

Senator Stephanie Pitcher proposes the following substitute bill:

CIVIL ACTION AMENDMENTS

2024 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Stephanie Gricius

Senate Sponsor: Stephanie Pitcher

LONG TITLE

General Description:

This bill addresses civil actions.

Highlighted Provisions:

This bill:

- ▶ defines terms;
- ▶ clarifies the requirements for bringing a civil action for human trafficking;
- ▶ allows for the dissolution of a nonprofit organization in certain civil actions; 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- 16-6a-1414 (Superseded 07/01/24)**, as enacted by Laws of Utah 2000, Chapter 300
- 16-6a-1414 (Effective 07/01/24)**, as last amended by Laws of Utah 2023, Chapter 401
- 16-6a-1416 (Effective 07/01/24)**, as last amended by Laws of Utah 2023, Chapter 401
- 16-6a-1417 (Effective 07/01/24)**, as last amended by Laws of Utah 2023, Chapter 401



26 RENUMBERS AND AMENDS:

27 **78B-3-113**, (Renumbered from 77-38-15, as last amended by Laws of Utah 2022,
28 Chapter 430)

29

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

31 Section 1. Section **16-6a-1414 (Superseded 07/01/24)** is amended to read:

32 **16-6a-1414 (Superseded 07/01/24). Grounds for judicial dissolution.**

33 (1) A nonprofit corporation may be dissolved in a proceeding by the attorney general or
34 the division director if it is established that:

35 (a) the nonprofit corporation obtained its articles of incorporation through fraud; or

36 (b) the nonprofit corporation has continued to exceed or abuse the authority conferred
37 upon it by law.

38 (2) A nonprofit corporation may be dissolved in a proceeding by a member or director
39 if it is established that:

40 (a) (i) the directors are deadlocked in the management of the corporate affairs;

41 (ii) the members, if any, are unable to break the deadlock; and

42 (iii) irreparable injury to the nonprofit corporation is threatened or being suffered;

43 (b) the directors or those in control of the nonprofit corporation have acted, are acting,
44 or will act in a manner that is illegal, oppressive, or fraudulent;

45 (c) the members are deadlocked in voting power and have failed, for a period that
46 includes at least two consecutive annual meeting dates, to elect successors to directors whose
47 terms have expired or would have expired upon the election of their successors; or

48 (d) the corporate assets are being misapplied or wasted.

49 (3) A nonprofit corporation may be dissolved in a proceeding by a creditor if it is
50 established that:

51 (a) (i) the creditor's claim has been reduced to judgment;

52 (ii) the execution on the judgment has been returned unsatisfied; and

53 (iii) the nonprofit corporation is insolvent; or

54 (b) (i) the nonprofit corporation is insolvent; and

55 (ii) the nonprofit corporation has admitted in writing that the creditor's claim is due and
56 owing.

57 (4) (a) As used in this Subsection (4):

58 (i) "Misconduct claim" means:

59 (A) a claim for wrongful death, fraud, breach of public trust, or an intentional tort; or

60 (B) a claim regarding criminal conduct by a director, member, or employee of the

61 nonprofit organization that is a felony offense or an offense described in Title 76, Chapter 5,

62 Part 4, Sexual Offenses, Title 76, Chapter 5b, Sexual Exploitation Act, Section [76-7-102](#),

63 Section [76-9-702](#), or Section [76-9-702.1](#).

64 (ii) "Nonprofit corporation" does not include a bona fide church or religious

65 organization.

66 (b) If a person brings a misconduct claim in an action against a nonprofit corporation,

67 the person may also bring an action to dissolve the nonprofit corporation.

68 (c) If a person brings a dissolution action under Subsection (4)(b), the court may only

69 dissolve the nonprofit corporation if the court finds the nonprofit corporation is liable for the

70 misconduct claim.

71 (d) Upon a motion by the plaintiff in a dissolution action described in Subsection

72 (4)(b), the court may:

73 (i) issue an injunction preventing the nonprofit organization from selling or disposing
74 of any assets held by the nonprofit organization; and

75 (ii) require the nonprofit organization to deposit funds, or post a bond, with the court
76 for the amount of damages pleaded in the complaint.

77 (e) The court may void a transaction that is made by the nonprofit organization within

78 12 months before the day on which the action was filed with the court if the court finds that the

79 transaction is voidable under Section [25-6-202](#).

80 ~~[(4)]~~ (5) (a) If a nonprofit corporation has been dissolved by voluntary or

81 ~~[administrative]~~ another action taken under this part:

82 (i) the nonprofit corporation may bring a proceeding to wind up and liquidate its
83 business and affairs under judicial supervision in accordance with Section [16-6a-1405](#); and

84 (ii) the attorney general, a director, a member, ~~[or]~~ a creditor, or a plaintiff under

85 Subsection (4) may bring a proceeding to wind up and liquidate the affairs of the nonprofit

86 corporation under judicial supervision in accordance with Section [16-6a-1405](#), upon

87 establishing the grounds set forth in Subsections (1) through ~~[(3)]~~ (4).

88 (b) As used in Sections 16-6a-1415 through 16-6a-1417:

89 (i) a "judicial proceeding to dissolve the nonprofit corporation" includes a proceeding
90 brought under this Subsection [~~(4)~~] (5); and

91 (ii) a "decree of dissolution" includes an order of a court entered in a proceeding under
92 this Subsection [~~(4)~~] (5) that directs that the affairs of a nonprofit corporation shall be wound
93 up and liquidated under judicial supervision.

94 Section 2. Section 16-6a-1414 (Effective 07/01/24) is amended to read:

95 **16-6a-1414 (Effective 07/01/24). Grounds and procedure for judicial dissolution.**

96 (1) The attorney general or the division director may bring an action in a court with
97 jurisdiction under Title 78A, Judiciary and Judicial Administration, to dissolve a nonprofit
98 corporation if it is established that:

99 (a) the nonprofit corporation obtained the nonprofit corporation's articles of
100 incorporation through fraud; or

101 (b) the nonprofit corporation has continued to exceed or abuse the authority conferred
102 upon the nonprofit corporation by law.

103 (2) A member or director of a nonprofit corporation may bring an action in a court with
104 jurisdiction under Title 78A, Judiciary and Judicial Administration, to dissolve the nonprofit
105 corporation if it is established that:

106 (a) (i) the directors are deadlocked in the management of the corporate affairs;

107 (ii) the members, if any, are unable to break the deadlock; and

108 (iii) irreparable injury to the nonprofit corporation is threatened or being suffered;

109 (b) the directors or those in control of the nonprofit corporation have acted, are acting,
110 or will act in a manner that is illegal, oppressive, or fraudulent;

111 (c) the members are deadlocked in voting power and have failed, for a period that
112 includes at least two consecutive annual meeting dates, to elect successors to directors whose
113 terms have expired or would have expired upon the election of their successors; or

114 (d) the corporate assets are being misapplied or wasted.

115 (3) A creditor may bring an action in a court with jurisdiction under Title 78A,
116 Judiciary and Judicial Administration, to dissolve a nonprofit corporation if it is established
117 that:

118 (a) (i) the creditor's claim has been reduced to judgment;

- 119 (ii) the execution on the judgment has been returned unsatisfied; and
120 (iii) the nonprofit corporation is insolvent; or
121 (b) (i) the nonprofit corporation is insolvent; and
122 (ii) the nonprofit corporation has admitted in writing that the creditor's claim is due and
123 owing.
- 124 (4) (a) As used in this Subsection (4):
125 (i) "Misconduct claim" means:
126 (A) a claim for wrongful death, fraud, breach of public trust, or an intentional tort; or
127 (B) a claim regarding criminal conduct by a director, member, or employee of the
128 nonprofit organization that is a felony offense or an offense described in Title 76, Chapter 5,
129 Part 4, Sexual Offenses, Title 76, Chapter 5b, Sexual Exploitation Act, Section [76-7-102](#),
130 Section [76-9-702](#), or Section [76-9-702.1](#).
- 131 (ii) "Nonprofit corporation" does not include a bona fide church or religious
132 organization.
- 133 (b) If a person brings a misconduct claim in an action against a nonprofit corporation,
134 the person may also bring an action to dissolve the nonprofit corporation.
- 135 (c) If a person brings a dissolution action under Subsection (4)(b), the court may only
136 dissolve the nonprofit corporation if the court finds the nonprofit corporation is liable for the
137 misconduct claim.
- 138 (d) Upon a motion by the plaintiff in a dissolution action described in Subsection
139 (4)(b), the court may:
- 140 (i) issue an injunction preventing the nonprofit organization from selling or disposing
141 of any assets held by the nonprofit organization; and
142 (ii) require the nonprofit organization to deposit funds, or post a bond, with the court
143 for the amount of damages pleaded in the complaint.
- 144 (e) The court may void a transaction that is made by the nonprofit organization within
145 12 months before the day on which the action was filed with the court if the court finds that the
146 transaction is voidable under Section [25-6-202](#).
- 147 ~~[(4)]~~ (5) If an action is brought under this section, it is not necessary to make directors
148 or members parties to the action to dissolve the nonprofit corporation unless relief is sought
149 against the members individually.

150 ~~[(5)]~~ (6) In an action under this section, the court may:
151 (a) issue injunctions;
152 (b) appoint a receiver or a custodian pendente lite with all powers and duties the court
153 directs; or
154 (c) take other action required to preserve the nonprofit corporation's assets wherever
155 located and carry on the business of the nonprofit corporation until a full hearing can be held.

156 ~~[(6)]~~ (7) If a nonprofit corporation has been dissolved by voluntary or ~~[administrative]~~
157 another action taken under this part:

158 (a) the nonprofit corporation may bring a proceeding to wind up and liquidate its
159 business and affairs under judicial supervision in accordance with Section 16-6a-1405; and

160 (b) the attorney general, a director, a member, ~~[or]~~ a creditor, or a plaintiff under
161 Subsection (4) may bring a proceeding to wind up and liquidate the affairs of the nonprofit
162 corporation under judicial supervision in accordance with Section 16-6a-1405, upon
163 establishing the grounds set forth in Subsections (1) through ~~[(3)]~~ (4).

164 Section 3. Section 16-6a-1416 (Effective 07/01/24) is amended to read:

165 **16-6a-1416 (Effective 07/01/24). Receivership or custodianship.**

166 (1) As used in this section:

167 (a) "Decree of dissolution" includes an order of a court entered in a proceeding under
168 ~~[Subsection 16-6a-1414(4)]~~ Section 16-6a-1414 that directs that the affairs of a nonprofit
169 corporation be wound up and liquidated under judicial supervision.

170 (b) "Judicial proceeding to dissolve the nonprofit corporation" includes a proceeding
171 brought under ~~[Subsection 16-6a-1414(4)]~~ Section 16-6a-1414.

172 (2) (a) A court in a judicial proceeding brought to dissolve a nonprofit corporation may
173 appoint:

174 (i) one or more receivers to wind up and liquidate the affairs of the nonprofit
175 corporation; or

176 (ii) one or more custodians to manage the affairs of the nonprofit corporation.

177 (b) Before appointing a receiver or custodian, the court shall hold a hearing, after
178 giving notice to:

179 (i) all parties to the proceeding; and

180 (ii) any interested persons designated by the court.

181 (c) The court appointing a receiver or custodian has exclusive jurisdiction over the
182 nonprofit corporation and all of its property, wherever located.

183 (d) The court may appoint as a receiver or custodian:

184 (i) an individual;

185 (ii) a domestic or foreign corporation authorized to conduct affairs in this state; or

186 (iii) a domestic or foreign nonprofit corporation authorized to conduct affairs in this
187 state.

188 (e) The court may require the receiver or custodian to post bond, with or without
189 sureties, in an amount specified by the court.

190 (3) The court shall describe the powers and duties of the receiver or custodian in its
191 appointing order that may be amended from time to time. Among other powers the receiver
192 shall have the power to:

193 (a) dispose of all or any part of the property of the nonprofit corporation, wherever
194 located:

195 (i) at a public or private sale; and

196 (ii) if authorized by the court; and

197 (b) sue and defend in the receiver's own name as receiver of the nonprofit corporation
198 in all courts.

199 (4) The custodian may exercise all of the powers of the nonprofit corporation, through
200 or in place of its board of directors or officers, to the extent necessary to manage the affairs of
201 the nonprofit corporation in the best interests of its members and creditors.

202 (5) If doing so is in the best interests of the nonprofit corporation and its members and
203 creditors, the court may:

204 (a) during a receivership, redesignate the receiver as a custodian; and

205 (b) during a custodianship, redesignate the custodian as a receiver.

206 (6) The court from time to time during the receivership or custodianship may order
207 compensation paid and expense disbursements or reimbursements made from the assets of the
208 nonprofit corporation or proceeds from the sale of the assets to:

209 (a) the receiver;

210 (b) the custodian; or

211 (c) the receiver's or custodian's attorney.

212 Section 4. Section **16-6a-1417 (Effective 07/01/24)** is amended to read:

213 **16-6a-1417 (Effective 07/01/24). Decree of dissolution.**

214 (1) As used in this section:

215 (a) "Decree of dissolution" includes an order of a court entered in a proceeding under
216 [~~Subsection 16-6a-1414(4)~~] Section 16-6a-1414 that directs that the affairs of a nonprofit
217 corporation be wound up and liquidated under judicial supervision.

218 (b) "Judicial proceeding to dissolve the nonprofit corporation" includes a proceeding
219 brought under [~~Subsection 16-6a-1414(4)~~] Section 16-6a-1414.

220 (2) If after a hearing the court determines that one or more grounds for judicial
221 dissolution described in Section 16-6a-1414 exist:

222 (a) the court may enter a decree:

223 (i) dissolving the nonprofit corporation; and

224 (ii) specifying the effective date of the dissolution; and

225 (b) the clerk of the court shall deliver a certified copy of the decree to the division
226 which shall file it accordingly.

227 (3) After entering the decree of dissolution, the court shall direct:

228 (a) the winding up and liquidation of the nonprofit corporation's affairs in accordance
229 with Section 16-6a-1405; and

230 (b) the giving of notice to:

231 (i) (A) the nonprofit corporation's registered agent; or

232 (B) the division if it has no registered agent; and

233 (ii) to claimants in accordance with Sections 16-6a-1406 and 16-6a-1407.

234 (4) The court's order or decision may be appealed as in other civil proceedings.

235 Section 5. Section **78B-3-113**, which is renumbered from Section 77-38-15 is
236 renumbered and amended to read:

237 [~~77-38-15~~]. **78B-3-113. Right of action for a victim of a human trafficking**
238 **offense.**

239 (1) [~~A victim of a person that commits any of the following offenses may bring a civil~~
240 ~~action against that person:] As used in this section:~~

241 (a) "Human trafficking offense" means an offense for:

242 [~~(a)~~] (i) human trafficking for labor under Section 76-5-308;

243 ~~[(b)]~~ (ii) human trafficking for sexual exploitation under Section 76-5-308.1;

244 ~~[(c)]~~ (iii) human smuggling under Section 76-5-308.3;

245 ~~[(d)]~~ (iv) human trafficking of a child under Section 76-5-308.5;

246 ~~[(e)]~~ (v) aggravated human trafficking under Section 76-5-310;

247 ~~[(f)]~~ (vi) aggravated human smuggling under Section 76-5-310.1; or

248 ~~[(g)]~~ (vii) benefitting from human trafficking under Section 76-5-309.

249 (b) "Victim" means an individual against whom a human trafficking offense has been
250 committed.

251 (2) A victim has a right of action against a person that committed a human trafficking
252 offense against the victim to recover:

253 (a) ~~[The court may award]~~ actual damages, compensatory damages, punitive damages,
254 injunctive relief, or any other appropriate relief~~[-]~~ for the human trafficking offense; and

255 (b) ~~[The court may award]~~ treble damages on proof of actual damages for the human
256 trafficking offense if the court finds that the person's acts were willful and malicious.

257 ~~[(3) In an action under this section, the court shall award a prevailing victim reasonable~~
258 ~~attorney fees and costs.]~~

259 ~~[(4) (3) [An action under this section shall be commenced no later than 10 years after~~
260 ~~the later of:]~~ Notwithstanding any other statute of limitation or repose that may be applicable to
261 an action described in this section, a victim may only bring an action described in this section
262 within 10 years after the later of:

263 (a) the day on which the victim was freed from the human trafficking or human
264 smuggling situation;

265 (b) the day on which the victim ~~[attains]~~ reaches 18 years old; or

266 (c) if the victim was unable to bring an action due to a disability, the day on which the
267 victim's disability ends.

268 ~~[(5) (4) The time period described in Subsection [(4) (3) is tolled during a period of~~
269 ~~time when the victim fails to bring an action due to the person:~~

270 (a) inducing the victim to delay filing the action;

271 (b) preventing the victim from filing the action; or

272 (c) threatening and causing duress upon the victim in order to prevent the victim from
273 filing the action.

274 ~~[(6) The court shall offset damages awarded to the victim under this section by any~~
275 ~~restitution paid to the victim under Title 77, Chapter 38b, Crime Victims Restitution Act.]~~

276 (5) The court shall credit any restitution paid by the person to the victim as described in
277 Subsection [77-38b-303\(5\)\(b\)](#).

278 (6) The court shall award reasonable attorney fees and costs as described in Subsection
279 [77-38b-303\(7\)](#) in an action brought under this section.

280 ~~[(7) A victim may bring an action described in this section in any court of competent~~
281 ~~jurisdiction where:]~~

282 (7) (a) Notwithstanding Chapter 3a, Venue for Civil Actions, a victim shall bring an
283 action under this section in the county in which:

284 [(a)] (i) ~~[a violation described in Subsection (1)]~~ the human trafficking offense
285 occurred;

286 [(b)] (ii) the victim resides; or

287 [(c)] (iii) ~~[the person that commits the offense resides or has a place of business]~~ the
288 defendant resides at the commencement of the action.

289 (b) If the defendant is a business organization as defined in Section [78B-3a-101](#), the
290 residence of the business organization is as described in Section [78B-3a-104](#).

291 (8) If the victim is deceased or otherwise unable to represent the victim's own interests
292 ~~[in court]~~ in the action, a legal guardian, family member, representative of the victim, or court
293 appointee may bring an action under this section on behalf of the victim.

294 (9) This section does not preclude any other remedy available to the victim under the
295 laws of this state or under federal law.

296 **Section 6. Effective date.**

297 (1) (a) Except as provided in Subsections (1)(b) and (2), if approved by two-thirds of
298 all the members elected to each house, this bill takes effect upon approval by the governor, or
299 the day following the constitutional time limit of Utah Constitution, Article VII, Section 8,
300 without the governor's signature, or in the case of a veto, the date of veto override.

301 (b) If this bill is not approved by two-thirds of all members elected to each house, this
302 bill takes effect on May 1, 2024.

303 (2) The actions affecting Section [16-6a-1414](#) (Effective 07/01/24), Section [16-6a-1416](#)
304 (Effective 07/01/24), and Section [16-6a-1417](#) (Effective 07/01/24) take effect on July 1, 2024.

305