporation as its principal office in the most recent document on file with the division
257 providing that information, including:
258 (i) an annual report;
259 (ii) an application for a certificate of authority; or
260 (iii) a notice of change of principal office; or
261 (b) if no principal office can be determined, a domestic or foreign nonprofit
262 corporation's registered office.
263 [~~(38)~~] (39) "Proceeding" includes:
264 (a) a civil suit;
265 (b) arbitration;
266 (c) mediation;
267 (d) a criminal action;
268 (e) an administrative action; or
269 (f) an investigatory action.
270 [~~(39)~~] (40) "Receive," when used in reference to receipt of a writing or other document
271 by a domestic or foreign nonprofit corporation, means the writing or other document is actually
272 received:
273 (a) by the domestic or foreign nonprofit corporation at:

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

275 (ii) its principal office;

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

278 (c) by another person authorized by the bylaws or the board of directors to receive the
279 writing or other document, wherever that person is found.

280 [~~40~~] (41) (a) "Record date" means the date established under Part 6, Members, or Part
281 7, Member Meetings and Voting, on which a nonprofit corporation determines the identity of
282 the nonprofit corporation's members.

283 (b) The determination described in Subsection [~~40~~] (41)(a) shall be made as of the
284 close of business on the record date unless another time for doing so is specified when the
285 record date is fixed.

286 [~~41~~] (42) "Registered agent" means the registered agent of:

287 (a) a domestic nonprofit corporation; or

288 (b) a foreign nonprofit corporation.

289 [~~42~~] (43) "Registered office" means the office within this state designated by a
290 domestic or foreign nonprofit corporation as its registered office in the most recent document
291 on file with the division providing that information, including:

292 (a) articles of incorporation;

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

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

295 [~~43~~] (44) "Secretary" means the corporate officer to whom the bylaws or the board of
296 directors delegates responsibility under Subsection 16-6a-818(3) for:

297 (a) the preparation and maintenance of:

298 (i) minutes of the meetings of:

299 (A) the board of directors; or

300 (B) the members; and

301 (ii) the other records and information required to be kept by the nonprofit corporation
302 pursuant to Section 16-6a-1601; and

303 (b) authenticating records of the nonprofit corporation.

304 [~~44~~] (45) "Shareholder" means a person in whose name a share is registered in the

305 records of a nonprofit corporation.

306 [~~(45)~~] (46) "Share" means a unit of interest in a nonprofit corporation.

307 [~~(46)~~] (47) "State," when referring to a part of the United States, includes:

308 (a) a state;

309 (b) a commonwealth;

310 (c) the District of Columbia;

311 (d) an agency or governmental and political subdivision of a state, commonwealth, or

312 District of Columbia;

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

314 (f) an agency or governmental and political subdivision of a territory or insular

315 possession of the United States.

316 [~~(47)~~] (48) "Street address" means:

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

318 (ii) city or town; and

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

320 (b) if, by reason of rural location or otherwise, a street name, number, city, or town

321 does not exist, an appropriate description other than that described in Subsection [~~(47)~~] (48)(a)

322 fixing as nearly as possible the actual physical location, but only if the information includes:

323 (i) the rural free delivery route;

324 (ii) the county; and

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

326 [~~(48)~~] (49) "Tribe" means a tribe, band, nation, pueblo, or other organized group or

327 community of Indians, including an Alaska Native village, that is legally recognized as eligible

328 for and is consistent with a special program, service, or entitlement provided by the United

329 States to Indians because of their status as Indians.

330 [~~(49)~~] (50) "Tribal nonprofit corporation" means a nonprofit corporation:

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

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

333 [~~(50)~~] (51) "United States" includes a district, authority, office, bureau, commission,

334 department, and another agency of the United States of America.

335 [~~(51)~~] (52) "Vote" includes authorization by:

336 (a) written ballot; and

337 (b) written consent.

338 [~~52~~] (53) (a) "Voting group" means all the members of one or more classes of
339 members or directors that, under this chapter, the articles of incorporation, or the bylaws, are
340 entitled to vote and be counted together collectively on a matter.

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

343 [~~53~~] (54) (a) "Voting member" means a person entitled to vote for all matters
344 required or permitted under this chapter to be submitted to a vote of the members, except as
345 otherwise provided in the articles of incorporation or bylaws.

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

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

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

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

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

352 Section 2. Section **16-6a-816** is amended to read:

353 **16-6a-816. Quorum and voting.**

354 (1) Unless a greater or lesser number is required by the bylaws, a quorum of a board of
355 directors consists of a majority of the number of directors in office immediately before the
356 meeting begins.

357 (2) The bylaws may authorize a quorum of a board of directors to consist of:

358 (a) no fewer than [~~1/3~~];

359 (i) one-third of the number of directors fixed if the nonprofit corporation has a fixed
360 board size; [~~or~~] and

361 (ii) no fewer than two directors in all circumstances;

362 (b) if a range for the size of the board is established pursuant to Subsection
363 16-6a-803(2), no fewer than [~~1/3~~] one-third of the number of directors:

364 (i) fixed in accordance with Subsection 16-6a-803(2); or

365 (ii) in office immediately before the meeting begins, if no number is fixed in
366 accordance with Subsection 16-6a-803(2).

367 (3) If a quorum is present when a vote is taken, the affirmative vote of a majority of
368 directors present is the act of the board of directors unless the vote of a greater number of
369 directors is required by this chapter or the bylaws.

370 (4) (a) If provided in the bylaws, for purposes of determining a quorum with respect to
371 a particular proposal, and for purposes of casting a vote for or against a particular proposal, a
372 director may be considered to be present at a meeting and to vote if the director has granted a
373 signed written proxy:

374 (i) to another director who is present at the meeting; and

375 (ii) authorizing the other director to cast the vote that is directed to be cast by the
376 written proxy with respect to the particular proposal that is described with reasonable
377 specificity in the proxy.

378 (b) Except as provided in this Subsection (4) and as permitted by Section 16-6a-813,
379 directors may not vote or otherwise act by proxy.

380 (c) Notwithstanding Subsection (4)(a), a director may grant a proxy to a person who is
381 not a director if:

382 (i) permitted by the bylaws; and

383 (ii) the proxy meets all other requirements of Subsection (4)(a).

384 (5) A director who is present at a meeting of the board of directors when corporate
385 action is taken is considered to have assented to all action taken at the meeting unless:

386 (a) (i) the director objects at the beginning of the meeting, or promptly upon the
387 director's arrival, to holding the meeting or transacting business at the meeting; and

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

390 (b) the director contemporaneously requests that the director's dissent or abstention as
391 to any specific action taken be entered in the minutes of the meeting; or

392 (c) the director causes written notice of the director's dissent or abstention as to any
393 specific action to be received by:

394 (i) the presiding officer of the meeting before adjournment of the meeting; or

395 (ii) the nonprofit corporation promptly after adjournment of the meeting.

396 (6) The right of dissent or abstention pursuant to Subsection (5) as to a specific action
397 is not available to a director who votes in favor of the action taken.

398 Section 3. Section **16-6a-823** is amended to read:

399 **16-6a-823. Limitation of liability of directors.**

400 (1) (a) Except as provided in Subsection (1)(b) [~~and without limiting the generality of~~
401 ~~Subsection 16-6a-822(6)~~], a nonprofit corporation may eliminate or limit the liability of a
402 director to the nonprofit corporation or to its members for monetary damages for any action
403 taken or any failure to take any action as a director, if:

404 (i) so provided in:

405 (A) the articles of incorporation;

406 (B) the bylaws; or

407 (C) a resolution; and

408 (ii) to the extent permitted in Subsection (3).

409 (b) Subsection (1)(a) does not permit a nonprofit corporation from eliminating or
410 limiting the liability of a director for:

411 (i) the amount of a financial benefit received by a director to which the director is not
412 entitled;

413 (ii) an intentional infliction of harm on:

414 (A) the nonprofit corporation; or

415 (B) the members of a nonprofit corporation;

416 (iii) an intentional violation of criminal law; or

417 (iv) a violation of Section 16-6a-824.

418 (2) A provision authorized under this section may not eliminate or limit the liability of
419 a director for any act or omission occurring prior to the date when the provision becomes
420 effective.

421 (3) Any provision authorized under this section to be included in the articles of
422 incorporation may be adopted in the bylaws or by resolution, but only if the provision is
423 approved by the same percentage of members of each voting group as would be required to
424 approve an amendment to the articles of incorporation including the provision.

425 (4) Any foreign nonprofit corporation authorized to transact business in this state,
426 except as otherwise provided by law, may adopt any provision authorized under this section.

427 Section 4. Section **16-6a-1008** is amended to read:

428 **16-6a-1008. Conversion to a corporation.**

429 (1) (a) A domestic nonprofit corporation may convert to a corporation subject to Title
430 16, Chapter 10a, Utah Revised Business Corporation Act, by filing an amendment of its articles
431 of incorporation with the division pursuant to this section.

432 (b) The day on which a nonprofit domestic corporation files an amendment under this
433 section, the domestic nonprofit corporation becomes a corporation subject to Title 16, Chapter
434 10a, Utah Revised Business Corporation Act[-], except that, notwithstanding Section
435 16-10a-203, the existence of the nonprofit corporation is considered to commence on the day
436 on which the converting corporation:

437 (i) commenced its existence under this chapter; or

438 (ii) otherwise was created, formed, incorporated, or came into being.

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

440 (a) revise the statement of purpose;

441 (b) delete:

442 (i) the authorization for members; and

443 (ii) any other provisions relating to memberships;

444 (c) authorize shares:

445 (i) stating the number of shares; and

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

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

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

450 (i) the cancellation of the memberships; or

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

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

455 (4) If an amendment to the articles of incorporation filed pursuant to this section is
456 included in a merger agreement, this section applies, except that any provisions for cancellation
457 or conversion of memberships:

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

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

460 (5) A conversion under this section may not result in a violation, directly or indirectly,
461 of:

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

463 (b) any other provision of this chapter.

464 (6) The conversion of a nonprofit corporation into a corporation does not affect:

465 (a) an obligation or liability of the converting nonprofit corporation incurred before its
466 conversion to a corporation; or

467 (b) the personal liability of any person incurred before the conversion.

468 (7) (a) (i) When a conversion is effective under this section, for purposes of the laws of
469 this state, the things listed in Subsection (7)(a)(ii):

470 (A) vest in the corporation to which the nonprofit corporation converts;

471 (B) are the property of the corporation; and

472 (C) are not considered transferred by the converting nonprofit corporation to the
473 corporation by operation of this Subsection (7)(a).

474 (ii) This Subsection (7)(a) applies to the following of the converting nonprofit
475 corporation:

476 (A) its rights, privileges, and powers;

477 (B) its interests in property, whether real, personal, or mixed;

478 (C) debts due to the converting nonprofit corporation;

479 (D) the debts, liabilities, and duties of the converting nonprofit corporation;

480 (E) the rights and obligations under contract of the converting nonprofit corporation;

481 and

482 (F) other things and causes of action belonging to the converting nonprofit corporation.

483 (b) The title to any real property vested by deed or otherwise in a nonprofit corporation
484 converting to a corporation does not revert and is not in any way impaired by reason of this
485 chapter or of the conversion.

486 (c) A right of a creditor or a lien on property of a converting nonprofit corporation that
487 is described in Subsection (6)(a) or (b) is preserved unimpaired.

488 (d) A debt, liability, or duty of a converting nonprofit corporation:

489 (i) remains attached to the corporation to which the nonprofit corporation converts; and

490 (ii) may be enforced against the corporation to the same extent as if the debts,

491 liabilities, and duties had been incurred or contracted by the corporation in its capacity as a
492 corporation.

493 (e) A converted nonprofit corporation upon conversion to a corporation pursuant to this
494 section is considered the same entity as the corporation.

495 (f) In connection with a conversion of a nonprofit corporation to a corporation under
496 this section, the interests or rights in the nonprofit corporation which is to be converted may be
497 exchanged or converted into one or more of the following:

498 (i) cash, property, interests, or rights in the corporation to which it is converted; or

499 (ii) cash, property or interests in, or rights in another entity.

500 (g) Unless otherwise agreed:

501 (i) a converting nonprofit corporation is not required solely as a result of the
502 conversion to:

503 (A) wind up its affairs;

504 (B) pay its liabilities; or

505 (C) distribute its assets; and

506 (ii) a conversion is not considered to constitute a dissolution of the nonprofit
507 corporation, but constitutes a continuation of the existence of the nonprofit corporation in the
508 form of a corporation.

509 Section 5. Section **16-6a-1302** is amended to read:

510 **16-6a-1302. Authorized distributions.**

511 (1) A nonprofit corporation may:

512 (a) make distributions or distribute the nonprofit corporation's assets to a member:

513 (i) that is a domestic or foreign nonprofit corporation; [~~or~~]

514 (ii) of a mutual benefit corporation, not inconsistent with its bylaws; or

515 (iii) that is a governmental entity;

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

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

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

521 (2) A nonprofit corporation may make distributions upon dissolution as follows:

- 522 (a) to a member that is a domestic or foreign nonprofit corporation;
- 523 (b) to its members if it is a mutual benefit corporation;
- 524 (c) to another nonprofit corporation, including a nonprofit corporation organized to
- 525 receive the assets of and function in place of the dissolved nonprofit corporation; and
- 526 (d) otherwise in conformity to this chapter.

527 (3) A mutual benefit corporation may purchase a member's membership in conformity
528 with Section 16-6a-610 if, after the purchase is completed:

- 529 (a) the mutual benefit corporation would be able to pay its debts as they become due in
- 530 the usual course of its activities; and
- 531 (b) the mutual benefit corporation's total assets would at least equal the sum of its total
- 532 liabilities.

533 (4) Authorized distributions by a dissolved nonprofit corporation may be made by
534 authorized officers or directors, including those elected, hired, or otherwise selected after
535 dissolution if the election, hiring, or other selection after dissolution is not inconsistent with the
536 articles of incorporation and bylaws existing at the time of dissolution.

537 Section 6. Section **16-6a-1411** is amended to read:

538 **16-6a-1411. Procedure for and effect of administrative dissolution.**

539 (1) If the division determines that one or more grounds exist under Section 16-6a-1410
540 for dissolving a nonprofit corporation, the division shall mail to the nonprofit corporation
541 written notice of the determination, stating the one or more grounds for administrative
542 dissolution.

543 (2) (a) If the nonprofit corporation does not correct each ground for dissolution, or
544 demonstrate to the reasonable satisfaction of the division that each ground determined by the
545 division does not exist, within 60 days after mailing of the notice contemplated in Subsection
546 (1), the division shall administratively dissolve the nonprofit corporation.

547 (b) If a nonprofit corporation is dissolved under Subsection (2)(a), the division shall
548 mail written notice of the administrative dissolution to the dissolved nonprofit corporation
549 stating the date of dissolution specified in Subsection (2)(d).

550 (c) The division shall mail written notice of the administrative dissolution to:

- 551 (i) the last registered agent of the dissolved nonprofit corporation; or
- 552 (ii) if there is no registered agent of record, at least one officer of the nonprofit

553 corporation.

554 (d) A nonprofit corporation's date of dissolution is five days after the date the division
555 mails written notice of dissolution under Subsection (2)(b).

556 (3) (a) Except as provided in Subsection (3)(b), a nonprofit corporation
557 administratively dissolved continues its corporate existence, but may not carry on any activities
558 except as is appropriate to:

559 (i) wind up and liquidate its affairs under Section 16-6a-1405; and

560 (ii) to give notice to claimants in the manner provided in Sections 16-6a-1406 and
561 16-6a-1407.

562 (b) If the nonprofit corporation is reinstated in accordance with Section 16-6a-1412,
563 business conducted by the nonprofit corporation during a period of administrative dissolution is
564 unaffected by the dissolution.

565 (4) The administrative dissolution of a nonprofit corporation does not terminate the
566 authority of its registered agent.

567 [~~(5)(a) Upon the administrative dissolution of a nonprofit corporation, the division
568 shall be the dissolved nonprofit corporation's agent for service of process.]~~

569 [~~(b) Service of process on the division under this Subsection (5) is service on the
570 dissolved nonprofit corporation.]~~

571 [~~(c) Upon receipt of process, the division shall deliver a copy of the process to the
572 dissolved nonprofit corporation at its principal office.]~~

573 [~~(6)~~] (5) A notice mailed under this section shall be:

574 (a) mailed first class, postage prepaid; and

575 (b) addressed to the most current mailing address appearing on the records of the
576 division for:

577 (i) the registered agent of the nonprofit corporation, if the notice is required to be
578 mailed to the registered agent; or

579 (ii) the officer of the nonprofit corporation that is mailed the notice if the notice is
580 required to be mailed to an officer of the nonprofit corporation.

581 Section 7. Section **16-6a-1412** is amended to read:

582 **16-6a-1412. Reinstatement following administrative dissolution -- Reinstatement**
583 **after voluntary dissolution.**

584 (1) A nonprofit corporation administratively dissolved under Section 16-6a-1411 may
585 apply to the division for reinstatement within two years after the effective date of dissolution by
586 delivering to the division for filing an application for reinstatement that states:

587 (a) the effective date of its administrative dissolution and its corporate name on the
588 effective date of dissolution;

589 (b) that the ground or grounds for dissolution:

590 (i) did not exist; or

591 (ii) have been eliminated;

592 (c) (i) the corporate name under which the nonprofit corporation is being reinstated;

593 and

594 (ii) the corporate name that satisfies the requirements of Section 16-6a-401;

595 (d) that all taxes, fees, or penalties imposed pursuant to this chapter, otherwise owed by
596 the nonprofit corporation to the State Tax Commission, or otherwise imposed by the applicable
597 laws of this state have been paid;

598 (e) the address of its registered office;

599 (f) the name of its registered agent at the office stated in Subsection (1)(e); and

600 (g) the additional information as the division determines is necessary or appropriate.

601 (2) The nonprofit corporation shall include in or with the application for reinstatement:

602 (a) the written consent to appointment by the designated registered agent; and

603 (b) a certificate from the State Tax Commission reciting that all taxes owed by the

604 nonprofit corporation have been paid.

605 (3) (a) The division shall revoke the administrative dissolution if:

606 (i) the division determines that the application for reinstatement contains the
607 information required by Subsections (1) and (2); and

608 (ii) that the information is correct.

609 (b) The division shall mail written notice of the revocation to the nonprofit corporation
610 in the manner provided in Subsection 16-6a-1411[~~(6)~~](5) stating the effective date of the
611 dissolution.

612 (4) When the reinstatement is effective:

613 (a) the reinstatement relates back to and takes effect as of the effective date of the
614 administrative dissolution;

615 (b) the nonprofit corporation may carry on its activities, under the name stated pursuant
616 to Subsection (1)(c), as if the administrative dissolution had never occurred; and

617 (c) an act of the nonprofit corporation during the period of dissolution is effective and
618 enforceable as if the administrative dissolution had never occurred.

619 (5) (a) The division may make rules for the reinstatement of a nonprofit corporation
620 voluntarily dissolved.

621 (b) The rules made under Subsection (5)(a) shall be substantially similar to the
622 requirements of this section for reinstatement of a nonprofit corporation that is administratively
623 dissolved.

624 Section 8. Section **16-6a-1413** is amended to read:

625 **16-6a-1413. Appeal from denial of reinstatement.**

626 (1) If the division denies a nonprofit corporation's application for reinstatement
627 following administrative dissolution under Section 16-6a-1411, the division shall mail to the
628 nonprofit corporation in the manner provided in Subsection 16-6a-1411[~~(6)~~](5) written notice:

629 (a) setting forth the reasons for denying the application; and

630 (b) stating that the nonprofit corporation has the right to appeal the division's
631 determination to the executive director as provided in Subsection (2).

632 (2) If the division denies a nonprofit corporation's application for reinstatement
633 following administrative dissolution, in accordance with Title 63G, Chapter 4, Administrative
634 Procedures Act, the following may appeal the denial to the executive director:

635 (a) the nonprofit corporation for which the reinstatement was requested; or

636 (b) the representative of the nonprofit corporation for which reinstatement was
637 requested.

638 Section 9. Section **16-6a-1516** is amended to read:

639 **16-6a-1516. Procedure for and effect of revocation.**

640 (1) If the division determines that one or more grounds exist under Section 16-6a-1515
641 for revoking the authority of a foreign nonprofit corporation to conduct affairs in this state, the
642 division shall mail to the foreign nonprofit corporation with written notice of the division's
643 determination stating the grounds.

644 (2) (a) If the foreign nonprofit corporation does not correct each ground for revocation
645 or demonstrate to the reasonable satisfaction of the division that each ground determined by the

646 division does not exist, within 60 days after mailing of the notice under Subsection (1), the
647 division shall revoke the foreign nonprofit corporation's authority to conduct affairs in this
648 state.

649 (b) If a foreign nonprofit corporation's authority to conduct affairs in this state is
650 revoked under Subsection (2)(a), the division shall:

651 (i) mail a written notice of the revocation to the foreign nonprofit corporation stating
652 the effective date of the revocation; and

653 (ii) mail a copy of the notice to:

654 (A) the last registered agent of the foreign nonprofit corporation; or

655 (B) if there is no registered agent of record, at least one officer of the corporation.

656 (3) The authority of a foreign nonprofit corporation to conduct affairs in this state
657 ceases on the date shown on the division's certificate revoking the foreign nonprofit
658 corporation's certificate of authority.

659 (4) Revocation of a foreign nonprofit corporation's authority to conduct affairs in this
660 state does not terminate the authority of the registered agent of the foreign nonprofit
661 corporation.

662 ~~[(5) (a) Upon the revocation of a foreign nonprofit corporation's authority to conduct~~
663 ~~affairs in this state, the division becomes an agent for the foreign nonprofit corporation for~~
664 ~~service of process in any proceeding based on a cause of action which arose during the time the~~
665 ~~foreign nonprofit corporation conducted affairs in this state or was authorized to conduct affairs~~
666 ~~in this state.]~~

667 ~~[(b) Service of process on the division under this Subsection (5) is service on the~~
668 ~~foreign nonprofit corporation.]~~

669 ~~[(c) Upon receipt of process, the division shall mail a copy of the process to the foreign~~
670 ~~nonprofit corporation at its principal office, if known.]~~

671 ~~[(6)]~~ (5) A notice mailed under this section shall be:

672 (a) mailed first class, postage prepaid; and

673 (b) addressed to the most current mailing address appearing on the records of the
674 division for:

675 (i) the registered agent of the nonprofit corporation, if the notice is required to be
676 mailed to the registered agent; or

677 (ii) the officer of the nonprofit corporation that is mailed the notice if the notice is
678 required to be mailed to an officer of the nonprofit corporation.

679 Section 10. Section **16-10a-1008.5** is amended to read:

680 **16-10a-1008.5. Conversion to a nonprofit corporation.**

681 (1) (a) A corporation may convert to a nonprofit corporation subject to Title 16,
682 Chapter 6a, Utah Revised Nonprofit Corporation Act, by filing an amendment of its articles of
683 incorporation pursuant to this section.

684 (b) The day on which a corporation files an amendment under this section, the
685 corporation becomes a nonprofit corporation subject to Title 16, Chapter 6a, Utah Revised
686 Nonprofit Corporation Act[-], except that, notwithstanding Section 16-6a-203, the existence of
687 the nonprofit corporation is considered to commence on the day on which the converting
688 corporation:

689 (i) commenced its existence under this chapter; or

690 (ii) otherwise was created, formed, incorporated, or came into being.

691 (2) The amendment of the articles of incorporation to convert to a nonprofit
692 corporation shall:

693 (a) revise the statement of purposes of the corporation;

694 (b) delete:

695 (i) the authorization for shares; and

696 (ii) any provision relating to authorized or issued shares;

697 (c) if any shares have been issued, provide for:

698 (i) the cancellation of issued shares; or

699 (ii) the conversion of the shares to membership interests in the nonprofit corporation;

700 and

701 (d) make such other changes as may be necessary or desired.

702 (3) If the corporation has issued shares, an amendment to convert to a nonprofit
703 corporation shall be approved by all of the outstanding shares of all classes of shares regardless
704 of limitations or restrictions on the voting rights of the shares.

705 (4) If an amendment pursuant to this section is included in a merger agreement, this
706 section applies, except that any provision for the cancellation or conversion of shares shall be
707 set forth in the merger agreement and not in the amendment of the articles of incorporation.

708 (5) The conversion of a corporation into a nonprofit corporation does not affect:
709 (a) an obligation or liability of the converting corporation incurred before its
710 conversion to a nonprofit corporation; or
711 (b) the personal liability of any person incurred before the conversion.
712 (6) (a) (i) When a conversion is effective under this section, for purposes of the laws of
713 this state, the things listed in Subsection (6)(a)(ii):
714 (A) vest in the nonprofit corporation to which the corporation converts;
715 (B) are the property of the nonprofit corporation; and
716 (C) are not considered transferred by the converting corporation to the nonprofit
717 corporation by operation of this Subsection (6)(a).
718 (ii) This Subsection (6)(a) applies to the following of the converting corporation:
719 (A) its rights, privileges, and powers;
720 (B) its interests in property, whether real, personal, or mixed;
721 (C) debts due to the converting corporation;
722 (D) debts, liabilities, and duties of the converting corporation;
723 (E) rights and obligations under contract of the converting corporation; and
724 (F) other things and causes of action belonging to the converting corporation.
725 (b) The title to any real property vested by deed or otherwise in a corporation
726 converting to a nonprofit corporation does not revert and is not in any way impaired by reason
727 of this chapter or of the conversion.
728 (c) A right of a creditor or a lien on property of a converting corporation that is
729 described in Subsection (6)(a) or (b) is preserved unimpaired.
730 (d) A debt, liability, or duty of a converting corporation:
731 (i) remains attached to the nonprofit corporation to which the corporation converts; and
732 (ii) may be enforced against the nonprofit corporation to the same extent as if the debts,
733 liabilities, and duties had been incurred or contracted by the nonprofit corporation in its
734 capacity as a nonprofit corporation.
735 (e) A converted corporation upon conversion to a nonprofit corporation pursuant to this
736 section is considered the same entity as the nonprofit corporation.
737 (f) In connection with a conversion of a corporation to a nonprofit corporation under
738 this section, the interests or rights in the corporation which is to be converted may be

739 exchanged or converted into one or more of the following:

740 (i) cash, property, interests, or rights in the nonprofit corporation to which it is

741 converted; or

742 (ii) cash, property or interests in, or rights in another entity.

743 (g) Unless otherwise agreed:

744 (i) a converting corporation is not required solely as a result of the conversion to:

745 (A) wind up its affairs;

746 (B) pay its liabilities; or

747 (C) distribute its assets; and

748 (ii) a conversion is not considered to constitute a dissolution of the corporation, but

749 constitutes a continuation of the existence of the corporation in the form of a nonprofit

750 corporation.

751 Section 11. Section **16-10a-1421** is amended to read:

752 **16-10a-1421. Procedure for and effect of administrative dissolution.**

753 (1) If the division determines that one or more grounds exist under Section

754 16-10a-1420 for dissolving a corporation, it shall mail the corporation written notice of:

755 (a) the division's determination that one or more grounds exist for dissolving; and

756 (b) the grounds for dissolving the corporation.

757 (2) (a) If the corporation does not correct each ground for dissolution, or demonstrate

758 to the reasonable satisfaction of the division that each ground does not exist, within 60 days

759 after mailing the notice provided by Subsection (1), the division shall administratively dissolve

760 the corporation.

761 (b) If a corporation is dissolved under Subsection (2)(a), the division shall mail written

762 notice of the administrative dissolution to the dissolved corporation, stating the date of

763 dissolution specified in Subsection (2)(d).

764 (c) The division shall mail a copy of the notice of administrative dissolution to:

765 (i) the last registered agent of the dissolved corporation; or

766 (ii) if there is no registered agent of record, at least one officer of the corporation.

767 (d) A corporation's date of dissolution is five days after the date the division mails the

768 written notice of dissolution under Subsection (2)(b).

769 (e) On the date of dissolution, any assumed names filed on behalf of the dissolved

770 corporation under Title 42, Chapter 2, Conducting Business Under [an] Assumed Name, are
771 canceled.

772 (f) Notwithstanding Subsection (2)(e), the name of the corporation that is dissolved and
773 any assumed names filed on its behalf are not available for two years from the date of
774 dissolution for use by any other person:

775 (i) transacting business in this state; or

776 (ii) doing business under an assumed name under Title 42, Chapter 2, Conducting
777 Business Under [an] Assumed Name.

778 (g) Notwithstanding Subsection (2)(e), if the corporation that is dissolved is reinstated
779 in accordance with Section 16-10a-1422, the registration of the name of the corporation and
780 any assumed names filed on its behalf are reinstated back to the date of dissolution.

781 (3) (a) Except as provided in Subsection (3)(b), a corporation administratively dissolved
782 under this section continues its corporate existence, but may not carry on any business except:

783 (i) the business necessary to wind up and liquidate its business and affairs under
784 Section 16-10a-1405; and

785 (ii) to give notice to claimants in the manner provided in Sections 16-10a-1406 and
786 16-10a-1407.

787 (b) If the corporation is reinstated in accordance with Section 16-10a-1422, business
788 conducted by the corporation during a period of administrative dissolution is unaffected by the
789 dissolution.

790 (4) The administrative dissolution of a corporation does not terminate the authority of
791 its registered agent.

792 [~~(5) (a) Upon the administrative dissolution of a corporation, the division shall be an~~
793 ~~agent of the dissolved corporation for purposes of service of process.]~~

794 [~~(b) Service of process on the division under this Subsection (5) is service on the~~
795 ~~dissolved corporation.]~~

796 [~~(c) Upon receipt of process under this Subsection (5), the division shall deliver a copy~~
797 ~~of the process to the dissolved corporation at its principal office.]~~

798 [(6)] (5) A notice mailed under this section shall be:

799 (a) mailed first-class, postage prepaid; and

800 (b) addressed to the most current mailing address appearing on the records of the

801 division for:

802 (i) the registered agent of the corporation, if the notice is required to be mailed to the
803 registered agent; or

804 (ii) the officer of the corporation that is mailed the notice, if the notice is required to be
805 mailed to an officer of the corporation.

806 Section 12. Section **16-10a-1422** is amended to read:

807 **16-10a-1422. Reinstatement following dissolution.**

808 (1) A corporation dissolved under Section 16-10a-1403 or 16-10a-1421 may apply to
809 the division for reinstatement within two years after the effective date of dissolution by
810 delivering to the division for filing an application for reinstatement that states:

811 (a) the effective date of the corporation's dissolution;

812 (b) the corporation's corporate name as of the effective date of dissolution;

813 (c) that the grounds for dissolution either did not exist or have been eliminated;

814 (d) the corporate name under which the corporation is being reinstated;

815 (e) that the name stated in Subsection (1)(d) satisfies the requirements of Section
816 16-10a-401;

817 (f) that all taxes, fees, or penalties imposed pursuant to this chapter, otherwise owed by
818 the corporation to the State Tax Commission, or otherwise imposed by applicable laws of this
819 state have been paid;

820 (g) the address of its registered office in this state;

821 (h) the name of its registered agent at the office stated in Subsection (1)(g); and

822 (i) any additional information the division determines to be necessary or appropriate.

823 (2) The corporation shall include in or with the application for reinstatement:

824 (a) the written consent to appointment by the designated registered agent; and

825 (b) a certificate from the State Tax Commission reciting that all taxes owed by the
826 corporation have been paid.

827 (3) If the division determines that the application for reinstatement contains the
828 information required by Subsections (1) and (2) and that the information is correct, the division
829 shall revoke the administrative dissolution. The division shall mail to the corporation in the
830 manner provided in Subsection 16-10a-1421[~~(6)~~](5) written notice of:

831 (a) the revocation; and

832 (b) the effective date of the revocation.

833 (4) When the reinstatement is effective, it relates back to the effective date of the
834 administrative dissolution. Upon reinstatement:

835 (a) an act of the corporation during the period of dissolution is effective and
836 enforceable as if the administrative dissolution had never occurred; and

837 (b) the corporation may carry on its business, under the name stated pursuant to
838 Subsection (1)(d), as if the administrative dissolution had never occurred.

839 Section 13. Section **16-10a-1423** is amended to read:

840 **16-10a-1423. Appeal from denial of reinstatement.**

841 If the division denies a corporation's application for reinstatement under Section
842 16-10a-1422 following administrative dissolution, the division shall mail to the corporation in
843 the manner provided in Subsection 16-10a-1421~~(6)~~(5) written notice:

844 (1) setting forth the reasons for denying the application; and

845 (2) stating that the corporation has the right to appeal the division's determination to
846 the executive director of the Department of Commerce in accordance with Title 63G, Chapter
847 4, Administrative Procedures Act.

848 Section 14. Section **16-10a-1531** is amended to read:

849 **16-10a-1531. Procedure for and effect of revocation.**

850 (1) If the division determines that one or more grounds exist under Section
851 16-10a-1530 for revoking the authority of a foreign corporation to transact business in this
852 state, the division shall mail to the foreign corporation written notice of:

853 (a) the division's determination that one or more grounds exist for revocation; and

854 (b) the grounds for revocation.

855 (2) (a) If the foreign corporation does not correct each ground for revocation or
856 demonstrate to the reasonable satisfaction of the division that each ground determined by the
857 division does not exist, within 60 days after mailing the notice under Subsection (1), the
858 division shall revoke the foreign corporation's authority to transact business in this state.

859 (b) If a foreign corporation's authority to transact business in this state is revoked under
860 Subsection (2)(a), the division shall mail to the foreign corporation written notice of:

861 (i) revocation; and

862 (ii) the effective date of the revocation.

863 (c) The division shall mail a copy of the notice to:

864 (i) the last registered agent of the foreign corporation; or

865 (ii) if there is no registered agent of record, at least one officer of the corporation.

866 (3) The authority of a foreign corporation to transact business in this state ceases on the

867 date shown on the division's certificate revoking the corporation's certificate of authority.

868 (4) Revocation of a foreign corporation's authority to transact business in this state

869 does not terminate the authority of the registered agent of the corporation.

870 ~~[(5)(a) Upon the revocation of a foreign corporation's authority to transact business in~~

871 ~~this state, the division becomes an agent for the foreign corporation for service of process in~~

872 ~~any proceeding based on a cause of action that arose during the time the foreign corporation:]~~

873 ~~[(i) transacted business in this state; or]~~

874 ~~[(ii) was authorized to transact business in this state.]~~

875 ~~[(b) Service of process on the division under this Subsection (5) is service on the~~

876 ~~foreign corporation.]~~

877 ~~[(c) Upon receipt of process under this Subsection (5), the division shall mail a copy of~~

878 ~~the process to the foreign corporation at its principal office.]~~

879 ~~[(6)]~~ (5) A notice mailed under this section shall be:

880 (a) mailed first-class, postage prepaid; and

881 (b) addressed to the most current mailing address appearing on the records of the

882 division for:

883 (i) the registered agent of the foreign corporation, if the notice is required to be mailed

884 to the registered agent; or

885 (ii) the officer of the foreign corporation that is mailed the notice, if the notice is

886 required to be mailed to an officer of the foreign corporation.

887 Section 15. Section **31A-5-101** is amended to read:

888 **31A-5-101. Definitions.**

889 In this chapter, unless the context requires otherwise:

890 (1) The definitions of the following terms applicable to the Utah Revised Business

891 Corporation Act in [~~Subsections 16-10a-102(2), (23), and (24)] Section 16-10a-102 apply to~~

892 stock corporations[-]:

893 (a) "affiliate";

894 (b) "mail"; and

895 (c) "notice."

896 (2) The definitions to the following terms applicable to nonprofit corporations in

897 [~~Subsections 16-6a-102(3), (6), and (30)~~] Section 16-6a-102 apply to mutuals[-]:

898 (a) "articles of incorporation";

899 (b) "bylaws"; and

900 (c) "member."

901 (3) "Promoter securities" are securities issued by a stock insurer to the incorporators,

902 directors, officers, or their families or nominees at any time prior to, and up to one year

903 following, the issuance of a certificate of authority to the stock insurer.

904 Section 16. Section **31A-9-101** is amended to read:

905 **31A-9-101. Definitions.**

906 (1) As used in this chapter:

907 (a) "Fraternal" or "fraternal benefit society" means a corporation organized or operating

908 under this chapter that:

909 (i) has no capital stock;

910 (ii) exists solely for:

911 (A) the benefit of its members and their beneficiaries; and

912 (B) any lawful social, intellectual, educational, charitable, benevolent, moral, fraternal,

913 patriotic, or religious purpose for the benefit of its members or the public, carried on through

914 voluntary activity of its members in their local lodges or through institutional programs of the

915 fraternal or its local lodges;

916 (iii) has a lodge system;

917 (iv) has a representative form of government; and

918 (v) provides insurance benefits authorized under this chapter.

919 (b) "Laws of a fraternal" include its articles of incorporation and bylaws, however

920 designated.

921 (c) "Lodge system" means one in which:

922 (i) there is a supreme governing body;

923 (ii) subordinate to the supreme governing body are local lodges, however designated,

924 into which natural persons are admitted as members in accordance with the laws of the

925 fraternal;

926 (iii) the local lodges are required by the laws of the fraternal to hold regular meetings at
927 least monthly; and

928 (iv) the local lodges regularly engage in programs involving member participation to
929 implement the purposes of Subsection (1)(a)(ii).

930 (d) "Representative form of government" means the fraternal complies with Section
931 31A-9-403.

932 (2) In any provisions of law made applicable to fraternal by this chapter, the technical
933 terms used in those provisions are applicable to fraternal despite the use of other parallel terms
934 by fraternal.

935 (3) The definitions [~~provided in Subsections 16-6a-102(3), (6), and (30), and Section~~
936 ~~31A-1-301~~] in Section 31A-1-301 and the definitions to the following terms in Section
937 16-6a-102 apply to fraternal[-];

938 (a) "articles of incorporation";

939 (b) "bylaws"; and

940 (c) "member."

941 Section 17. Section **42-2-6.6** is amended to read:

942 **42-2-6.6. Assumed name.**

943 (1) The assumed name:

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

946 (b) shall be distinguishable from any registered name or trademark of record in the
947 offices of the Division of Corporations and Commercial Code, as defined in Subsection
948 16-10a-401(5), except as authorized by the Division of Corporations and Commercial Code
949 pursuant to Subsection (2);

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

952 (i) "Olympic";

953 (ii) "Olympiad"; or

954 (iii) "Citius Altius Fortius";

955 (d) without the written consent of the Division of Consumer Protection issued in

956 accordance with Section 13-34-114, may not contain the words:

957 (i) "university";

958 (ii) "college"; or

959 (iii) "institute"; and

960 (e) an assumed name authorized for use in this state on or after May 1, 2000, may not
961 contain the words:

962 (i) "incorporated";

963 (ii) "inc."; or

964 (iii) a variation of "incorporated" or "inc."

965 (2) Notwithstanding Subsection (1)(e), an assumed name may contain a word listed in
966 Subsection (1)(e) if the Division of Corporations and Commercial Code authorizes the use of
967 the name by a corporation as defined in:

968 (a) Subsection 16-6a-102(25);

969 (b) Subsection 16-6a-102[~~(33)~~](34);

970 (c) Subsection 16-10a-102(11); or

971 (d) Subsection 16-10a-102(20).

972 (3) The Division of Corporations and Commercial Code shall authorize the use of the
973 name applied for if:

974 (a) the name is distinguishable from one or more of the names and trademarks that are
975 on the division's records; or

976 (b) the applicant delivers to the division a certified copy of the final judgment of a
977 court of competent jurisdiction establishing the applicant's right to use the name applied for in
978 this state.

979 (4) The assumed name, for purposes of recordation, shall be either translated into
980 English or transliterated into letters of the English alphabet if it is not in English.

981 (5) The Division of Corporations and Commercial Code may not approve an
982 application for an assumed name to any person violating this section.

983 (6) The director of the Division of Corporations and Commercial Code shall have the
984 power and authority reasonably necessary to interpret and efficiently administer this section
985 and to perform the duties imposed on the division by this section.

986 (7) A name that implies by any word in the name that it is an agency of the state or of

987 any of its political subdivisions, if it is not actually such a legally established agency, may not
988 be approved for filing by the Division of Corporations and Commercial Code.

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

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

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

996 Section 18. Section **48-2c-203** is amended to read:

997 **48-2c-203. Annual report.**

998 (1) (a) [~~Each~~] A company [~~and each~~] or a foreign company authorized to transact
999 business in this state shall file an annual report with the division:

1000 (i) during the month of its anniversary date of formation, in the case of domestic
1001 companies; or

1002 (ii) during the month of the anniversary date of being granted authority to transact
1003 business in this state, in the case of foreign companies authorized to transact business in this
1004 state.

1005 (b) [~~The~~] An annual report required by Subsection (1)(a) shall set forth:

1006 (i) the name of the company;

1007 (ii) the state or country under the laws of which it is formed; and

1008 (iii) any change in:

1009 (A) the information required by Subsection 16-17-203(1);

1010 (B) if the street address or legal name of any manager in a manager-managed company,
1011 any member in a member-managed company, or any person with management authority of a
1012 foreign company [~~has changed~~] changes, the new street address or legal name of the manager,
1013 member, or other person; and

1014 (C) the identity of the persons constituting the managers in a manager-managed
1015 company or members in a member-managed company or other person with management
1016 authority of a foreign company.

1017 (2) (a) The annual report required by Subsection (1) shall:

- 1018 (i) be made on [~~forms~~] a form prescribed and furnished by the division; and
1019 (ii) contain information that is given as of the date of signing the annual report.
- 1020 (b) [~~The~~] An annual report [~~forms~~] form shall include a statement notifying the
1021 company that failure to file the annual report will result in:
- 1022 (i) the dissolution of the company, in the case of a domestic company; or
1023 (ii) the revocation of authority to transact business in this state in the case of a foreign
1024 company.
- 1025 [~~(3) The annual report shall be signed by:~~]
1026 [~~(a) (i) any manager in a manager-managed company;~~]
1027 [~~(ii) any member in a member-managed company; or~~]
1028 [~~(iii) any other person with management authority; and~~]
1029 [~~(b) if the registered agent has changed since the filing of the articles of organization or~~
1030 ~~last annual report, by the new registered agent.~~]
- 1031 (3) The fact that an individual's name is signed on an annual report form is prima facie
1032 evidence for division purposes that the individual is authorized to certify the report on behalf of
1033 the company.
- 1034 (4) (a) If the annual report conforms to the requirements of this chapter, the division
1035 shall file the report.
- 1036 (b) If the annual report does not conform to the requirements of this chapter, the
1037 division shall mail the report, first class postage prepaid, to the registered agent of the company
1038 for any necessary corrections at the street address for the registered agent most recently
1039 furnished to the division by notice, annual report, or other document.
- 1040 (c) If the division returns an annual report in accordance with Subsection (4)(b), the
1041 penalties for failure to file the report within the time prescribed in this section do not apply, as
1042 long as the annual report is corrected and returned to the division within 30 days from the date
1043 the nonconforming report was mailed to the registered agent of the company.
- 1044 Section 19. Section **48-2c-1207** is amended to read:
- 1045 **48-2c-1207. Procedure for and effect of administrative dissolution.**
- 1046 (1) If the division determines that one or more grounds exist under Section 48-2c-1206
1047 for dissolving a company, it shall mail to the company written notice of:
- 1048 (a) the division's determination that one or more grounds exist for dissolving the

1049 company; and

1050 (b) the grounds for dissolving the company.

1051 (2) (a) If the company does not correct each ground for dissolution, or demonstrate to
1052 the reasonable satisfaction of the division that each ground does not exist, within 60 days after
1053 mailing the notice provided in Subsection (1), the division shall administratively dissolve the
1054 company.

1055 (b) If a company is dissolved under Subsection (2)(a), the division shall mail written
1056 notice of the administrative dissolution to the dissolved company at its principal office, stating
1057 the date of dissolution specified in Subsection (2)(d).

1058 (c) The division shall mail a copy of the notice of administrative dissolution including
1059 a statement of the grounds for the administrative dissolution, to:

1060 (i) the registered agent of the dissolved company; or

1061 (ii) if there is no registered agent of record, or if the mailing to the registered agent is
1062 returned as undeliverable, at least one member if the company is member-managed or one
1063 manager of the company if the company is manager-managed, at their addresses as reflected on
1064 the notice, annual report, or document most recently filed with the division.

1065 (d) A company's effective date of administrative dissolution is five days after the date
1066 the division mails the written notice of dissolution under Subsection (2)(b).

1067 (e) On the effective date of dissolution, any assumed names filed on behalf of the
1068 dissolved company under Title 42, Chapter 2, Conducting Business Under Assumed Name, are
1069 canceled.

1070 (f) Notwithstanding Subsection (2)(e), the name of the company that is dissolved and
1071 any assumed names filed on its behalf are not available for two years from the effective date of
1072 dissolution for use by any other person:

1073 (i) transacting business in this state; or

1074 (ii) doing business under an assumed name under Title 42, Chapter 2, Conducting
1075 Business Under Assumed Name.

1076 (g) Notwithstanding Subsection (2)(e), if the company that is dissolved is reinstated in
1077 accordance with Section 48-2c-1208, the registration of the name of the company and any
1078 assumed names filed on its behalf are reinstated back to the effective date of dissolution.

1079 (3) (a) Except as provided in Subsection (3)(b), a company administratively dissolved

1080 under this section continues its existence but may not carry on any business except:

1081 (i) the business necessary to wind up and liquidate its business and affairs under Part
1082 13, Winding Up; and

1083 (ii) to give notice to claimants in the manner provided in Sections 48-2c-1305 and
1084 48-2c-1306.

1085 (b) If the company is reinstated in accordance with Section 48-2c-1208, business
1086 conducted by the company during a period of administrative dissolution is unaffected by the
1087 dissolution.

1088 (4) The administrative dissolution of a company does not terminate the authority of its
1089 registered agent.

1090 [~~(5) (a) Upon the administrative dissolution of a company, the director of the division
1091 shall be an additional agent of the dissolved company for purposes of service of process.]~~

1092 [~~(b) Service of process on the director of the division under this Subsection (5) is
1093 service on the dissolved company.]~~

1094 [~~(c) Upon receipt of process under this Subsection (5), the director of the division shall
1095 send a copy of the process to the dissolved company at its designated office and a copy of the
1096 process to the registered agent of the dissolved company.]~~

1097 [~~(6)~~ (5) A notice mailed under this section shall be:

1098 (a) mailed first-class, postage prepaid; and

1099 (b) addressed to the most current mailing address appearing on the records of the
1100 division for:

1101 (i) the principal office of the company, if the notice is required to be mailed to the
1102 company;

1103 (ii) the registered agent of the company, if the notice is required to be mailed to the
1104 registered agent; or

1105 (iii) any member if the company is member-managed, or to any manager of the
1106 company if the company is manager-managed, if the notice is required to be mailed to a
1107 member or manager of the company.

1108 Section 20. Section **48-2c-1208** is amended to read:

1109 **48-2c-1208. Reinstatement following administrative dissolution.**

1110 (1) A company dissolved under Section 48-2c-1207 may apply to the division for

1111 reinstatement within two years after the effective date of dissolution by delivering to the
1112 division for filing an application for reinstatement that states:

- 1113 (a) the effective date of the company's dissolution;
- 1114 (b) the company name as of the effective date of dissolution;
- 1115 (c) that the ground for dissolution either did not exist or has been eliminated;
- 1116 (d) the name under which the company is being reinstated, if different than the name
1117 stated in Subsection (1)(b);
- 1118 (e) that the name stated in Subsection (1)(d) satisfies the requirements of Section
1119 48-2c-106;
- 1120 (f) that all fees or penalties imposed pursuant to this chapter or otherwise owed by the
1121 company to the state have been paid;
- 1122 (g) the address of the principal office of the company; and
- 1123 (h) the information required by Subsection 16-17-203(1).

1124 (2) The company shall include in or with the application for reinstatement the written
1125 consent to appointment by the designated registered agent.

1126 (3) If the division determines that the application for reinstatement contains the
1127 information required by Subsections (1) and (2) and that the information is correct, the division
1128 shall revoke the administrative dissolution. The division shall mail to the company in the
1129 manner provided in Subsection 48-2c-1207~~(6)~~(5) written notice of:

- 1130 (a) the revocation; and
- 1131 (b) the effective date of the revocation.

1132 (4) When the reinstatement is effective, it relates back to the effective date of the
1133 administrative dissolution. Upon reinstatement:

- 1134 (a) an act of the company during the period of dissolution is effective and enforceable
1135 as if the administrative dissolution had never occurred; and
- 1136 (b) the company may carry on its business, under the name stated pursuant to
1137 Subsection (1)(b) or (1)(d), as if the administrative dissolution had never occurred.

1138 Section 21. Section **48-2c-1209** is amended to read:

1139 **48-2c-1209. Appeal from denial of reinstatement.**

1140 If the division denies a company's application for reinstatement under Section
1141 48-2c-1208 following administrative dissolution, the division shall mail to the company in the

1142 manner provided in Subsection 48-2c-1207[(6)](5) written notice:

1143 (1) setting forth the reasons for denying the application; and

1144 (2) stating that the company has the right to appeal the division's determination to the
1145 executive director of the Department of Commerce in accordance with Title 63G, Chapter 4,
1146 Administrative Procedures Act.

1147 Section 22. Section **48-2c-1401** is amended to read:

1148 **48-2c-1401. Conversion of certain entities to a domestic company.**

1149 (1) As used in this part, the term "subject entity" means and includes a corporation,
1150 business trust or association, a real estate investment trust, a common-law trust, or any other
1151 unincorporated business, including a general partnership, a registered limited liability
1152 partnership, a limited partnership, a nonprofit corporation, or a foreign company.

1153 (2) Any subject entity may convert to a domestic company by complying with Section
1154 48-2c-1404 and filing with the division:

1155 (a) articles of conversion that satisfy the requirements of Section 48-2c-1402; and

1156 (b) articles of organization that satisfy the requirements of Part 4, Formation.

1157 Section 23. Section **48-2c-1613** is amended to read:

1158 **48-2c-1613. Procedure for and effect of revocation.**

1159 (1) If the division determines that one or more grounds exist under Section 48-2c-1612
1160 for revoking the authority of a foreign company to transact business in this state, the division
1161 shall mail to the foreign company written notice of:

1162 (a) the division's determination that one or more grounds exist for revocation; and

1163 (b) the grounds for revocation.

1164 (2) (a) If the foreign company does not correct each ground for revocation or
1165 demonstrate to the reasonable satisfaction of the division that each ground determined by the
1166 division does not exist, within 60 days after mailing the notice under Subsection (1), the
1167 division shall revoke the foreign company's authority to transact business in this state.

1168 (b) If a foreign company's authority to transact business in this state is revoked under
1169 Subsection (2)(a), the division shall mail to the foreign company written notice of:

1170 (i) revocation; and

1171 (ii) the effective date of the revocation.

1172 (c) The division shall mail a copy of the notice to:

1173 (i) the last registered agent of the foreign company; or
 1174 (ii) if there is no registered agent of record, at least one member or manager of the
 1175 foreign company.

1176 (3) The authority of a foreign company to transact business in this state ceases on the
 1177 date shown on the division's certificate revoking the company's certificate of authority.

1178 (4) Revocation of a foreign company's authority to transact business in this state does
 1179 not terminate the authority of the registered agent of the foreign company.

1180 ~~[(5)(a) Upon the revocation of a foreign company's authority to transact business in
 1181 this state, the division becomes an agent for the foreign company for service of process in any
 1182 proceeding based on a cause of action that arose during the time the foreign company:]~~

1183 ~~[(i) transacted business in this state; or]~~

1184 ~~[(ii) was authorized to transact business in this state.]~~

1185 ~~[(b) Service of process on the division under this Subsection (5) is service on the
 1186 foreign company.]~~

1187 ~~[(c) Upon receipt of process under this Subsection (5), the division shall mail a copy of
 1188 the process to the foreign company at its principal office.]~~

1189 ~~[(6)]~~ (5) A notice mailed under this section shall be:

1190 (a) mailed first-class, postage prepaid; and

1191 (b) addressed to the most current mailing address appearing on the records of the
 1192 division for:

1193 (i) the registered agent of the foreign company, if the notice is required to be mailed to
 1194 the registered agent; or

1195 (ii) the member or manager of the foreign company that is mailed the notice, if the
 1196 notice is required to be mailed to a member or manager of the foreign company.

1196a **H→ Section 24. Effective date.**

1196b **If approved by two-thirds of all the members elected to each house, this bill takes effect upon**
 1196c **approval by the governor, or the day following the constitutional time limit of Utah**

1196d **Constitution Article VII, Section 8, without the governor's signature, or in the case of a veto,**

1196e **the date of veto override. ←H**

Fiscal Note

**S.B. 192 1st Sub. (Green) - Corporation and Business Entity Related
Amendments**

2009 General Session

State of Utah

State Impact

Enactment of this bill will not require additional appropriations.

Individual, Business and/or Local Impact

Enactment of this bill likely will not result in direct, measurable costs and/or benefits for individuals, businesses, or local governments.
