

# HB0209S01 compared with HB0209

~~{deleted text}~~ shows text that was in HB0209 but was deleted in HB0209S01.

inserted text shows text that was not in HB0209 but was inserted into HB0209S01.

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~~{HUMAN TRAFFICKING}~~ 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

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### LONG TITLE

#### General Description:

This bill addresses ~~{a}~~ civil ~~{action for human trafficking}~~ 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:

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~~{ None }~~ 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16-6a-1414 (Superseded 07/01/24), as enacted by Laws of Utah 2000, Chapter 300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

#### RENUMBERS AND AMENDS:

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

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

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 Section 16-6a-1414 (Superseded 07/01/24) is amended to read:

16-6a-1414 (Superseded 07/01/24).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

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

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

(b) the nonprofit corporation has continued to exceed or abuse the authority conferred

upon it by law.

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

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

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

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

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

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

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

(3) A nonprofit corporation may be dissolved in a proceeding by a creditor if it is

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established that:

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

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

(iii) the nonprofit corporation is insolvent; or

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

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

owing.

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

(i) "Misconduct claim" means:

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

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

nonprofit organization that is a felony offense or an offense described in Title 76, Chapter 5, Part 4, Sexual Offenses, Title 76, Chapter 5b, Sexual Exploitation Act, Section 76-7-102, Section 76-9-702, or Section 76-9-702.1.

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

(b) If a person brings a misconduct claim in an action against a nonprofit corporation, the person may also bring an action to dissolve the nonprofit corporation.

(c) If a person brings a dissolution action under Subsection (4)(b), the court may only dissolve the nonprofit corporation if the court finds the nonprofit corporation is liable for the misconduct claim.

(d) Upon a motion by the plaintiff in a dissolution action described in Subsection (4)(b), the court may:

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

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

(e) The court may void a transaction that is made by the nonprofit organization within 12 months before the day on which the action was filed with the court if the court finds that the transaction is voidable under Section 25-6-202.

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

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[administrative] another action taken under this part:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(c) the members are deadlocked in voting power and have failed, for a period that

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includes at least two consecutive annual meeting dates, to elect successors to directors whose terms have expired or would have expired upon the election of their successors; or

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

(3) A creditor may bring an action in a court with jurisdiction under Title 78A,

Judiciary and Judicial Administration, to dissolve a nonprofit corporation if it is established that:

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

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

(iii) the nonprofit corporation is insolvent; or

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

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

owing.

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

(i) "Misconduct claim" means:

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

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

nonprofit organization that is a felony offense or an offense described in Title 76, Chapter 5, Part 4, Sexual Offenses, Title 76, Chapter 5b, Sexual Exploitation Act, Section 76-7-102, Section 76-9-702, or Section 76-9-702.1.

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

(b) If a person brings a misconduct claim in an action against a nonprofit corporation, the person may also bring an action to dissolve the nonprofit corporation.

(c) If a person brings a dissolution action under Subsection (4)(b), the court may only dissolve the nonprofit corporation if the court finds the nonprofit corporation is liable for the misconduct claim.

(d) Upon a motion by the plaintiff in a dissolution action described in Subsection (4)(b), the court may:

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

(ii) require the nonprofit organization to deposit funds, or post a bond, with the court

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for the amount of damages pleaded in the complaint.

(e) The court may void a transaction that is made by the nonprofit organization within 12 months before the day on which the action was filed with the court if the court finds that the transaction is voidable under Section 25-6-202.

~~[(4)]~~ (5) If an action is brought under this section, it is not necessary to make directors or members parties to the action to dissolve the nonprofit corporation unless relief is sought against the members individually.

~~[(5)]~~ (6) In an action under this section, the court may:

(a) issue injunctions;

(b) appoint a receiver or a custodian pendente lite with all powers and duties the court directs; or

(c) take other action required to preserve the nonprofit corporation's assets wherever located and carry on the business of the nonprofit corporation until a full hearing can be held.

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

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

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

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

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

(1) As used in this section:

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

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

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

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

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

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

(i) all parties to the proceeding; and

(ii) any interested persons designated by the court.

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

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

(i) an individual;

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

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

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

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

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

(i) at a public or private sale; and

(ii) if authorized by the court; and

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

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

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

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

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

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

(a) the receiver;

(b) the custodian; or

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

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

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

(1) As used in this section:

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

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

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

(a) the court may enter a decree:

(i) dissolving the nonprofit corporation; and

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

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

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

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

(b) the giving of notice to:

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

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

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

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

Section 5. Section 78B-3-113, which is renumbered from Section 77-38-15 is



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renumbered and amended to read:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(c) if the victim was unable to bring an action due to a disability, the day on which the

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victim's disability ends.

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

- (a) inducing the victim to delay filing the action;
- (b) preventing the victim from filing the action; or
- (c) threatening and causing duress upon the victim in order to prevent the victim from filing the action.

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

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

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

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

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

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

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

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

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

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

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

Section ~~{2}~~6. **Effective date.**

~~{This}~~(1) (a) Except as provided in Subsections (1)(b) and (2), if approved by

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two-thirds of all the members elected to each house, this bill takes effect upon approval by the governor, or the day following the constitutional time limit of Utah Constitution, Article VII, Section 8, without the governor's signature, or in the case of a veto, the date of veto override.

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

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