

## HB0399S03 compared with HB0399S02

~~deleted text~~ shows text that was in HB0399S02 but was deleted in HB0399S03.

inserted text shows text that was not in HB0399S02 but was inserted into HB0399S03.

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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

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#### 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

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

### Money Appropriated in this Bill:

None

### Other Special Clauses:

This bill provides a special effective date.

### Utah Code Sections Affected:

AMENDS:

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

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

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

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

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

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

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

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

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

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

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

(2) ~~[An]~~ Except as provided in Subsection (3), an amendment to the articles of incorporation or the bylaws that adds, changes, or deletes a greater quorum or voting requirement shall meet the same quorum requirement and be adopted by the same vote and

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

- (a) then in effect; or
- (b) proposed to be adopted.

(3) Notwithstanding Subsection (2), a nonprofit organization that is affiliated with a religious organization may make an amendment to the nonprofit organization's articles of incorporation or bylaws in accordance with the direction of the religious organization's religious authorities.

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

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

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

(a) states:

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

~~(b)~~ (ii) that the ground or grounds for dissolution:

~~(i)~~ (A) did not exist; or

~~(ii)~~ (B) have been eliminated;

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

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

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

~~(e)~~ (vi) that the nonprofit corporation:

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

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

~~(f)~~ (vii) the address of the nonprofit corporation's registered office;

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

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(ix) the federal employer identification number of the nonprofit corporation; and  
~~[(h)]~~ (x) any additional information the division determines is necessary or appropriate[-]; and

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(4) When the reinstatement is effective:

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

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

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

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

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

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

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

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

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

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

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

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

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

(ii) if different from the address of the principal office or if no principal office is to be maintained, the address to which service of process may be mailed pursuant to Section 16-6a-1514;

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

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

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

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

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

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

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

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

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

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

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

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

(ii) request that the State Tax Commission certify that the foreign nonprofit corporation

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is in good standing.

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

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

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

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

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

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

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

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

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

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

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

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

(a) states:

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

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

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

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

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

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

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

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

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

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

~~[(i)]~~ (ix) the name of the corporation's registered agent at the office stated in Subsection (1)(h);

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

~~[(j)]~~ (xi) any additional information the division determines to be necessary or appropriate[-]; and

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

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

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

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

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

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

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

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

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

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

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

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



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Tax Commission shall:

- (i) notify the division, stating that the corporation is not in good standing; and
- (ii) notify the corporation, explaining in detail why the corporation is not in good

standing.

(3) [Hf]

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

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

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

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

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

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

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

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

(b) Upon reinstatement:

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

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

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

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

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

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

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that states:

- (a) [its] the foreign corporation's corporate name and [its] assumed name, if any;
- (b) the name of the state or country under whose law [it] the foreign corporation is incorporated;
- (c) the address of [its] the foreign corporation's principal office, or if none is to be maintained, a statement that the corporation will not maintain a principal office, and if different from the address of the principal office or if no principal office is to be maintained, the address to which service of process may be mailed pursuant to Section 16-10a-1521;
- (d) that the corporation is not transacting business in this state and that [it] the foreign corporation surrenders [its] the foreign corporation's authority to transact business in this state;
- (e) whether [its] the foreign corporation's registered agent will continue to be authorized to accept service on [its] the foreign corporation's behalf in any proceeding based on a cause of action arising during the time [it] the foreign corporation was authorized to transact business in this state; ~~and~~
- (f) the federal employer identification number of the foreign corporation; and
- ~~[(f)]~~ (g) any additional information that the division determines is necessary or appropriate to determine whether the corporation is entitled to withdraw, and to determine and assess any unpaid taxes, fees, and penalties payable by [it] the foreign corporation as prescribed by this chapter.

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

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

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

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

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

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

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

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

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

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

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

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

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

Section 6. **Effective date.**

~~(1)~~ (1) Except as provided in Subsection (2), this bill takes effect on May 3, 2023.

(2) The actions affecting the following sections take effect on July 1, 2023:

(a) Section 16-6a-1412;

(b) Section 16-6a-1513;

(c) Section 16-10a-1422; and

(d) Section 16-10a-1520.