

Senator Daniel McCay proposes the following substitute bill:

CORPORATION AMENDMENTS

2023 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Anthony E. Loubet

Senate Sponsor: Daniel McCay

LONG TITLE

General Description:

This bill addresses provisions related to corporations.

Highlighted Provisions:

This bill:

- ▶ amends application requirements for:
 - a nonprofit corporation or a corporation applying for reinstatement after dissolution; and
 - a foreign nonprofit corporation or foreign corporation applying for withdrawal;
- ▶ requires the Division of Corporations and Commercial Code to request that the State Tax Commission certify that:
 - a nonprofit corporation or corporation applying for reinstatement after dissolution is in good standing; and
 - a foreign nonprofit corporation or foreign corporation applying for withdrawal is in good standing;
- ▶ requires the State Tax Commission to notify the Division of Corporations and Commercial Code and the corporation if the corporation is not in good standing;
- ▶ requires the Division of Corporations and Commercial Code to approve a corporation's application for withdrawal under certain circumstances;



- 26 ▶ modifies provisions related to corporate quorum or voting requirements for
- 27 religious nonprofit corporations; and
- 28 ▶ makes technical and conforming changes.

29 **Money Appropriated in this Bill:**

30 None

31 **Other Special Clauses:**

32 This bill provides a special effective date.

33 **Utah Code Sections Affected:**

34 AMENDS:

35 **16-6a-716**, as enacted by Laws of Utah 2000, Chapter 300

36 **16-6a-1412**, as last amended by Laws of Utah 2017, Chapter 122

37 **16-6a-1513**, as enacted by Laws of Utah 2000, Chapter 300

38 **16-10a-1422**, as last amended by Laws of Utah 2017, Chapter 122

39 **16-10a-1520**, as enacted by Laws of Utah 1992, Chapter 277



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

42 Section 1. Section **16-6a-716** is amended to read:

43 **16-6a-716. Greater quorum or voting requirements.**

44 (1) The articles of incorporation or bylaws may provide for a greater:

45 (a) quorum requirement for members or voting groups than is provided for by this

46 chapter; or

47 (b) voting requirement for members or voting groups than is provided by this chapter.

48 (2) ~~Art~~ Except as provided in Subsection (3), an amendment to the articles of

49 incorporation or the bylaws that adds, changes, or deletes a greater quorum or voting

50 requirement shall meet the same quorum requirement and be adopted by the same vote and

51 voting groups required to take action under the greater of the quorum and voting requirements:

52 (a) then in effect; or

53 (b) proposed to be adopted.

54 (3) Notwithstanding Subsection (2), a nonprofit organization that is affiliated with a

55 religious organization may make an amendment to the nonprofit organization's articles of

56 incorporation or bylaws in accordance with the direction of the religious organization's

57 religious authorities.

58 Section 2. Section **16-6a-1412** is amended to read:

59 **16-6a-1412. Reinstatement following administrative dissolution -- Reinstatement**
60 **after voluntary dissolution.**

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

64 (a) states:

65 [(a)] (i) the effective date of [its] the nonprofit corporation's administrative dissolution
66 and [its] the nonprofit corporation's corporate name on the effective date of dissolution;

67 [(b)] (ii) that the ground or grounds for dissolution:

68 [(i)] (A) did not exist; or

69 [(ii)] (B) have been eliminated;

70 [(c)] (iii) [(i)] the corporate name under which the nonprofit corporation is being
71 reinstated; [and]

72 [(ii)] (iv) the corporate name that satisfies the requirements of Section **16-6a-401**;

73 [(d)] (v) that the nonprofit corporation has paid all fees or penalties imposed under this
74 chapter or other applicable state law;

75 [(e)] (vi) that the nonprofit corporation:

76 [(i)] (A) has paid any taxes, fees, or penalties owed to the State Tax Commission; or

77 [(ii)] (B) is current on a payment plan with the State Tax Commission for any taxes,
78 fees, or penalties owed to the State Tax Commission;

79 [(f)] (vii) the address of the nonprofit corporation's registered office;

80 [(g)] (viii) the name of the nonprofit corporation's registered agent at the office stated
81 in Subsection (1)(f);

82 (ix) the federal employer identification number of the nonprofit corporation; and

83 [(h)] (x) any additional information the division determines is necessary or
84 appropriate[-]; and

85 [(2)] (b) [~~The nonprofit corporation shall include in or with the application for~~
86 ~~reinstatement.~~]

87 [(a)] includes the written consent to appointment by the designated registered agent[;

88 and].

89 ~~[(b) a certificate from the State Tax Commission that states that the nonprofit~~
90 ~~corporation:]~~

91 ~~[(i) has paid any taxes, fees, or penalties owed to the State Tax Commission; or]~~

92 ~~[(ii) is current on a payment plan with the State Tax Commission for any taxes, fees, or~~
93 ~~penalties owed to the State Tax Commission.]~~

94 (2) (a) After receiving a nonprofit corporation's application for reinstatement, the
95 division shall:

96 (i) provide the State Tax Commission with the nonprofit corporation's federal employer
97 identification number; and

98 (ii) request that the State Tax Commission certify that the nonprofit corporation is in
99 good standing.

100 (b) The State Tax Commission shall certify that a nonprofit corporation is in good
101 standing if the nonprofit corporation:

102 (i) has paid all taxes, fees, and penalties the nonprofit corporation owed to the State
103 Tax Commission; or

104 (ii) is current on a payment plan with the State Tax Commission for all taxes, fees, and
105 penalties the nonprofit corporation owes to the State Tax Commission.

106 (c) If a nonprofit corporation is not in good standing as described in Subsection (2)(b),
107 the State Tax Commission shall:

108 (i) notify the division, stating that the nonprofit corporation is not in good standing;
109 and

110 (ii) notify the nonprofit corporation, explaining in detail why the nonprofit corporation
111 is not in good standing.

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

113 (i) the division determines that the application for reinstatement contains the
114 information required ~~[by Subsections (1) and (2); and]~~ under Subsection (1);

115 (ii) the division determines that the information in the application is correct; and

116 (iii) the State Tax Commission certifies that the nonprofit corporation is in good
117 standing as described in Subsection (2)(b).

118 (b) The division shall mail written notice of the revocation to the nonprofit corporation

119 in the manner provided in Subsection 16-6a-1411(5) stating the effective date of the
120 dissolution.

121 (4) When the reinstatement is effective:

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

124 (b) the nonprofit corporation may carry on [its] the nonprofit corporation's activities,
125 under the name stated pursuant to Subsection (1)(c), as if the administrative dissolution had
126 never occurred; and

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

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

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

134 Section 3. Section 16-6a-1513 is amended to read:

135 **16-6a-1513. Withdrawal of foreign nonprofit corporation.**

136 (1) A foreign nonprofit corporation authorized to conduct affairs in this state may not
137 withdraw from this state until [its] the foreign nonprofit corporation's application for
138 withdrawal has been filed by the division.

139 (2) A foreign nonprofit corporation authorized to conduct affairs in this state may apply
140 for withdrawal by delivering to the division for filing an application for withdrawal [~~setting~~
141 ~~forth~~] that states:

142 (a) [its] the foreign nonprofit corporation's corporate name and [its] assumed name, if
143 any;

144 (b) the name of the state or country under whose law [it] the foreign nonprofit
145 corporation is incorporated;

146 (c) (i) (A) the address of [its] the foreign nonprofit corporation's principal office; or

147 (B) if a principal office is not to be maintained, a statement that the foreign nonprofit
148 corporation will not maintain a principal office; and

149 (ii) if different from the address of the principal office or if no principal office is to be

150 maintained, the address to which service of process may be mailed pursuant to Section
151 [16-6a-1514](#);

152 (d) that the foreign nonprofit corporation is not conducting affairs in this state;

153 (e) that ~~[it]~~ the foreign nonprofit corporation surrenders ~~[its]~~ the foreign nonprofit
154 corporation's authority to conduct affairs in this state;

155 (f) whether ~~[its]~~ the foreign nonprofit corporation's registered agent will continue to be
156 authorized to accept service on ~~[its]~~ the foreign nonprofit corporation's behalf in any
157 proceeding based on a cause of action arising during the time ~~[it]~~ the foreign nonprofit
158 corporation was authorized to conduct affairs in this state; ~~[and]~~

159 (g) the federal employer identification number of the foreign nonprofit corporation; and

160 ~~[(g)]~~ (h) any additional information that the division determines is necessary or
161 appropriate to:

162 (i) determine whether the foreign nonprofit corporation is entitled to withdraw; and

163 (ii) determine and assess any unpaid taxes, fees, and penalties payable by the foreign
164 nonprofit corporation as prescribed by this chapter.

165 ~~[(3) A foreign nonprofit corporation's application for withdrawal may not be filed by~~
166 ~~the division until:]~~

167 ~~[(a) all outstanding fees and state tax obligations have been paid; and]~~

168 ~~[(b) the division has received a certificate from the State Tax Commission reciting that~~
169 ~~all taxes owed by the foreign nonprofit corporation have been paid.]~~

170 (3) (a) After receiving a foreign nonprofit corporation's application for withdrawal, the
171 division shall:

172 (i) provide the State Tax Commission with the foreign nonprofit corporation's federal
173 employer identification number; and

174 (ii) request that the State Tax Commission certify that the foreign nonprofit corporation
175 is in good standing.

176 (b) The State Tax Commission shall certify that a foreign nonprofit corporation is in
177 good standing if the foreign nonprofit corporation has paid all taxes, fees, and penalties the
178 foreign nonprofit corporation owed to the State Tax Commission.

179 (c) If a foreign nonprofit corporation is not in good standing as described in Subsection
180 (3)(b), the State Tax Commission shall:

181 (i) notify the division, stating that the foreign nonprofit corporation is not in good
 182 standing; and

183 (ii) notify the foreign nonprofit corporation, explaining in detail why the foreign
 184 nonprofit corporation is not in good standing.

185 (4) (a) The division shall approve a foreign nonprofit corporation's application for
 186 withdrawal if:

187 (i) the division determines that the application for withdrawal contains the information
 188 required under Subsection (2);

189 (ii) the division determines the information in the application is correct; and

190 (iii) the State Tax Commission certifies that the foreign nonprofit corporation is in
 191 good standing as described in Subsection (3)(b).

192 (b) The division shall mail written notice of the withdrawal stating the effective date of
 193 the withdrawal to the foreign nonprofit corporation.

194 Section 4. Section **16-10a-1422** is amended to read:

195 **16-10a-1422. Reinstatement following dissolution.**

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

199 (a) states:

200 ~~[(a)]~~ (i) the effective date of the corporation's dissolution;

201 ~~[(b)]~~ (ii) the corporation's corporate name as of the effective date of dissolution;

202 ~~[(c)]~~ (iii) that the grounds for dissolution either did not exist or have been eliminated;

203 ~~[(d)]~~ (iv) the corporate name under which the corporation is being reinstated;

204 ~~[(e)]~~ (v) that the name stated in Subsection ~~[(1)](d)~~ (1)(a)(iv) satisfies the requirements
 205 of Section **16-10a-401**;

206 ~~[(f)]~~ (vi) that the corporation has paid all fees or penalties imposed under this chapter
 207 or other applicable state law;

208 ~~[(g)]~~ (vii) that the corporation:

209 ~~[(i)]~~ (A) has paid any taxes, fees, or penalties owed to the State Tax Commission; or

210 ~~[(ii)]~~ (B) is current on a payment plan with the State Tax Commission for any taxes,
 211 fees, or penalties owed to the State Tax Commission;

212 ~~[(h)]~~ (viii) the address of the corporation's registered office in this state;

213 ~~[(i)]~~ (ix) the name of the corporation's registered agent at the office stated in

214 Subsection (1)(h);

215 (x) the federal employer identification number of the corporation; and

216 ~~[(j)]~~ (xi) any additional information the division determines to be necessary or

217 appropriate~~[-];~~ and

218 ~~[(2)]~~ (b) ~~[The corporation shall include in or with the application for reinstatement:]~~

219 ~~[(a)]~~ includes the written consent to appointment by the designated registered agent~~;~~

220 ~~and].~~

221 ~~[(b) a certificate from the State Tax Commission that states that the corporation:]~~

222 ~~[(i) has paid any taxes, fees, or penalties owed to the State Tax Commission; or]~~

223 ~~[(ii) is current on a payment plan with the State Tax Commission for any taxes, fees, or~~

224 ~~penalties owed to the State Tax Commission.]~~

225 (2) (a) After receiving a corporation's application for reinstatement, the division shall:

226 (i) provide the State Tax Commission with the corporation's federal employer

227 identification number; and

228 (ii) request that the State Tax Commission certify that the corporation is in good

229 standing.

230 (b) The State Tax Commission shall certify that a corporation is in good standing if the

231 corporation:

232 (i) has paid all taxes, fees, and penalties the corporation owed to the State Tax

233 Commission; or

234 (ii) is current on a payment plan with the State Tax Commission for all taxes, fees, and

235 penalties the corporation owes to the State Tax Commission.

236 (c) If a corporation is not in good standing as described in Subsection (2)(b), the State

237 Tax Commission shall:

238 (i) notify the division, stating that the corporation is not in good standing; and

239 (ii) notify the corporation, explaining in detail why the corporation is not in good

240 standing.

241 (3) [H]

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

243 (i) the division determines that the application for reinstatement contains the
 244 information required ~~[by Subsections (1) and (2) and]~~ under Subsection (1);

245 (ii) the division determines that the information in the application is correct~~[the~~
 246 ~~division shall revoke the administrative dissolution.]; and~~

247 (iii) the State Tax Commission certifies that the corporation is in good standing as
 248 described in Subsection (2)(b).

249 (b) The division shall mail to the corporation in the manner provided in Subsection
 250 16-10a-1421(5) written notice of:

251 ~~[(a)]~~ (i) the revocation; and

252 ~~[(b)]~~ (ii) the effective date of the revocation.

253 (4) (a) When the reinstatement is effective, ~~[it]~~ the reinstatement relates back to the
 254 effective date of the administrative dissolution.

255 (b) Upon reinstatement:

256 ~~[(a)]~~ (i) an act of the corporation during the period of dissolution is effective and
 257 enforceable as if the administrative dissolution had never occurred; and

258 ~~[(b)]~~ (ii) the corporation may carry on ~~[its]~~ the corporation's business, under the name
 259 stated pursuant to Subsection ~~[(1)(d)]~~, (1)(a)(iv), as if the administrative dissolution had never
 260 occurred.

261 Section 5. Section 16-10a-1520 is amended to read:

262 **16-10a-1520. Withdrawal of foreign corporation.**

263 (1) A foreign corporation authorized to transact business in this state may not withdraw
 264 from this state until ~~[its]~~ the foreign corporation's application for withdrawal has been filed by
 265 the division.

266 (2) A foreign corporation authorized to transact business in this state may apply for
 267 withdrawal by delivering to the division for filing an application for withdrawal ~~[setting forth]~~
 268 that states:

269 (a) ~~[its]~~ the foreign corporation's corporate name and ~~[its]~~ assumed name, if any;

270 (b) the name of the state or country under whose law ~~[it]~~ the foreign corporation is
 271 incorporated;

272 (c) the address of ~~[its]~~ the foreign corporation's principal office, or if none is to be
 273 maintained, a statement that the corporation will not maintain a principal office, and if different

274 from the address of the principal office or if no principal office is to be maintained, the address
275 to which service of process may be mailed pursuant to Section [16-10a-1521](#);

276 (d) that the corporation is not transacting business in this state and that ~~[it]~~ the foreign
277 corporation surrenders ~~[its]~~ the foreign corporation's authority to transact business in this state;

278 (e) whether ~~[its]~~ the foreign corporation's registered agent will continue to be
279 authorized to accept service on ~~[its]~~ the foreign corporation's behalf in any proceeding based on
280 a cause of action arising during the time ~~[it]~~ the foreign corporation was authorized to transact
281 business in this state; ~~[and]~~

282 (f) the federal employer identification number of the foreign corporation; and
283 ~~[(f)]~~ (g) any additional information that the division determines is necessary or
284 appropriate to determine whether the corporation is entitled to withdraw, and to determine and
285 assess any unpaid taxes, fees, and penalties payable by ~~[it]~~ the foreign corporation as prescribed
286 by this chapter.

287 ~~[(3) A foreign corporation's application for withdrawal may not be filed by the division~~
288 ~~until all outstanding fees and state tax obligations have been paid and the division has received~~
289 ~~a tax clearance certificate from the State Tax Commission.]~~

290 (3) (a) After receiving a foreign corporation's application for withdrawal, the division
291 shall:

292 (i) provide the State Tax Commission with the foreign corporation's federal employer
293 identification number; and

294 (ii) request that the State Tax Commission certify that the foreign corporation is in
295 good standing.

296 (b) The State Tax Commission shall certify that a foreign corporation is in good
297 standing if the foreign corporation has paid all taxes, fees, and penalties the foreign nonprofit
298 corporation owed to the State Tax Commission.

299 (c) If a foreign corporation is not in good standing as described in Subsection (3)(b),
300 the State Tax Commission shall:

301 (i) notify the division, stating that the foreign corporation is not in good standing; and

302 (ii) notify the foreign corporation, explaining in detail why the foreign corporation is
303 not in good standing.

304 (4) (a) The division shall approve a foreign corporation's application for withdrawal if:

305 (i) the division determines that the application for withdrawal contains the information
306 required under Subsection (2);

307 (ii) the division determines the information in the application is correct; and

308 (iii) the State Tax Commission certifies that the foreign corporation is in good standing
309 as described in Subsection (3)(b).

310 (b) The division shall mail written notice of the withdrawal stating the effective date of
311 the withdrawal to the foreign corporation.

312 **Section 6. Effective date.**

313 This bill takes effect on July 1, 2023.