

1 **SHARE CERTIFICATES IN WATER COMPANIES**

2 2011 GENERAL SESSION

3 STATE OF UTAH

4 **Chief Sponsor: Ralph Okerlund**

5 House Sponsor: Jack R. Draxler

7 **LONG TITLE**

8 **General Description:**

9 This bill modifies the Uniform Commercial Code and the Utah Revised Nonprofit
10 Corporation Act to address issues related to water company share certificates that are
11 lost, destroyed, or wrongfully taken.

12 **Highlighted Provisions:**

13 This bill:

- 14 ▶ modifies definition provisions;
- 15 ▶ exempts share certificates in water companies from certain general procedures
16 related to lost, destroyed, or wrongfully taken securities;
- 17 ▶ addresses the application of the investment securities provisions of the Uniform
18 Commercial Code to water companies;
- 19 ▶ establishes procedures specific to water company share certificates that are lost,
20 destroyed, or wrongfully taken;
- 21 ▶ addresses the relationship of this procedure to requirements for nonprofit
22 corporations; and
- 23 ▶ makes technical and conforming amendments.

24 **Money Appropriated in this Bill:**

25 None

26 **Other Special Clauses:**

27 None

28 **Utah Code Sections Affected:**

29 AMENDS:

- 30 **16-6a-609**, as enacted by Laws of Utah 2000, Chapter 300
- 31 **70A-8-101**, as last amended by Laws of Utah 2007, Chapter 272
- 32 **70A-8-303**, as repealed and reenacted by Laws of Utah 1996, Chapter 204
- 33 **70A-8-405**, as repealed and reenacted by Laws of Utah 1996, Chapter 204
- 34 **70A-8-406**, as repealed and reenacted by Laws of Utah 1996, Chapter 204
- 35 **70A-8-409**, as enacted by Laws of Utah 1996, Chapter 51

36 ENACTS:

37 **70A-8-409.1**, Utah Code Annotated 1953



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

40 Section 1. Section **16-6a-609** is amended to read:

41 **16-6a-609. Termination, expulsion, or suspension.**

42 (1) Unless otherwise provided by the bylaws, except pursuant to a procedure that is fair
43 and reasonable:

44 (a) a member of a nonprofit corporation may not be expelled or suspended; and

45 (b) membership in a nonprofit corporation may not be terminated or suspended.

46 (2) For purposes of this section, a procedure is fair and reasonable when either:

47 (a) the bylaws or a written policy of the board of directors set forth a procedure that
48 provides:

49 (i) not less than 15 days prior written notice of:

50 (A) the expulsion, suspension, or termination; and

51 (B) the reasons for the expulsion, suspension, or termination; and

52 (ii) an opportunity for the member to be heard:

53 (A) orally or in writing;

54 (B) not less than five days before the effective date of the expulsion, suspension, or
55 termination; and

56 (C) by one or more persons authorized to decide that the proposed expulsion,
57 termination, or suspension not take place; or

58 (b) it is fair and reasonable taking into consideration all of the relevant facts and
59 circumstances.

60 (3) For purposes of this section, any written notice given by mail shall be given by
61 first-class or certified mail sent to the last address of the member shown on the nonprofit
62 corporation's records.

63 (4) Unless otherwise provided by the bylaws, any proceeding challenging an expulsion,
64 suspension, or termination, including a proceeding in which defective notice is alleged, shall be
65 commenced within one year after the effective date of the expulsion, suspension, or
66 termination.

67 (5) Unless otherwise provided by the bylaws, a member who has been expelled or
68 suspended may be liable to the nonprofit corporation for dues, assessments, or fees as a result
69 of an obligation incurred or commitment made prior to the effective date of the expulsion or
70 suspension.

71 (6) A mutual benefit corporation that complies with Section 70A-8-409.1 is considered
72 to have followed a fair and reasonable procedure for purposes of this section without the
73 existence of a written policy or bylaw otherwise required by this section.

74 Section 2. Section **70A-8-101** is amended to read:

75 **70A-8-101. Definitions.**

76 (1) As used in this chapter:

77 (a) "Adverse claim" means a claim that a claimant has a property interest in a financial
78 asset and that it is a violation of the rights of the claimant for another person to hold, transfer,
79 or deal with the financial asset.

80 (b) "Bearer form," as applied to a certificated security, means a form in which the
81 security is payable to the bearer of the security certificate according to its terms but not by
82 reason of an indorsement.

83 (c) "Broker" means a person defined as a broker or dealer under the federal securities
84 laws, but without excluding a bank acting in that capacity.

85 (d) "Certificated security" means a security that is represented by a certificate.

86 (e) "Clearing corporation" means:
87 (i) a person that is registered as a "clearing agency" under the federal securities laws;
88 (ii) a federal reserve bank; or
89 (iii) any other person that provides clearance or settlement services with respect to
90 financial assets that would require it to register as a clearing agency under the federal securities
91 laws but for an exclusion or exemption from the registration requirement, if its activities as a
92 clearing corporation, including promulgation of rules, are subject to regulation by a federal or
93 state governmental authority.

94 (f) "Communicate" means to:
95 (i) send a signed writing; or
96 (ii) transmit information by any mechanism agreed upon by the persons transmitting
97 and receiving the information.

98 (g) "Entitlement holder" means a person identified in the records of a securities
99 intermediary as the person having a security entitlement against the securities intermediary. If
100 a person acquired a security entitlement by virtue of Subsection 70A-8-501(2)(b) or (c), that
101 person is the entitlement holder.

102 (h) "Entitlement order" means a notification communicated to a securities intermediary
103 directing transfer or redemption of a financial asset to which the entitlement holder has a
104 security entitlement.

105 (i) (i) "Financial asset," except as otherwise provided in Section 70A-8-102, means:

106 (A) a security;

107 (B) an obligation of a person or a share, participation, or other interest in a person or in
108 property or an enterprise of a person, which is or is of a type, dealt in or traded on financial
109 markets, or which is recognized in any area in which it is issued or dealt in as a medium for
110 investment; or

111 (C) any property that is held by a securities intermediary for another person in a
112 securities account if that securities intermediary has expressly agreed with the other person that
113 the property is to be treated as a financial asset under this chapter.

114 (ii) As context requires, [~~the term~~] "financial asset" means either the interest itself or
115 the means by which a person's claim to it is evidenced, including a certificated or uncertificated
116 security, a security certificate, or a security entitlement.

117 (j) "Good faith," for purposes of the obligation of good faith in the performance or
118 enforcement of contracts or duties within this chapter, means honesty in fact and the
119 observance of reasonable commercial standards of fair dealing.

120 (k) "Indorsement" means a signature that alone or accompanied by other words is made
121 on a security certificate in registered form or on a separate document for the purpose of
122 assigning, transferring, or redeeming the security or granting a power to assign, transfer, or
123 redeem it.

124 (l) "Instruction" means a notification communicated to the issuer of an uncertificated
125 security which directs that the transfer of the security be registered or that the security be
126 redeemed.

127 (m) "Registered form," as applied to a certificated security, means a form in which:

- 128 (i) the security certificate specifies a person entitled to the security; and
- 129 (ii) a transfer of the security may be registered upon books maintained for that purpose
130 by or on behalf of the issuer, or the security certificate so states.

131 (n) "Securities intermediary" means:

- 132 (i) a clearing corporation; or
- 133 (ii) a person, including a bank or broker, that in the ordinary course of its business
134 maintains securities accounts for others and is acting in that capacity.

135 (o) "Security," except as otherwise provided in Section 70A-8-102, means an
136 obligation of an issuer or a share, participation, or other interest in an issuer or in property or an
137 enterprise of an issuer that:

138 (i) [~~which~~] is represented by a security certificate in bearer or registered form, or the
139 transfer of which may be registered upon books maintained for that purpose by or on behalf of
140 the issuer;

141 (ii) [~~which~~] is one of a class or series or by its terms is divisible into a class or series of

142 shares, participations, interests, or obligations; and

143 ~~[(iii) which:]~~

144 (iii) (A) is, or is of a type, dealt in or traded on securities exchanges or securities

145 markets; or

146 (B) is a medium for investment and by its terms expressly provides that it is a security

147 governed by this chapter.

148 (p) "Security certificate" means a certificate representing a security.

149 (q) "Security entitlement" means the rights and property interest of an entitlement

150 holder with respect to a financial asset specified in Part 5, Security Entitlements.

151 (r) "Uncertificated security" means a security that is not represented by a certificate.

152 (s) "Water company" is as defined in Section 16-4-102.

153 (2) Other definitions applying to this chapter and the sections in which they appear are:

154 (a) "Appropriate person," Section 70A-8-106.

155 (b) "Control," Section 70A-8-105.

156 (c) "Delivery," Section 70A-8-301.

157 (d) "Investment company security," Section 70A-8-102.

158 (e) "Issuer," Section 70A-8-201.

159 (f) "Overissue," Section 70A-8-210.

160 (g) "Protected purchaser," Section 70A-8-303.

161 (h) "Securities account," Section 70A-8-501.

162 (3) In addition, Chapter 1a, Uniform Commercial Code - General Provisions, contains

163 general definitions and principles of construction and interpretation applicable throughout this

164 chapter.

165 (4) The characterization of a person, business, or transaction for purposes of this

166 chapter does not determine the characterization of the person, business, or transaction for

167 purposes of any other law, regulation, or rule.

168 Section 3. Section **70A-8-303** is amended to read:

169 **70A-8-303. Protected purchaser.**

170 (1) "Protected purchaser" means a purchaser of a certificated or uncertificated security,
 171 or of an interest ~~[therein]~~ in the security, who:

- 172 (a) (i) gives value;
- 173 ~~[(b)]~~ (ii) does not have notice of ~~[any]~~ an adverse claim to the security; and
- 174 ~~[(c)]~~ (iii) obtains control of the ~~[certificated or uncertificated]~~ security~~[-];~~ or
- 175 (b) for a security issued by a water company, pays, or whose predecessors in interest
- 176 paid, an assessment levied by the water company in accordance with Title 16, Chapter 4, Share
- 177 Assessment Act, against the security at least once within the five-year period immediately
- 178 preceding the date it is determined whether the purchaser is a protected purchaser.

179 (2) In addition to acquiring the rights of a purchaser, a protected purchaser ~~[also]~~
 180 acquires ~~[its]~~ the purchaser's interest in the certificated or uncertificated security free of any
 181 adverse claim.

182 Section 4. Section **70A-8-405** is amended to read:

183 **70A-8-405. Replacement of lost, destroyed, or wrongfully taken security**
 184 **certificate.**

185 (1) If an owner of a certificated security, whether in registered or bearer form, claims
 186 that the certificate has been lost, destroyed, or wrongfully taken, the issuer shall issue a new
 187 certificate if the owner:

- 188 (a) ~~[so]~~ requests that a new certificate be issued before the issuer has notice that the
- 189 certificate has been acquired by a protected purchaser;
- 190 (b) files with the issuer a sufficient indemnity bond; and
- 191 (c) satisfies other reasonable requirements imposed by the issuer.

192 (2) (a) If, after the issue of a new ~~[security]~~ certificate, a protected purchaser of the
 193 original certificate presents it for registration of transfer, the issuer shall register the transfer
 194 unless an overissue would result. ~~[In that case,]~~

195 (b) If an overissue would result from registration of transfer, the issuer's liability is
 196 governed by Section 70A-8-210.

197 (c) In addition to any rights on the indemnity bond, an issuer may recover the new

198 certificate from a person to whom it was issued or any person taking under that person, except
199 a protected purchaser.

200 (3) On and after July 1, 2011, this section does not apply to the replacement of a lost,
201 destroyed, or wrongfully taken share certificate of a water company. Section 70A-8-409.1
202 governs replacement of a lost, destroyed, or wrongfully taken share certificate of a water
203 company.

204 Section 5. Section **70A-8-406** is amended to read:

205 **70A-8-406. Obligation to notify issuer of lost, destroyed, or wrongfully taken**
206 **security certificate.**

207 (1) If a security certificate has been lost, apparently destroyed, or wrongfully taken, and
208 the owner fails to notify the issuer of that fact within the reasonable time after the owner has
209 notice of it and the issuer registers a transfer of the security before receiving notification, the
210 owner may not assert against the issuer a claim for registering the transfer under Section
211 70A-8-404 or a claim to a new security certificate under Section 70A-8-405.

212 (2) On and after July 1, 2011, Subsection (1) does not apply to the replacement of a
213 lost, destroyed, or wrongfully taken share certificate of a water company. Section 70A-8-409.1
214 governs replacement of a lost, destroyed, or wrongfully taken share certificate of a water
215 company.

216 Section 6. Section **70A-8-409** is amended to read:

217 **70A-8-409. Application to water company.**

218 The procedures of this chapter [~~shall~~] apply to shares of stock in a water company[~~;~~
219 ~~irrigation company, canal company, reservoir company, or other similar water corporation].~~

220 Section 7. Section **70A-8-409.1** is enacted to read:

221 **70A-8-409.1. Replacement of lost, destroyed, or wrongfully taken share certificate**
222 **of a water company.**

223 (1) For purposes of this section:

224 (a) "Affected share" means the share represented by a share certificate that is lost,
225 destroyed, or wrongfully taken.

226 (b) "Distribution area" means the geographic area where the water company distributes
227 water.

228 (c) "Original share certificate" means a share certificate that is alleged to be lost,
229 destroyed, or wrongfully taken.

230 (d) "Person" means:

231 (i) an individual;

232 (ii) a corporation;

233 (iii) a business entity;

234 (iv) a political subdivision of the state, including a municipality;

235 (v) an agency of the state; or

236 (vi) an agency of the federal government.

237 (e) "Replacement share certificate" means a share certificate issued to replace a share
238 certificate that is lost, destroyed, or wrongfully taken.

239 (f) "Share certificate" means a certificated share of stock in a water company.

240 (2) (a) On and after July 1, 2011, this section applies to the replacement of a lost,
241 destroyed, or wrongfully taken share certificate.

242 (b) Unless the articles of incorporation or bylaws of a water company address the
243 replacement of a lost, destroyed, or wrongfully taken share certificate, this section governs the
244 replacement of a lost, destroyed, or wrongfully taken share certificate.

245 (3) A water company shall issue a replacement share certificate to a person claiming to
246 be the owner of a share certificate that is lost, destroyed, or wrongfully taken, and cancel the
247 original share certificate on the records of the water company, if:

248 (a) the person represents to the water company that the original share certificate is lost,
249 destroyed, or wrongfully taken;

250 (b) (i) (A) the person is the registered owner of the affected share; and

251 (B) before the water company receives notice that the share certificate has been
252 acquired by a protected purchaser, the person requests that a replacement share certificate be
253 issued; or

254 (ii) (A) the person is not the registered owner of the affected share; and
255 (B) the person establishes ownership of the affected share, including by presenting to
256 the water company written documentation that demonstrates to the reasonable satisfaction of
257 the water company that the person is the rightful owner of the affected share through purchase,
258 gift, inheritance, foreclosure, bankruptcy, or reorganization;

259 (c) the assessments to which the affected share is subject are paid current;

260 (d) except as provided in Subsection (5), the person files with the water company a
261 sufficient indemnity bond or other security acceptable to the water company; and

262 (e) the person satisfies any other reasonable requirement imposed by the water
263 company, including the payment of a reasonable transfer fee.

264 (4) (a) If after a replacement share certificate is issued a protected purchaser of the
265 original share certificate presents the original share certificate for registration of transfer, the
266 water company shall register the transfer unless an overissue would result.

267 (b) If an overissue would result when there is a registration of transfer of an original
268 share certificate, a water company may recover the replacement share certificate from the
269 person to whom it is issued, or any person taking under that person, except a protected
270 purchaser.

271 (c) If a water company elects to follow the procedures of Subsection (5), to assert an
272 ownership interest in the affected share, a protected purchaser shall file a written notice of
273 objection within the 60-day period described in Subsection (5)(d). A protected purchaser's
274 failure to file a written notice of objection within the 60-day period eliminates any claim of the
275 protected purchaser.

276 (5) As an alternative to requiring an indemnity bond or other acceptable security under
277 Subsection (3)(d), a water company is considered to have followed a fair and reasonable
278 procedure without the necessity of a written policy or bylaw otherwise required by Section
279 16-6a-609, if the water company follows the following procedure:

280 (a) The water company shall publish written notice at least once a week for three
281 consecutive weeks:

282 (i) (A) in a newspaper of general circulation in the area that reasonably includes the
283 distribution area of the water company; and

284 (B) as required in Section 45-1-101;

285 (ii) with at least seven days between each publication date under Subsection

286 (5)(a)(i)(A); and

287 (iii) beginning no later than 20 days after submission of the request to issue the
288 replacement share certificate.

289 (b) The water company shall post written notice in at least three conspicuous places
290 within the distribution area of the water company.

291 (c) No later than 20 days after the day on which the water company receives a request
292 to issue a replacement share certificate, the water company shall mail written notice:

293 (i) to the last known address of the owner of the affected share shown on the records of
294 the water company;

295 (ii) if a water company maintains a record of who pays annual assessments, to any
296 person who, within the five-year period immediately preceding the day the written notice is
297 mailed, pays an assessment levied against the affected share; and

298 (iii) to any person that has notified the water company in writing of an interest in the
299 affected share, including a financial institution.

300 (d) A notice required under Subsections (5)(a) through (c) shall:

301 (i) identify the person who is requesting that a replacement share certificate be issued;

302 (ii) state that an interested person may file a written notice of objection with the water
303 company; and

304 (iii) state that unless a written notice of objection to the issuance of a replacement share
305 certificate is filed within 60 days after the last day of publication under Subsection (5)(a)(i)(A),
306 including a written notice of objection from a protected purchaser:

307 (A) a replacement share certificate will be issued to the person requesting that the
308 replacement share certificate be issued; and

309 (B) the original share certificate will be permanently canceled on the records of the

310 water company.

311 (e) A notice of objection under Subsection (5)(d) shall:

312 (i) state the basis for objecting to the claim of ownership of the affected share;

313 (ii) identify a person that the objecting person believes has a stronger claim of

314 ownership to the affected share; and

315 (iii) be accompanied by written evidence that reasonably documents the basis of the

316 objection to the claim of ownership.

317 (f) If the water company receives a notice of objection within the 60-day period

318 described in Subsection (5)(d), the water company may review the disputed claim and:

319 (i) deny in writing the objection to the claim of ownership and issue a replacement

320 share certificate to the person requesting the replacement share certificate;

321 (ii) accept in writing a claim of ownership asserted by a notice of objection and issue a

322 replacement share certificate to the person the objecting person asserts owns the affected share;

323 (iii) file an interpleader action in accordance with Utah Rules of Civil Procedure, Rule

324 22, joining the persons claiming an interest in the affected share and depositing a replacement

325 share certificate with the court; or

326 (iv) require the persons claiming an interest in the affected share to resolve the

327 ownership dispute.

328 (g) Upon receipt, the water company shall act in accordance with:

329 (i) a written agreement acceptable to the water company among the persons who claim

330 interest in the affected share; or

331 (ii) a court order declaring ownership in the affected share.

332 (h) The following are entitled to receive from a nonprevailing person the costs for

333 resolution of a dispute under this Subsection (5), including reasonable attorney fees when

334 attorney fees are necessary:

335 (i) a prevailing person; and

336 (ii) the water company, if the water company acts in good faith.

337 (i) The person requesting that a replacement share certificate be issued shall reimburse

338 the water company for the costs reasonably incurred by the water company under this
339 Subsection (5) that are not paid under this Subsection (5)(i) including:
340 (i) legal and other professional fees; and
341 (ii) costs incurred by the water company in response to a notice of objection.
342 (j) A water company shall comply with this Subsection (5) before issuance of a
343 replacement share certificate:
344 (i) upon request from the person requesting a replacement share certificate be issued;
345 and
346 (ii) if the person requesting the replacement share certificate provides indemnification
347 satisfactory to the water company against liability and costs of proceeding under this
348 Subsection (5).
349 (k) A determination made under this Subsection (5) is considered to be a final and
350 conclusive determination of ownership of a disputed replacement share certificate.
351 (6) (a) A water company shall:
352 (i) make a decision to approve or deny the issuance of a replacement share certificate in
353 writing; and
354 (ii) deliver the written decision to:
355 (A) the person requesting a replacement share certificate be issued;
356 (B) a person who files a notice of objection under Subsection (5); and
357 (C) any other person the water company determines is involved in the request for a
358 replacement share certificate.
359 (b) A decision of a water company described in Subsection (6)(a) is subject to de novo
360 judicial review in the district court in which the water company has its principal place of
361 business.
362 (c) A person may not seek judicial review under Subsection (6)(b) more than 30 days
363 after the day on which the written decision is delivered under Subsection (6)(a). If no action
364 for judicial review is filed within the 30-day period, absent fraud, the issuance of a replacement
365 share certificate or the decision to not issue a replacement share certificate is final and

366 conclusive evidence of ownership of the affected share.

367 (d) (i) In a judicial action brought under this Subsection (6), the prevailing person as
368 determined by court order, is entitled to payment by a nonprevailing person of:

369 (A) the costs of successfully defending its ownership claim; and

370 (B) reasonable attorney fees.

371 (ii) Notwithstanding Subsection (6)(d)(i), an award of costs or attorney fees may not be
372 granted against a water company if the water company acts in good faith.