

BUSINESS ENTITY AMENDMENTS

2010 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Lyle W. Hillyard

House Sponsor: Fred R Hunsaker

LONG TITLE

General Description:

This bill modifies provisions in Title 16, Corporations, Title 48, Partnership, Title 76, Utah Criminal Code, and Title 78B, Judicial Code, related to business entities required to file with the Division of Corporations and Commercial Code, including addressing issues regarding filings and the responsibilities of the division.

Highlighted Provisions:

This bill:

- ▶ repeals outdated language related to registered agents;
- ▶ requires certain documents to be in a machine printed format;
- ▶ addresses the Division of Corporations and Commercial Code's subpoena powers;
- ▶ addresses the notice requirement in articles of organization for series limited

liability companies;

▶ repeals language in the criminal code that addresses filings or service of process with the Division of Corporations and Commercial Code;

▶ repeals language related to sworn certificates being required of a nonresident doing business in the state; and

- ▶ makes technical and conforming changes.

Monies Appropriated in this Bill:

None

Other Special Clauses:



28 None

29 **Utah Code Sections Affected:**

30 AMENDS:

- 31 **16-6a-202**, as last amended by Laws of Utah 2008, Chapter 364
- 32 **16-10a-202**, as last amended by Laws of Utah 2008, Chapter 364
- 33 **16-10a-1503**, as last amended by Laws of Utah 2008, Chapters 249 and 364
- 34 **42-2-5**, as last amended by Laws of Utah 2008, Chapter 307
- 35 **48-2c-113**, as last amended by Laws of Utah 2008, Chapter 364
- 36 **48-2c-410**, as enacted by Laws of Utah 2001, Chapter 260
- 37 **48-2c-606**, as enacted by Laws of Utah 2006, Chapter 92
- 38 **48-2c-607**, as enacted by Laws of Utah 2006, Chapter 92
- 39 **76-10-1209**, as last amended by Laws of Utah 2009, Chapter 183
- 40 **76-10-1219**, as last amended by Laws of Utah 1984, Chapter 66
- 41 **76-10-1220**, as last amended by Laws of Utah 1984, Chapter 66
- 42 **76-10-1221**, as last amended by Laws of Utah 1984, Chapter 66
- 43 **78B-3-204**, as renumbered and amended by Laws of Utah 2008, Chapter 3

44 REPEALS:

- 45 **78B-3-203**, as renumbered and amended by Laws of Utah 2008, Chapter 3



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

48 Section 1. Section **16-6a-202** is amended to read:

49 **16-6a-202. Articles of incorporation.**

- 50 (1) The articles of incorporation shall set forth:
 - 51 (a) one or more purposes for which the nonprofit corporation is organized;
 - 52 (b) a corporate name for the nonprofit corporation that satisfies the requirements of
 - 53 Section 16-6a-401;
 - 54 (c) the information required by Subsection 16-17-203(1);
 - 55 (d) the name and address of each incorporator;
 - 56 (e) whether or not the nonprofit corporation will have voting members;
 - 57 (f) if the nonprofit corporation is to issue shares of stock evidencing membership in the
 - 58 nonprofit corporation or interests in water or other property rights:

59 (i) the aggregate number of shares that the nonprofit corporation has authority to issue;
60 and

61 (ii) if the shares are to be divided into classes:

62 (A) the number of shares of each class;

63 (B) the designation of each class; and

64 (C) a statement of the preferences, limitations, and relative rights of the shares of each
65 class; and

66 (g) provisions not inconsistent with law regarding the distribution of assets on
67 dissolution.

68 (2) The articles of incorporation may but need not set forth:

69 (a) the names and addresses of the individuals who are to serve as the initial directors;

70 (b) provisions not inconsistent with law regarding:

71 (i) managing the business and regulating the affairs of the nonprofit corporation;

72 (ii) defining, limiting, and regulating the powers of:

73 (A) the nonprofit corporation;

74 (B) the board of directors of the nonprofit corporation; and

75 (C) the members of the nonprofit corporation or any class of members;

76 (iii) whether cumulative voting will be permitted; and

77 (iv) the characteristics, qualifications, rights, limitations, and obligations attaching to
78 each or any class of members; and

79 (c) any provision that under this chapter is permitted to be in the articles of
80 incorporation or required or permitted to be set forth in the bylaws, including elective
81 provisions that in accordance with this chapter shall be included in the articles of incorporation
82 to be effective.

83 (3) (a) It is sufficient under Subsection (1)(a) to state, either alone or with other
84 purposes, that the purpose of the nonprofit corporation is to engage in any lawful act for which
85 a nonprofit corporation may be organized under this chapter.

86 (b) If the articles of incorporation include the statement described in Subsection (3)(a),
87 all lawful acts and activities shall be within the purposes of the nonprofit corporation, except
88 for express limitations, if any.

89 (4) The articles of incorporation need not set forth any corporate power enumerated in

90 this chapter.

91 (5) The articles of incorporation shall:

92 (a) be signed by each incorporator; and

93 (b) meet the filing requirements of Section 16-6a-105.

94 [~~(6) The appointment of the registered agent shall be signed by the registered agent~~
95 ~~on:~~]

96 [~~(a) the articles of incorporation; or~~]

97 [~~(b) an acknowledgment attached to the articles of incorporation.~~]

98 [~~(7)~~ (6) (a) If this chapter conditions any matter upon the presence of a provision in
99 the bylaws, the condition is satisfied if the provision is present either in:

100 (i) the articles of incorporation; or

101 (ii) the bylaws.

102 (b) If this chapter conditions any matter upon the absence of a provision in the bylaws,
103 the condition is satisfied only if the provision is absent from both:

104 (i) the articles of incorporation; and

105 (ii) the bylaws.

106 Section 2. Section **16-10a-202** is amended to read:

107 **16-10a-202. Articles of incorporation.**

108 (1) The articles of incorporation shall set forth:

109 (a) the purpose or purposes for which the corporation is organized;

110 (b) a corporate name for the corporation that satisfies the requirements of Section
111 16-10a-401;

112 (c) the number of shares the corporation is authorized to issue;

113 (d) the information required by Section 16-10a-601 with respect to each class of shares
114 the corporation is authorized to issue;

115 (e) the information required by Subsection 16-17-203(1); and

116 (f) the name and address of each incorporator.

117 (2) The articles of incorporation may set forth:

118 (a) the names and addresses of the individuals who are to serve as the initial directors;

119 (b) provisions not inconsistent with law regarding:

120 (i) managing the business and regulating the affairs of the corporation;

121 (ii) defining, limiting, and regulating the powers of the corporation, its board of
122 directors, and its shareholders;
123 (iii) a par value for authorized shares or classes of shares; and
124 (iv) the imposition of personal liability on shareholders for the debts of the corporation
125 to a specified extent and upon specified conditions; and
126 (c) any provision that under this chapter is permitted to be in the articles of
127 incorporation or required or permitted to be set forth in the bylaws including elective
128 provisions which, to be effective, must be included in the articles of incorporation, as provided
129 in this chapter.

130 (3) It shall be sufficient under Subsection (1)(a) to state, either alone or with other
131 purposes, that the purpose of the corporation is to engage in any lawful act or activity for which
132 corporations may be organized under [~~the Utah Revised Business Corporation Act~~] this
133 chapter, and by such statement all lawful acts and activities shall be within the purposes of the
134 corporation, except for express limitations, if any.

135 (4) The articles of incorporation need not set forth any of the corporate powers
136 enumerated in this chapter.

137 (5) The articles of incorporation shall be signed by each incorporator and meet the
138 filing requirements of Section 16-10a-120.

139 [~~(6) The appointment of the registered agent shall be signed by the registered agent on~~
140 ~~the articles of incorporation or on an attached acknowledgement.]~~

141 [~~(7)~~] (6) (a) If this chapter conditions any matter upon the presence of a provision in
142 the bylaws, the condition is satisfied if the provision is present either in the articles of
143 incorporation or the bylaws.

144 (b) If this chapter conditions any matter upon the absence of a provision in the bylaws,
145 the condition is satisfied only if the provision is absent from both the articles of incorporation
146 and the bylaws.

147 Section 3. Section **16-10a-1503** is amended to read:

148 **16-10a-1503. Application for authority to transact business.**

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

- 152 (a) its corporate name and its assumed name, if any;
- 153 (b) the name of the state or country under whose law it is incorporated;
- 154 (c) its date of incorporation and period of its corporate duration;
- 155 (d) the street address of its principal office;
- 156 (e) the information required by Subsection 16-17-203(1);
- 157 (f) the names and usual business addresses of its current directors and officers;
- 158 (g) the date it commenced or expects to commence transacting business in this state;

159 and

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

162 (2) The foreign corporation shall deliver with the completed application for authority to
163 transact business a certificate of existence, or a document of similar import, duly authorized by
164 the lieutenant governor or other official having custody of corporate records in the state or
165 country under whose law it is incorporated. The certificate of existence shall be dated within
166 90 days ~~[prior to]~~ before the day on which the application for authority to transact business by
167 the division is filed.

168 ~~[(3) The foreign corporation shall include in the application for authority to transact
169 business, or in an accompanying document, the written consent to appointment by the
170 designated registered agent.]~~

171 ~~[(4)]~~ (3) (a) The division may permit a tribal corporation to apply for authority to
172 transact business in this state in the same manner as a foreign corporation incorporated in
173 another state.

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

177 Section 4. Section **42-2-5** is amended to read:

178 **42-2-5. Certificate of assumed and of true name -- Contents -- Execution -- Filing**
179 **-- Notice.**

180 (1) For purposes of this section, "filed" means the Division of Corporations and
181 Commercial Code has:

- 182 (a) received and approved, as to form, a document submitted under this chapter; and

183 (b) marked on the face of the document a stamp or seal indicating:

184 (i) the time of day and date of approval;

185 (ii) the name of the division; and

186 (iii) the division director's signature and division seal, or facsimiles of the signature or
187 seal.

188 ~~[(1) Every]~~ (2) A person who carries on, conducts, or transacts business in this state
189 under an assumed name, whether that business is carried on, conducted, or transacted as an
190 individual, association, partnership, corporation, or otherwise, shall file with the Division of
191 Corporations and Commercial Code a certificate setting forth:

192 (a) the name under which the business is, or is to be carried on, conducted, or
193 transacted~~[-, and];~~

194 (b) the full true name, or names, of the person owning, and the person carrying on,
195 conducting, or transacting the business; and

196 ~~[(b)]~~ (c) the location of the principal place of business, and the street address of the
197 person.

198 ~~[(2) The]~~ (3) A certificate filed under this section shall be:

199 (a) executed by the person owning, and the person carrying on, conducting, or
200 transacting the business~~[-, and shall be];~~

201 (b) filed not later than 30 days after the time of commencing to carry on, conduct, or
202 transact the business~~[-]; and~~

203 ~~[(3) "Filed" means the Division of Corporations and Commercial Code has received~~
204 ~~and approved, as to form, a document submitted under the provisions of this chapter, and has~~
205 ~~marked on the face of the document a stamp or seal indicating the time of day and date of~~
206 ~~approval, the name of the division, the division director's signature and division seal, or~~
207 ~~facsimiles of the signature or seal.]~~

208 (c) submitted in a machine printed format.

209 (4) ~~[Every]~~ A certificate filed with the Division of Corporations and Commercial Code
210 under this chapter shall include the following notice in a conspicuous place on the face thereof:

211 NOTICE - THE FILING OF THIS APPLICATION AND ITS APPROVAL BY THE
212 DIVISION OF CORPORATIONS AND COMMERCIAL CODE DOES NOT AUTHORIZE
213 THE USE IN THE STATE OF UTAH OF AN ASSUMED NAME IN VIOLATION OF THE

214 RIGHTS OF ANOTHER UNDER FEDERAL, STATE, OR COMMON LAW (SEE UTAH
215 CODE ANN. SECTIONS 42-2-5 ET SEQ.).

216 (5) (a) A certificate filed under this section shall include a portion that allows the
217 person filing the form to voluntarily disclose the gender and race of one or more owners of the
218 entity for which the filing is made.

219 (b) Race shall be indicated under Subsection (5)(a) by selecting from the categories of
220 race listed in 15 U.S.C. Sec. 631(f).

221 (c) A person is not required to provide information under Subsection (5)(a) concerning
222 the gender or race of one or more owners of the entity for which the filing is made.

223 (d) (i) The Division of Corporations and Commercial Code shall compile information
224 concerning the gender or race included on certificates filed with the Division of Corporations
225 and Commercial Code.

226 (ii) Information compiled by the Division of Corporations and Commercial Code under
227 Subsection (5)(d)(i) may be compiled in a manner determined by the Division of Corporations
228 and Commercial Code by rules made pursuant to Title 63G, Chapter 3, Utah Administrative
229 Rulemaking Act.

230 Section 5. Section **48-2c-113** is amended to read:

231 **48-2c-113. Inspection of records by members and managers.**

232 (1) A current or former member or manager of a company is entitled to inspect and
233 copy, during regular business hours at the company's principal office, any of the records
234 described in Subsection (2) after first giving the company written notice of the demand at least
235 five business days before the inspection is to occur.

236 (2) Records required to be kept at the principal office under Subsection (1) include:

237 (a) a current list in alphabetical order of the full name and last-known business,
238 residence, or mailing address of each member and each manager;

239 (b) a copy of the stamped articles of organization and all certificates of amendment
240 thereto, together with a copy of all signed powers of attorney pursuant to which the articles of
241 organization or any amendment has been signed;

242 (c) a copy of the writing required of an organizer under Subsection 48-2c-401(2);

243 (d) a copy of the company's federal, state, and local income tax returns and reports, if
244 any, for the three most recent years;

245 (e) a copy of any financial statements of the company, if any, for the three most recent
246 years;

247 (f) a copy of the company's operating agreement, if any, and all amendments thereto;

248 (g) a copy of the minutes, if any, of each meeting of members and of any written
249 consents obtained from members; and

250 (h) unless otherwise set forth in the articles of organization or the operating agreement,
251 a written statement setting forth:

252 (i) the amount of cash and a description and statement of the agreed value of the other
253 property or services contributed and agreed to be contributed by each member;

254 (ii) the times at which, or events on the happening of which, any additional
255 contributions agreed to be made by each member are to be made;

256 (iii) any right of a member to receive distributions;

257 (iv) any date or event upon the happening of which a member is entitled to payment in
258 redemption of the member's interest in the company; and

259 (v) any date or event upon the happening of which the company is to be dissolved and
260 its affairs wound up.

261 (3) This section does not affect:

262 (a) the right of a member or manager to inspect records if the member or manager is in
263 litigation with the company, to the same extent as any other litigant; or

264 (b) the power of a court, independent of this chapter, to compel the production of
265 records for examination.

266 (4) A current or former member or manager may not use any information obtained
267 through the inspection or copying of records permitted by Subsection (1) for any improper
268 purpose.

269 (5) The division may on the division's own behalf subpoena ~~[any of the records]~~ a
270 record described in Subsection (2) if a company denies any current or former member or
271 manager access to the records.

272 Section 6. Section **48-2c-410** is amended to read:

273 **48-2c-410. Transfer to other jurisdiction.**

274 (1) Any domestic company may transfer to or domesticate in any jurisdiction besides
275 this state that permits the transfer to or domestication in such jurisdiction of a limited liability

276 company by delivering to the division for filing articles of transfer meeting the requirements of
277 Subsection (2) if such transfer is approved by the members as provided in the company's
278 operating agreement or, if the operating agreement does not so provide, by all of the members.

279 (2) The articles of transfer shall state:

280 (a) the name of the company;

281 (b) the date of filing of the company's original articles of organization with the
282 division;

283 (c) the jurisdiction to which the company shall be transferred or in which it shall be
284 domesticated;

285 (d) the future effective date, which shall be a date certain, of the transfer or
286 domestication if it is not to be effective upon the filing of the articles of transfer;

287 (e) that the transfer or domestication has been approved by the members;

288 (f) that the existence of the company as a domestic company of this state shall cease
289 when the articles of transfer become effective;

290 (g) the agreement of the company that it may be served with process in this state in any
291 proceeding for enforcement of any obligation of the company arising while it was a company
292 under the laws of this state; and

293 ~~[(h) that it irrevocably appoints the director of the division as its agent to accept service
294 for process in any proceeding; and]~~

295 ~~[(i)]~~ (h) if the company does not apply for authority to transact business in this state as
296 a foreign company pursuant to Section 48-2c-1604, then the address to which a copy of service
297 of process ~~[referred to in Subsection (2)(h)] shall be mailed to it by the division in the event of~~
298 ~~service upon the director of the division and the agreement of the company to give the division~~
299 ~~written notice of any change in the address] may be made under Subsection (2)(g).~~

300 (3) When the articles of transfer are filed with the division, or upon the future, delayed
301 effective date of the articles of transfer, and payment to the division of all fees prescribed under
302 this chapter, the company shall cease to exist as a domestic company of this state. Thereafter,
303 any certificate of the division as to the transfer shall be prima facie evidence of the transfer or
304 domestication by the company out of this state.

305 (4) Transfer or domestication of a company out of this state in accordance with this
306 section and the resulting cessation of its existence as a domestic company of this state shall not

307 be considered to affect any obligations or liabilities of the company incurred prior to the
308 transfer or domestication or the personal liability of any person incurred prior to the transfer or
309 domestication, including, but not limited to, any taxes owing to this state, nor shall it be
310 considered to affect the choice of law applicable to the company with respect to matters arising
311 prior to such transfer or domestication.

312 Section 7. Section **48-2c-606** is amended to read:

313 **48-2c-606. Series of members, managers, or limited liability company interests.**

314 (1) (a) An operating agreement may establish or provide for the establishment of one or
315 more designated series of members, managers, or interests in the company having separate
316 rights, powers, or duties with respect to specified property or obligations of the limited liability
317 company or profits and losses associated with specified property or obligations.

318 (b) The separate rights, powers, and duties of a series shall be identified in the
319 operating agreement.

320 (2) A series may have a business purpose or investment objective separate from the
321 company.

322 (3) A series' debts, liabilities, obligations, and expenses are enforceable against the
323 assets of that series only, and not against the assets of the company generally or any other series
324 if:

325 (a) the operating agreement provides for separate treatment of the series;

326 (b) separate and distinct records are maintained concerning the series;

327 (c) the assets associated with the series are held and accounted for separately from the
328 other assets of the company and any other series; and

329 (d) notice of the limitation on liability of a series is included in the company's articles
330 of organization in accordance with Section 48-2c-607.

331 (4) None of the debts, liabilities, obligations, and expenses incurred, contracted for, or
332 otherwise existing with respect to the company generally or any other series are enforceable
333 against the assets of a series if:

334 (a) the operating agreement provides for separate treatment of the series;

335 (b) separate and distinct records are maintained concerning the series;

336 (c) the assets associated with the series are held and accounted for separately from the
337 other assets of the company and any other series; and

338 (d) notice of the limitation on liability of a series is included in the company's articles
339 of organization in accordance with Section 48-2c-607.

340 (5) A series may contract on its own behalf and in its own name, including through a
341 manager.

342 (6) Notwithstanding other provisions of this section:

343 (a) property and assets of a series may not be transferred to the company generally or
344 another series if the transfer impairs the ability of the series releasing the property or assets to
345 pay its debts existing at the time of the transfer unless fair value is given to the transferring
346 series for the property or assets transferred; and

347 (b) a tax or other liability of the company generally or of a series may not be assigned
348 by the series against which the tax or other liability is imposed to the company generally or to
349 another series within the company if the assignment impairs a creditor's right and ability to
350 fully collect an amount due when owed.

351 Section 8. Section **48-2c-607** is amended to read:

352 **48-2c-607. Notice of series -- Articles of organization.**

353 (1) Notice in a company's articles of organization of the limitation on liabilities of a
354 series, as required by Section 48-2c-606, is sufficient whether or not the company has
355 established any series at the time the notice is included in the articles of organization.

356 (2) The notice required by Section 48-2c-606:

357 (a) need not reference any specific series[-]; and

358 (b) for articles of organization or an amendment to articles of organization made to
359 include notice of series that is filed on or after May 11, 2010, notice in a company's articles of
360 organization is sufficient for purposes of Subsection (1) only if the notice of series appears
361 immediately following the provision stating the name of the company.

362 (3) The filing of the notice required by Section 48-2c-606 with the division constitutes
363 notice of the limitation on liability of a series.

364 Section 9. Section **76-10-1209** is amended to read:

365 **76-10-1209. Injunctive relief -- Jurisdiction -- Consent to be sued.**

366 (1) The district courts of this state shall have full power, authority, and jurisdiction,
367 upon application by any county attorney or city attorney within their respective jurisdictions or
368 the attorney general, to issue any and all proper restraining orders, preliminary and permanent

369 injunctions, and any other writs and processes appropriate to carry out and enforce the
370 provisions of this part. No restraining order or injunction, however, shall issue except upon
371 notice to the person sought to be enjoined. That person shall be entitled to a trial of the issues
372 commencing within three days after filing of an answer to the complaint and a decision shall be
373 rendered by the court within two days after the conclusion of the trial. If a final order or
374 judgment of injunction is entered against the person sought to be enjoined, this final order or
375 judgment shall contain a provision directing the person to surrender to the sheriff of the county
376 in which the action was brought any pornographic material in the person's possession which is
377 subject to the injunction; and the sheriff shall be directed to seize and destroy this material.

378 (2) Any person not qualified to do business in the state who sends or brings any
379 pornographic material into the state with the intent to distribute or exhibit it to others in this
380 state ~~[thereby]~~ consents that the person may be sued in any proceedings commenced under this
381 section ~~[and therefor appoints the director of the Division of Corporations and Commercial~~
382 ~~Code to be the agent upon whom may be served all legal process against that person. Service~~
383 ~~of process shall be made by serving a copy of same upon the director of the Division of~~
384 ~~Corporations and Commercial Code or by filing the copy in that office, together with payment~~
385 ~~of a fee determined by the division pursuant to Section 63J-1-504. This service shall be~~
386 ~~sufficient service upon the defendant if:].~~

387 ~~[(a) notice of the service and a copy of the process are within 10 days thereafter sent by~~
388 ~~mail by the prosecuting attorney to the defendant at the address of the defendant that appears~~
389 ~~on any material exhibited or distributed, and if no address appears, then the last known address~~
390 ~~of the defendant; and]~~

391 ~~[(b) the prosecuting attorney's affidavit of compliance with the provisions of this~~
392 ~~Subsection (2) are attached to the summons. The Division of Corporations and Commercial~~
393 ~~Code shall keep a record of all the process served upon it under this section, showing the day~~
394 ~~and hour of the service. Nothing in this Subsection (2) shall be construed to limit the operation~~
395 ~~of Rule 17(e) of the Utah Rules of Civil Procedure.]~~

396 ~~[(3) This section shall not be construed in any way to limit the district courts in the~~
397 ~~exercise of their jurisdiction under any other provision of law.]~~

398 Section 10. Section **76-10-1219** is amended to read:

399 **76-10-1219. Qualification for distribution of films.**

400 (1) A distributor which is a corporation shall be qualified to distribute films within this
401 state if:

402 (a) it is a domestic corporation in good standing or a foreign corporation authorized to
403 transact business in this state; and

404 (b) it submits itself to the jurisdiction and laws of this state relating to being a
405 distributor in this state.

406 ~~[(b) it has filed with the Division of Corporations and Commercial Code a statement~~
407 ~~upon forms prescribed and furnished by that office, signed and verified on behalf of the~~
408 ~~corporation by an officer qualified and authorized to bind the corporation for such purpose, a~~
409 ~~statement indicating that it desires to be qualified to distribute films in this state and that it~~
410 ~~submits itself to the jurisdiction and laws of this state relating thereto and, further, indicating~~
411 ~~the following:]~~

412 ~~[(i) the address of its principal office;]~~

413 ~~[(ii) the name under which it wishes to distribute films in this state;]~~

414 ~~[(iii) the names and addresses of all directors and officers;]~~

415 ~~[(iv) the address of the registered office in this state; and]~~

416 ~~[(v) the name of its registered agent in this state;]~~

417 ~~[(c) it files a current statement on or before March 1 of each year thereafter indicating~~
418 ~~that information specified in Subsection (b) of this Subsection (1) in the manner provided~~
419 ~~therein.]~~

420 (2) A distributor which is not a corporation shall be qualified to distribute films within
421 this state if:

422 (a) it has and continuously maintains a registered office in this state; and

423 (b) it has a registered agent whose business address is at that registered office and
424 which is either an individual residing and domiciled in this state, a domestic corporation in
425 good standing, or a foreign corporation authorized to transact business in this state[;].

426 ~~[(c) it has filed with the Division of Corporations and Commercial Code a statement,~~
427 ~~upon forms prescribed and furnished by that office, signed and verified, indicating that it~~
428 ~~desires to be qualified to distribute films in this state and that it submits itself to the jurisdiction~~
429 ~~and laws of this state relating thereto and, further, indicating the following:]~~

430 ~~[(i) the address of its principal office;]~~

431 ~~[(ii) the name under which it wishes to distribute films in this state;]~~
432 ~~[(iii) the names and address of each partner or the sole proprietor, owning the~~
433 ~~distributorship;]~~
434 ~~[(iv) the address of its registered office in this state; and]~~
435 ~~[(v) the name of its registered agent in this state;]~~
436 ~~[(d) it files a current statement on or before March 1 of each year thereafter indicating~~
437 ~~that information specified in Subsection (b) of this Subsection (2) in the manner provided~~
438 ~~therein.]~~

439 ~~[(3) The Division of Corporations and Commercial Code shall keep a record of all~~
440 ~~processes, notices and demands served upon it pursuant to this section, together with the time~~
441 ~~of such service and its action relating thereto.]~~

442 ~~[(4)]~~ (3) This section shall not affect the right to serve any process, notice, or demand,
443 required or permitted by law to be served upon a distributor, in any other manner provided by
444 law.

445 Section 11. Section **76-10-1220** is amended to read:

446 **76-10-1220. Change of registered office or agent by film distributor.**

447 ~~[(1)]~~ A distributor qualified to distribute films in this state may change its registered
448 office or registered agent ~~[by filing with the Division of Corporations and Commercial Code a~~
449 ~~statement setting forth:]~~ in accordance with Title 16, Chapter 17, Model Registered Agents
450 Act.

451 ~~[(a) the name of the distributor;]~~

452 ~~[(b) the address of its present registered office;]~~

453 ~~[(c) the name of its present registered agent; and]~~

454 ~~[(d) the address of the new registered office or name of the new registered agent.]~~

455 ~~[(2) The statement provided for in this section must be signed, verified, and filed in the~~
456 ~~same manner as specified in Section 76-10-1219.]~~

457 ~~[(3) If the Division of Corporations and Commercial Code finds that the statement~~
458 ~~conforms to the provisions of this act, it shall file the statement in its office and the change in~~
459 ~~the registered office or agent shall thereupon take effect.]~~

460 ~~[(4) Any registered agent may resign that position by filing a signed and verified notice~~
461 ~~of that resignation in duplicate with the Division of Corporations and Commercial Code which~~

462 shall forthwith mail a copy thereof to the distributor at its principal office. That resignation
463 shall take effect 30 days after receipt thereof by the Division of Corporations and Commercial
464 Code.]

465 Section 12. Section **76-10-1221** is amended to read:

466 **76-10-1221. Service of process, notice, or demand on registered agent of film**
467 **distributor.**

468 [(1)] Any process, notice, or demand required or permitted by law to be served upon the
469 distributor may be served upon the registered agent of that distributor.

470 [(2)] ~~If the registered agent cannot with reasonable diligence be found at the registered~~
471 ~~office, the director of the Division of Corporations and Commercial Code shall constitute the~~
472 ~~agent of the distributor for the service of any process, notice, or demand required or permitted~~
473 ~~by law to be served upon the distributor. Service of any such process, notice, or demand upon~~
474 ~~the director of the Division of Corporations and Commercial Code shall be made in duplicate~~
475 ~~and the Division of Corporations and Commercial Code shall thereupon cause one of the~~
476 ~~copies thereof to be forwarded by registered mail to the distributor at its principal office~~
477 ~~indicated in that statement filed pursuant to Section 76-10-1219. Such service shall be deemed~~
478 ~~complete upon the tenth day following that service.]~~

479 Section 13. Section **78B-3-204** is amended to read:

480 **78B-3-204. Effect of failure to file certificate -- Service of process upon**
481 **nonresident.**

482 If a nonresident person doing business [~~as provided in Section 78B-3-203~~] fails to [~~file~~
483 ~~a certificate, or the manager, superintendent, or agent designated in the certificate cannot be~~
484 ~~found] appoint a registered agent within the state in accordance with Title 16, Chapter 17,
485 Model Registered Agents Act, service of process may be made by serving any person employed
486 by or acting as an agent for the nonresident.~~

487 Section 14. **Repealer.**

488 This bill repeals:

489 Section **78B-3-203, Sworn certificate of nonresident doing business here.**

Legislative Review Note
as of 2-9-10 12:29 PM

Office of Legislative Research and General Counsel

S.B. 173 - Business Entity Amendments

Fiscal Note

2010 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.
