

1 **NONPROFIT CORPORATION ACT AMENDMENTS**

2 2015 GENERAL SESSION

3 STATE OF UTAH

4 **Chief Sponsor: Lyle W. Hillyard**

5 House Sponsor: V. Lowry Snow

7 **LONG TITLE**

8 **General Description:**

9 This bill amends the Utah Revised Nonprofit Corporation Act.

10 **Highlighted Provisions:**

11 This bill:

- 12 ▶ modifies definition provisions;
- 13 ▶ provides for use of electronic transmissions;
- 14 ▶ addresses private foundations;
- 15 ▶ addresses incorporation;
- 16 ▶ provides for mutual benefit corporations to purchase memberships;
- 17 ▶ modifies provision addressing no property rights;
- 18 ▶ addresses action without meeting;
- 19 ▶ modifies provision related to voting entitlement;
- 20 ▶ modifies provisions related to board of directors;
- 21 ▶ addresses authorized actions of a committee of the board;
- 22 ▶ modifies provisions related to conflicting interest transactions;
- 23 ▶ modifies provisions related to court-ordered indemnification of a director;
- 24 ▶ addresses provisions related to articles of incorporation;
- 25 ▶ provides for voting members to vote on amendment to convert to a corporation;
- 26 ▶ modifies effect of dissolution provision; and
- 27 ▶ makes technical and conforming changes.

28 **Money Appropriated in this Bill:**

29 None

30 **Other Special Clauses:**

31 None

32 **Utah Code Sections Affected:**

33 AMENDS:

- 34 **16-6a-102**, as last amended by Laws of Utah 2009, Chapter 386
- 35 **16-6a-103**, as last amended by Laws of Utah 2009, Chapter 388
- 36 **16-6a-116**, as last amended by Laws of Utah 2002, Chapter 197
- 37 **16-6a-203**, as enacted by Laws of Utah 2000, Chapter 300
- 38 **16-6a-610**, as enacted by Laws of Utah 2000, Chapter 300
- 39 **16-6a-611**, as last amended by Laws of Utah 2007, Chapter 315
- 40 **16-6a-705**, as enacted by Laws of Utah 2000, Chapter 300
- 41 **16-6a-707**, as last amended by Laws of Utah 2002, Chapter 197
- 42 **16-6a-711**, as last amended by Laws of Utah 2007, Chapter 315
- 43 **16-6a-712**, as enacted by Laws of Utah 2000, Chapter 300
- 44 **16-6a-801**, as enacted by Laws of Utah 2000, Chapter 300
- 45 **16-6a-807**, as enacted by Laws of Utah 2000, Chapter 300
- 46 **16-6a-808**, as last amended by Laws of Utah 2014, Chapter 160
- 47 **16-6a-813**, as enacted by Laws of Utah 2000, Chapter 300
- 48 **16-6a-814**, as last amended by Laws of Utah 2009, Chapter 388
- 49 **16-6a-815**, as last amended by Laws of Utah 2006, Chapter 228
- 50 **16-6a-817**, as last amended by Laws of Utah 2001, Chapter 127
- 51 **16-6a-825**, as last amended by Laws of Utah 2007, Chapter 315
- 52 **16-6a-905**, as last amended by Laws of Utah 2006, Chapter 228
- 53 **16-6a-1002**, as last amended by Laws of Utah 2008, Chapter 364
- 54 **16-6a-1003**, as enacted by Laws of Utah 2000, Chapter 300
- 55 **16-6a-1006**, as enacted by Laws of Utah 2000, Chapter 300
- 56 **16-6a-1008**, as last amended by Laws of Utah 2009, Chapter 386
- 57 **16-6a-1302**, as last amended by Laws of Utah 2009, Chapter 386

58 [16-6a-1405](#), as last amended by Laws of Utah 2007, Chapter 315

59 [42-2-6.6](#), as last amended by Laws of Utah 2010, Chapter 218

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

62 Section 1. Section **16-6a-102** is amended to read:

63 **16-6a-102. Definitions.**

64 As used in this chapter:

65 (1) (a) "Address" means a location where mail can be delivered by the United States
66 Postal Service.

67 (b) "Address" includes:

68 (i) a post office box number;

69 (ii) a rural free delivery route number; and

70 (iii) a street name and number.

71 (2) "Affiliate" means a person that directly or indirectly through one or more
72 intermediaries controls, or is controlled by, or is under common control with, the person
73 specified.

74 (3) "Articles of incorporation" include:

75 (a) amended articles of incorporation;

76 (b) restated articles of incorporation;

77 (c) articles of merger; and

78 (d) a document of a similar import to the documents described in Subsections (3)(a)
79 through (c).

80 (4) "Assumed corporate name" means a name assumed for use in this state:

81 (a) by a:

82 (i) foreign corporation pursuant to Section [16-10a-1506](#); or

83 (ii) a foreign nonprofit corporation pursuant to Section [16-6a-1506](#); and

84 (b) because the corporate name of the foreign corporation described in Subsection

85 (4)(a) is not available for use in this state.

86 (5) (a) Except as provided in Subsection (5)(b), "board of directors" means the body
87 authorized to manage the affairs of a domestic or foreign nonprofit corporation.

88 (b) Notwithstanding Subsection (5)(a), a person may not be considered a member of
89 the board of directors because of a power delegated to that person pursuant to Subsection
90 16-6a-801(2).

91 (6) (a) "Bylaws" means the one or more codes of rules, other than the articles of
92 incorporation, adopted pursuant to this chapter for the regulation or management of the affairs
93 of a domestic or foreign nonprofit corporation irrespective of the one or more names by which
94 the codes of rules are designated.

95 (b) "Bylaws" includes:

96 (i) amended bylaws; and

97 (ii) restated bylaws.

98 (7) (a) "Cash" or "money" means:

99 (i) legal tender;

100 (ii) a negotiable instrument; or

101 (iii) other cash equivalent readily convertible into legal tender.

102 (b) "Cash" and "money" are used interchangeably in this chapter.

103 (8) (a) "Class" means a group of memberships that has the same right with respect to
104 voting, dissolution, redemption, transfer, or other characteristics.

105 (b) For purposes of Subsection (8)(a), a right is considered the same if it is determined
106 by a formula applied uniformly to a group of memberships.

107 (9) (a) "Conspicuous" means so written that a reasonable person against whom the
108 writing is to operate should have noticed the writing.

109 (b) "Conspicuous" includes printing or typing in:

110 (i) italics;

111 (ii) boldface;

112 (iii) contrasting color;

113 (iv) capitals; or

- 114 (v) underlining.
- 115 (10) "Control" or a "controlling interest" means the direct or indirect possession of the
- 116 power to direct or cause the direction of the management and policies of an entity by:
- 117 (a) the ownership of voting shares;
- 118 (b) contract; or
- 119 (c) a means other than those specified in Subsection (10)(a) or (b).
- 120 (11) Subject to Section [16-6a-207](#), "cooperative nonprofit corporation" or
- 121 "cooperative" means a nonprofit corporation organized or existing under this chapter.
- 122 (12) "Corporate name" means:
- 123 (a) the name of a domestic corporation as stated in the domestic corporation's articles
- 124 of incorporation;
- 125 (b) the name of a domestic nonprofit corporation as stated in the domestic nonprofit
- 126 corporation's articles of incorporation;
- 127 (c) the name of a foreign corporation as stated in the foreign corporation's:
- 128 (i) articles of incorporation; or
- 129 (ii) document of similar import to articles of incorporation; or
- 130 (d) the name of a foreign nonprofit corporation as stated in the foreign nonprofit
- 131 corporation's:
- 132 (i) articles of incorporation; or
- 133 (ii) document of similar import to articles of incorporation.
- 134 (13) "Corporation" or "domestic corporation" means a corporation for profit that:
- 135 (a) is not a foreign corporation; and
- 136 (b) is incorporated under or subject to Chapter 10a, Utah Revised Business Corporation
- 137 Act.
- 138 (14) "Delegate" means a person elected or appointed to vote in a representative
- 139 assembly:
- 140 (a) for the election of a director; or
- 141 (b) on matters other than the election of a director.

142 (15) "Deliver" includes delivery by mail or another means of transmission authorized
143 by Section 16-6a-103, except that delivery to the division means actual receipt by the division.

144 (16) "Director" means a member of the board of directors.

145 (17) (a) "Distribution" means the payment of a dividend or any part of the income or
146 profit of a nonprofit corporation to the nonprofit corporation's:

147 (i) members;

148 (ii) directors; or

149 (iii) officers.

150 (b) "Distribution" does not include a fair-value payment for:

151 (i) a good sold; or

152 (ii) a service received.

153 (18) "Division" means the Division of Corporations and Commercial Code.

154 (19) "Effective date," when referring to a document filed by the division, means the
155 time and date determined in accordance with Section 16-6a-108.

156 (20) "Effective date of notice" means the date notice is effective as provided in Section
157 16-6a-103.

158 (21) "Electronic transmission" or "electronically transmitted" means a process of
159 communication not directly involving the physical transfer of paper that is suitable for the
160 receipt, retention, retrieval, and reproduction of information by the recipient, whether by email,
161 texting, facsimile, or otherwise.

162 [~~21~~] (22) (a) "Employee" includes an officer of a nonprofit corporation.

163 (b) (i) Except as provided in Subsection [~~21~~] (22)(b)(ii), "employee" does not include
164 a director of a nonprofit corporation.

165 (ii) Notwithstanding Subsection [~~21~~] (22)(b)(i), a director may accept one or more
166 duties that make that director an employee of a nonprofit corporation.

167 [~~22~~] (23) "Executive director" means the executive director of the Department of
168 Commerce.

169 [~~23~~] (24) "Entity" includes:

- 170 (a) a domestic or foreign corporation;
 - 171 (b) a domestic or foreign nonprofit corporation;
 - 172 (c) a limited liability company;
 - 173 (d) a profit or nonprofit unincorporated association;
 - 174 (e) a business trust;
 - 175 (f) an estate;
 - 176 (g) a partnership;
 - 177 (h) a trust;
 - 178 (i) two or more persons having a joint or common economic interest;
 - 179 (j) a state;
 - 180 (k) the United States; or
 - 181 (l) a foreign government.
- 182 [~~24~~] (25) "Foreign corporation" means a corporation for profit incorporated under a
183 law other than the laws of this state.
- 184 [~~25~~] (26) "Foreign nonprofit corporation" means an entity:
- 185 (a) incorporated under a law other than the laws of this state; and
 - 186 (b) that would be a nonprofit corporation if formed under the laws of this state.
- 187 [~~26~~] (27) "Governmental entity" means:
- 188 (a) (i) the executive branch of the state;
 - 189 (ii) the judicial branch of the state;
 - 190 (iii) the legislative branch of the state;
 - 191 (iv) an independent entity, as defined in Section [63E-1-102](#);
 - 192 (v) a political subdivision of the state;
 - 193 (vi) a state institution of higher education, as defined in Section [53B-3-102](#);
 - 194 (vii) an entity within the state system of public education; or
 - 195 (viii) the National Guard; or
 - 196 (b) any of the following that is established or controlled by a governmental entity listed
197 in Subsection [~~26~~] (27)(a) to carry out the public's business:

- 198 (i) an office;
 - 199 (ii) a division;
 - 200 (iii) an agency;
 - 201 (iv) a board;
 - 202 (v) a bureau;
 - 203 (vi) a committee;
 - 204 (vii) a department;
 - 205 (viii) an advisory board;
 - 206 (ix) an administrative unit; or
 - 207 (x) a commission.
- 208 [~~27~~] (28) "Governmental subdivision" means:
- 209 (a) a county;
 - 210 (b) a city;
 - 211 (c) a town; or
 - 212 (d) another type of governmental subdivision authorized by the laws of this state.
- 213 [~~28~~] (29) "Individual" means:
- 214 (a) a natural person;
 - 215 (b) the estate of an incompetent individual; or
 - 216 (c) the estate of a deceased individual.
- 217 [~~29~~] (30) "Internal Revenue Code" means the federal "Internal Revenue Code of
- 218 1986," as amended from time to time, or to corresponding provisions of subsequent internal
- 219 revenue laws of the United States of America.
- 220 [~~30~~] (31) (a) "Mail," "mailed," or "mailing" means deposit, deposited, or depositing
- 221 in the United States mail, properly addressed, first-class postage prepaid.
- 222 (b) "Mail," "mailed," or "mailing" includes registered or certified mail for which the
- 223 proper fee is paid.
- 224 [~~31~~] (32) (a) "Member" means one or more persons identified or otherwise appointed
- 225 as a member of a domestic or foreign nonprofit corporation as provided:

226 (i) in the articles of incorporation;
227 (ii) in the bylaws;
228 (iii) by a resolution of the board of directors; or
229 (iv) by a resolution of the members of the nonprofit corporation.
230 (b) "Member" includes "voting member."
231 ~~[(32)]~~ (33) "Membership" refers to the rights and obligations of a member or members.
232 ~~[(33)]~~ (34) "Mutual benefit corporation" means a nonprofit corporation:
233 (a) that issues shares of stock to its members evidencing a right to receive distribution
234 of water or otherwise representing property rights; or
235 (b) all of whose assets are contributed or acquired by or for the members of the
236 nonprofit corporation or their predecessors in interest to serve the mutual purposes of the
237 members.
238 ~~[(34)]~~ (35) "Nonprofit corporation" or "domestic nonprofit corporation" means an
239 entity that:
240 (a) is not a foreign nonprofit corporation; and
241 (b) is incorporated under or subject to this chapter.
242 ~~[(35)]~~ (36) "Notice" ~~[is as provided]~~ means the same as that term is defined in Section
243 16-6a-103.
244 ~~[(36)]~~ (37) "Party related to a director" means:
245 (a) the spouse of the director;
246 (b) a child of the director;
247 (c) a grandchild of the director;
248 (d) a sibling of the director;
249 (e) a parent of the director;
250 (f) the spouse of an individual described in Subsections ~~[(36)]~~ (37)(b) through (e);
251 (g) an individual having the same home as the director;
252 (h) a trust or estate of which the director or another individual specified in this
253 Subsection ~~[(36)]~~ (37) is a substantial beneficiary; or

254 (i) any of the following of which the director is a fiduciary:

255 (i) a trust;

256 (ii) an estate;

257 (iii) an incompetent;

258 (iv) a conservatee; or

259 (v) a minor.

260 [~~(37)~~] (38) "Person" means an:

261 (a) individual; or

262 (b) entity.

263 [~~(38)~~] (39) "Principal office" means:

264 (a) the office, in or out of this state, designated by a domestic or foreign nonprofit

265 corporation as its principal office in the most recent document on file with the division

266 providing that information, including:

267 (i) an annual report;

268 (ii) an application for a certificate of authority; or

269 (iii) a notice of change of principal office; or

270 (b) if no principal office can be determined, a domestic or foreign nonprofit

271 corporation's registered office.

272 [~~(39)~~] (40) "Proceeding" includes:

273 (a) a civil suit;

274 (b) arbitration;

275 (c) mediation;

276 (d) a criminal action;

277 (e) an administrative action; or

278 (f) an investigatory action.

279 [~~(40)~~] (41) "Receive," when used in reference to receipt of a writing or other document

280 by a domestic or foreign nonprofit corporation, means the writing or other document is actually

281 received:

- 282 (a) by the domestic or foreign nonprofit corporation at:
- 283 (i) its registered office in this state; or
- 284 (ii) its principal office;
- 285 (b) by the secretary of the domestic or foreign nonprofit corporation, wherever the
- 286 secretary is found; or
- 287 (c) by another person authorized by the bylaws or the board of directors to receive the
- 288 writing or other document, wherever that person is found.

289 ~~[(41)]~~ (42) (a) "Record date" means the date established under Part 6, Members, or Part

290 7, Member Meetings and Voting, on which a nonprofit corporation determines the identity of

291 the nonprofit corporation's members.

292 (b) The determination described in Subsection ~~[(41)]~~ (42)(a) shall be made as of the

293 close of business on the record date unless another time for doing so is specified when the

294 record date is fixed.

295 ~~[(42)]~~ (43) "Registered agent" means the registered agent of:

- 296 (a) a domestic nonprofit corporation; or
- 297 (b) a foreign nonprofit corporation.

298 ~~[(43)]~~ (44) "Registered office" means the office within this state designated by a

299 domestic or foreign nonprofit corporation as its registered office in the most recent document

300 on file with the division providing that information, including:

- 301 (a) articles of incorporation;
- 302 (b) an application for a certificate of authority; or
- 303 (c) a notice of change of registered office.

304 ~~[(44)]~~ (45) "Secretary" means the corporate officer to whom the bylaws or the board of

305 directors delegates responsibility under Subsection 16-6a-818(3) for:

- 306 (a) the preparation and maintenance of:
- 307 (i) minutes of the meetings of:
- 308 (A) the board of directors; or
- 309 (B) the members; and

310 (ii) the other records and information required to be kept by the nonprofit corporation
311 pursuant to Section ~~16-6a-1601~~; and

312 (b) authenticating records of the nonprofit corporation.

313 ~~[(46)]~~ (46) "Share" means a unit of interest in a nonprofit corporation.

314 ~~[(45)]~~ (47) "Shareholder" means a person in whose name a share is registered in the
315 records of a nonprofit corporation.

316 ~~[(47)]~~ (48) "State," when referring to a part of the United States, includes:

317 (a) a state;

318 (b) a commonwealth;

319 (c) the District of Columbia;

320 (d) an agency or governmental and political subdivision of a state, commonwealth, or
321 District of Columbia;

322 (e) territory or insular possession of the United States; or

323 (f) an agency or governmental and political subdivision of a territory or insular
324 possession of the United States.

325 ~~[(48)]~~ (49) "Street address" means:

326 (a) (i) street name and number;

327 (ii) city or town; and

328 (iii) United States post office zip code designation; or

329 (b) if, by reason of rural location or otherwise, a street name, number, city, or town
330 does not exist, an appropriate description other than that described in Subsection ~~[(48)]~~ (49)(a)
331 fixing as nearly as possible the actual physical location, but only if the information includes:

332 (i) the rural free delivery route;

333 (ii) the county; and

334 (iii) the United States post office zip code designation.

335 ~~[(49)]~~ (50) "Tribe" means a tribe, band, nation, pueblo, or other organized group or
336 community of Indians, including an Alaska Native village, that is legally recognized as eligible
337 for and is consistent with a special program, service, or entitlement provided by the United

338 States to Indians because of their status as Indians.

339 [~~(50)~~] (51) "Tribal nonprofit corporation" means a nonprofit corporation:

340 (a) incorporated under the law of a tribe; and

341 (b) that is at least 51% owned or controlled by the tribe.

342 [~~(51)~~] (52) "United States" includes a district, authority, office, bureau, commission,
343 department, and another agency of the United States of America.

344 [~~(52)~~] (53) "Vote" includes authorization by:

345 (a) written ballot; and

346 (b) written consent.

347 [~~(53)~~] (54) (a) "Voting group" means all the members of one or more classes of
348 members or directors that, under this chapter, the articles of incorporation, or the bylaws, are
349 entitled to vote and be counted together collectively on a matter.

350 (b) All members or directors entitled by this chapter, the articles of incorporation, or
351 the bylaws to vote generally on a matter are for that purpose a single voting group.

352 [~~(54)~~] (55) (a) "Voting member" means a person entitled to vote for all matters
353 required or permitted under this chapter to be submitted to a vote of the members, except as
354 otherwise provided in the articles of incorporation or bylaws.

355 (b) A person is not a voting member solely because of:

356 (i) a right the person has as a delegate;

357 (ii) a right the person has to designate a director; or

358 (iii) a right the person has as a director.

359 (c) Except as the bylaws may otherwise provide, "voting member" includes a
360 "shareholder" if the nonprofit corporation has shareholders.

361 Section 2. Section **16-6a-103** is amended to read:

362 **16-6a-103. Notice.**

363 (1) Notice given under this chapter shall be in writing unless oral notice is reasonable
364 under the circumstances.

365 (2) (a) Notice may be communicated:

- 366 (i) in person;
- 367 (ii) by telephone;
- 368 (iii) by [~~any form of electronic communication~~] electronic transmission; or
- 369 (iv) by mail or private carrier.
- 370 (b) If the forms of personal notice described in Subsection (2)(a) are impracticable,
- 371 notice may be communicated by:
- 372 (i) (A) a newspaper of general circulation in the county or similar governmental
- 373 subdivision in which the corporation's principal or registered office is located; and
- 374 (B) as required in Section 45-1-101; or
- 375 (ii) radio, television, or other form of public broadcast communication in the county or
- 376 similar governmental subdivision in which the corporation's principal or registered office is
- 377 located.
- 378 (3) Written notice to a domestic or foreign nonprofit corporation authorized to conduct
- 379 affairs in this state may be addressed to:
- 380 (a) its registered agent at its registered office; or
- 381 (b) the corporation's secretary at its principal office.
- 382 (4) (a) Written notice by a domestic or foreign nonprofit corporation to its members, is
- 383 effective as to each member when mailed, if:
- 384 (i) in a comprehensible form; and
- 385 (ii) addressed to the member's address shown in the domestic or foreign nonprofit
- 386 corporation's current record of members.
- 387 (b) If three successive notices given to a member pursuant to Subsection (5) have been
- 388 returned as undeliverable, further notices to that member are not necessary until another
- 389 address of the member is made known to the nonprofit corporation.
- 390 (5) Except as provided in Subsection (4), written notice, if in a comprehensible form, is
- 391 effective at the earliest of the following:
- 392 (a) when received;
- 393 (b) five days after it is mailed; or

394 (c) on the date shown on the return receipt if:
395 (i) sent by registered or certified mail;
396 (ii) sent return receipt requested; and
397 (iii) the receipt is signed by or on behalf of the addressee.
398 (6) Oral notice is effective when communicated if communicated in a comprehensible
399 manner.

400 (7) Notice by publication is effective on the date of first publication.

401 (8) A written notice or report delivered as part of a newsletter, magazine, or other
402 publication regularly sent to members shall constitute a written notice or report if:

403 (a) addressed or delivered to the member's address shown in the nonprofit corporation's
404 current list of members; or

405 (b) if two or more members are residents of the same household and have the same
406 address in the nonprofit corporation's current list of members, addressed or delivered to one of
407 the members at the address appearing on the current list of members.

408 (9) (a) If this chapter prescribes notice requirements for particular circumstances, the
409 notice requirements for the particular circumstances govern.

410 (b) If articles of incorporation or bylaws prescribe notice requirements not inconsistent
411 with this section or other provisions of this chapter, the notice requirements of the articles of
412 incorporation or bylaws govern.

413 Section 3. Section **16-6a-116** is amended to read:

414 **16-6a-116. Private foundations.**

415 Except [~~as otherwise specified in the articles of incorporation or as provided~~] when
416 otherwise determined by a court of competent jurisdiction, a nonprofit corporation that is a
417 private foundation as defined in Section 509(a), Internal Revenue Code:

418 (1) shall make distributions for each taxable year at the time and in the manner as not
419 to subject the nonprofit corporation to tax under Section 4942, Internal Revenue Code;

420 (2) may not engage in any act of self-dealing as defined in Section 4941(d), Internal
421 Revenue Code;

422 (3) may not retain any excess business holdings as defined in Section 4943(c), Internal
423 Revenue Code;

424 (4) may not make any investments that would subject the nonprofit corporation to
425 taxation under Section 4944, Internal Revenue Code; and

426 (5) may not make any taxable expenditures as defined in Section 4945(d), Internal
427 Revenue Code.

428 Section 4. Section **16-6a-203** is amended to read:

429 **16-6a-203. Incorporation.**

430 (1) A nonprofit corporation is incorporated, and its corporate existence begins:

431 (a) when the articles of incorporation are filed by the division; or

432 (b) if a delayed effective date is specified pursuant to Subsection [16-6a-108\(2\)](#), on the
433 delayed effective date, unless a certificate of withdrawal is filed prior to the delayed effective
434 date.

435 (2) [~~The~~] Notwithstanding Subsection [16-6a-110\(4\)](#), the filing of the articles of
436 incorporation by the division is conclusive proof that all conditions precedent to incorporation
437 have been satisfied, except in a proceeding by the state to:

438 (a) cancel or revoke the incorporation; or

439 (b) involuntarily dissolve the nonprofit corporation.

440 Section 5. Section **16-6a-610** is amended to read:

441 **16-6a-610. Purchase of memberships.**

442 (1) Unless otherwise provided by the bylaws, a nonprofit corporation may not purchase
443 the membership of a member:

444 (a) who resigns; or

445 (b) whose membership is terminated.

446 (2) (a) If so authorized, a nonprofit corporation may purchase the membership of a
447 member who resigns or whose membership is terminated for the amount and pursuant to the
448 conditions set forth in or authorized by:

449 (i) its bylaws; or

- 450 (ii) agreement with the affected member.
- 451 (b) A payment permitted under Subsection (2)(a) may not violate:
- 452 (i) Section 16-6a-1301; or
- 453 (ii) any other provision of this chapter.
- 454 (3) A mutual benefit corporation may purchase a member's membership if, after the
- 455 purchase is completed:
- 456 (a) the mutual benefit corporation would be able to pay its debts as they become due in
- 457 the usual course of its activities; and
- 458 (b) the mutual benefit corporation's total assets would at least equal the sum of its total
- 459 liabilities.
- 460 Section 6. Section 16-6a-611 is amended to read:
- 461 **16-6a-611. No property right.**
- 462 A member does not have any vested property right including any right relating to
- 463 management, control, purpose, or duration of the nonprofit corporation, except as provided by:
- 464 (1) the bylaws of a mutual benefit corporation; or
- 465 (2) other applicable law.
- 466 Section 7. Section 16-6a-705 is amended to read:
- 467 **16-6a-705. Waiver of notice.**
- 468 (1) (a) A member may waive any notice required by this chapter or by the bylaws,
- 469 whether before or after the date or time stated in the notice as the date or time when any action
- 470 will occur or has occurred.
- 471 (b) A waiver described in Subsection (1) shall be:
- 472 (i) in writing;
- 473 (ii) signed by the member entitled to the notice; and
- 474 (iii) delivered to the nonprofit corporation for:
- 475 (A) inclusion in the minutes; or
- 476 (B) filing with the corporate records.
- 477 (c) A waiver satisfies the requirements of Subsection (1)(b) if communicated by

478 electronic transmission.

479 ~~[(c)]~~ (d) The delivery and filing required under Subsection (1)(b) may not be conditions
480 of the effectiveness of the waiver.

481 (2) A member's attendance at a meeting:

482 (a) waives objection to lack of notice or defective notice of the meeting, unless the
483 member at the beginning of the meeting objects to holding the meeting or transacting business
484 at the meeting because of lack of notice or defective notice; and

485 (b) waives objection to consideration of a particular matter at the meeting that is not
486 within the purpose or purposes described in the meeting notice, unless the member objects to
487 considering the matter when it is presented.

488 Section 8. Section **16-6a-707** is amended to read:

489 **16-6a-707. Action without meeting.**

490 (1) Unless otherwise provided in the articles of incorporation and Subsection (5), and
491 subject to the limitations of Subsection **16-6a-1704(3)**, any action that may be taken at any
492 annual or special meeting of members may be taken without a meeting and without prior
493 notice, if one or more consents in writing, setting forth the action taken, are signed by the
494 members having not less than the minimum voting power that would be necessary to authorize
495 or take the action at a meeting at which all members entitled to vote on the action were present
496 and voted.

497 (2) (a) Unless the written consents of all members entitled to vote have been obtained,
498 notice of any member approval without a meeting shall be given at least 10 days before the
499 consummation of the transaction, action, or event authorized by the member action to:

500 (i) those members entitled to vote who have not consented in writing; and

501 (ii) those members:

502 (A) not entitled to vote; and

503 (B) to whom this chapter requires that notice of the proposed action be given.

504 (b) The notice required pursuant to Subsection (2)(a) shall contain or be accompanied
505 by the same material that under this chapter would have been required to be sent in a notice of

506 meeting at which the proposed action would have been submitted to the members for action.

507 (3) Any member giving a written consent, or the member's proxyholder or a personal
508 representative of the member or their respective proxyholder, may revoke the consent by a
509 signed writing:

510 (a) describing the action;

511 (b) stating that the member's prior consent is revoked; and

512 (c) that is received by the nonprofit corporation prior to the effectiveness of the action.

513 (4) (a) A member action taken pursuant to this section is not effective unless all written
514 consents on which the nonprofit corporation relies for the taking of an action pursuant to
515 Subsection (1) are:

516 (i) received by the nonprofit corporation within a 60-day period; and

517 (ii) not revoked pursuant to Subsection (3).

518 (b) Action taken by the members pursuant to this section is effective:

519 (i) as of the date the last written consent necessary to effect the action is received by
520 the nonprofit corporation; or

521 (ii) if all of the written consents necessary to effect the action specify a later date as the
522 effective date of the action, the later date specified in the consents.

523 (c) If the nonprofit corporation has received written consents in accordance with
524 Subsection (1) signed by all members entitled to vote with respect to the action, the effective
525 date of the member action may be any date that is specified in all the written consents as the
526 effective date of the member action.

527 ~~[(d) Unless otherwise provided by the bylaws, a written consent under this Subsection~~
528 ~~(4) may be received by the nonprofit corporation by electronically transmitted facsimile or~~
529 ~~other form of communication providing the nonprofit corporation with a complete copy of the~~
530 ~~written consent, including a copy of the signature to the written consent.]~~

531 (d) (i) Unless otherwise provided by the bylaws, a member may deliver a written
532 consent under this section by an electronic transmission that provides the nonprofit corporation
533 with a complete copy of the written consent.

534 (ii) An electronic transmission consenting to an action under this section is considered
535 to be written, signed, and dated for purposes of this section if the electronic transmission is
536 delivered with information from which the corporation can determine:

537 (A) that the electronic transmission is transmitted by the member; and

538 (B) the date on which the electronic transmission is transmitted.

539 (iii) The date on which an electronic transmission is transmitted is considered the date
540 on which a consent is signed.

541 (5) Notwithstanding Subsection (1), directors may not be elected by written consent
542 except by unanimous written consent of all members entitled to vote for the election of
543 directors.

544 (6) If not otherwise determined under Section 16-6a-703 or 16-6a-706, the record date
545 for determining the members entitled to take action without a meeting or entitled to be given
546 notice under Subsection (2) of action taken without a meeting is the date the first member
547 delivers to the nonprofit corporation a writing upon which the action is taken pursuant to
548 Subsection (1).

549 (7) Action taken under this section has the same effect as action taken at a meeting of
550 members and may be so described in any document.

551 Section 9. Section 16-6a-711 is amended to read:

552 **16-6a-711. Voting entitlement generally.**

553 (1) Unless otherwise provided by the bylaws:

554 (a) only voting members may vote with respect to any matter required or permitted
555 under this chapter to be submitted to a vote of the members;

556 (b) all references in this chapter to votes of or voting by the members permit voting
557 only by the voting members; and

558 (c) voting members may vote with respect to all matters required or permitted under
559 this chapter to be submitted to a vote of the members.

560 (2) Unless otherwise provided by the [~~articles of incorporation~~] bylaws, each member
561 entitled to vote may cast:

562 (a) one vote on each matter submitted to a vote of members for nonprofit corporations
563 other than those in Subsection (2)(b); and

564 (b) one vote for each share held by the member on each matter submitted for a vote of
565 members if the nonprofit corporation issues shares to its members.

566 (3) Unless otherwise provided by the bylaws, if a membership stands of record in the
567 names of two or more persons, the membership's acts with respect to voting have the following
568 effect:

569 (a) If only one votes, the act binds all of the persons whose membership is jointly held.

570 (b) If more than one votes, the vote is divided on a pro-rata basis.

571 Section 10. Section **16-6a-712** is amended to read:

572 **16-6a-712. Proxies.**

573 (1) Unless otherwise provided by the bylaws, a member entitled to vote may vote or
574 otherwise act in person or by proxy.

575 (2) Without limiting the manner in which a member may appoint a proxy to vote or
576 otherwise act for the member, Subsections (2)(a) and (b) constitute valid means of appointing a
577 proxy.

578 (a) A member may appoint a proxy by signing an appointment form, either personally
579 or by the member's attorney-in-fact.

580 (b) (i) Subject to Subsection (2)(b)(ii) a member may appoint a proxy by transmitting
581 or authorizing the transmission of a telegram, teletype, facsimile, or other electronic
582 transmission providing a written statement of the appointment to:

583 (A) the proxy;

584 (B) a proxy solicitor;

585 (C) a proxy support service organization;

586 (D) another person duly authorized by the proxy to receive appointments as agent for
587 the proxy; or

588 (E) the nonprofit corporation.

589 (ii) An appointment transmitted under Subsection (2)(b)(i) shall set forth or be

590 transmitted with written evidence from which it can be determined that the member transmitted
591 or authorized the transmission of the appointment.

592 (3) (a) An appointment of a proxy is effective against the nonprofit corporation when
593 received by the nonprofit corporation, including receipt by the nonprofit corporation of an
594 appointment transmitted pursuant to Subsection (2)(b).

595 (b) An appointment is valid for 11 months unless a different period is expressly
596 provided in the appointment form.

597 (4) Any complete copy, including an [~~electronically transmitted facsimile~~] electronic
598 transmission, of an appointment of a proxy may be substituted for or used in lieu of the original
599 appointment for any purpose for which the original appointment could be used.

600 (5) An appointment of a proxy is revocable by the member.

601 (6) An appointment of a proxy is revoked by the person appointing the proxy:

602 (a) attending any meeting and voting in person; or

603 (b) signing and delivering to the secretary or other officer or agent authorized to
604 tabulate proxy votes:

605 (i) a writing stating that the appointment of the proxy is revoked; or

606 (ii) a subsequent appointment form.

607 (7) The death or incapacity of the member appointing a proxy does not affect the right
608 of the nonprofit corporation to accept the proxy's authority unless notice of the death or
609 incapacity is received by the secretary or other officer or agent authorized to tabulate votes
610 before the proxy exercises the proxy's authority under the appointment.

611 (8) Subject to Section 16-6a-713 and to any express limitation on the proxy's authority
612 appearing on the appointment form, a nonprofit corporation is entitled to accept the proxy's
613 vote or other action as that of the member making the appointment.

614 Section 11. Section 16-6a-801 is amended to read:

615 **16-6a-801. Requirement for board of directors.**

616 (1) A nonprofit corporation shall have a board of directors.

617 (2) (a) Except as may otherwise be provided in this chapter [~~or~~], including Subsection

618 (2)(b), all corporate powers shall be exercised by or under the authority of, and the business
619 and affairs of the nonprofit corporation managed under the direction of, the board of directors.

620 (b) (i) The articles of incorporation may authorize one or more persons to exercise
621 some or all of the powers that would otherwise be exercised by the board of directors.

622 (ii) To the extent the articles of incorporation authorize a person other than the board of
623 directors to have the authority and perform a duty of the board of directors, the directors shall
624 be relieved to that extent from such authority and duty.

625 (3) The board of directors may be divided into classes, each with such respective rights
626 and duties as the articles of incorporation or bylaws may provide.

627 (4) The board of directors and the directors may be known by any other name
628 designated in the bylaws.

629 Section 12. Section **16-6a-807** is amended to read:

630 **16-6a-807. Resignation of directors.**

631 (1) A director may resign at any time by giving written notice of resignation to the
632 [nonprofit corporation] board's chair, the nonprofit corporation's secretary, or as otherwise
633 provided in the bylaws.

634 (2) A resignation of a director is effective when the notice is received by the nonprofit
635 corporation unless the notice specifies a later effective date.

636 (3) A director who resigns may deliver to the division for filing a statement that the
637 director resigns pursuant to Section **16-6a-1608**.

638 (4) The failure to attend or meet obligations shall be effective as a resignation at the
639 time of the board of director's vote to confirm the failure if:

640 (a) at the beginning of a director's term on the board, the bylaws provide that a director
641 may be considered to have resigned for failing to:

642 (i) attend a specified number of board meetings; or

643 (ii) meet other specified obligations of directors; and

644 (b) the failure to attend or meet obligations is confirmed by an affirmative vote of the
645 board of directors.

646 Section 13. Section **16-6a-808** is amended to read:

647 **16-6a-808. Removal of directors.**

648 (1) Directors elected by voting members or directors may be removed as provided in
649 Subsections (1)(a) through ~~[(g)]~~ (f).

650 (a) The voting members may remove one or more directors elected by them with or
651 without cause unless the bylaws provide that directors may be removed only for cause.

652 (b) If a director is elected by a voting group, only that voting group may participate in
653 the vote to remove that director.

654 (c) Unless otherwise provided in the bylaws, a director may be removed:

655 (i) when the director is elected by the voting members, only if a majority of the voting
656 members votes to remove the director; or

657 (ii) when the director is elected by a voting group, only if a majority of the voting
658 group votes to remove the director.

659 (d) A director elected by voting members may be removed by the voting members
660 only:

661 (i) at a meeting called for the purpose of removing that director; and

662 (ii) if the meeting notice states that the purpose, or one of the purposes, of the meeting
663 is removal of the director.

664 (e) An entire board of directors may be removed under Subsections (1)(a) through (d).

665 (f) (i) Except as provided in Subsection (1)(f)(ii), a director elected by the board of
666 directors may be removed with or without cause by the vote of a majority of the directors then
667 in office or such greater number as is set forth in the bylaws.

668 (ii) A director elected by the board of directors to fill the vacancy of a director elected
669 by the voting members may be removed without cause by the voting members but not the
670 board of directors.

671 ~~[(g) Notwithstanding Subsections (1)(a) through (f), if provided in the bylaws, any~~
672 ~~director no longer qualified to serve, under standards set forth in the bylaws, may be removed~~
673 ~~by a vote of a majority of the directors then in office or such greater number as set forth in the~~

674 bylaws.]

675 ~~[(h)]~~ (g) A director who is removed pursuant to this section may deliver to the division
676 for filing a statement to that effect pursuant to Section 16-6a-1608.

677 (2) Unless otherwise provided in the bylaws:

678 (a) an appointed director may be removed without cause by the person appointing the
679 director;

680 (b) the person described in Subsection (2)(a) shall remove the director by giving
681 written notice of the removal to:

682 (i) the director; and

683 (ii) the nonprofit corporation; and

684 (c) unless the written notice described in Subsection (2)(b) specifies a future effective
685 date, a removal is effective when the notice is received by both:

686 (i) the director to be removed; and

687 (ii) the nonprofit corporation.

688 (3) A designated director, as provided in Subsection 16-6a-804(5), may be removed by
689 an amendment to the bylaws deleting or changing the designation.

690 (4) Removal of a director under this section is not affected by Subsection 16-6a-805(5).

691 Section 14. Section 16-6a-813 is amended to read:

692 **16-6a-813. Action without meeting.**

693 (1) (a) Unless otherwise provided in the bylaws, any action required or permitted by
694 this chapter to be taken at a board of directors' meeting may be taken without a meeting if ~~[each~~
695 ~~and every member]~~ all members of the board consent to the action in writing ~~[either:]~~.

696 ~~[(a) votes for the action; or]~~

697 ~~[(b) (i) (A) votes against the action; or]~~

698 ~~[(B) abstains from voting; and]~~

699 ~~[(ii) waives the right to demand that action not be taken without a meeting;]~~

700 ~~[(2) Action is taken under this section only if the affirmative vote for the action equals~~
701 ~~or exceeds the minimum number of votes that would be necessary to take the action at a~~

702 meeting at which all of the directors then in office were present and voted.]

703 ~~[(3) (a) An action taken pursuant to this section may not be effective unless the~~
704 ~~nonprofit corporation receives writings:]~~

705 ~~[(i) describing the action taken;]~~

706 ~~[(ii) otherwise satisfying the requirements of Subsection (1);]~~

707 ~~[(iii) signed by all directors; and]~~

708 ~~[(iv) not revoked pursuant to Subsection (4).]~~

709 ~~[(b) Unless otherwise provided by the bylaws, a writing described in Subsection (3)(a)~~
710 ~~may be received by the nonprofit corporation by electronically transmitted facsimile or other~~
711 ~~form of wire or wireless communication providing the nonprofit corporation with a complete~~
712 ~~copy of the document, including a copy of the signature on the document.]~~

713 ~~[(c) A director's right to demand that action not be taken without a meeting shall be~~
714 ~~considered to have been waived if the nonprofit corporation receives a writing satisfying the~~
715 ~~requirements of Subsection (1) that has been signed by the director and not revoked pursuant to~~
716 ~~Subsection (4).]~~

717 ~~[(d) Action taken pursuant to this section shall be effective when the last writing~~
718 ~~necessary to effect the action is received by the nonprofit corporation, unless the writings~~
719 ~~describing the action taken set forth a different effective date.]~~

720 ~~[(4) If the writing is received by the nonprofit corporation before the last writing~~
721 ~~necessary to effect the action is received by the nonprofit corporation, any director who has~~
722 ~~signed a writing pursuant to this section may revoke the writing by a writing signed and dated~~
723 ~~by the director.]~~

724 ~~[(a) describing the action; and]~~

725 ~~[(b) stating that the director's prior vote with respect to the writing is revoked.]~~

726 ~~[(5) Action taken pursuant to this section:]~~

727 ~~[(a) has the same effect as action taken at a meeting of directors; and]~~

728 ~~[(b) may be described as an action taken at a meeting of directors in any document.]~~

729 (b) Action is taken under Subsection (1)(a) at the time the last director signs a writing

730 describing the action taken, unless, before that time, any director revokes a consent by a writing
731 signed by the director and received by the secretary or any other person authorized by the
732 bylaws or the board of directors to receive the revocation.

733 (c) Action under Subsection (1)(a) is effective at the time it is taken under Subsection
734 (1)(a) unless the board of directors establishes a different effective date.

735 (2) (a) If provided in the bylaws, any action required or permitted by this chapter to be
736 taken at a board of directors' meeting may be taken without a meeting if notice is transmitted in
737 writing to each member of the board and each member of the board by the time stated in the
738 notice:

739 (i) (A) signs a writing for such action; or

740 (B) signs a writing against such action, abstains in writing from voting, or fails to
741 respond or vote; and

742 (ii) fails to demand in writing that action not be taken without a meeting.

743 (b) The notice required by Subsection (1) shall state:

744 (i) the action to be taken;

745 (ii) the time by which a director must respond to the notice;

746 (iii) that failure to respond by the time stated in the notice will have the same effect as:

747 (A) abstaining in writing by the time stated in the notice; and

748 (B) failing to demand in writing by the time stated in the notice that action not be taken
749 without a meeting; and

750 (iv) any other matters the nonprofit corporation determines to include.

751 (c) Action is taken under this Subsection (2) only if at the end of the time stated in the
752 notice transmitted pursuant to Subsection (2)(a):

753 (i) the affirmative votes in writing for the action received by the nonprofit corporation
754 and not revoked pursuant to Subsection (2)(e) equal or exceed the minimum number of votes
755 that would be necessary to take such action at a meeting at which all of the directors then in
756 office were present and voted; and

757 (ii) the nonprofit corporation has not received a written demand by a director that the

758 action not be taken without a meeting other than a demand that has been revoked pursuant to
759 Subsection (2)(e).

760 (d) A director's right to demand that action not be taken without a meeting shall be
761 considered to have been waived unless the nonprofit corporation receives such demand from
762 the director in writing by the time stated in the notice transmitted pursuant to Subsection (2)(a)
763 and the demand has not been revoked pursuant to Subsection (2)(e).

764 (e) A director who in writing has voted, abstained, or demanded action not be taken
765 without a meeting pursuant to this Subsection (2) may revoke the vote, abstention, or demand
766 in writing received by the nonprofit corporation by the time stated in the notice transmitted
767 pursuant to Subsection (2)(a).

768 (f) Unless the notice transmitted pursuant to Subsection (2)(a) states a different
769 effective date, action taken pursuant to this Subsection (2) is effective at the end of the time
770 stated in the notice transmitted pursuant to Subsection (2)(a).

771 (3) (a) Unless otherwise provided by the bylaws, a communication under this section
772 may be delivered by an electronic transmission.

773 (b) An electronic transmission communicating a vote, abstention, demand, or
774 revocation under Subsection (2) is considered to be written, signed, and dated for purposes of
775 this section if the electronic transmission is delivered with information from which the
776 nonprofit corporation can determine:

777 (i) that the electronic transmission is transmitted by the director; and

778 (ii) the date on which the electronic transmission is transmitted.

779 (c) The date on which an electronic transmission is transmitted is considered the date
780 on which the vote, abstention, demand, or revocation is signed.

781 (d) For purposes of this section, communications to the nonprofit corporation are not
782 effective until received.

783 (4) Action taken pursuant to this section:

784 (a) has the same effect as action taken at a meeting of directors; and

785 (b) may be described as an action taken at a meeting of directors in any document.

786 Section 15. Section **16-6a-814** is amended to read:

787 **16-6a-814. Notice of meeting.**

788 (1) (a) A nonprofit corporation shall give to each director entitled to vote at an annual
789 meeting notice of the annual meeting consistent with the nonprofit corporation's bylaws in a
790 fair and reasonable manner.

791 (b) Any notice that conforms to the requirements of Subsection (1)(c) is fair and
792 reasonable, but other means of giving notice may also be fair and reasonable when all the
793 circumstances are considered.

794 (c) Notice under Subsection (1)(a) is fair and reasonable if the nonprofit corporation
795 notifies each director of the place, date, and time of the annual meeting:

796 (i) no fewer than 10 days before the meeting, unless otherwise provided by the bylaws;

797 (ii) if notice is mailed by other than first-class or registered mail, no fewer than 30
798 days, nor more than 60 days before the meeting date; and

799 (iii) if notice is given:

800 (A) by newspaper as provided in Subsection **16-6a-103(2)(b)(i)(A)**, by publication
801 three separate times with:

802 (I) the first of the publications no more than 60 days before the meeting date; and

803 (II) the last of the publications no fewer than 10 days before the meeting date; and

804 (B) (I) as provided in Subsection **16-6a-103(2)(b)(i)(B)**; and

805 (II) for 60 days before the meeting date.

806 (2) Unless otherwise provided in this chapter or in the bylaws, regular meetings of the
807 board of directors may be held without notice of the date, time, place, or purpose of the
808 meeting.

809 (3) (a) Unless the bylaws provide for a longer or shorter period, special meetings of the
810 board of directors shall be preceded by at least two days notice of the date, time, and place of
811 the meeting.

812 (b) The notice required by Subsection (3)(a) need not describe the purpose of the
813 special meeting unless otherwise required by this chapter or the bylaws.

814 Section 16. Section **16-6a-815** is amended to read:

815 **16-6a-815. Waiver of notice.**

816 (1) (a) A director may waive any notice of a meeting before or after the time and date
817 of the meeting stated in the notice.

818 (b) Except as provided by Subsection (2), the waiver shall be:

819 (i) ~~be~~ in writing;

820 (ii) signed by the director entitled to the notice; and

821 (iii) ~~be~~ delivered to the nonprofit corporation for filing with the corporate records.

822 (c) A waiver satisfies the requirements of Subsection (1)(b) if communicated by
823 electronic transmission.

824 ~~(c)~~ (d) The delivery and filing required by Subsection (1)(b) may not be conditions of
825 the effectiveness of the waiver.

826 (2) A director's attendance at or participation in a meeting waives any required notice
827 to that director of the meeting unless:

828 (a) (i) at the beginning of the meeting or promptly upon the director's later arrival, the
829 director objects to holding the meeting or transacting business at the meeting because of lack of
830 notice or defective notice; and

831 (ii) after objecting, the director does not vote for or assent to action taken at the
832 meeting; or

833 (b) if special notice was required of a particular purpose pursuant to Subsection
834 **16-6a-814**(3):

835 (i) the director objects to transacting business with respect to the purpose for which the
836 special notice was required; and

837 (ii) after objecting, the director does not vote for or assent to action taken at the
838 meeting with respect to the purpose.

839 Section 17. Section **16-6a-817** is amended to read:

840 **16-6a-817. Committees of the board.**

841 (1) Unless otherwise provided in the bylaws [~~and subject to the provisions of Section~~

842 ~~16-6a-906~~], the board of directors may:

843 (a) create one or more committees of the board; and

844 (b) appoint two or more directors to serve on the committees created under Subsection

845 (1)(a).

846 (2) Unless otherwise provided in the bylaws, the creation of a committee of the board

847 and appointment of directors to it shall be approved by the greater of:

848 (a) a majority of all the directors in office when the action is taken; or

849 (b) the number of directors required by the bylaws to take action under Section

850 ~~16-6a-816~~.

851 (3) Unless otherwise provided in the bylaws, a committee of the board and the

852 members of the committee are subject to Sections ~~16-6a-812~~ through ~~16-6a-816~~, which govern:

853 (a) meetings;

854 (b) action without meeting;

855 (c) notice;

856 (d) waiver of notice; and

857 (e) quorum and voting requirements.

858 ~~[(4) To the extent specified in the bylaws or by the board of directors, and subject to~~

859 ~~Subsection (6)(b), each committee of the board shall have the authority of the board of~~

860 ~~directors under Section ~~16-6a-801~~.]~~

861 (4) To the extent stated in the bylaws or by the board of directors, each committee of

862 the board shall have the authority of the board of directors as described in Section ~~16-6a-801~~,

863 except that a committee of the board may not:

864 (a) authorize distributions;

865 (b) approve or propose to members any action required by this chapter to be approved

866 by members;

867 (c) elect, appoint, or remove a director;

868 (d) amend articles of incorporation;

869 (e) adopt, amend, or repeal bylaws;

870 (f) approve a plan of conversion or a plan of merger not requiring member approval; or
871 (g) approve a sale, lease, exchange, or other disposition of all, or substantially all, of its
872 property, with or without goodwill, otherwise than in the usual and regular course of business.

873 (5) The creation of, delegation of authority to, or action by a committee does not alone
874 constitute compliance by a director with the standards of conduct described in Section
875 16-6a-822.

876 (6) (a) Subject to Subsection (6)(b), nothing in this part shall prohibit or restrict a
877 nonprofit corporation from establishing in its bylaws or by action of the board of directors or
878 otherwise one or more committees, advisory boards, auxiliaries, or other bodies of any kind:

879 (i) having the members and rules of procedure as the bylaws or board of directors may
880 provide;

881 (ii) established to provide the advice, service, and assistance to the nonprofit
882 corporation as may be specified in the bylaws or by the board of directors; and

883 (iii) established to carry out the duties and responsibilities for the nonprofit
884 corporation, as may be specified in the bylaws or by the board of directors.

885 (b) Notwithstanding Subsection (6)(a), if any committee or other body established
886 under Subsection (6)(a) has one or more members who are entitled to vote on committee
887 matters and who are not then also directors, the committee or other body may not exercise any
888 power or authority reserved to the board of directors, in this chapter or in the bylaws.

889 Section 18. Section **16-6a-825** is amended to read:

890 **16-6a-825. Conflicting interest transaction.**

891 (1) As used in this section, "conflicting interest transaction" means a contract,
892 transaction, or other financial relationship between a nonprofit corporation and:

893 (a) a director of the nonprofit corporation;

894 (b) a party related to a director; or

895 (c) an entity in which a director of the nonprofit corporation:

896 (i) is a director or officer; or

897 (ii) has a financial interest.

898 (2) Except as otherwise provided in this section, upon the finding of a conflicting
899 interest transaction, in an action properly brought before it, a court may:

900 (a) rule that the conflicting interest transaction is void or voidable;

901 (b) enjoin or set aside the conflict of interest transaction; or

902 (c) determine that the conflicting interest transaction gives rise to an award of damages
903 or other sanctions.

904 (3) (a) A loan may not be made directly or indirectly by a nonprofit corporation to:

905 (i) a director or officer of the nonprofit corporation; ~~or~~

906 (ii) a natural person related to a director or officer~~[-];~~ or

907 (iii) an entity in which a director, officer, or natural person related to a director or
908 officer has any ownership, management right, or financial interest.

909 (b) A director or officer who assents to or participates in the making of a loan in
910 violation of Subsection (3)(a) shall be liable to the nonprofit corporation for the amount of the
911 loan until the repayment of the loan.

912 (4) (a) If the conditions of Subsection (4)(b) are met, a conflicting interest transaction
913 may not be void or voidable or be enjoined, set aside, or give rise to an award of damages or
914 other sanctions in a proceeding by a member or by or in the right of the nonprofit corporation,
915 solely because:

916 (i) the conflicting interest transaction involves:

917 (A) a director of the nonprofit corporation;

918 (B) a party related to a director; or

919 (C) an entity in which a director of the nonprofit corporation is a director or officer or
920 has a financial interest;

921 (ii) the director is present at or participates in the meeting of the nonprofit corporation's
922 board of directors or of the committee of the board of directors that authorizes, approves, or
923 ratifies the conflicting interest transaction; or

924 (iii) the director's vote is counted for the purpose described in Subsection (4)(a)(ii).

925 (b) Subsection (4)(a) applies if:

926 (i) (A) the material facts as to the director's relationship or interest and as to the
927 conflicting interest transaction are disclosed or are known to the board of directors or the
928 committee; and

929 (B) the board of directors or committee in good faith authorizes, approves, or ratifies
930 the conflicting interest transaction by the affirmative vote of a majority of the disinterested
931 directors, even though the disinterested directors are less than a quorum;

932 (ii) (A) the material facts as to the director's relationship or interest and as to the
933 conflicting interest transaction are disclosed or are known to the members entitled to vote on
934 the conflicting interest transaction; and

935 (B) the conflicting interest transaction is specifically authorized, approved, or ratified
936 in good faith by a vote of the members entitled to vote thereon;

937 (iii) the conflicting interest transaction is consistent with a provision in the articles of
938 incorporation or bylaws which:

939 (A) commits the nonprofit corporation to support one or more other nonprofit
940 corporations, charitable trusts, or charitable entities; or

941 (B) authorizes one or more directors to exercise discretion in making gifts or
942 contributions to one or more other nonprofit corporations, charitable trusts, or charitable
943 entities; or

944 (iv) the conflicting interest transaction is fair as to the nonprofit corporation.

945 (5) Common or interested directors may be counted in determining the presence of a
946 quorum at a meeting of the board of directors or of a committee that authorizes, approves, or
947 ratifies the conflicting interest transaction.

948 (6) For purposes of this section, "a natural person related to a director or officer" means
949 any natural person whose familial, financial, professional, or employment relationship with the
950 director or officer would, under the circumstances, reasonably be expected to exert an influence
951 on the director's or officer's judgment when voting on a transaction.

952 Section 19. Section **16-6a-905** is amended to read:

953 **16-6a-905. Court-ordered indemnification of directors.**

954 (1) Unless a nonprofit corporation's [bylaws] articles of incorporation provide
955 otherwise, a director of the nonprofit corporation who is or was a party to a proceeding may
956 apply for indemnification to:

957 (a) the court conducting the proceeding; or

958 (b) another court of competent jurisdiction.

959 (2) On receipt of an application described in Subsection (1), the court, after giving any
960 notice the court considers necessary, may order indemnification in the following manner:

961 (a) if the court determines that the director is entitled to mandatory indemnification
962 under Section 16-6a-903, the court shall:

963 (i) order indemnification; and

964 (ii) order the nonprofit corporation to pay the director's reasonable expenses incurred to
965 obtain court-ordered indemnification; and

966 (b) if the court determines that the director is fairly and reasonably entitled to
967 indemnification in view of all the relevant circumstances, whether or not the director met the
968 applicable standard of conduct set forth in Section 16-6a-902 or was adjudged liable as
969 described in Subsection 16-6a-902(4), the court may order indemnification as the court
970 determines to be proper, except that the indemnification with respect to any proceeding in
971 which liability has been adjudged in the circumstances described in Subsection 16-6a-902(4) is
972 limited to reasonable expenses incurred.

973 Section 20. Section 16-6a-1002 is amended to read:

974 **16-6a-1002. Amendment of articles of incorporation by board of directors or**
975 **incorporators.**

976 (1) Unless otherwise provided in the articles of incorporation, the board of directors
977 may adopt, without member approval, one or more amendments to the articles of incorporation
978 to:

979 (a) delete the names and addresses of the initial directors;

980 (b) change the information required by Subsection 16-17-203(1), but an amendment is
981 not required to change the information;

982 (c) change the corporate name by:

983 (i) substituting the word "corporation," "incorporated," "company," "limited," or an
984 abbreviation of any such word for a similar word or abbreviation in the name; or

985 (ii) adding, deleting, or changing a geographical attribution; or

986 (d) make any other change expressly permitted by this chapter to be made without
987 member action.

988 (2) The board of directors may adopt, without member action, one or more
989 amendments to the articles of incorporation to change the corporate name, if necessary, in
990 connection with the reinstatement of a nonprofit corporation pursuant to Section 16-6a-1412.

991 (3) (a) Subject to any approval required pursuant to Section 16-6a-1013, if a nonprofit
992 corporation has no members, no members entitled to vote on amendments, or no members yet
993 admitted to membership, one or more amendments to the nonprofit corporation's articles of
994 incorporation may be adopted by:

995 (i) its incorporators until directors have been chosen; or

996 (ii) its directors after the directors have been chosen.

997 (b) A nonprofit corporation described in Subsection (3)(a) shall provide notice of any
998 meeting at which an amendment is to be voted upon.

999 (c) The notice required by Subsection (3)(b) shall:

1000 (i) be in accordance with Section 16-6a-814;

1001 (ii) state that the purpose, or one of the purposes, of the meeting is to consider a
1002 proposed amendment to the articles of incorporation; and

1003 (iii) (A) contain or be accompanied by a copy or summary of the amendment; or

1004 (B) state the general nature of the amendment.

1005 (d) An amendment described in Subsection (3)(a) shall be approved:

1006 (i) by a majority of the incorporators, until directors have been chosen; or

1007 (ii) after directors are chosen by a majority of the directors in office at the time the
1008 amendment is adopted or such greater number as is set forth in the bylaws.

1009 Section 21. Section 16-6a-1003 is amended to read:

1010 **16-6a-1003. Amendment of articles of incorporation by board of directors and**
1011 **members.**

1012 (1) The board of directors or the members representing at least 10% of all of the votes
1013 entitled to be cast on the amendment may propose an amendment to the articles of
1014 incorporation for submission to the members unless a different vote or voting class is required
1015 by:

- 1016 (a) this chapter;
- 1017 (b) the articles of incorporation;
- 1018 (c) the bylaws; or
- 1019 (d) the members or the board of directors acting pursuant to Subsection (5).

1020 (2) For an amendment to the articles of incorporation to be adopted pursuant to
1021 Subsection (1):

- 1022 (a) the board of directors shall recommend the amendment to the members unless:
 - 1023 (i) the amendment is proposed by members; or
 - 1024 (ii) the board of directors:

1025 (A) determines that because of conflict of interest or other special circumstances it
1026 should make no recommendation; and

1027 (B) communicates the basis for its determination to the members with the amendment;
1028 and

1029 (b) the members entitled to vote on the amendment shall approve the amendment as
1030 provided in Subsection (5).

1031 (3) The proposing board of directors or the proposing members may condition the
1032 effectiveness of the amendment on any basis.

1033 (4) (a) The nonprofit corporation shall give notice, in accordance with Section
1034 16-6a-704, to each member entitled to vote on the amendment of the members' meeting at
1035 which the amendment will be voted upon.

1036 (b) The notice required by Subsection (4)(a) shall:

1037 (i) state that the purpose, or one of the purposes, of the meeting is to consider the

1038 amendment; and

1039 (ii) (A) contain or be accompanied by a copy or a summary of the amendment; or

1040 (B) shall state the general nature of the amendment.

1041 (5) The amendment shall be approved by the votes required by Sections 16-6a-714 and

1042 16-6a-715 by every voting group entitled to vote on the amendment unless a greater vote is

1043 required by:

1044 (a) this chapter;

1045 (b) the articles of incorporation;

1046 (c) bylaws adopted by the members; or

1047 (d) the proposing board of directors or the proposing members acting pursuant to

1048 Subsection (3).

1049 (6) If the board of directors or the members seek to have the amendment approved by

1050 the members by written consent or by written ballot, the material soliciting the approval shall

1051 contain or be accompanied by a copy or summary of the amendment.

1052 Section 22. Section 16-6a-1006 is amended to read:

1053 **16-6a-1006. Restated articles of incorporation.**

1054 (1) (a) The board of directors may restate the articles of incorporation at any time with

1055 or without member action.

1056 (b) The incorporators of a nonprofit corporation may restate the articles of incorporation

1057 at any time if the nonprofit corporation:

1058 (i) has no members; and

1059 (ii) no directors have been chosen.

1060 (2) (a) The restatement may include one or more amendments to the articles of

1061 incorporation.

1062 (b) Notwithstanding Subsection (1), if the restatement includes an amendment

1063 requiring member approval, it shall be adopted as provided in Section 16-6a-1003.

1064 (3) (a) If the board of directors submits a restatement for member action, the nonprofit

1065 corporation shall give notice, in accordance with Section 16-6a-704, to each member entitled to

1066 vote on the restatement of the members' meeting at which the restatement will be voted upon.

1067 (b) The notice required by Subsection (3)(a) shall:

1068 (i) state that the purpose, or one of the purposes, of the meeting is to consider the
1069 restatement; and

1070 (ii) contain or be accompanied by a copy of the restatement that identifies any
1071 amendment or other change it would make in the articles of incorporation.

1072 (4) A nonprofit corporation restating its articles of incorporation shall deliver to the
1073 division for filing articles of restatement setting forth:

1074 (a) the name of the nonprofit corporation;

1075 (b) the text of the restated articles of incorporation;

1076 (c) if the restatement contains an amendment to the articles of incorporation that was
1077 adopted by the members, the information required by Subsection 16-6a-1005(5); ~~and~~

1078 (d) if the restatement was adopted by the board of directors or incorporators without
1079 member action, a statement to that effect and that member action was not required~~[-];~~ and

1080 (e) the restatement does not need to contain the name or address of the incorporator or
1081 incorporators that were included in the articles of incorporation when originally filed.

1082 (5) Upon filing by the division or at any later effective date determined pursuant to
1083 Section 16-6a-108, restated articles of incorporation supersede the original articles of
1084 incorporation and all prior amendments to the original articles of incorporation.

1085 Section 23. Section **16-6a-1008** is amended to read:

1086 **16-6a-1008. Conversion to a business corporation.**

1087 (1) (a) A domestic nonprofit corporation may convert to a corporation subject to [~~Title~~
1088 ~~16,~~] Chapter 10a, Utah Revised Business Corporation Act, by filing an amendment of its
1089 articles of incorporation with the division pursuant to this section.

1090 (b) The day on which a nonprofit domestic corporation files an amendment under this
1091 section, the domestic nonprofit corporation becomes a corporation subject to [~~Title 16,~~
1092 Chapter 10a, Utah Revised Business Corporation Act, except that, notwithstanding Section
1093 16-10a-203, the existence of the nonprofit corporation is considered to commence on the day

1094 on which the converting corporation:

1095 (i) commenced its existence under this chapter; or

1096 (ii) otherwise was created, formed, incorporated, or came into being.

1097 (2) The amendment of the articles of incorporation to convert to a corporation shall:

1098 (a) revise the statement of purpose;

1099 (b) delete:

1100 (i) the authorization for members; and

1101 (ii) any other provisions relating to memberships;

1102 (c) authorize shares:

1103 (i) stating the number of shares; and

1104 (ii) including the information required by Section 16-10a-601 with respect to each class

1105 of shares the corporation is to be authorized to issue;

1106 (d) make such other changes as may be necessary or desired; and

1107 (e) if the corporation has any members, provide for:

1108 (i) the cancellation of the memberships; or

1109 (ii) the conversion of the memberships to shares of the corporation.

1110 (3) If the nonprofit corporation has any voting members, an amendment to convert to a

1111 corporation shall be approved by all of the voting members regardless of limitations or

1112 restrictions on the voting rights of the members.

1113 (4) If an amendment to the articles of incorporation filed pursuant to this section is

1114 included in a merger agreement, this section applies, except that any provisions for cancellation

1115 or conversion of memberships:

1116 (a) shall be in the merger agreement; and

1117 (b) may not be in the amendment of the articles of incorporation.

1118 (5) A conversion under this section may not result in a violation, directly or indirectly,

1119 of:

1120 (a) Section 16-6a-1301; or

1121 (b) any other provision of this chapter.

1122 (6) The conversion of a nonprofit corporation into a corporation does not affect:
1123 (a) an obligation or liability of the converting nonprofit corporation incurred before its
1124 conversion to a corporation; or
1125 (b) the personal liability of any person incurred before the conversion.

1126 (7) (a) (i) When a conversion is effective under this section, for purposes of the laws of
1127 this state, the things listed in Subsection (7)(a)(ii):
1128 (A) vest in the corporation to which the nonprofit corporation converts;
1129 (B) are the property of the corporation; and
1130 (C) are not considered transferred by the converting nonprofit corporation to the
1131 corporation by operation of this Subsection (7)(a).
1132 (ii) This Subsection (7)(a) applies to the following of the converting nonprofit
1133 corporation:
1134 (A) its rights, privileges, and powers;
1135 (B) its interests in property, whether real, personal, or mixed;
1136 (C) debts due to the converting nonprofit corporation;
1137 (D) the debts, liabilities, and duties of the converting nonprofit corporation;
1138 (E) the rights and obligations under contract of the converting nonprofit corporation;
1139 and
1140 (F) other things and causes of action belonging to the converting nonprofit corporation.

1141 (b) The title to any real property vested by deed or otherwise in a nonprofit corporation
1142 converting to a corporation does not revert and is not in any way impaired by reason of this
1143 chapter or of the conversion.

1144 (c) A right of a creditor or a lien on property of a converting nonprofit corporation that
1145 is described in Subsection (6)(a) or (b) is preserved unimpaired.

1146 (d) A debt, liability, or duty of a converting nonprofit corporation:
1147 (i) remains attached to the corporation to which the nonprofit corporation converts; and
1148 (ii) may be enforced against the corporation to the same extent as if the debts,
1149 liabilities, and duties had been incurred or contracted by the corporation in its capacity as a

1150 corporation.

1151 (e) A converted nonprofit corporation upon conversion to a corporation pursuant to this
1152 section is considered the same entity as the corporation.

1153 (f) In connection with a conversion of a nonprofit corporation to a corporation under
1154 this section, the interests or rights in the nonprofit corporation which is to be converted may be
1155 exchanged or converted into one or more of the following:

1156 (i) cash, property, interests, or rights in the corporation to which it is converted; or

1157 (ii) cash, property or interests in, or rights in another entity.

1158 (g) Unless otherwise agreed:

1159 (i) a converting nonprofit corporation is not required solely as a result of the
1160 conversion to:

1161 (A) wind up its affairs;

1162 (B) pay its liabilities; or

1163 (C) distribute its assets; and

1164 (ii) a conversion is not considered to constitute a dissolution of the nonprofit
1165 corporation, but constitutes a continuation of the existence of the nonprofit corporation in the
1166 form of a corporation.

1167 Section 24. Section **16-6a-1302** is amended to read:

1168 **16-6a-1302. Authorized distributions.**

1169 (1) A nonprofit corporation may:

1170 (a) make distributions or distribute the nonprofit corporation's assets to a member:

1171 (i) that is a domestic or foreign nonprofit corporation;

1172 (ii) of a mutual benefit corporation, not inconsistent with its bylaws; or

1173 (iii) that is a governmental entity;

1174 (b) pay compensation in a reasonable amount to its members, directors, or officers for
1175 services rendered;

1176 (c) if a cooperative nonprofit corporation, make distributions consistent with its
1177 purposes; and

- 1178 (d) confer benefits upon its members in conformity with its purposes.
- 1179 (2) A nonprofit corporation may make distributions upon dissolution as follows:
- 1180 (a) to a member that is a domestic or foreign nonprofit corporation;
- 1181 (b) to its members if it is a mutual benefit corporation;
- 1182 (c) to another nonprofit corporation, including a nonprofit corporation organized to
- 1183 receive the assets of and function in place of the dissolved nonprofit corporation; and
- 1184 (d) otherwise in conformity [~~to this chapter~~] with Part 14, Dissolution.
- 1185 [~~(3) A mutual benefit corporation may purchase a member's membership in conformity~~
- 1186 ~~with Section 16-6a-610 if, after the purchase is completed:~~]
- 1187 [~~(a) the mutual benefit corporation would be able to pay its debts as they become due~~
- 1188 ~~in the usual course of its activities; and]~~
- 1189 [~~(b) the mutual benefit corporation's total assets would at least equal the sum of its total~~
- 1190 ~~liabilities.]~~
- 1191 [~~(4)~~] (3) Authorized distributions by a dissolved nonprofit corporation may be made by
- 1192 authorized officers or directors, including those elected, hired, or otherwise selected after
- 1193 dissolution if the election, hiring, or other selection after dissolution is not inconsistent with the
- 1194 articles of incorporation and bylaws existing at the time of dissolution.
- 1195 Section 25. Section **16-6a-1405** is amended to read:
- 1196 **16-6a-1405. Effect of dissolution.**
- 1197 (1) A dissolved nonprofit corporation continues its corporate existence but may not
- 1198 carry on any activities except as is appropriate to wind up and liquidate its affairs, including:
- 1199 (a) collecting its assets;
- 1200 (b) returning, transferring, or conveying assets held by the nonprofit corporation upon a
- 1201 condition requiring return, transfer, or conveyance, which condition occurs by reason of the
- 1202 dissolution, in accordance with the condition;
- 1203 (c) transferring, subject to any contractual or legal requirements, its assets as provided
- 1204 in or authorized by its articles of incorporation or bylaws;
- 1205 (d) discharging or making provision for discharging its liabilities; and

1206 (e) doing every other act necessary to wind up and liquidate its assets and affairs.
1207 [~~(2)~~ Notwithstanding any other provision of this chapter, the distribution of assets of a
1208 nonprofit corporation upon its dissolution shall be consistent with all applicable requirements
1209 and limitations set forth in the Internal Revenue Code.]

1210 [~~(3)~~] (2) Dissolution of a nonprofit corporation does not:

1211 (a) transfer title to the nonprofit corporation's property including title to water rights,
1212 water conveyance facilities, or other assets of a nonprofit corporation organized to divert or
1213 distribute water to its members;

1214 (b) subject its directors or officers to standards of conduct different from those
1215 prescribed in this chapter;

1216 (c) change quorum or voting requirements for its board of directors or members;

1217 (d) change provisions for selection, resignation, or removal of its directors or officers,
1218 or both;

1219 (e) change provisions for amending its bylaws or its articles of incorporation;

1220 (f) prevent commencement of a proceeding by or against the nonprofit corporation in
1221 its corporate name; or

1222 (g) abate or suspend a proceeding pending by or against the nonprofit corporation on
1223 the effective date of dissolution.

1224 [~~(4)~~] (3) Nothing in this section may be applied in a manner inconsistent with a court's
1225 power of judicial dissolution exercised in accordance with Section 16-6a-1414 or 16-6a-1415.

1226 Section 26. Section 42-2-6.6 is amended to read:

1227 **42-2-6.6. Assumed name.**

1228 (1) The assumed name:

1229 (a) may not contain any word or phrase that indicates or implies that the business is
1230 organized for any purpose other than one or more of the purposes contained in its application;

1231 (b) shall be distinguishable from any registered name or trademark of record in the
1232 offices of the Division of Corporations and Commercial Code, as defined in Subsection
1233 16-10a-401(5), except as authorized by the Division of Corporations and Commercial Code

1234 pursuant to Subsection (2);

1235 (c) without the written consent of the United States Olympic Committee, may not
1236 contain the words:

- 1237 (i) "Olympic";
- 1238 (ii) "Olympiad"; or
- 1239 (iii) "Citius Altius Fortius";

1240 (d) without the written consent of the Division of Consumer Protection issued in
1241 accordance with Section 13-34-114, may not contain the words:

- 1242 (i) "university";
- 1243 (ii) "college"; or
- 1244 (iii) "institute" or "institution"; and

1245 (e) an assumed name authorized for use in this state on or after May 1, 2000, may not
1246 contain the words:

- 1247 (i) "incorporated";
- 1248 (ii) "inc."; or
- 1249 (iii) a variation of "incorporated" or "inc."

1250 (2) Notwithstanding Subsection (1)(e), an assumed name may contain a word listed in
1251 Subsection (1)(e) if the Division of Corporations and Commercial Code authorizes the use of
1252 the name by a corporation as defined in:

- 1253 (a) Subsection 16-6a-102~~[(25)]~~(26);
- 1254 (b) Subsection 16-6a-102~~[(34)]~~(35);
- 1255 (c) Subsection 16-10a-102(11); or
- 1256 (d) Subsection 16-10a-102(20).

1257 (3) The Division of Corporations and Commercial Code shall authorize the use of the
1258 name applied for if:

- 1259 (a) the name is distinguishable from one or more of the names and trademarks that are
1260 on the division's records; or
- 1261 (b) the applicant delivers to the division a certified copy of the final judgment of a

1262 court of competent jurisdiction establishing the applicant's right to use the name applied for in
1263 this state.

1264 (4) The assumed name, for purposes of recordation, shall be either translated into
1265 English or transliterated into letters of the English alphabet if it is not in English.

1266 (5) The Division of Corporations and Commercial Code may not approve an
1267 application for an assumed name to any person violating this section.

1268 (6) The director of the Division of Corporations and Commercial Code shall have the
1269 power and authority reasonably necessary to interpret and efficiently administer this section
1270 and to perform the duties imposed on the division by this section.

1271 (7) A name that implies by any word in the name that it is an agency of the state or of
1272 any of its political subdivisions, if it is not actually such a legally established agency, may not
1273 be approved for filing by the Division of Corporations and Commercial Code.

1274 (8) Section [16-10a-403](#) applies to this chapter.

1275 (9) (a) The requirements of Subsection (1)(d) do not apply to a person who filed a
1276 certificate of assumed and of true name with the Division of Corporations and Commercial
1277 Code on or before May 4, 1998, until December 31, 1998.

1278 (b) On or after January 1, 1999, any person who carries on, conducts, or transacts
1279 business in this state under an assumed name shall comply with the requirements of Subsection
1280 (1)(d).