

1 HB230  
2 208922-1  
3 By Representative Poole  
4 RFD: State Government  
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SYNOPSIS: This bill would make changes to the Alabama Business and Nonprofit Entities Code to clarify the relationship between the general provisions of Chapter 1 and the other chapters contained within the Alabama Business and Nonprofit Entities Code.

A BILL  
TO BE ENTITLED  
AN ACT

Relating to the Alabama Business and Nonprofit Entities Code; to amend Sections 10A-1-1.02, 10A-1-1.03, and 10A-1-4.02, as amended by Act 2020-73, 2020 Regular Session, Code of Alabama 1975; to add Section 10A-1-5.18 to the Code of Alabama 1975; to amend Sections 10A-2A-1.40 and 10A-2A-1.41, as amended by Act 2020-73, 2020 Regular Session, Section 10A-2A-2.01, as added to the Code of Alabama 1975 by Act 2019-94, 2019 Regular Session, Sections 10A-2A-2.02 and 10A-2A-7.20, as amended by Act 2020-73, 2020 Regular Session, Sections 10A-2A-8.30, 10A-2A-8.31, 10A-2A-8.42, 10A-2A-8.43,

1 10A-2A-8.59, 10A-2A-9.01, 10A-2A-10.06, 10A-2A-10.07,  
2 10A-2A-10.08, 10A-2A-11.01, 10A-2A-13.01, and 10A-2A-16.01, as  
3 added to the Code of Alabama 1975 by Act 2019-94, 2019 Regular  
4 Session, and Section 10A-3-1.02, Code of Alabama 1975; to add  
5 Section 10A-3-1.05 to the Code of Alabama 1975; to amend  
6 Sections 10A-3-2.02, 10A-3-2.03, 10A-3-2.09, and 10A-3-2.21,  
7 Section 10A-5A-1.02, as amended by Act 2018-125, 2018 Regular  
8 Session, Sections 10A-5A-2.01, 10A-5A-2.02, and 10A-5A-7.02,  
9 as amended by Act 2020-73, 2020 Regular Session, Section  
10 10A-5A-7.04, Section 10A-5A-7.05, as amended by Act 2020-73,  
11 2020 Regular Session, Sections 10A-5A-7.06, 10A-5A-7.07,  
12 10A-5A-11.10, and 10A-5A-11.12, Section 10A-5A-11.13, as  
13 amended by Act 2020-73, 2020 Regular Session, Sections  
14 10A-5A-11.14 and 10A-5A-11.15, Section 10A-8A-1.02, as amended  
15 by Act 2019-304, 2019 Regular Session, Section 10A-8A-4.10, as  
16 added to the Code of Alabama 1975 by Act 2018-125, 2018  
17 Regular Session, Section 10A-8A-8.02, as amended by Act  
18 2020-73, 2020 Regular Session, Section 10A-8A-8.06, as added  
19 to the Code of Alabama by Act 2018-125, 2018 Regular Session,  
20 Section 10A-8A-8.07, as amended by Act 2020-73, 2020 Regular  
21 Session, Sections 10A-8A-8.09, 10A-8A-8.10, and 10A-8A-9.01,  
22 as added to the Code of Alabama 1975 by Act 2018-125, 2018  
23 Regular Session, Section 10A-9A-1.02, Sections 10A-9A-2.01 and  
24 10A-9A-2.02, as amended by Act 2020-73, 2020 Regular Session,  
25 Sections 10A-9A-4.06 and 10A-9A-4.07, Section 10A-9A-8.02, as  
26 amended by Act 2020-73, 2020 Regular Session, Section  
27 10A-9A-8.06, Section 10A-9A-8.07, as amended by Act 2020-73,

1 2020 Regular Session, and Sections 10A-9A-8.09, 10A-9A-8.10,  
2 and 10A-9A-10.01, Code of Alabama 1975; to clarify the  
3 relationship between the general provisions of Chapter 1 and  
4 the other chapters contained within the Alabama Business and  
5 Nonprofit Entities Code.

6 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

7 Section 1. Sections 10A-1-1.02, 10A-1-1.03, and  
8 10A-1-4.02, as amended by Act 2020-73, 2020 Regular Session,  
9 of the Code of Alabama 1975, are amended to read as follows:

10 "§10A-1-1.02.

11 "(a) All provisions of this chapter shall apply to  
12 all entities formed pursuant to or governed by Chapters 2A to  
13 11, inclusive, and Chapter 17, ~~except to the extent, if any,~~  
14 ~~that any provision of this chapter is inconsistent with or as~~  
15 ~~otherwise provided by the provisions of this title or other~~  
16 ~~statutory or constitutional provisions specifically applicable~~  
17 ~~to the entity~~ as set forth in this chapter and except as set  
18 forth in subsections (c), (d), and (e).

19 "(b) The provisions of this chapter shall apply to  
20 entities formed pursuant to or governed by Chapter 16, Chapter  
21 20, and Chapter 30 only as provided therein or expressly  
22 provided in this chapter.

23 "(c) If a provision of this chapter conflicts with a  
24 provision in another chapter of this title, the provision of  
25 the other chapter, to the extent of the conflict, supersedes  
26 the provision of this chapter.

1           "(d) Provisions in another chapter may provide that  
2 the provisions of this chapter do not apply by specifically  
3 providing which provisions in this chapter do not apply.

4           "(e) Provisions in another chapter may provide that  
5 the governing documents of an entity governed by that other  
6 chapter may supersede the provisions of this chapter by  
7 specifically providing which provisions in this chapter may be  
8 superseded by those governing documents.

9           "§10A-1-1.03.

10          "(a) If a term, including a term that is defined in  
11 subsection (b) of this section, is defined in a chapter of  
12 this title, then, when used in that chapter, the term shall  
13 have the meaning set forth in that chapter.

14          "(b) As used in this title, ~~unless~~ except as  
15 provided in subsection (a) of this section or where the  
16 context otherwise requires, the following terms mean:

17           "(1) AFFILIATE. A person who controls, is controlled  
18 by, or is under common control with another person. An  
19 affiliate of an individual includes the spouse, or a parent or  
20 sibling thereof, of the individual, or a child, grandchild,  
21 sibling, parent, or spouse of any thereof, of the individual,  
22 or an individual having the same home as the individual, or a  
23 trust or estate of which an individual specified in this  
24 sentence is a substantial beneficiary; a trust, estate,  
25 incompetent, conservatee, protected person, or minor of which  
26 the individual is a fiduciary; or an entity of which the

1 individual is director, general partner, agent, employee or  
2 the governing authority or member of the governing authority.

3 "(2) ASSOCIATE. When used to indicate a relationship  
4 with:

5 "(A) a domestic or foreign entity for which the  
6 person is:

7 "(i) an officer or governing person; or

8 "(ii) a beneficial owner of 10 percent or more of a  
9 class of voting ownership interests or similar securities of  
10 the entity;

11 "(B) a trust or estate in which the person has a  
12 substantial beneficial interest or for which the person serves  
13 as trustee or in a similar fiduciary capacity;

14 "(C) the person's spouse or a relative of the person  
15 related by consanguinity or affinity within the fifth degree  
16 who resides with the person; or

17 "(D) a governing person or an affiliate or officer  
18 of the person.

19 "(3) ASSOCIATION. Includes, but is not limited to,  
20 an unincorporated nonprofit association as defined in Chapter  
21 17 and an unincorporated professional association as defined  
22 in Article 1 of Chapter 30.

23 "(4) BENEFIT CORPORATION. A benefit corporation as  
24 defined in Chapter 2A.

25 "(5) BUSINESS CORPORATION. A corporation or foreign  
26 corporation as defined in Chapter 2A. The term includes a  
27 benefit corporation as defined in Chapter 2A.

1           "(6) BUSINESS TRUST. A business trust as defined in  
2 Chapter 16.

3           "(7) CERTIFICATE OF DISSOLUTION. Any document such  
4 as a certificate of dissolution, statement of dissolution, or  
5 articles of dissolution, required or permitted to be filed  
6 publicly with respect to an entity's dissolution and winding  
7 up of its business, activity, activities, not for profit  
8 activity, or affairs.

9           "(8) CERTIFICATE OF FORMATION.

10          "(A) The document required to be filed publicly  
11 under this title to form a filing entity; and

12          "(B) if appropriate, a restated certificate of  
13 formation and all amendments of an original or restated  
14 certificate of formation.

15          "(9) CERTIFICATE OF OWNERSHIP. An instrument  
16 evidencing an ownership interest or membership interest in an  
17 entity.

18          "(10) CERTIFICATED OWNERSHIP INTEREST. An ownership  
19 interest of a domestic entity represented by a certificate.

20          "(11) CERTIFICATION or CERTIFIED. Duly authenticated  
21 by the proper officer or filing officer of the jurisdiction  
22 the laws of which govern the internal affairs of an entity.

23          "(12) CONTRIBUTION. A tangible or intangible benefit  
24 that a person transfers to an entity in consideration for an  
25 ownership interest in the entity or otherwise in the person's  
26 capacity as an owner or a member. A benefit that may  
27 constitute a contribution transferred in exchange for an

1 ownership interest or transferred in the transferor's capacity  
2 as an owner or member may include cash, property, services  
3 rendered, a contract for services to be performed, a  
4 promissory note or other obligation of a person to pay cash or  
5 transfer property to the entity, or securities or other  
6 interests in or obligations of an entity. In either case, the  
7 benefit does not include cash or property received by the  
8 entity:

9 "(A) with respect to a promissory note or other  
10 obligation to the extent that the agreed value of the note or  
11 obligation has previously been included as a contribution; or

12 "(B) that the person intends to be a loan to the  
13 entity.

14 "(13) CONVERSION. A conversion, whether referred to  
15 as a conversion, domestication, or otherwise, means:

16 "(A) the continuance of a domestic entity as a  
17 foreign entity of any type;

18 "(B) the continuance of a foreign entity as a  
19 domestic entity of any type; or

20 "(C) the continuance of a domestic entity of one  
21 type as a domestic entity of another type.

22 "(14) CONVERTED ENTITY. An entity resulting from a  
23 conversion.

24 "(15) CONVERTING ENTITY. An entity as the entity  
25 existed before the entity's conversion.

26 "(16) COOPERATIVE. Includes an employee cooperative  
27 as defined in Chapter 11.



1           "(17) CORPORATION. Includes a domestic or foreign  
2 business corporation, including a benefit corporation, as  
3 defined in Chapter 2A, a domestic or foreign nonprofit  
4 corporation as defined in Chapter 3, a domestic or foreign  
5 professional corporation as defined in Chapter 4, and those  
6 entities specified in Chapter 20 as corporate.

7           "(18) COURT. The designated court, and if none, the  
8 circuit court specifically set forth in this title, and if  
9 none, any other court having jurisdiction in a case.

10           "(19) DAY. When used in the computation of time,  
11 excludes the first day and includes the last day of the period  
12 so computed, unless the last day is a Saturday, Sunday, or  
13 legal holiday, in which event the period runs until the end of  
14 the next day that is not a Saturday, a Sunday, or a legal  
15 holiday. When the period of time to be computed is less than 7  
16 days, intermediate Saturdays, Sundays, and legal holidays  
17 shall be excluded.

18           "(20) DEBTOR IN BANKRUPTCY. A person who is the  
19 subject of:

20           "(A) an order for relief under the United States  
21 bankruptcy laws, Title 11, United States Code, or comparable  
22 order under a successor statute of general application; or

23           "(B) a comparable order under federal, state, or  
24 foreign law governing insolvency.

25           "(21) DESIGNATED COURT. The court or courts that are  
26 designated in the (i) certificate of incorporation or bylaws  
27 of a corporation as authorized by Chapter 2A, (ii) limited

1 liability company agreement of a limited liability company  
2 formed pursuant to or governed by Chapter 5A, (iii)  
3 partnership agreement of a partnership formed pursuant to or  
4 governed by Chapter 8A, or (iv) limited partnership agreement  
5 of a limited partnership formed pursuant to or governed by  
6 Chapter 9A.

7 "(22) DIRECTOR. An individual who serves on the  
8 board of directors, by whatever name known, of a foreign or  
9 domestic corporation.

10 "(23) DISTRIBUTION. A transfer of property,  
11 including cash, from an entity to an owner or member of the  
12 entity in the owner's or member's capacity as an owner or  
13 member. The term includes a dividend, a redemption or purchase  
14 of an ownership interest, or a liquidating distribution.

15 "(24) DOMESTIC. With respect to an entity, means  
16 governed as to its internal affairs by this title.

17 "(25) DOMESTIC ENTITY. An entity governed as to its  
18 internal affairs by this title.

19 "(26) EFFECTIVE DATE OF THIS TITLE. January 1, 2011.

20 "(27) ELECTRONIC. Relating to technology having  
21 electrical, digital, magnetic, wireless, optical,  
22 electromagnetic, or similar capabilities.

23 "(28) ELECTRONIC SIGNATURE. An electronic signature  
24 as that term is defined in the Alabama Electronic Transactions  
25 Act, Chapter 1A of Title 8, or any successor statute.

26 "(29) ELECTRONIC TRANSMISSION or ELECTRONICALLY  
27 TRANSMITTED. Any form or process of communication not directly

1 involving the physical transfer of paper or another tangible  
2 medium, which (i) is suitable for the retention, retrieval,  
3 and reproduction of information by the recipient, and (ii) is  
4 retrievable in paper form by the recipient through an  
5 automated process used in conventional commercial practice.

6 "(30) ELECTRONIC WRITING. Information that is stored  
7 in an electronic or other nontangible medium and is  
8 retrievable in paper form through an automated process used in  
9 conventional commercial practice.

10 "(31) ENTITY. A domestic or foreign organization.

11 "(32) FILING ENTITY. A domestic entity that is a  
12 corporation, limited partnership, limited liability limited  
13 partnership, limited liability company, professional  
14 association, employee cooperative corporation, or real estate  
15 investment trust.

16 "(33) FILING INSTRUMENT. An instrument, document, or  
17 statement that is required or permitted by this title to be  
18 delivered for filing by or for an entity to a filing officer.

19 "(34) FILING OFFICER. An officer of this state with  
20 whom a filing instrument is required or permitted to be  
21 delivered for filing pursuant to this title.

22 "(35) FOREIGN. With respect to an entity, means  
23 governed as to its internal affairs by the laws of a  
24 jurisdiction other than this state.

25 "(36) FOREIGN ENTITY. An entity governed as to its  
26 internal affairs by the laws of a jurisdiction other than this  
27 state.

1           "(37) FOREIGN FILING ENTITY. A foreign entity that  
2 registers or is required to register as a foreign entity under  
3 Article 7.

4           "(38) FOREIGN GOVERNMENTAL AUTHORITY. A governmental  
5 official, agency, or instrumentality of a jurisdiction other  
6 than this state.

7           "(39) FOREIGN NONFILING ENTITY. A foreign entity  
8 that is not a foreign filing entity.

9           "(40) GENERAL PARTNER.

10          "(A) Each partner in a general partnership; or

11          "(B) a person who is admitted to a limited  
12 partnership as a general partner in accordance with the  
13 governing documents of the limited partnership.

14          "(41) GENERAL PARTNERSHIP. A partnership as defined  
15 in Chapter 8A. The term includes a limited liability  
16 partnership as defined in Chapter 8A.

17          "(42) GOVERNING AUTHORITY. A person or group of  
18 persons who are entitled to manage and direct the affairs of  
19 an entity pursuant to this title and the governing documents  
20 of the entity, except that if the governing documents of the  
21 entity or this title divide the authority to manage and direct  
22 the affairs of the entity among different persons or groups of  
23 persons according to different matters, governing authority  
24 means the person or group of persons entitled to manage and  
25 direct the affairs of the entity with respect to a matter  
26 under the governing documents of the entity or this title. The  
27 term includes the board of directors of a corporation, by

1 whatever name known, or other persons authorized to perform  
2 the functions of the board of directors of a corporation, the  
3 general partners of a general partnership or limited  
4 partnership, the persons who have direction and oversight of a  
5 limited liability company, and the trust managers of a real  
6 estate investment trust. The term does not include an officer  
7 who is acting in the capacity of an officer.

8 "(43) GOVERNING DOCUMENTS.

9 "(A) In the case of a domestic entity:

10 "(i) the certificate of formation for a filing  
11 entity or the document or agreement under which a nonfiling  
12 entity is formed; and

13 "(ii) the other documents or agreements, including  
14 bylaws, partnership agreements of partnerships, limited  
15 liability company agreements of limited liability companies,  
16 or similar documents, adopted by the entity pursuant to this  
17 title to govern the formation or the internal affairs of the  
18 entity; or

19 "(B) in the case of a foreign entity, the  
20 instruments, documents, or agreements adopted under the law of  
21 its jurisdiction of formation to govern the formation or the  
22 internal affairs of the entity.

23 "(44) GOVERNING PERSON. A person serving as part of  
24 the governing authority of an entity.

25 "(45) INDIVIDUAL. A natural person and the estate of  
26 an incompetent or deceased natural person.

1           "(46) INSOLVENCY. The inability of a person to pay  
2 the person's debts as they become due in the usual course of  
3 business or affairs.

4           "(47) INSOLVENT. A person who is unable to pay the  
5 person's debts as they become due in the usual course of  
6 business or affairs.

7           "(48) JUDGE OF PROBATE. The judge of probate of the  
8 county in which an entity is required or permitted to deliver  
9 a filing instrument for filing pursuant to this title.

10          "(49) JURISDICTION OF FORMATION.

11          "(A) In the case of a filing entity, this state;

12          "(B) in the case of a foreign entity, the  
13 jurisdiction in which the entity's certificate of formation or  
14 similar organizational instrument is filed, or if no  
15 certificate of formation or similar organizational instrument  
16 is filed, then the laws of the jurisdiction which govern the  
17 internal affairs of the foreign entity;

18          "(C) in the case of a general partnership which has  
19 filed a statement of partnership, a statement of not for  
20 profit partnership, or a statement of limited liability  
21 partnership in accordance with Chapter 8A, in this state;

22          "(D) in the case of a foreign limited liability  
23 partnership, the laws of the jurisdiction which govern the  
24 filing of the foreign limited liability partnership's  
25 statement of limited liability partnership or such filing in  
26 that jurisdiction; and

1           "(E) in the case of a foreign or domestic nonfiling  
2 entity other than those entities described in subsection (C)  
3 or (D):

4           "(i) the jurisdiction the laws of which are chosen  
5 in the entity's governing documents to govern its internal  
6 affairs if that jurisdiction bears a reasonable relation to  
7 the owners or members or to the domestic or foreign nonfiling  
8 entity's business and affairs under the principles of this  
9 state that otherwise would apply to a contract among the  
10 owners or members; or

11           "(ii) if subparagraph (i) does not apply, the  
12 jurisdiction in which the entity has its principal office.

13           "(50) LAW. Unless the context requires otherwise,  
14 both statutory and common law.

15           "(51) LICENSE. A license, certificate of  
16 registration, or other legal authorization.

17           "(52) LICENSING AUTHORITY. The state court, state  
18 regulatory licensing board, or other like agency which has the  
19 power to issue a license or other legal authorization to  
20 render professional services.

21           "(53) LIMITED LIABILITY COMPANY. A limited liability  
22 company as defined in Chapter 5A.

23           "(54) LIMITED LIABILITY LIMITED PARTNERSHIP. A  
24 limited liability limited partnership as defined in Chapter  
25 9A.

26           "(55) LIMITED LIABILITY PARTNERSHIP. A limited  
27 liability partnership as defined in Chapter 8A.

1           "(56) LIMITED PARTNER. A person who has been  
2 admitted to a limited partnership as a limited partner as  
3 provided by:

4           "(A) in the case of a domestic limited partnership,  
5 Chapter 9A; or

6           "(B) in the case of a foreign limited partnership,  
7 the laws of its jurisdiction of formation.

8           "(57) LIMITED PARTNERSHIP. A limited partnership as  
9 defined in Chapter 9A. The term includes a limited liability  
10 limited partnership as defined in Chapter 9A.

11           "(58) MANAGERIAL OFFICIAL. An officer or a governing  
12 person.

13           "(59) MEMBER.

14           "(A) A person defined as a member under Chapter 5A;

15           "(B) in the case of a nonprofit corporation formed  
16 pursuant to or governed by Chapter 3, a person having  
17 membership rights in the nonprofit corporation in accordance  
18 with its governing documents as provided in Chapter 3;

19           "(C) in the case of an employee cooperative  
20 corporation formed pursuant to or governed by Chapter 11, a  
21 natural person who, as provided in Chapter 11, has been  
22 accepted for membership in and owns a membership share in an  
23 employee cooperative;

24           "(D) in the case of a nonprofit association, a  
25 person who, as provided in Chapter 17, may participate in the  
26 selection of persons authorized to manage the affairs of the  
27 nonprofit association or in the development of its policy.



1           "(60) MERGER. The combination of one or more  
2 domestic entities with one or more domestic entities or  
3 foreign entities resulting in:

4           "(A) one or more surviving domestic entities or  
5 foreign entities;

6           "(B) the creation of one or more new domestic  
7 entities or foreign entities, or one or more surviving  
8 domestic entities or foreign entities; or

9           "(C) one or more surviving domestic entities or  
10 foreign entities and the creation of one or more new domestic  
11 entities or foreign entities.

12           "(61) NONFILING ENTITY. A domestic entity that is  
13 not a filing entity. The term includes a domestic general  
14 partnership, a limited liability partnership, and a nonprofit  
15 association.

16           "(62) NONPROFIT ASSOCIATION. An unincorporated  
17 nonprofit association as defined in Chapter 17. The term does  
18 not include a general partnership which has filed a statement  
19 of not for profit partnership in accordance with Chapter 8A, a  
20 limited partnership which is carrying on a not for profit  
21 purpose, or a limited liability company which is carrying on a  
22 not for profit purpose.

23           "(63) NONPROFIT CORPORATION. A domestic or foreign  
24 nonprofit corporation as defined in Chapter 3.

25           "(64) NONPROFIT ENTITY. An entity that is a  
26 nonprofit corporation, nonprofit association, or other entity  
27 that is organized solely for one or more nonprofit purposes.

1           "(65) OFFICER. An individual elected, appointed, or  
2 designated as an officer of an entity by the entity's  
3 governing authority or under the entity's governing documents.

4           "(66) ORGANIZATION. A corporation, limited  
5 partnership, general partnership, limited liability company,  
6 business trust, real estate investment trust, joint venture,  
7 joint stock company, cooperative, association, or other  
8 organization, including, regardless of its organizational  
9 form, a bank, insurance company, credit union, and savings and  
10 loan association, whether for profit, not for profit,  
11 nonprofit, domestic, or foreign.

12           "(67) ORGANIZER. A person, who need not be an owner  
13 or member of the entity, who, having the capacity to contract,  
14 is authorized to execute documents in connection with the  
15 formation of the entity. The term includes an incorporator.

16           "(68) OWNER.

17           "(A) With respect to a foreign or domestic business  
18 corporation or real estate investment trust, a stockholder or  
19 a shareholder;

20           "(B) with respect to a foreign or domestic  
21 partnership, a partner;

22           "(C) with respect to a foreign or domestic limited  
23 liability company or association, a member; and

24           "(D) with respect to another foreign or domestic  
25 entity, an owner of an equity interest in that entity.

26           "(69) OWNERSHIP INTEREST. An owner's interest in an  
27 entity. The term includes the owner's share of profits and

1 losses or similar items and the right to receive  
2 distributions. The term does not include an owner's right to  
3 participate in management or participate in the direction or  
4 oversight of the entity. An ownership interest is personal  
5 property.

6 "(70) PARENT or PARENT ENTITY. An entity that:

7 "(A) owns at least 50 percent of the ownership or  
8 membership interest of a subsidiary; or

9 "(B) possesses at least 50 percent of the voting  
10 power of the owners or members of a subsidiary.

11 "(71) PARTNER. A limited partner or general partner.

12 "(72) PARTNERSHIP. Includes a general partnership, a  
13 limited liability partnership, a foreign limited liability  
14 partnership, a limited partnership, a foreign limited  
15 partnership, a limited liability limited partnership, and a  
16 foreign limited liability limited partnership.

17 "(73) PARTNERSHIP AGREEMENT. Any agreement (whether  
18 referred to as a partnership agreement or otherwise), written,  
19 oral or implied, of the partners as to the activities and  
20 affairs of a general partnership or a limited partnership. The  
21 partnership agreement includes any amendments to the  
22 partnership agreement. In the case of limited partnerships  
23 formed prior to October 1, 1998, partnership agreement  
24 includes the certificate of partnership.

25 "(74) PARTY TO THE MERGER. A domestic entity or  
26 foreign entity that under a plan of merger is combined by a  
27 merger. The term does not include a domestic entity or foreign

1 entity that is not to be combined into or with one or more  
2 domestic entities or foreign entities, regardless of whether  
3 ownership interests of the entity are to be issued under the  
4 plan of merger.

5 "(75) PERSON. An individual, including the estate of  
6 an incompetent or deceased individual, or an entity, whether  
7 created by the laws of this state or another state or foreign  
8 country, including, without limitation, a general partnership,  
9 limited liability partnership, limited partnership, limited  
10 liability limited partnership, limited liability company,  
11 corporation, professional corporation, nonprofit corporation,  
12 professional association, trustee, personal representative,  
13 fiduciary, as defined in Section 19-3-150 or person performing  
14 in any similar capacity, business trust, estate, trust,  
15 association, joint venture, government, governmental  
16 subdivision, agency, or instrumentality, or any other legal or  
17 commercial entity.

18 "(76) PRESIDENT.

19 "(A) The individual designated as president of an  
20 entity under the entity's governing documents; or

21 "(B) the officer or committee of persons authorized  
22 to perform the functions of the principal executive officer of  
23 an entity without regard to the designated name of the officer  
24 or committee.

25 "(77) PRINCIPAL OFFICE. The office, in or out of  
26 this state, where the principal executive office, whether

1 referred to as the principal executive office, chief executive  
2 office, or otherwise, of an entity is located.

3 "(78) PROFESSIONAL ASSOCIATION. A professional  
4 association as defined in Chapter 30.

5 "(79) PROFESSIONAL CORPORATION. A domestic or  
6 foreign professional corporation as defined in Chapter 4.

7 "(80) PROFESSIONAL ENTITY. A professional  
8 association and a professional corporation.

9 "(81) PROFESSIONAL SERVICE. Any type of service that  
10 may lawfully be performed only pursuant to a license issued by  
11 a state court, state regulatory licensing board, or other like  
12 agency pursuant to state laws.

13 "(82) PROPERTY. Includes all property, whether real,  
14 personal, or mixed, or tangible or intangible, or any right or  
15 interest therein.

16 "(83) REAL ESTATE INVESTMENT TRUST. An  
17 unincorporated trust, association, or other entity as defined  
18 in Chapter 10.

19 "(84) SECRETARY.

20 "(A) The individual designated as secretary of an  
21 entity under the entity's governing documents; or

22 "(B) the officer or committee of persons authorized  
23 to perform the functions of secretary of an entity without  
24 regard to the designated name of the officer or committee.

25 "(85) SECRETARY OF STATE. The Secretary of State of  
26 the State of Alabama.

1           "(86) SIGN or SIGNATURE. With the present intent to  
2 authenticate or adopt a writing:

3           "(A) to execute or adopt a tangible symbol to a  
4 writing, and includes any manual, facsimile, or conformed  
5 signature; or

6           "(B) to attach to or logically associate with an  
7 electronic transmission an electronic sound, symbol, or  
8 process, and includes an electronic signature in an electronic  
9 transmission.

10           "(87) STATE. Includes, when referring to a part of  
11 the United States, a state or commonwealth, and its agencies  
12 and governmental subdivisions, and a territory or possession,  
13 and its agencies and governmental subdivisions, of the United  
14 States.

15           "(88) SUBSCRIBER. A person who agrees with or makes  
16 an offer to an entity to purchase by subscription an ownership  
17 interest in the entity.

18           "(89) SUBSCRIPTION. An agreement between a  
19 subscriber and an entity, or a written offer made by a  
20 subscriber to an entity before or after the entity's  
21 formation, in which the subscriber agrees or offers to  
22 purchase a specified ownership interest in the entity.

23           "(90) SUBSIDIARY. An entity at least 50 percent of:

24           "(A) the ownership or membership interest of which  
25 is owned by a parent entity; or

26           "(B) the voting power of which is possessed by a  
27 parent entity.

1           "(91) TREASURER.

2           "(A) The individual designated as treasurer of an  
3 entity under the entity's governing documents; or

4           "(B) the officer or committee of persons authorized  
5 to perform the functions of treasurer of an entity without  
6 regard to the designated name of the officer or committee.

7           "(92) TRUSTEE. A person who serves as a trustee of a  
8 trust, including a real estate investment trust.

9           "(93) UNCERTIFICATED OWNERSHIP INTEREST. An  
10 ownership interest in a domestic entity that is not  
11 represented by a certificate.

12           "(94) VICE PRESIDENT.

13           "(A) The individual designated as vice president of  
14 an entity under the governing documents of the entity; or

15           "(B) the officer or committee of persons authorized  
16 to perform the functions of the president of the entity on the  
17 death, absence, or resignation of the president or on the  
18 inability of the president to perform the functions of office  
19 without regard to the designated name of the officer or  
20 committee.

21           "(95) WRITING or WRITTEN. Information that is  
22 inscribed on a tangible medium or that is stored in an  
23 electronic or other medium and is retrievable in perceivable  
24 form.

25           "§10A-1-4.02.

1           "(a) A filing instrument required or allowed by this  
2 title to be delivered to the Secretary of State for filing  
3 shall be delivered to the Secretary of State for filing.

4           "(b) A filing instrument required or permitted by  
5 this title to be delivered to the judge of probate for filing  
6 shall be delivered to the judge of probate for filing.

7           "(c) If a provision of this title does not specify  
8 which filing officer a filing instrument is to be delivered to  
9 for filing, that filing instrument shall be delivered to the  
10 Secretary of State for filing.

11           "(d) If the filing officer finds that a filing  
12 instrument delivered to the filing officer for filing  
13 substantially conforms to the provisions of this title that  
14 apply to that filing instrument and that all required fees  
15 have been paid, the filing officer shall file it immediately  
16 upon delivery by:

17           "(1) recording that filing instrument as "filed,"  
18 together with the name and official title of the filing  
19 officer and the date and time of receipt on the instrument and  
20 all copies required hereunder and on the receipt for the  
21 filing fee;

22           "(2) accepting that filing instrument into the  
23 filing system adopted by the filing officer and assigning the  
24 instrument a date and time of filing; and

25           "(3) delivering a copy of that filing instrument,  
26 indicating the date and time of the filing on the copy along



1 with the filing fee receipt to the entity or its  
2 representative.

3 "(e) The filing fee to be collected by the filing  
4 officer shall be paid or provision for payment shall be made  
5 in a manner permitted by the filing officer. The filing  
6 officer may accept payment of the correct amount due by check,  
7 credit card, charge card, or similar method. If the amount due  
8 is tendered by any method other than cash, the liability shall  
9 not be finally discharged until the filing officer receives  
10 final irrevocable full payment of immediately available funds.  
11 If after five consecutive calendar days prior notice by the  
12 filing officer to the entity or person who delivered a filing  
13 instrument for filing for which the filing fee was not  
14 received in final irrevocable full payment of immediately  
15 available funds, then the filing officer may declare the  
16 filing instrument to be null and void and of no legal effect  
17 as if it had never been filed and may remove the filing  
18 instrument from the records of the filing officer.

19 "(f) If the filing officer refuses to file a filing  
20 instrument, the filing officer shall return it to the entity  
21 or its representative within five consecutive calendar days  
22 after the filing instrument was delivered to the filing  
23 officer for filing, together with a brief, written explanation  
24 of the reason for the refusal.

25 "(g) Delivery by a filing officer of an  
26 acknowledgement of filing, receipt for the filing fee, an  
27 explanation for the reason a filing instrument was not filed,

1 notice that a filing fee was not made in final irrevocable  
2 full payment of immediately available funds, or other  
3 communication as to a filing instrument delivered for filing  
4 to that filing officer may be accomplished by mail, courier,  
5 or electronic transmission.

6 "(h) The duty of the filing officer to file filing  
7 instruments pursuant to this title is ministerial. Filing or  
8 refusing to file a filing instrument by the filing officer  
9 does not:

10 "(1) affect the validity or invalidity of the filing  
11 instrument in whole or in part;

12 "(2) relate to the correctness or incorrectness of  
13 information contained in the filing instrument; or

14 "(3) create a presumption that the filing instrument  
15 is valid or invalid or that information contained in the  
16 filing instrument is correct or incorrect.

17 "(i) The Secretary of State shall assign a unique  
18 identifying number to each domestic entity and each foreign  
19 filing entity for which the Secretary of State has filed or  
20 files a filing instrument and shall keep:

21 "(1) an alphabetical list of ~~all~~ those domestic  
22 entities and ~~registered~~ foreign filing entities;

23 "(2) with respect to those domestic entities and  
24 ~~registered~~ foreign filing entities, all filing instruments and  
25 any other document required or permitted to be delivered to  
26 the Secretary of State for filing pursuant to this title; and

27 "(3) the data contained in those filing instruments.

1           "(j) The Secretary of State shall establish and  
2 maintain an automated electronic system that enables:

3           "(i) the delivery, acceptance, and filing by  
4 electronic transmission of all filing instruments authorized  
5 or required by this title to be delivered to the Secretary of  
6 State for filing;

7           "(ii) all filing instruments to be in a form that  
8 complies with this title but does not require the filing  
9 instruments to be in a form adopted by or otherwise required  
10 by the Secretary of State;

11           "(iii) the delivery, acceptance, and filing of  
12 filing instruments by electronic transmission to occur 24  
13 hours a day, seven days a week, each day of the year,  
14 including holidays and weekends; and

15           "(iv) each person delivering a filing instrument by  
16 means of electronic transmission to the Secretary of State for  
17 filing to receive from the Secretary of State immediate  
18 confirmation that the filing instrument has been delivered to,  
19 and accepted and filed by, the Secretary of State with that  
20 confirmation to include the information required in  
21 subsections (d) (1), (d) (2), and (d) (3), associated with that  
22 filing instrument, clearly set forth on a digital copy of that  
23 filing instrument.

24           "(k) If a filing instrument which is authorized or  
25 required to be delivered to the Secretary of State for filing  
26 by this title is delivered to the Secretary of State by means  
27 other than electronic transmission, and that filing instrument

1 complies with the requirements of this title, then the  
2 Secretary of State shall:

3 "(i) file that filing instrument as of the date and  
4 time of the receipt of that filing instrument;

5 "(ii) confirm that the filing instrument has been  
6 delivered to, and accepted and filed by, the Secretary of  
7 State with that confirmation to include the information  
8 required in subsections (d)(1), (d)(2), and (d)(3), associated  
9 with that filing instrument, clearly set forth on a copy of  
10 that filing instrument; and

11 "(iii) either (A) place that confirmation and that  
12 copy of the filing instrument in the United States mail,  
13 postage prepaid, and properly addressed to the person who  
14 delivered that filing instrument to the Secretary of State,  
15 not later than the next business day or (B) transmit that  
16 confirmation and that copy of the filing instrument by  
17 electronic transmission to the person who delivered that  
18 filing instrument to the Secretary of State, not later than  
19 the next business day.

20 "(l) Subject to subsection (e), a filing officer who  
21 has filed a filing instrument shall maintain that filing  
22 instrument in perpetuity."

23 Section 2. Section 10A-1-5.18 is added to the Code  
24 of Alabama 1975, to read as follows:

25 §10A-1-5.18.

26 If an entity is listed in the Secretary of State's  
27 records as an entity that has been dissolved, then if that

1 entity is reinstated in accordance with this chapter or the  
2 chapter that governs the dissolved entity, the name of that  
3 entity following revocation and reinstatement shall be that  
4 entity's name at the time of revocation and reinstatement if  
5 that entity's name complies with this article at the time of  
6 revocation and reinstatement. If that entity's name does not  
7 comply with this article, the name of that entity following  
8 revocation and reinstatement shall be that entity's name  
9 followed by the word "reinstated."

10 Section 3. Sections 10A-2A-1.40 and 10A-2A-1.41, as  
11 amended by Act 2020-73, 2020 Regular Session, Section  
12 10A-2A-2.01, as added to the Code of Alabama 1975 by Act  
13 2019-94, 2019 Regular Session, Sections 10A-2A-2.02 and  
14 10A-2A-7.20, as amended by Act 2020-73, 2020 Regular Session,  
15 Sections 10A-2A-8.30, 10A-2A-8.31, 10A-2A-8.42, 10A-2A-8.43,  
16 10A-2A-8.59, 10A-2A-9.01, 10A-2A-10.06, 10A-2A-10.07,  
17 10A-2A-10.08, 10A-2A-11.01, 10A-2A-13.01, and 10A-2A-16.01, as  
18 added to the Code of Alabama 1975 by Act 2019-94, 2019 Regular  
19 Session, and Section 10A-3-1.02 of the Code of Alabama 1975,  
20 are amended to read as follows:

21 "§10A-2A-1.40.

22 "~~Notwithstanding Section 10A-1-1.03, as~~ As used in  
23 this chapter, unless otherwise specified or unless the context  
24 otherwise requires, the following terms have the following  
25 meanings:

1           "(1) AUTHORIZED STOCK means the stock of all classes  
2 and series a corporation or foreign corporation is authorized  
3 to issue.

4           "(2) BENEFICIAL STOCKHOLDER means a person who owns  
5 the beneficial interest in stock, which is either a record  
6 stockholder or a person on whose behalf shares of stock are  
7 registered in the name of an intermediary or nominee.

8           "(3) CERTIFICATE OF INCORPORATION means the  
9 certificate of incorporation described in Section 10A-2A-2.02,  
10 all amendments to the certificate of incorporation, and any  
11 other documents permitted or required to be delivered for  
12 filing by a corporation with the Secretary of State under this  
13 chapter or Chapter 1 that modify, amend, supplement, restate,  
14 or replace the certificate of incorporation. After an  
15 amendment of the certificate of incorporation or any other  
16 document filed under this chapter or Chapter 1 that restates  
17 the certificate of incorporation in its entirety, the  
18 certificate of incorporation shall not include any prior  
19 documents. When used with respect to a corporation  
20 incorporated and existing on December 31, 2019, under a  
21 predecessor law of this state, the term "certificate of  
22 incorporation" means articles of incorporation, charter, or  
23 similar incorporating document, and all amendments and  
24 restatements to the certificate of incorporation, charter, or  
25 similar incorporating document. When used with respect to a  
26 foreign corporation, a nonprofit corporation, or a foreign  
27 nonprofit corporation, the "certificate of incorporation" of

1 such an entity means the document of such entity that is  
2 equivalent to the certificate of incorporation of a  
3 corporation. The term "certificate of incorporation" as used  
4 in this chapter is synonymous to the term "certificate of  
5 formation" used in Chapter 1.

6 "(4) CORPORATION, except in the phrase "foreign  
7 corporation," means an entity incorporated or existing under  
8 this chapter.

9 "(5) DELIVER or DELIVERY means any method of  
10 delivery used in conventional commercial practice, including  
11 delivery by hand, mail, commercial delivery, and, if  
12 authorized in accordance with Section 10A-2A-1.41, by  
13 electronic transmission.

14 "(6) DISTRIBUTION means a direct or indirect  
15 transfer of cash or other property (except a corporation's own  
16 stock) or incurrence of indebtedness by a corporation to or  
17 for the benefit of its stockholders in respect of any of its  
18 stock. A distribution may be in the form of a payment of a  
19 dividend; a purchase, redemption, or other acquisition of  
20 stock; a distribution of indebtedness; a distribution in  
21 liquidation; or otherwise.

22 "(7) DOCUMENT means a writing as defined in Chapter  
23 1.

24 "(8) EFFECTIVE DATE, when referring to a document  
25 accepted for filing by the Secretary of State, means the time  
26 and date determined in accordance with Article 4 of Chapter 1.

1           "(9) ELECTRONIC MAIL means an electronic  
2 transmission directed to a unique electronic mail address,  
3 ~~which electronic mail shall be deemed to include any files~~  
4 ~~attached thereto and any information hyperlinked to a website~~  
5 ~~if such electronic mail includes the contact information of an~~  
6 ~~officer or agent of the corporation who is available to assist~~  
7 ~~with accessing those files and that information.~~

8           "(10) ELECTRONIC MAIL ADDRESS means a destination,  
9 commonly expressed as a string of characters, consisting of a  
10 unique user name or mailbox (commonly referred to as the  
11 "local part" of the address) and a reference to an internet  
12 domain (commonly referred to as the "domain part" of the  
13 address), whether or not displayed, to which electronic mail  
14 can be sent or delivered.

15           "(11) ELIGIBLE ENTITY means an unincorporated  
16 entity, foreign unincorporated entity, nonprofit corporation,  
17 or foreign nonprofit corporation.

18           "(12) ELIGIBLE INTERESTS means interests or  
19 memberships.

20           "(13) EMPLOYEE includes an officer, but not a  
21 director. A director may accept duties that make the director  
22 also an employee.

23           "(14) ENTITY includes corporation; foreign  
24 corporation; nonprofit corporation; foreign nonprofit  
25 corporation; estate; trust; unincorporated entity; foreign  
26 unincorporated entity; and state, United States, and foreign  
27 government.



1           "(15) EXPENSES means reasonable expenses of any kind  
2 that are incurred in connection with a matter.

3           "(16) FILING ENTITY means an unincorporated entity,  
4 other than a limited liability partnership, that is of a type  
5 that is created by filing a public organic record or is  
6 required to file a public organic record that evidences its  
7 creation.

8           "(17) FOREIGN CORPORATION means a corporation  
9 incorporated under a law other than the law of this state  
10 which would be a corporation if incorporated under the law of  
11 this state.

12           "(18) FOREIGN NONPROFIT CORPORATION means a  
13 corporation incorporated under a law other than the law of  
14 this state which would be a nonprofit corporation if  
15 incorporated under the law of this state.

16           "(19) GOVERNING STATUTE means the statute governing  
17 the internal affairs of a corporation, foreign corporation,  
18 nonprofit corporation, foreign nonprofit corporation,  
19 unincorporated entity, or foreign unincorporated entity.

20           "(20) GOVERNMENTAL SUBDIVISION includes authority,  
21 county, district, and municipality.

22           "(21) INCLUDES and INCLUDING denote a partial  
23 definition or a nonexclusive list.

24           "(22) INTEREST means either or both of the following  
25 rights under the governing statute governing an unincorporated  
26 entity:

1           "(i) the right to receive distributions from the  
2 entity either in the ordinary course or upon liquidation; or

3           "(ii) the right to receive notice or vote on issues  
4 involving its internal affairs, other than as an agent,  
5 assignee, proxy, or person responsible for managing its  
6 business and affairs.

7           "(23) INTEREST HOLDER means a person who holds of  
8 record an interest.

9           "(24) KNOWLEDGE is determined as follows:

10          "(a) A person knows a fact when the person:

11          "(1) has actual knowledge of it; or

12          "(2) is deemed to know it under law other than this  
13 chapter.

14          "(b) A person has notice of a fact when the person:

15          "(1) knows of it;

16          "(2) receives notification of it in accordance with  
17 Section 10A-2A-1.41;

18          "(3) has reason to know the fact from all of the  
19 facts known to the person at the time in question; or

20          "(4) is deemed to have notice of the fact under  
21 subsection (d).

22          "(c) A person notifies another of a fact by taking  
23 steps reasonably required to inform the other person in  
24 ordinary course in accordance with Section 10A-2A-1.41,  
25 whether or not the other person knows the fact.

26          "(d) A person is deemed to have notice of a  
27 corporation's:

1           "(1) matters included in the certificate of  
2 incorporation upon filing;

3           "(2) dissolution, 90 days after a certificate of  
4 dissolution under Section 10A-2A-14.03 becomes effective;

5           "(3) conversion, merger, or interest exchange under  
6 Article 9 or Article 11, 90 days after a statement of  
7 conversion, or statement of merger or interest exchange  
8 becomes effective;

9           "(4) conversion or merger under Article 8 of Chapter  
10 1, 90 days after a statement of conversion or statement of  
11 merger becomes effective; and

12           "(5) revocation of dissolution and reinstatement, 90  
13 days after certificate of revocation of dissolution and  
14 reinstatement under Section 10A-2A-14.04 becomes effective.

15           "(e) A stockholder's knowledge, notice, or receipt  
16 of a notification of a fact relating to the corporation is not  
17 knowledge, notice, or receipt of a notification of a fact by  
18 the corporation solely by reason of the stockholder's capacity  
19 as a stockholder.

20           "(f) The date and time of the effectiveness of a  
21 notice delivered in accordance with Section 10A-2A-1.41, is  
22 determined by Section 10A-2A-1.41.

23           "(25) MEANS denotes an exhaustive definition.

24           "(26) MEMBERSHIP means the rights of a member in a  
25 nonprofit corporation or foreign nonprofit corporation.

26           "(27) MERGER means a transaction pursuant to Section  
27 10A-2A-11.02.

1           "(28) ORGANIZATIONAL DOCUMENTS means the public  
2 organic record and private organizational documents of a  
3 corporation, foreign corporation, or eligible entity.

4           "(29) PRINCIPAL OFFICE means the office (in or out  
5 of this state) so designated in the annual report where the  
6 principal executive offices of a corporation or foreign  
7 corporation are located.

8           "(30) PRIVATE ORGANIZATIONAL DOCUMENTS means (i) the  
9 bylaws of a corporation, foreign corporation, nonprofit  
10 corporation, or foreign nonprofit corporation, or (ii) the  
11 rules, regardless of whether in writing, that govern the  
12 internal affairs of an unincorporated entity or foreign  
13 unincorporated entity, are binding on all its interest  
14 holders, and are not part of its public organic record, if  
15 any. Where private organizational documents have been amended  
16 or restated, the term means the private organizational  
17 documents as last amended or restated.

18           "(31) PROCEEDING includes any civil suit and  
19 criminal, administrative, and investigatory action.

20           "(32) PUBLIC ORGANIC RECORD means (i) the  
21 certificate of incorporation of a corporation, foreign  
22 corporation, nonprofit corporation, or foreign nonprofit  
23 corporation, or (ii) the document, if any, the filing of which  
24 is required to create an unincorporated entity or foreign  
25 unincorporated entity, or which creates the unincorporated  
26 entity or foreign unincorporated entity and is required to be  
27 filed. Where a public organic record has been amended or

1 restated, the term means the public organic record as last  
2 amended or restated.

3 "(33) RECORD DATE means the date fixed for  
4 determining the identity of the corporation's stockholders and  
5 their stockholdings for purposes of this chapter. Unless  
6 another time is specified when the record date is fixed, the  
7 determination shall be made as of the close of business at the  
8 principal office of the corporation on the date so fixed.

9 "(34) RECORD STOCKHOLDER means (i) the person in  
10 whose name shares of stock are registered in the records of  
11 the corporation, or (ii) the person identified as the  
12 beneficial owner of stock in a beneficial ownership  
13 certificate pursuant to Section 10A-2A-7.23 on file with the  
14 corporation to the extent of the rights granted by such  
15 certificate.

16 "(35) SECRETARY means the corporate officer to whom  
17 the board of directors has delegated responsibility under  
18 Section 10A-2A-8.40(c) to maintain the minutes of the meetings  
19 of the board of directors and of the stockholders and for  
20 authenticating records of the corporation.

21 "(36) STOCK EXCHANGE means a transaction pursuant to  
22 Section 10A-2A-11.03.

23 "(37) STOCKHOLDER means a record stockholder.

24 "(38) STOCK means the units into which the  
25 proprietary interests in a corporation or foreign corporation  
26 are divided.

1           "(39) TYPE OF ENTITY means a generic form of entity:  
2           (i) recognized at common law; or (ii) formed under a governing  
3           statute, regardless of whether some entities formed under that  
4           law are subject to provisions of that law that create  
5           different categories of the form of entity.

6           "(40) UNINCORPORATED ENTITY means an organization or  
7           artificial legal person that either has a separate legal  
8           existence or has the power to acquire an estate in real  
9           property in its own name and that is not any of the following:  
10          a corporation, foreign corporation, nonprofit corporation,  
11          foreign nonprofit corporation, a series of a limited liability  
12          company or of another type of entity, an estate, a trust, a  
13          state, United States, or foreign government. The term includes  
14          a general partnership, limited liability company, limited  
15          partnership, business trust, joint stock association, and  
16          unincorporated nonprofit association.

17          "(41) UNITED STATES includes any district,  
18          authority, bureau, commission, department, and any other  
19          agency of the United States.

20          "(42) UNRESTRICTED VOTING TRUST BENEFICIAL OWNER  
21          means, with respect to any stockholder rights, a voting trust  
22          beneficial owner whose entitlement to exercise the stockholder  
23          right in question is not inconsistent with the voting trust  
24          agreement.

25          "(43) VOTING GROUP means all stock of one or more  
26          classes or series that under the certificate of incorporation  
27          or this chapter are entitled to vote and be counted together

1 collectively on a matter at a meeting of stockholders. All  
2 stock entitled by the certificate of incorporation or this  
3 chapter to vote generally on the matter is for that purpose a  
4 single voting group.

5 "(44) VOTING POWER means the current power to vote  
6 in the election of directors.

7 "(45) VOTING TRUST BENEFICIAL OWNER means an owner  
8 of a beneficial interest in stock of the corporation held in a  
9 voting trust established pursuant to Section 10A-2A-7.30(a).

10 "§10A-2A-1.41.

11 "(a) A notice under this chapter must be in writing  
12 unless oral notice is reasonable in the circumstances. Unless  
13 otherwise agreed between the sender and the recipient, words  
14 in a notice or other communication under this chapter must be  
15 in English.

16 "(b) A notice or other communication may be given by  
17 any method of delivery, except that notice or other  
18 communication by electronic ~~transmissions~~ transmission must be  
19 in accordance with this section. If the methods of delivery  
20 are impracticable, a notice or other communication from the  
21 corporation may be given by means of a broad non-exclusionary  
22 distribution to the public (which may include a newspaper of  
23 general circulation in the area where published; radio,  
24 television, or other form of public broadcast communication;  
25 or other methods of distribution that the corporation has  
26 previously identified to its stockholders).

1           "(c) A notice or other communication to a  
2 corporation or to a foreign corporation registered to ~~do~~  
3 transact business in this state may be delivered to the  
4 corporation's registered agent at its registered office or to  
5 the secretary at the corporation's principal office shown in  
6 its most recent annual report or, in the case of a foreign  
7 corporation that has not yet delivered an annual report, in  
8 its foreign registration under Chapter 1.

9           "(d) A notice or other communications from the  
10 corporation to a stockholder ~~from the corporation~~ may be  
11 delivered by electronic mail to ~~that stockholder~~ at the  
12 electronic mail address for that stockholder ~~as reflected in~~  
13 ~~the books and records of the corporation~~ required to be  
14 included in the record of stockholders maintained pursuant to  
15 Section 10A-2A-16.01(d), unless that stockholder has  
16 previously notified the corporation in writing that the  
17 stockholder objects to receiving notices and other  
18 communications by electronic mail. Any ~~such~~ notice or  
19 communication may be delivered by another form of electronic  
20 transmission ~~other than electronic mail~~ if consented to by the  
21 stockholder or if authorized by subsection (j), ~~and any other.~~  
22 Any notice or other communication from the corporation to any  
23 other person may be delivered by electronic transmission if  
24 consented to by the recipient or if authorized by subsection  
25 (j). Any consent given under this subsection or subsection (j)  
26 may be revoked with respect to future notices or



1 communications by the person who consented by written notice  
2 to the person to whom the consent was delivered.

3 " (e) ~~Any consent under subsection (d) may be revoked~~  
4 ~~by the person who consented by written or electronic notice to~~  
5 ~~the person to whom the consent was delivered. Authority to~~  
6 ~~deliver notice or other communications to a stockholder by~~  
7 ~~electronic mail or by electronic transmission~~ A notice or  
8 other communication may no longer be delivered to an  
9 electronic mail address or other electronic transmission  
10 address pursuant to subsection (d) shall cease if (i) the  
11 corporation ~~is unable to deliver~~ receives notice from the  
12 information processing system into which the notice or other  
13 communication was entered that two consecutive notices or  
14 other communications given by electronic transmissions to that  
15 ~~stockholder in accordance with subsection (d)~~ have not been  
16 delivered to the electronic mail address or other electronic  
17 transmission address to which the notice or other  
18 communication was directed, and (ii) the ~~inability~~ notice of  
19 non-delivery becomes known to the secretary or an assistant  
20 secretary or to the transfer agent, or ~~other~~ another person  
21 responsible for the giving of ~~notice~~ notices or other  
22 communications for the corporation; provided, however, the  
23 inadvertent failure to ~~treat that inability~~ recognize the  
24 notice of non-delivery as a cessation of authority to provide  
25 a stockholder with notice by electronic mail or other  
26 electronic transmission shall not invalidate any meeting or  
27 other action.

1           "(f) Unless otherwise agreed between the sender and  
2 the recipient, ~~an~~ a notice or other communication by  
3 electronic transmission is received when:

4           "(1) it enters an information processing system ~~that~~  
5 ~~the recipient has designated or uses for the purposes of~~  
6 ~~receiving electronic transmissions or information of the type~~  
7 ~~sent, and from which the recipient is able to retrieve the~~  
8 directed to (i) in the case of a stockholder, the electronic  
9 mail address for the stockholder required to be included in  
10 the record of stockholders maintained pursuant to Section  
11 10A-2A-16.01(d) or other electronic transmission address at  
12 which the stockholder has consented to receive notice or other  
13 communications by electronic transmission, or (ii) in the case  
14 of any other recipient, the electronic transmission address at  
15 which the recipient has consented to receive notice or other  
16 communications by electronic transmission; and

17           "(2) it is in a form capable of being processed by  
18 that system.

19           "(g) Receipt of an electronic acknowledgement from  
20 an information processing system described in subsection  
21 (f) (1) establishes that an electronic transmission was  
22 received but, by itself, does not establish that the content  
23 sent corresponds to the content received.

24           "(h) An electronic transmission is received under  
25 this section even if no person is aware of its receipt.

1           "(i) A notice or other communication, if in a  
2           comprehensible form or manner, is effective at the earliest of  
3           the following:

4           " (1) if in a physical form, the earliest of when it  
5           is actually received, or when it is left at:

6           " (i) a stockholder's address ~~shown on the~~  
7           ~~corporation's~~ included in the record of stockholders  
8           ~~maintained by the corporation under~~ pursuant to Section  
9           10A-2A-16.01(d);

10          " (ii) a director's residence or usual place of  
11          business; or

12          " (iii) the corporation's principal office;

13          " (2) if mailed by United States mail postage prepaid  
14          and ~~correctly~~ addressed to a stockholder at the stockholder's  
15          address included in the record of stockholders maintained  
16          pursuant to Section 10A-2A-16.01(d), upon deposit in the  
17          ~~United States~~ mail;

18          " (3) if mailed by United States mail postage prepaid  
19          and ~~correctly~~ addressed to a recipient other than a  
20          stockholder at the address included in the corporation's  
21          records, the earliest of when it is actually received, or:

22          " (i) if sent by registered or certified mail, return  
23          receipt requested, the date shown on the return receipt signed  
24          by or on behalf of the addressee; or

25          " (ii) five days after it is deposited in the United  
26          States mail;

1           "(4) if sent by a nationally recognized commercial  
2 carrier that issues a receipt or other confirmation of  
3 delivery, the earliest of when it is actually received or the  
4 date shown on the receipt or other confirmation of delivery  
5 issued by the commercial carrier;

6           "(5) if an electronic transmission, when it is  
7 received as provided in subsection (f); and

8           "(6) if oral, when communicated.

9           "(j) A notice or other communication may be in the  
10 form of an electronic transmission that cannot be directly  
11 reproduced in paper form by the recipient through an automated  
12 process used in conventional commercial practice only if (i)  
13 the electronic transmission is otherwise retrievable in  
14 perceivable form, and (ii) the sender and the recipient have  
15 consented in writing to the use of such form of electronic  
16 transmission.

17           "(k) If this chapter prescribes requirements for  
18 notices or other communications in particular circumstances,  
19 those requirements govern. If the certificate of incorporation  
20 or bylaws prescribe requirements for notices or other  
21 communications, not inconsistent with this section or other  
22 provisions of this chapter, those requirements govern. The  
23 certificate of incorporation or bylaws may authorize or  
24 require delivery of notices of meetings of directors by  
25 electronic transmission.

26           "(l) In the event that any provisions of this  
27 chapter are deemed to modify, limit, or supersede the federal

1 Electronic Signatures in Global and National Commerce Act, 15  
2 U.S.C. §§7001 et seq., the provisions of this chapter shall  
3 control to the maximum extent permitted by Section 102(a)(2)  
4 of that federal act.

5 "(m) Whenever a notice or communication would  
6 otherwise be required to be given under this chapter to a  
7 stockholder, the notice or communication need not be given if  
8 the corporation is not permitted to deliver the notice or  
9 communication by electronic transmission pursuant to  
10 subsections (d) and (e) and:

11 "(1) notices and communications to stockholders of  
12 two consecutive annual meetings, and all notices and  
13 communications of meetings during the period between those two  
14 consecutive annual meetings, have been sent to that  
15 stockholder at that stockholder's address included in the  
16 record of stockholders maintained pursuant to Section  
17 10A-2A-16.01(d) and have been returned undeliverable or could  
18 not be delivered; or

19 "(2) all, but not less than two, distributions to  
20 stockholders during a 12-month period, or two consecutive  
21 distributions to stockholders during a period of more than 12  
22 months, have been sent to that stockholder at that  
23 stockholder's address included in the record of stockholders  
24 maintained pursuant to Section 10A-2A-16.01(d) and have been  
25 returned undeliverable or could not be delivered; or

26 "(3) no address has been provided to the corporation  
27 by or on behalf of a stockholder and the corporation has not

1 otherwise obtained an address for that stockholder it believes  
2 to be reliable.

3 "In addition, if any stockholder to which this  
4 subsection (m) applies delivers to the corporation a written  
5 notice or communication setting forth that stockholder's  
6 then-current address, the requirement that notice and  
7 communication be given to that stockholder shall be  
8 reinstated.

9 "(n) Whenever a notice or communication is required  
10 to be given, under this chapter or the certificate of  
11 incorporation or bylaws of any corporation, to any person with  
12 whom notice to or communication with is unlawful, the giving  
13 of the notice or communication to that person shall not be  
14 required and there shall be no duty to apply to any  
15 governmental authority or agency for a license or permit to  
16 give the notice or communication to that person. Any action or  
17 meeting which shall be taken or held without notice or  
18 communication to the person with whom notice to or  
19 communication with is unlawful shall have the same force and  
20 effect as if the notice or communication had been duly given.  
21 In the event that the action taken by the corporation is such  
22 as to require the filing of a certificate or other filing  
23 instrument under any other sections of this chapter, the  
24 certificate or other filing instrument shall state, if that is  
25 the fact and if notice or communication is required, that  
26 notice or communication was given to all persons entitled to

1 receive notice or communication except those persons with whom  
2 notice to or communication with is unlawful.

3 "§10A-2A-2.01.

4 "~~Notwithstanding~~ Section 10A-1-3.04, in shall not  
5 apply to this chapter. In order to incorporate a corporation,  
6 one or more incorporators must execute a certificate of  
7 incorporation and deliver it for filing to the Secretary of  
8 State.

9 "§10A-2A-2.02.

10 "~~Notwithstanding~~ Section 10A-1-3.05 shall not apply  
11 to this chapter. Instead:

12 "(a) The certificate of incorporation must set  
13 forth:

14 "(1) a corporate name for the corporation that  
15 satisfies the requirements of Article 5 of Chapter 1;

16 "(2) the number of shares of stock the corporation  
17 is authorized to issue;

18 "(3) the street and mailing addresses of the  
19 corporation's initial registered office, the county within  
20 this state in which the street and mailing address is located,  
21 and the name of the corporation's initial registered agent at  
22 that office as required by Article 5 of Chapter 1; and

23 "(4) the name and address of each incorporator.

24 "(b) The certificate of incorporation may set forth:

25 "(1) the names and addresses of the individuals who  
26 are to serve as the initial directors;

27 "(2) provisions not inconsistent with law regarding:

1           "(i) the purpose or purposes for which the  
2 corporation is organized;

3           "(ii) managing the business and regulating the  
4 affairs of the corporation;

5           "(iii) defining, limiting, and regulating the powers  
6 of the corporation, its board of directors, and stockholders;

7           "(iv) a par value for authorized stock or classes of  
8 stock; or

9           "(v) subject to subsection (f), a provision imposing  
10 personal liability for the debts of the corporation on its  
11 stockholders to a specified extent and upon specified  
12 conditions; otherwise, the stockholders of a corporation shall  
13 not be personally liable for the payment of the corporation's  
14 debts, except as they may be liable by reason of their own  
15 conduct or acts;

16           "(3) any provision that under this chapter is  
17 permitted to be set forth in the certificate of incorporation  
18 or required or permitted to be set forth in the bylaws;

19           "(4) a provision eliminating or limiting the  
20 liability of a director to the corporation or its stockholders  
21 for money damages for any action taken, or any failure to take  
22 any action, as a director, except liability for (i) the amount  
23 of a financial benefit received by a director to which the  
24 director is not entitled; (ii) an intentional infliction of  
25 harm on the corporation or the stockholders; (iii) a violation  
26 of Section 10A-2A-8.32; or (iv) an intentional violation of  
27 criminal law;



1           "(5) a provision permitting or making obligatory  
2 indemnification of a director for liability as defined in  
3 Section 10A-2A-8.50 to any person for any action taken, or any  
4 failure to take any action, as a director, except liability  
5 for (i) receipt of a financial benefit to which the director  
6 is not entitled, (ii) an intentional infliction of harm on the  
7 corporation or its stockholders, (iii) a violation of Section  
8 10A-2A-8.32, or (iv) an intentional violation of criminal law;  
9 and

10           "(6) a provision limiting or eliminating any duty of  
11 a director or any other person to offer the corporation the  
12 right to have or participate in any, or one or more classes or  
13 categories of, business opportunities, before the pursuit or  
14 taking of the opportunity by the director or other person;  
15 provided that any application of that provision to an officer  
16 or a related person of that officer (i) also requires approval  
17 of that application by the board of directors, subsequent to  
18 the effective date of the provision, by action of qualified  
19 directors taken in compliance with the same procedures as are  
20 set forth in Section 10A-2A-8.60, and (ii) may be limited by  
21 the authorizing action of the board of directors.

22           "(c) The certificate of incorporation need not set  
23 forth any of the corporate powers enumerated in Sections  
24 10A-1-2.11, 10A-1-2.12, and 10A-1-2.13.

25           "(d) Provisions of the certificate of incorporation  
26 may be made dependent upon facts objectively ascertainable

1 outside the certificate of incorporation in accordance with  
2 Section 10A-2A-1.20(c).

3 "(e) As used in this section, "related person" has  
4 the meaning specified in Section 10A-2A-8.60.

5 "(f) The certificate of incorporation may not  
6 contain any provision that would impose liability on a  
7 stockholder for the attorney's fees or expenses of the  
8 corporation or any other party in connection with an internal  
9 corporate claim, as defined in Section 10A-2A-2.07(d).

10 "(g) The certificate of incorporation is part of a  
11 binding contract between the corporation and the stockholders,  
12 subject to the provisions of this chapter.

13 "§10A-2A-7.20.

14 "(a) After fixing a record date for a meeting, a  
15 corporation shall prepare an alphabetical list of the names of  
16 all its stockholders who are entitled to notice of ~~a~~ the  
17 stockholders' meeting. If the board of directors fixes a  
18 different record date under Section 10A-2A-7.07(e) to  
19 determine the stockholders entitled to vote at the meeting, a  
20 corporation also shall prepare an alphabetical list of the  
21 names of all its stockholders who are entitled to vote at the  
22 meeting. ~~A~~ Each list must be arranged by voting group (and  
23 within each voting group by class or series of stock) and ~~show~~  
24 contain the address of, and number and class or series of  
25 shares of stock held by, each stockholder. ~~If,~~ and if the  
26 notice or other communications regarding the meeting have been  
27 or will be sent by the corporation ~~has an electronic mail~~

1 ~~address for~~ to a stockholder and ~~the corporation uses that~~ by  
2 electronic mail ~~address to send notices and other~~  
3 ~~communications to that stockholder, then the corporation shall~~  
4 ~~include that electronic mail address on the stockholders' list~~  
5 or other electronic transmission, the electronic mail or other  
6 electronic transmission address of that stockholder.

7 " (b) The ~~stockholders' list~~ for of stockholders  
8 entitled to notice shall be available for inspection by any  
9 stockholder, beginning two business days after notice of the  
10 meeting is given for which the list was prepared and  
11 continuing through the meeting, (i) at the corporation's  
12 principal office or at a place identified in the meeting  
13 notice in the city where the meeting will be held or (ii) on a  
14 reasonably accessible electronic network, provided that the  
15 information required to gain access to such list is provided  
16 with the notice of the meeting. The list of stockholders  
17 entitled to vote shall be similarly available for inspection  
18 promptly after the record date for voting. In the event that  
19 the corporation determines to make ~~the~~ a list of stockholders  
20 available on an electronic network, the corporation may take  
21 reasonable steps to ensure that such information is available  
22 only to stockholders of the corporation. ~~A stockholders' list~~  
23 ~~for voting shall be similarly available for inspection~~  
24 ~~promptly after the record date for voting.~~ A stockholder, or  
25 the stockholder's agent or attorney, is entitled on written  
26 demand to inspect and, subject to the requirements of Section  
27 10A-2A-16.02(c), to copy a list of stockholders, during

1 regular business hours and at the stockholder's expense,  
2 during the period it is available for inspection. A  
3 corporation may satisfy the stockholder's right to copy a list  
4 of stockholders by furnishing a copy in the manner described  
5 in Section 10A-2A-16.03(b). A stockholder and the  
6 stockholder's agent or attorney who inspects or is furnished a  
7 copy of a list of stockholders under this subsection (b) or  
8 under subsection (c) or who copies the list under this  
9 subsection (b) may use the information on that list only for  
10 purposes related to the meeting and its subject matter and  
11 must keep the information on that list confidential.

12 "(c) If the meeting is to be held at a place, the  
13 corporation shall make the list of stockholders entitled to  
14 vote available at the meeting and any adjournment, and any  
15 stockholder, or the stockholder's agent or attorney, is  
16 entitled to inspect the list at any time during the meeting ~~or~~  
17 and any adjournment. If the meeting is to be held solely by  
18 means of remote communication, then such list shall also be  
19 ~~open to~~ available for such inspection during the meeting and  
20 any adjournment on a reasonably accessible electronic network,  
21 and the information required to access such list shall be  
22 provided with the notice of the meeting. The corporation may  
23 satisfy its obligation to make such list available for  
24 inspection during a meeting by furnishing a copy of the list  
25 in the manner described in Section 10A-2A-16.03(b) to the  
26 stockholders prior to the meeting.

1           "(d) If the corporation refuses to allow a  
2 stockholder, or the stockholder's agent or attorney, to  
3 inspect a ~~stockholders'~~ list of stockholders before or at the  
4 meeting or any adjournment (or copy a list as permitted by  
5 subsection (b)), the designated court, and if none, the  
6 circuit court for the county in which the corporation's  
7 principal office is located in this state, and if none in this  
8 state, the circuit court for the county in which the  
9 corporation's most recent registered office is located, on  
10 application of the stockholder, may summarily order the  
11 inspection or copying at the corporation's expense and may  
12 postpone the meeting for which the list was prepared until the  
13 inspection or copying is complete.

14           "(e) Refusal or failure to prepare or make available  
15 ~~the stockholders'~~ a list of stockholders does not affect the  
16 validity of action taken at the meeting.

17           "(f) The stock transfer records of the corporation  
18 shall be prima facie evidence as to who are the stockholders  
19 entitled to examine the stockholders' list or transfer records  
20 or to vote at any meeting of stockholders.

21           "§10A-2A-8.30.

22           "~~Notwithstanding~~ Division C of Article 3 of Chapter  
23 1 shall not apply to this chapter. Instead:

24           "(a) Each member of the board of directors, when  
25 discharging the duties of a director, shall act: (i) in good  
26 faith, and (ii) in a manner the director reasonably believes  
27 to be in the best interests of the corporation.

1           "(b) The members of the board of directors or a  
2 board committee, when becoming informed in connection with  
3 their decision-making function or devoting attention to their  
4 oversight function, shall discharge their duties with the care  
5 that a person in a like position would reasonably believe  
6 appropriate under similar circumstances.

7           "(c) In discharging board of directors or board  
8 committee duties, a director shall disclose, or cause to be  
9 disclosed, to the other board of directors or board committee  
10 members information not already known by them but known by the  
11 director to be material to the discharge of their  
12 decision-making or oversight functions, except that disclosure  
13 is not required to the extent that the director reasonably  
14 believes that doing so would violate a duty imposed under law,  
15 a legally enforceable obligation of confidentiality, or a  
16 professional ethics rule.

17           "(d) In discharging board of directors or board  
18 committee duties, a director who does not have knowledge that  
19 makes reliance unwarranted is entitled to rely on the  
20 performance by any of the persons specified in subsection  
21 (f) (1) or subsection (f) (3) to whom the board of directors may  
22 have delegated, formally or informally by course of conduct,  
23 the authority or duty to perform one or more of the board of  
24 directors' functions that are delegable under applicable law.

25           "(e) In discharging board of directors or board  
26 committee duties, a director who does not have knowledge that  
27 makes reliance unwarranted is entitled to rely on information,

1 opinions, reports, or statements, including financial  
2 statements and other financial data, prepared or presented by  
3 any of the persons specified in subsection (f).

4 "(f) A director is entitled to rely, in accordance  
5 with subsection (d) or (e), on:

6 "(1) one or more officers or employees of the  
7 corporation whom the director reasonably believes to be  
8 reliable and competent in the functions performed or the  
9 information, opinions, reports or statements provided;

10 "(2) legal counsel, public accountants, or other  
11 persons retained by the corporation as to matters involving  
12 skills or expertise the director reasonably believes are  
13 matters (i) within the particular person's professional or  
14 expert competence, or (ii) as to which the particular person  
15 merits confidence; or

16 "(3) a board committee of which the director is not  
17 a member if the director reasonably believes the committee  
18 merits confidence.

19 "§10A-2A-8.31.

20 "~~Notwithstanding~~ Division C of Article 3 of Chapter  
21 1 shall not apply to this chapter. Instead:

22 "(a) A director shall not be liable to the  
23 corporation or its stockholders for any decision to take or  
24 not to take action, or any failure to take any action, as a  
25 director, unless the party asserting liability in a proceeding  
26 establishes that:

1           "(1) no defense interposed by the director based on  
2           (i) any provision in the certificate of incorporation  
3           authorized by Section 10A-2A-2.02(b)(4) or by Section  
4           10A-2A-2.02(b)(6), or (ii) the protection afforded by Section  
5           10A-2A-8.60, precludes liability; and

6           "(2) the challenged conduct consisted or was the  
7           result of:

8           "(i) action not in good faith; or

9           "(ii) a decision

10           "(A) which the director did not reasonably believe  
11           to be in the best interests of the corporation, or

12           "(B) as to which the director was not informed to an  
13           extent the director reasonably believed appropriate in the  
14           circumstances; or

15           "(iii) a lack of objectivity due to the director's  
16           familial, financial or business relationship with, or a lack  
17           of independence due to the director's domination or control  
18           by, another person having a material interest in the  
19           challenged conduct,

20           "(A) which relationship or which domination or  
21           control could reasonably be expected to have affected the  
22           director's judgment respecting the challenged conduct in a  
23           manner adverse to the corporation, and

24           "(B) after a reasonable expectation to that effect  
25           has been established, the director shall not have established  
26           that the challenged conduct was reasonably believed by the  
27           director to be in the best interests of the corporation; or



1           "(iv) a sustained failure of the director to devote  
2 attention to ongoing oversight of the business and affairs of  
3 the corporation, or a failure to devote timely attention, by  
4 making (or causing to be made) appropriate inquiry, when  
5 particular facts and circumstances of significant concern  
6 materialize that would alert a reasonably attentive director  
7 to the need for that inquiry; or

8           "(v) receipt of a financial benefit to which the  
9 director was not entitled or any other breach of the  
10 director's duties to deal fairly with the corporation and its  
11 stockholders that is actionable under applicable law.

12           "(b) The party seeking to hold the director liable:

13           "(1) for money damages, shall also have the burden  
14 of establishing that:

15           "(i) harm to the corporation or its stockholders has  
16 been suffered, and

17           "(ii) the harm suffered was proximately caused by  
18 the director's challenged conduct; or

19           "(2) for other money payment under a legal remedy,  
20 such as compensation for the unauthorized use of corporate  
21 assets, shall also have whatever persuasion burden may be  
22 called for to establish that the payment sought is appropriate  
23 in the circumstances; or

24           "(3) for other money payment under an equitable  
25 remedy, such as profit recovery by or disgorgement to the  
26 corporation, shall also have whatever persuasion burden may be

1 called for to establish that the equitable remedy sought is  
2 appropriate in the circumstances.

3 "(c) Nothing contained in this section shall (i) in  
4 any instance where fairness is at issue alter the burden of  
5 proving the fact or lack of fairness otherwise applicable,  
6 (ii) alter the fact or lack of liability of a director under  
7 another section of this chapter, such as the provisions  
8 governing the consequences of an unlawful distribution under  
9 Section 10A-2A-8.32 or a transactional interest under Section  
10 10A-2A-8.60, or (iii) affect any rights to which the  
11 corporation or a stockholder may be entitled under another  
12 statute of this state or the United States.

13 "§10A-2A-8.42.

14 ~~"Notwithstanding~~ Division C of Article 3 of Chapter  
15 1 shall not apply to this chapter. Instead:

16 "(a) An officer, when performing in his or her  
17 capacity as such, has the duty to act:

18 "(1) in good faith;

19 "(2) with the care that a person in a like position  
20 would reasonably exercise under similar circumstances; and

21 "(3) in a manner the officer reasonably believes to  
22 be in the best interests of the corporation.

23 "(b) The duty of an officer includes the obligation:

24 "(1) to inform the superior officer to whom, or the  
25 board of directors or the board committee to which, the  
26 officer reports of information about the affairs of the  
27 corporation known to the officer, within the scope of the

1 officer's functions, and known to the officer to be material  
2 to that superior officer, board of directors or board  
3 committee; and

4 "(2) to inform his or her superior officer, or  
5 another appropriate person within the corporation, or the  
6 board of directors, or a board committee, of any actual or  
7 probable material violation of law involving the corporation  
8 or material breach of duty to the corporation by an officer,  
9 employee, or agent of the corporation, that the officer  
10 believes has occurred or is likely to occur.

11 "(c) In discharging an officer's duties, an officer  
12 who does not have knowledge that makes reliance unwarranted is  
13 entitled to rely on:

14 "(1) the performance of properly delegated  
15 responsibilities by one or more employees of the corporation  
16 whom the officer reasonably believes to be reliable and  
17 competent in performing the responsibilities delegated; or

18 "(2) information, opinions, reports or statements,  
19 including financial statements and other financial data,  
20 prepared or presented by one or more employees of the  
21 corporation whom the officer reasonably believes to be  
22 reliable and competent in the matters presented or by legal  
23 counsel, public accountants, or other persons retained by the  
24 corporation as to matters involving skills or expertise the  
25 officer reasonably believes are matters (i) within the  
26 particular person's professional or expert competence or (ii)  
27 as to which the particular person merits confidence.

1           "(d) An officer shall not be liable to the  
2 corporation or its stockholders for any decision to take or  
3 not to take action, or any failure to take any action, as an  
4 officer, if the duties of the office are performed in  
5 compliance with this section. Whether an officer who does not  
6 comply with this section shall have liability will depend in  
7 each instance on applicable law, including those principles of  
8 Section 10A-2A-8.31 that have relevance.

9           "§10A-2A-8.43.

10           "~~Notwithstanding~~ Division C of Article 3 of Chapter  
11 1 shall not apply to this chapter. Instead:

12           "(a) An officer may resign at any time by delivering  
13 a written notice to the board of directors, its chair, the  
14 appointing officer, the secretary, or the corporation. A  
15 resignation is effective as provided in Section 10A-2A-1.41(i)  
16 unless the notice provides for a delayed effectiveness,  
17 including effectiveness determined upon a future event or  
18 events. If effectiveness of a resignation is stated to be  
19 delayed and the board of directors or the appointing officer  
20 accepts the delay, the board of directors or the appointing  
21 officer may fill the pending vacancy before the delayed  
22 effectiveness but the new officer may not take office until  
23 the vacancy occurs.

24           "(b) An officer may be removed at any time with or  
25 without cause by (i) the board of directors; (ii) the  
26 appointing officer, unless the certificate of incorporation,  
27 bylaws, or the board of directors provide otherwise; or (iii)

1 any other officer if authorized by the certificate of  
2 incorporation, bylaws, or the board of directors.

3 "(c) In this section, "appointing officer" means the  
4 officer (including any successor to that officer) who  
5 appointed the officer resigning or being removed.

6 "§10A-2A-8.59.

7 ~~"Notwithstanding~~ Division A of Article 6 of Chapter  
8 1 shall not apply to this chapter. Instead, a corporation may  
9 provide indemnification or advance expenses to a director or  
10 an officer only as permitted by this Division E of this  
11 Article 8.

12 "§10A-2A-9.01.

13 "As used in this Article 9:

14 ~~"Notwithstanding Section 10A-1-1.03, as~~ As used in  
15 this article, unless the context otherwise requires, the  
16 following terms have the following meanings:

17 "(1) ~~"Converted organization"~~ CONVERTED ORGANIZATION  
18 means the organization into which a converting organization  
19 converts pursuant to this article.

20 "(2) ~~"Converting corporation"~~ CONVERTING CORPORATION  
21 means a converting organization that is a corporation.

22 "(3) ~~"Converting organization"~~ CONVERTING  
23 ORGANIZATION means an organization that converts into another  
24 organization pursuant to this article.

25 "(4) ~~"Governing statute"~~ GOVERNING STATUTE of an  
26 organization means the statute that governs the organization's  
27 internal affairs.

1           "~~Organization~~" ORGANIZATION means a general  
2 partnership, including a limited liability partnership;  
3 limited partnership, including a limited liability limited  
4 partnership; limited liability company; business trust;  
5 corporation; nonprofit corporation; professional corporation;  
6 or any other person having a governing statute. The term  
7 includes domestic and foreign organizations whether or not  
8 organized for profit.

9           "~~Organizational documents~~" ORGANIZATIONAL  
10 DOCUMENTS means:

11           "(A) for a general partnership or foreign general  
12 partnership, its partnership agreement and if applicable, its  
13 registration as a limited liability partnership or a foreign  
14 limited liability partnership;

15           "(B) for a limited partnership or foreign limited  
16 partnership, its certificate of formation and partnership  
17 agreement, or comparable writings as provided in its governing  
18 statute;

19           "(C) for a limited liability company or foreign  
20 limited liability company, its certificate of formation and  
21 limited liability company agreement, or comparable writings as  
22 provided in its governing statute;

23           "(D) for a business or statutory trust or foreign  
24 business or statutory trust, its agreement of trust and  
25 declaration of trust, or comparable writings as provided in  
26 its governing statute;

1           "(E) for a corporation for profit or foreign  
2 corporation for profit, its certificate of incorporation,  
3 bylaws, and other agreements among its stockholders that are  
4 authorized by its governing statute, or comparable writings as  
5 provided in its governing statute;

6           "(F) for a nonprofit corporation or foreign  
7 nonprofit corporation, its certificate of incorporation,  
8 bylaws, and other agreements that are authorized by its  
9 governing statute, or comparable writings as provided in its  
10 governing statute;

11           "(G) for a professional corporation or foreign  
12 professional corporation, its certificate of incorporation,  
13 bylaws, and other agreements among its stockholders that are  
14 authorized by its governing statute, or comparable writings as  
15 provided in its governing statute; and

16           "(H) for any other organization, the basic writings  
17 that create the organization and determine its internal  
18 governance and the relations among the persons that own it,  
19 have an interest in it, or are members of it.

20           "§10A-2A-10.06.

21           "~~Notwithstanding~~ Division B of Article 3 of Chapter  
22 1 shall not apply to this chapter. Instead:

23           "(a) After an amendment to the certificate of  
24 incorporation has been adopted and approved in the manner  
25 required by this chapter and by the certificate of  
26 incorporation, the corporation shall deliver to the Secretary

1 of State for filing a certificate of amendment, which must set  
2 forth:

3 "(1) the name of the corporation;

4 "(2) the text of each amendment adopted, or the  
5 information required by Section 10A-2A-1.20(c) (5);

6 "(3) if an amendment provides for an exchange,  
7 reclassification, or cancellation of issued stock, provisions  
8 for implementing the amendment if not contained in the  
9 amendment itself, (which may be made dependent upon facts  
10 objectively ascertainable outside the certificate of amendment  
11 in accordance with Section 10A-2A-1.20(c) (5));

12 "(4) the date of each amendment's adoption; ~~and~~

13 "(5) if an amendment:

14 "(i) was adopted by the incorporators or board of  
15 directors without stockholder approval, a statement that the  
16 amendment was duly adopted by the incorporators or by the  
17 board of directors, as the case may be, and that stockholder  
18 approval was not required;

19 "(ii) required approval by the stockholders, a  
20 statement that the amendment was duly approved by the  
21 stockholders in the manner required by this chapter and by the  
22 certificate of incorporation; or

23 "(iii) is being filed pursuant to Section  
24 10A-2A-1.20(c) (5), a statement to that effect; ~~and~~

25 "(6) the unique identifying number or other  
26 designation as assigned by the Secretary of State.



1           "(b) A certificate of amendment shall take effect at  
2 the effective date determined in accordance with Article 4 of  
3 Chapter 1.

4           "§10A-2A-10.07.

5           "~~Notwithstanding~~ Division B of Article 3 of Chapter  
6 1 shall not apply to this chapter. Instead:

7           "(a) A corporation's board of directors may restate  
8 its certificate of incorporation at any time, without  
9 stockholder approval, to consolidate all amendments into a  
10 single document.

11           "(b) If the restated certificate of incorporation  
12 includes one or more new amendments that require stockholder  
13 approval, the amendments shall be adopted and approved as  
14 provided in Section 10A-2A-10.03.

15           "(c) A corporation that restates its certificate of  
16 incorporation shall deliver to the Secretary of State for  
17 filing a certificate of restatement setting forth:

18           "(1) the name of the corporation;

19           "(2) the text of the restated certificate of  
20 incorporation;

21           "(3) a statement that the restated certificate of  
22 incorporation consolidates all amendments into a single  
23 document; ~~and~~

24           "(4) if a new amendment is included in the restated  
25 certificate of incorporation, the statements required under  
26 Section 10A-2A-10.06 with respect to the new amendment; and

1                   "(5) the unique identifying number or other  
2 designation as assigned by the Secretary of State.

3                   "(d) The duly adopted restated certificate of  
4 incorporation supersedes the original certificate of  
5 incorporation and all amendments to the certificate of  
6 incorporation.

7                   "(e) The Secretary of State may certify the restated  
8 certificate of incorporation as the certificate of  
9 incorporation currently in effect, without including the  
10 statements required by subsection (c) (4).

11                   "§10A-2A-10.08.

12                   "~~Notwithstanding~~ Division B of Article 3 of Chapter  
13 1 shall not apply to this chapter. Instead:

14                   "(a) A corporation's certificate of incorporation  
15 may be amended without action by the board of directors or  
16 stockholders to carry out a plan of reorganization ordered or  
17 decreed by a court of competent jurisdiction under the  
18 authority of a law of the United States if the certificate of  
19 incorporation after the amendment only contains provisions  
20 required or permitted by Section 10A-2A-2.02.

21                   "(b) The individual or individuals designated by the  
22 court shall deliver to the Secretary of State for filing a  
23 certificate of amendment setting forth:

24                   "(1) the name of the corporation;

25                   "(2) the text of each amendment approved by the  
26 court;

1           "(3) the date of the court's order or decree  
2 approving the certificate of amendment;

3           "(4) the title of the reorganization proceeding in  
4 which the order or decree was entered; ~~and~~

5           "(5) a statement that the court had jurisdiction of  
6 the proceeding under federal statute~~;~~ and

7           "(6) the unique identifying number or other  
8 designation as assigned by the Secretary of State

9           "(c) Stockholders of a corporation undergoing  
10 reorganization do not have dissenters' rights except as and to  
11 the extent provided in the reorganization plan.

12           "(d) This section does not apply after entry of a  
13 final decree in the reorganization proceeding even though the  
14 court retains jurisdiction of the proceeding for limited  
15 purposes unrelated to consummation of the reorganization plan.

16           "§10A-2A-11.01.

17           "~~Notwithstanding Section 10A-1-1.03, as~~ As used in  
18 this article, unless the context otherwise requires, the  
19 following terms mean:

20           "(1) ~~"Acquired entity"~~ ACQUIRED ENTITY means the  
21 corporation or foreign corporation that will have all of one  
22 or more classes or series of its stock acquired in a stock  
23 exchange.

24           "(2) ~~"Acquiring entity"~~ ACQUIRING ENTITY means the  
25 corporation or foreign corporation that will acquire all of  
26 one or more classes or series of stock of the acquired entity  
27 in a stock exchange.

1                   "~~Constituent corporation~~" CONSTITUENT  
2 CORPORATION means a constituent organization that is a  
3 corporation.

4                   "~~Constituent organization~~" CONSTITUENT  
5 ORGANIZATION means an organization that is party to a merger  
6 under this article.

7                   "~~Governing statute~~" GOVERNING STATUTE of an  
8 organization means the statute that governs the organization's  
9 internal affairs.

10                   "~~Organization~~" ORGANIZATION means a general  
11 partnership, including a limited liability partnership;  
12 limited partnership, including a limited liability limited  
13 partnership; limited liability company; business trust;  
14 corporation; nonprofit corporation; professional corporation;  
15 or any other person having a governing statute. The term  
16 includes domestic and foreign organizations whether or not  
17 organized for profit.

18                   "~~Organizational documents~~" ORGANIZATIONAL  
19 DOCUMENTS means:

20                   "(A) for a general partnership or foreign general  
21 partnership, its partnership agreement and if applicable, its  
22 registration as a limited liability partnership or a foreign  
23 limited liability partnership;

24                   "(B) for a limited partnership or foreign limited  
25 partnership, its certificate of formation and partnership  
26 agreement, or comparable writings as provided in its governing  
27 statute;

1           "(C) for a limited liability company or foreign  
2 limited liability company, its certificate of formation and  
3 limited liability company agreement, or comparable writings as  
4 provided in its governing statute;

5           "(D) for a business or statutory trust or foreign  
6 business or statutory trust its agreement of trust and  
7 declaration of trust, or comparable writings as provided in  
8 its governing statute;

9           "(E) for a corporation or foreign corporation, its  
10 certificate of incorporation, bylaws, and other agreements  
11 among its stockholders that are authorized by its governing  
12 statute, or comparable writings as provided in its governing  
13 statute;

14           "(F) for a nonprofit corporation or foreign  
15 nonprofit corporation, its certificate of incorporation,  
16 bylaws, and other agreements that are authorized by its  
17 governing statute, or comparable writings as provided in its  
18 governing statute;

19           "(G) for a professional corporation or foreign  
20 professional corporation, its certificate of incorporation,  
21 bylaws, and other agreements among its stockholders that are  
22 authorized by its governing statute, or comparable writings as  
23 provided in its governing statute; and

24           "(H) for any other organization, the basic writings  
25 that create the organization and determine its internal  
26 governance and the relations among the persons that own it,  
27 have an interest in it, or are members of it.

1           "~~(8) "New personal liability"~~ NEW PERSONAL LIABILITY  
2 means personal liability of a person, resulting from a merger  
3 or stock exchange, that is (i) (A) in respect of an entity  
4 which is different from the entity in which the person held  
5 stock or eligible interests immediately before the merger  
6 became effective, or (B) in respect of an entity which is  
7 different from the entity in which the person held stock  
8 immediately before the stock exchange became effective; or  
9 (ii) in respect of the same entity as the one in which the  
10 person held stock or eligible interests immediately before the  
11 merger became effective if (A) the person did not have  
12 personal liability immediately before the merger became  
13 effective, or (B) the person had personal liability  
14 immediately before the merger became effective, the terms and  
15 conditions of which were changed when the merger became  
16 effective; or (iii) in respect of the same entity as the one  
17 in which the person held stock immediately before the stock  
18 exchange became effective if (A) the person did not have  
19 personal liability immediately before the stock exchange  
20 became effective, or (B) the person had personal liability  
21 immediately before the stock exchange became effective, the  
22 terms and conditions of which were changed when the stock  
23 exchange became effective.

24           "~~(9) "Surviving organization"~~ SURVIVING ORGANIZATION  
25 means an organization into which one or more other  
26 organizations are merged under this article, whether the

1 organization pre-existed the merger or was created pursuant to  
2 the merger.

3 "§10A-2A-13.01.

4 ~~"Notwithstanding Chapter 1, in~~ In this Article 13:

5 "(1) ~~"Affiliate"~~ AFFILIATE means a person that  
6 directly or indirectly through one or more intermediaries  
7 controls, is controlled by, or is under common control with  
8 another person or is a senior executive of that person. For  
9 purposes of Section 10A-2A-13.02(b)(4), a person is deemed to  
10 be an affiliate of its senior executives.

11 "(2) ~~"Corporation"~~ CORPORATION means the corporation  
12 that is the issuer of the stock held by a stockholder  
13 demanding appraisal and, for matters covered in Section  
14 10A-2A-13.22 through Section 10A-2A-13.31, includes the  
15 surviving organization of a merger.

16 "(3) ~~"Fair value"~~ FAIR VALUE means the value of the  
17 corporation's stock determined:

18 "(i) immediately before the effectiveness of the  
19 corporate action to which the stockholder objects;

20 "(ii) using customary and current valuation concepts  
21 and techniques generally employed for similar businesses in  
22 the context of the transaction requiring appraisal; and

23 "(iii) without discounting for lack of marketability  
24 or minority status.

25 "(4) ~~"Interest"~~ INTEREST means interest from the  
26 date the corporate action becomes effective until the date of  
27 payment, and shall be compounded quarterly and shall accrue at

1 five percent over the Federal Reserve discount rate (including  
2 any surcharge) as established from time to time during the  
3 period between the effective date of the corporate action and  
4 the date of payment.

5 "(5) ~~"Interested transaction"~~ INTERESTED TRANSACTION  
6 means a corporate action described in Section 10A-2A-13.02(a),  
7 other than a merger pursuant to Section 10A-2A-11.05,  
8 involving an interested person in which any of the stock or  
9 assets of the corporation are being acquired or converted. As  
10 used in this definition:

11 "(i) "Interested person" means a person, or an  
12 affiliate of a person, who at any time during the one-year  
13 period immediately preceding approval by the board of  
14 directors of the corporate action:

15 "(A) was the beneficial owner of 20 percent or more  
16 of the voting power of the corporation, other than as owner of  
17 excluded stock;

18 "(B) had the power, contractually or otherwise,  
19 other than as owner of excluded stock, to cause the  
20 appointment or election of 25 percent or more of the directors  
21 to the board of directors of the corporation; or

22 "(C) was a senior executive or director of the  
23 corporation or a senior executive of any affiliate of the  
24 corporation, and that senior executive or director will  
25 receive, as a result of the corporate action, a financial  
26 benefit not generally available to other stockholders as such,  
27 other than:



1           "(I) employment, consulting, retirement, or similar  
2 benefits established separately and not as part of or in  
3 contemplation of the corporate action;

4           "(II) employment, consulting, retirement, or similar  
5 benefits established in contemplation of, or as part of, the  
6 corporate action that are not more favorable than those  
7 existing before the corporate action or, if more favorable,  
8 that have been approved on behalf of the corporation in the  
9 same manner as is provided in Section 10A-2A-8.60; or

10           "(III) in the case of a director of the corporation  
11 who will, in the corporate action, become a director or  
12 governing person of the acquiror or any of its affiliates,  
13 rights and benefits as a director or governing person that are  
14 provided on the same basis as those afforded by the acquiror  
15 generally to other directors or governing persons of the  
16 acquiror or its affiliate.

17           "(ii) "Beneficial owner" means any person who,  
18 directly or indirectly, through any contract, arrangement, or  
19 understanding, other than a revocable proxy, has or shares the  
20 power to vote, or to direct the voting of, stock; except that  
21 a member of a national securities exchange is not deemed to be  
22 a beneficial owner of securities held directly or indirectly  
23 by it on behalf of another person if the member is precluded  
24 by the rules of the exchange from voting without instruction  
25 on contested matters or matters that may affect substantially  
26 the rights or privileges of the holders of the securities to  
27 be voted. When two or more persons agree to act together for

1 the purpose of voting their stock of the corporation, each  
2 member of the group formed thereby is deemed to have acquired  
3 beneficial ownership, as of the date of the agreement, of all  
4 stock having voting power of the corporation beneficially  
5 owned by any member of the group.

6 "(iii) "Excluded stock" means stock acquired  
7 pursuant to an offer for all stock having voting power if the  
8 offer was made within one year before the corporate action for  
9 consideration of the same kind and of a value equal to or less  
10 than that paid in connection with the corporate action.

11 "(6) ~~"Preferred stock"~~ PREFERRED STOCK means a class  
12 or series of stock whose holders have preference over any  
13 other class or series of stock with respect to distributions.

14 "(7) ~~"Senior executive"~~ SENIOR EXECUTIVE means the  
15 chief executive officer, chief operating officer, chief  
16 financial officer, and any individual in charge of a principal  
17 business unit or function.

18 "(8) ~~"Stockholder"~~ STOCKHOLDER means a record  
19 stockholder, a beneficial stockholder, and a voting trust  
20 beneficial owner.

21 "§10A-2A-16.01.

22 "(a) A corporation shall maintain the following  
23 records:

24 "(1) its certificate of incorporation as currently  
25 in effect;

26 "(2) any notices to stockholders referred to in  
27 Section 10A-2A-1.20(c) (5) specifying facts on which a filed

1 document is dependent if those facts are not included in the  
2 certificate of incorporation or otherwise available as  
3 specified in Section 10A-2A-1.20(c) (5);

4 "(3) its bylaws as currently in effect;

5 "(4) all written communications within the past  
6 three years to stockholders generally;

7 "(5) minutes of all meetings of, and records of all  
8 actions taken without a meeting by, its stockholders, its  
9 board of directors, and board committees established under  
10 Section 10A-2A-8.25;

11 "(6) a list of the names and business addresses of  
12 its current directors and officers; and

13 "(7) its most recent annual report delivered to the  
14 Secretary of State under Section 10A-2A-16.11.

15 "(b) A corporation shall maintain all annual  
16 financial statements prepared for the corporation for its last  
17 three fiscal years (or any shorter period of existence) and  
18 any audit or other reports with respect to those financial  
19 statements.

20 "(c) A corporation shall maintain accounting records  
21 in a form that permits preparation of its financial  
22 statements.

23 "(d) A corporation shall maintain a record of its  
24 current stockholders in alphabetical order by class or series  
25 of stock showing the address of each stockholder to which  
26 notices and other communications from the corporation are to  
27 be sent, and which shall include the number and class or

1 series of stock held by<sup>7</sup> each stockholder. ~~Nothing contained~~  
2 ~~in this subsection shall require the corporation to include in~~  
3 ~~that record the electronic mail address or other electronic~~  
4 ~~contact information of a stockholder.~~ In addition if a  
5 stockholder has provided an electronic mail address to the  
6 corporation or has consented to receive notices or other  
7 communications by electronic mail or other electronic  
8 transmission, the record of stockholders shall include the  
9 electronic mail or other electronic transmission address of  
10 the stockholder if notices or other communications are being  
11 delivered by the corporation to the stockholder at that  
12 electronic mail or other electronic transmission address  
13 pursuant to Section 10A-2A-1.41(d). An electronic mail address  
14 of a stockholder shall be deemed to be provided by a  
15 stockholder if it is contained in a communication to the  
16 corporation by or on behalf of the stockholder, unless the  
17 communication expressly indicates that the electronic mail  
18 address may not be used to deliver notices or other  
19 communications.

20 "(e) A corporation shall maintain the records  
21 specified in this section in a manner so that they may be made  
22 available for inspection within a reasonable time.

23 "§10A-3-1.02.

24 "As used in this chapter, the following terms shall  
25 have the following meanings, respectively, unless the context  
26 otherwise requires:

1           "(1) ARTICLES OF INCORPORATION. The original or  
2 restated articles of incorporation or articles of  
3 consolidation and all amendments thereto, including articles  
4 of merger, of a domestic or foreign nonprofit corporation. The  
5 term articles of incorporation of a nonprofit corporation  
6 constitutes its certificate of formation as defined in ~~Section~~  
7 ~~10A-1-1.03(7)~~ Chapter 1. The terms may be used  
8 interchangeably. The articles of incorporation or certificate  
9 of formation of a nonprofit corporation, together with its  
10 bylaws, constitute its governing documents ~~within the meaning~~  
11 ~~of Section 10A-1-1.03(40)~~ as described in Chapter 1.

12           "(2) BOARD OF DIRECTORS. The group of persons vested  
13 with the management of the affairs of the corporation  
14 irrespective of the name by which the group is designated. The  
15 board of directors of a nonprofit corporation is its governing  
16 authority as that term is defined in ~~Section 10A-1-1.03(39)~~  
17 Chapter 1, unless the certificate of formation provides  
18 otherwise as provided in Section 10A-3-2.08.

19           "(3) BYLAWS. The code or codes of rules adopted for  
20 the regulation or management of the affairs of the corporation  
21 irrespective of the name or names by which the rules are  
22 designated. The bylaws of a nonprofit corporation, together  
23 with its articles of incorporation or certificate of  
24 formation, constitute the nonprofit corporation's governing  
25 documents ~~within the meaning of Section 10A-1-1.03(40)~~ as  
26 described in Chapter 1.

1                   "(4) ELECTRONIC MAIL means an electronic  
2 transmission directed to a unique electronic mail address.

3                   "(5) ELECTRONIC MAIL ADDRESS means a destination,  
4 commonly expressed as a string of characters, consisting of a  
5 unique user name or mailbox (commonly referred to as the  
6 "local part" of the address) and a reference to an internet  
7 domain (commonly referred to as the "domain part" of the  
8 address), whether or not displayed, to which electronic mail  
9 can be sent or delivered.

10                   "~~(4)~~(6) FOREIGN NONPROFIT CORPORATION. A nonprofit  
11 corporation organized under laws other than the laws of  
12 Alabama.

13                   "~~(5)~~(7) MEMBER. One having membership rights in a  
14 corporation in accordance with the provisions of its governing  
15 documents. A member may be a natural person, a partnership, a  
16 professional association or professional corporation, a  
17 corporation for profit or a nonprofit corporation.

18                   "~~(6)~~(8) NONPROFIT CORPORATION. A nonprofit  
19 corporation no part of the income or profit of which is  
20 distributable to its members, directors, or officers.

21                   "~~(7)~~(9) NONPROFIT CORPORATION or DOMESTIC NONPROFIT  
22 CORPORATION. A nonprofit corporation subject to the provisions  
23 of this chapter, except a foreign nonprofit corporation.

24                   "~~(8)~~(10) VERIFIED. Supported by an affidavit or oath  
25 confirming the correctness, truth, or authenticity of the  
26 matter set forth therein."

1                   Section 4. Section 10A-3-1.05 is added to the Code  
2 of Alabama 1975, to read as follows:

3                   §10A-3-1.05.

4                   (a) A notice under this chapter must be in writing  
5 unless oral notice is reasonable in the circumstances. Unless  
6 otherwise agreed between the sender and the recipient, words  
7 in a notice or other communication under this chapter must be  
8 in English.

9                   (b) A notice or other communication may be given by  
10 any method of delivery, except that notice or other  
11 communication by electronic transmission must be in accordance  
12 with this section. If the methods of delivery are  
13 impracticable, a notice or other communication from the  
14 nonprofit corporation may be given by means of a broad  
15 non-exclusionary distribution to the public (which may include  
16 a newspaper of general circulation in the area where  
17 published; radio, television, or other form of public  
18 broadcast communication; or other methods of distribution that  
19 the nonprofit corporation has previously identified to its  
20 recipients).

21                   (c) A notice or other communication to a nonprofit  
22 corporation or to a foreign nonprofit corporation registered  
23 to transact business in this state may be delivered to the  
24 nonprofit corporation's registered agent at its registered  
25 office or to the secretary at the nonprofit corporation's  
26 principal office shown in its most recent annual report or, in  
27 the case of a foreign nonprofit corporation that has not yet

1 delivered an annual report, in its foreign registration under  
2 Chapter 1.

3 (d) A notice or other communication from the  
4 nonprofit corporation to a member may be delivered by  
5 electronic mail to an electronic mail address for that member  
6 as reflected in the books and records of the nonprofit  
7 corporation, unless that member has previously notified the  
8 nonprofit corporation in writing that the member objects to  
9 receiving notices and other communications by electronic mail.  
10 The notice or other communication may be delivered to a member  
11 by another form of electronic transmission if consented to by  
12 that member or if authorized by subsection (j). Any notice or  
13 other communication from the nonprofit corporation to any  
14 other person may be delivered by electronic transmission if  
15 consented to by the recipient or if authorized by subsection  
16 (j). Any consent under this subsection or subsection (j) may  
17 be revoked with respect to future notices or communications by  
18 the person who consented by giving written or electronic  
19 notice to the person to whom the consent was delivered.

20 (e) A notice or other communication may no longer be  
21 delivered to an electronic mail address or other electronic  
22 transmission address pursuant to subsection (d) if (i) the  
23 nonprofit corporation receives notice from the information  
24 processing system into which the notice or other communication  
25 was entered that two consecutive notices or other  
26 communications given by electronic transmission have not been  
27 delivered to the electronic mail address or other electronic



1 transmission address to which the notice or other  
2 communication was directed, and (ii) the notice of  
3 non-delivery becomes known to the secretary or an assistant  
4 secretary, or another person responsible for the giving of  
5 notices or other communications for the nonprofit corporation;  
6 provided, however, that the inadvertent failure to recognize  
7 the notice of non-delivery as a cessation of authority to  
8 provide a member with notice by electronic mail or other  
9 electronic transmission shall not invalidate any meeting or  
10 other action.

11 (f) Unless otherwise agreed between the sender and  
12 the recipient, a notice or other communication by electronic  
13 transmission is received when:

14 (1) it enters an information processing system  
15 directed to (i) in the case of a member, the electronic mail  
16 address for the member as reflected in the books and records  
17 of the nonprofit corporation or other electronic transmission  
18 address at which the member has consented to receive notice or  
19 other communication by electronic transmission, or (ii) in the  
20 case of any other recipient, the electronic transmission  
21 address at which the recipient has consented to receive notice  
22 or other communication by electronic transmission; and

23 (2) it is in a form capable of being processed by  
24 that system.

25 (g) Receipt of an electronic acknowledgement from an  
26 information processing system described in subsection (f)(1)  
27 establishes that an electronic transmission was received but,

1 by itself, does not establish that the content sent  
2 corresponds to the content received.

3 (h) An electronic transmission is received under  
4 this section even if no person is aware of its receipt.

5 (i) A notice or other communication, if in a  
6 comprehensible form or manner, is effective at the earliest of  
7 the following:

8 (1) if in a physical form, the earliest of when it  
9 is actually received, or when it is left at:

10 (i) a member's address reflected in the books and  
11 records of the nonprofit corporation;

12 (ii) a director's residence or usual place of  
13 business; or

14 (iii) the nonprofit corporation's principal office;

15 (2) if mailed by United States mail postage prepaid  
16 and addressed to a member at the member's address reflected in  
17 the books and records of the nonprofit corporation, upon  
18 deposit in the United States mail;

19 (3) if mailed by United States mail postage prepaid  
20 and addressed to a recipient other than a member, at the  
21 address of the recipient reflected in the books and records of  
22 the nonprofit corporation, the earliest of when it is actually  
23 received, or:

24 (i) if sent by registered or certified mail, return  
25 receipt requested, the date shown on the return receipt signed  
26 by or on behalf of the addressee; or

1           (ii) five days after it is deposited in the United  
2 States mail;

3           (4) if sent by a nationally recognized commercial  
4 carrier that issues a receipt or other confirmation of  
5 delivery, the earliest of when it is actually received or the  
6 date shown on the receipt or other confirmation of delivery  
7 issued by the commercial carrier;

8           (5) if an electronic transmission, when it is  
9 received as provided in subsection (f); and

10          (6) if oral, when communicated.

11          (j) A notice or other communication may be in the  
12 form of an electronic transmission that cannot be directly  
13 reproduced in paper form by the recipient through an automated  
14 process used in conventional commercial practice only if (i)  
15 the electronic transmission is otherwise retrievable in  
16 perceivable form, and (ii) the sender and the recipient have  
17 consented in writing to the use of that form of electronic  
18 transmission.

19          (k) If this chapter prescribes requirements for  
20 notices or other communications in particular circumstances,  
21 those requirements govern. If the certificate of incorporation  
22 or bylaws prescribe requirements for notices or other  
23 communications, not inconsistent with this section or other  
24 provisions of this chapter, those requirements govern. The  
25 certificate of incorporation or bylaws may authorize or  
26 require delivery of notices of meetings of directors by  
27 electronic transmission.

1           (1) In the event that any provisions of this chapter  
2 are deemed to modify, limit, or supersede the federal  
3 Electronic Signatures in Global and National Commerce Act, 15  
4 U.S.C. §§7001 et seq., the provisions of this chapter shall  
5 control to the maximum extent permitted by Section 102(a)(2)  
6 of that federal act.

7           (m) Whenever a notice or communication would  
8 otherwise be required to be given under any provision of this  
9 chapter to a member, the notice or communication need not be  
10 given if the nonprofit corporation is not permitted to deliver  
11 the notice or communication by electronic transmission  
12 pursuant to subsections (d) and (e) and:

13           (1) notices and communications to members of two  
14 consecutive annual meetings, and all notices and  
15 communications of meetings during the period between those two  
16 consecutive annual meetings, have been sent to that member at  
17 that member's address as reflected in the books and records of  
18 the nonprofit corporation and have been returned undeliverable  
19 or could not be delivered; or

20           (2) no address has been provided to the nonprofit  
21 corporation by or on behalf of a member and the nonprofit  
22 corporation has not otherwise obtained an address for that  
23 member it believes to be reliable.

24           In addition if any member to which this subsection  
25 (m) applies delivers to the nonprofit corporation a written  
26 notice or communication setting forth that member's

1 then-current address, the requirement that notice and  
2 communication be given to that member shall be reinstated.

3 (n) Whenever a notice or communication is required  
4 to be given, under any provision of this chapter or of the  
5 certificate of incorporation or bylaws of any nonprofit  
6 corporation, to any person with whom notice to or  
7 communication with is unlawful, the giving of the notice or  
8 communication to that person shall not be required and there  
9 shall be no duty to apply to any governmental authority or  
10 agency for a license or permit to give the notice or  
11 communication to that person. Any action or meeting which  
12 shall be taken or held without notice or communication to the  
13 person with whom notice to or communication with is unlawful  
14 shall have the same force and effect as if the notice or  
15 communication had been duly given. In the event that the  
16 action taken by the nonprofit corporation is such as to  
17 require the filing of a certificate or other filing instrument  
18 under any of the other sections of this chapter, the  
19 certificate or other filing instrument shall state, if that is  
20 the fact and if notice or communication is required, that  
21 notice or communication was given to all persons entitled to  
22 receive notice or communication except those persons with whom  
23 notice to or communication with is unlawful.

24 Section 5. Sections 10A-3-2.02, 10A-3-2.03,  
25 10A-3-2.09, and 10A-3-2.21, Section 10A-5A-1.02, as amended by  
26 Act 2018-125, 2018 Regular Session, Sections 10A-5A-2.01,  
27 10A-5A-2.02, and 10A-5A-7.02, as amended by Act 2020-73, 2020

1 Regular Session, Section 10A-5A-7.04, Section 10A-5A-7.05, as  
2 amended by Act 2020-73, 2020 Regular Session, Sections  
3 10A-5A-7.06, 10A-5A-7.07, 10A-5A-11.10, and 10A-5A-11.12,  
4 Section 10A-5A-11.13, as amended by Act 2020-73, 2020 Regular  
5 Session, Sections 10A-5A-11.14 and 10A-5A-11.15, Section  
6 10A-8A-1.02, as amended by Act 2019-304, 2019 Regular Session,  
7 Section 10A-8A-4.10, as added to the Code of Alabama 1975 by  
8 Act 2018-125, 2018 Regular Session, Section 10A-8A-8.02, as  
9 amended by Act 2020-73, 2020 Regular Session, Section  
10 10A-8A-8.06, as added to the Code of Alabama by Act 2018-125,  
11 2018 Regular Session, Section 10A-8A-8.07, as amended by Act  
12 2020-73, 2020 Regular Session, Sections 10A-8A-8.09,  
13 10A-8A-8.10, and 10A-8A-9.01, as added to the Code of Alabama  
14 1975 by Act 2018-125, 2018 Regular Session, Section  
15 10A-9A-1.02, Sections 10A-9A-2.01 and 10A-9A-2.02, as amended  
16 by Act 2020-73, 2020 Regular Session, Sections 10A-9A-4.06 and  
17 10A-9A-4.07, Section 10A-9A-8.02, as amended by Act 2020-73,  
18 2020 Regular Session, Section 10A-9A-8.06, Section  
19 10A-9A-8.07, as amended by Act 2020-73, 2020 Regular Session,  
20 and Sections 10A-9A-8.09, 10A-9A-8.10, and 10A-9A-10.01, of  
21 the Code of Alabama 1975, are amended to read as follows:

22 "§10A-3-2.02.

23 "(a) ~~Meetings~~ Unless the board of directors  
24 determines to hold the meeting of the members solely by means  
25 of remote communication in accordance with subsections (d),  
26 (e), and (f), meetings of members may be held at the place,  
27 either within or without Alabama, as may be provided in the

1 bylaws. ~~In~~ and, in the absence of any provision, all meetings  
2 shall be held at the registered office of the corporation in  
3 Alabama.

4 "(b) An annual meeting of the members shall be held  
5 at the time as may be provided in the bylaws. Failure to hold  
6 the annual meeting at the designated time shall not work a  
7 forfeiture or dissolution of the corporation.

8 "(c) Special meetings of the members may be called  
9 by the president or by the board of directors. Special  
10 meetings of the members may also be called by other officers  
11 or persons or number or proportion of members as may be  
12 provided in the governing documents. In the absence of a  
13 provision fixing the number or proportion of members entitled  
14 to call a meeting, a special meeting of members may be called  
15 by members having one-twentieth of the votes entitled to be  
16 cast at the meeting.

17 "(d) Members may participate in any meeting of the  
18 members by means of remote communication to the extent the  
19 governing authority authorizes participation for that meeting.  
20 Participation as a member by means of remote communication  
21 shall be subject to guidelines and procedures as the governing  
22 authority adopts, and shall be in conformity with this  
23 subsection.

24 "(e) Members participating in a meeting of the  
25 members by means of remote communication shall be deemed  
26 present and may vote at that meeting if the corporation has  
27 implemented reasonable measures:

1           "(1) to verify that each person participating  
2 remotely as a member is a member; and

3           "(2) to provide members participating remotely a  
4 reasonable opportunity to participate in the meeting and to  
5 vote on matters submitted to the members, including an  
6 opportunity to communicate, and to read or hear the  
7 proceedings of the meeting, substantially concurrently with  
8 the proceedings.

9           "(f) Unless the certificate of incorporation or  
10 bylaws require the meeting of members to be held at a place,  
11 the governing authority may determine that any meeting of the  
12 members shall not be held at any place and shall instead be  
13 held solely by means of remote communication, but only if the  
14 corporation implements the measures specified in subsection  
15 (e).

16           "§10A-3-2.03.

17           "Unless otherwise provided in the nonprofit  
18 corporation's governing documents, ~~written~~ notice stating the  
19 place, if any, day, and hour of the meeting and, in case of a  
20 special meeting, the purpose or purposes for which the meeting  
21 is called, shall be delivered not less than 10 nor more than  
22 ~~50~~ 60 days before the date of the meeting, ~~either personally~~  
23 ~~or by mail,~~ by or at the direction of the president, or the  
24 secretary, or the officers or persons calling the meeting, to  
25 each member entitled to vote at the meeting. ~~If mailed, the~~  
26 ~~notice shall be deemed to be delivered when deposited in the~~  
27 ~~United States mail addressed to the member at his or her~~



1 ~~address as it appears on the records of the nonprofit~~  
2 ~~corporation, with postage thereon prepaid. If the board of~~  
3 ~~directors has authorized participation by means of remote~~  
4 ~~communication pursuant to Section 10A-3A-2.02(d), (e), and~~  
5 ~~(f), the notice to the members must describe the means of~~  
6 ~~remote communication to be used.~~

7 "§10A-3-2.09.

8 "(a) The number of directors of a nonprofit  
9 corporation shall be not less than ~~three~~ one. Subject to this  
10 limitation, unless the number of directors ~~shall be~~ is fixed  
11 by the certificate of formation or the bylaws, except as to  
12 the board of directors may fix the number of the first board  
13 of directors which number from time to time. The number of  
14 directors to serve on the initial board of directors shall be  
15 fixed by the certificate of formation. ~~The~~ Unless the  
16 certificate of formation or bylaws require an amendment to the  
17 certificate or the bylaws, the number of directors may be  
18 increased or decreased from time to time by ~~amendment to the~~  
19 ~~bylaws, unless the certificate of formation provides that a~~  
20 ~~change in the number of directors shall be made only by~~  
21 ~~amendment of the certificate of formation~~ the board of  
22 directors. No decrease in number shall have the effect of  
23 shortening the term of any incumbent director. ~~In the absence~~  
24 ~~of a bylaw fixing the number of directors, the number shall be~~  
25 ~~the same as that stated in the certificate of formation.~~

26 "(b) The directors constituting the ~~first~~ initial  
27 board of directors shall be named in the certificate of

1 formation and shall hold office until the first annual  
2 election of directors or for any other period as may be  
3 specified in the governing documents. Thereafter, directors  
4 shall be elected or appointed in the manner and for the terms  
5 provided in the governing documents of the nonprofit  
6 corporation. In the absence of a provision fixing the term of  
7 office, the term of office of a director shall be one year.

8 "(c) Directors may be divided into classes and the  
9 terms of office of the several classes need not be uniform.  
10 Each director shall hold office for the term to which he or  
11 she is elected or appointed and until his or her successor  
12 shall have been elected or appointed and qualified.

13 "(d) A director may be removed from office pursuant  
14 to any procedure therefor provided in the certificate of  
15 formation.

16 "§10A-3-2.21.

17 "(a) The officers of a nonprofit corporation shall  
18 consist of a president, one or more ~~vice-presidents~~ vice  
19 presidents, a secretary, a treasurer, and other officers and  
20 assistant officers as may be deemed necessary, each of whom  
21 shall be elected or appointed at such time, in the manner and  
22 for the terms ~~not exceeding three years~~ as may be prescribed  
23 in the nonprofit corporation's governing documents. In the  
24 absence of any provision, all officers shall be elected or  
25 appointed annually by the board of directors. Each officer  
26 shall hold office for the term to which he or she is elected  
27 or appointed and until his or her successor shall have been

1 elected or appointed. If the bylaws so provide, any two or  
2 more offices may be held by the same person, ~~except the~~  
3 ~~offices of president and secretary.~~

4 "(b) The governing documents of the nonprofit  
5 corporation may provide that any one or more officers of the  
6 corporation shall be ex officio members of the board of  
7 directors.

8 "(c) The officers of a corporation may be designated  
9 by additional titles as may be provided in the governing  
10 documents of the nonprofit corporation.

11 "(d) The officers and employees of the nonprofit  
12 corporation shall not be liable for obligations of the  
13 corporation.

14 "§10A-5A-1.02.

15 "~~Notwithstanding Section 10A-1-1.03, as~~ As used in  
16 this chapter, unless the context otherwise requires, the  
17 following terms mean:

18 "(a) ~~"Certificate of formation,"~~ CERTIFICATE OF  
19 FORMATION, with respect to a limited liability company, means  
20 the certificate provided for by Section 10A-5A-2.01, and the  
21 certificate as amended or restated.

22 "(b) ~~"Constituent limited liability company"~~  
23 CONSTITUENT LIMITED LIABILITY COMPANY means a constituent  
24 organization that is a limited liability company.

25 "(c) ~~"Constituent organization"~~ CONSTITUENT  
26 ORGANIZATION means an organization that is party to a merger  
27 under Article 10.

1           "~~Converted organization~~" CONVERTED ORGANIZATION  
2 means the organization into which a converting organization  
3 converts pursuant to Article 10.

4           "~~Converting limited liability company~~"  
5 CONVERTING LIMITED LIABILITY COMPANY means a converting  
6 organization that is a limited liability company.

7           "~~Converting organization~~" CONVERTING  
8 ORGANIZATION means an organization that converts into another  
9 organization pursuant to Article 10.

10          "~~Disqualified person~~" DISQUALIFIED PERSON means  
11 any person who is not a qualified person.

12          "~~Distribution~~" DISTRIBUTION except as otherwise  
13 provided in Section 10A-5A-4.06(e), means a transfer of money  
14 or other property from a limited liability company, or series  
15 thereof, to another person on account of a transferable  
16 interest.

17          "~~Foreign limited liability company~~" FOREIGN  
18 LIMITED LIABILITY COMPANY means a limited liability company  
19 governed by the laws of a jurisdiction other than this state  
20 which would be a limited liability company if governed by the  
21 laws of this state.

22          "~~Governing statute~~" GOVERNING STATUTE means the  
23 statute that governs an organization's internal affairs.

24          "~~Limited liability company,~~" LIMITED LIABILITY  
25 COMPANY, except in the phrase "foreign limited liability  
26 company," means an entity formed or existing under this  
27 chapter.

1           "~~limited liability company agreement~~" LIMITED  
2 LIABILITY COMPANY AGREEMENT means any agreement (whether  
3 referred to as a limited liability company agreement,  
4 operating agreement or otherwise), written, oral or implied,  
5 of the member or members as to the activities and affairs of a  
6 limited liability company or series thereof. The limited  
7 liability company agreement of a limited liability company  
8 having only one member shall not be unenforceable by reason of  
9 there being only one person who is a party to the limited  
10 liability company agreement. The limited liability company  
11 agreement includes any amendments to the limited liability  
12 company agreement.

13           "(m) ~~Member~~" MEMBER means a person admitted under  
14 Section 10A-5A-4.01 and not dissociated under Section  
15 10A-5A-6.02.

16           "(n) ~~Organization~~" ORGANIZATION means a general  
17 partnership, including a limited liability partnership;  
18 limited partnership, including a limited liability limited  
19 partnership; limited liability company; business trust;  
20 corporation; nonprofit corporation; professional corporation;  
21 or any other person having a governing statute. The term  
22 includes domestic and foreign organizations whether or not  
23 organized for profit.

24           "(o) ~~Organizational documents~~" ORGANIZATIONAL  
25 DOCUMENTS means:

26           "(1) for a general partnership or foreign general  
27 partnership, its partnership agreement and if applicable, its

1 registration as a limited liability partnership or a foreign  
2 limited liability partnership;

3 "(2) for a limited partnership or foreign limited  
4 partnership, its certificate of formation and partnership  
5 agreement, or comparable writings as provided in its governing  
6 statute;

7 "(3) for a limited liability company or foreign  
8 limited liability company, its certificate of formation and  
9 limited liability company agreement, or comparable writings as  
10 provided in its governing statute;

11 "(4) for a business or statutory trust or foreign  
12 business or statutory trust its agreement of trust and  
13 declaration of trust, or comparable writings as provided in  
14 its governing statute;

15 "(5) for a corporation for profit or foreign  
16 corporation for profit, its certificate of formation, bylaws,  
17 and other agreements among its shareholders that are  
18 authorized by its governing statute, or comparable writings as  
19 provided in its governing statute;

20 "(6) for a nonprofit corporation or foreign  
21 nonprofit corporation, its certificate of formation, bylaws,  
22 and other agreements that are authorized by its governing  
23 statute, or comparable writings as provided in its governing  
24 statute;

25 "(7) for a professional corporation or foreign  
26 professional corporation, its certificate of formation,  
27 bylaws, and other agreements among its shareholders that are

1 authorized by its governing statute, or comparable writings as  
2 provided in its governing statute; and

3 "(8) for any other organization, the basic writings  
4 that create the organization and determine its internal  
5 governance and the relations among the persons that own it,  
6 have an interest in it, or are members of it.

7 "(p) ~~"Qualified person,"~~ QUALIFIED PERSON, with  
8 respect to a limited liability company rendering professional  
9 services in this state, means a person authorized by this  
10 state or a regulatory authority of this state to own a  
11 transferable interest in that limited liability company.

12 "(q) ~~"Surviving organization"~~ SURVIVING ORGANIZATION  
13 means an organization into which one or more other  
14 organizations are merged under Article 10, whether the  
15 organization pre-existed the merger or was created pursuant to  
16 the merger.

17 "(r) ~~"Transfer"~~ TRANSFER means an assignment,  
18 conveyance, deed, bill of sale, lease, mortgage, security  
19 interest, encumbrance, gift, or transfer by operation of law.

20 "(s) ~~"Transferee"~~ TRANSFeree means a person to which  
21 all or part of a transferable interest has been transferred,  
22 whether or not the transferor is a member.

23 "(t) ~~"Transferable interest"~~ TRANSFERABLE INTEREST  
24 means a member's right to receive distributions from a limited  
25 liability company or a series thereof.

26 "§10A-5A-2.01.

1           "(a) In order to form a limited liability company,  
2 one or more organizers must execute a certificate of formation  
3 and deliver it for filing to the filing officer provided for  
4 in subsection (e). ~~Notwithstanding~~ Section 10A-1-3.05 shall  
5 not apply to this chapter. Instead, the certificate of  
6 formation shall set forth:

7           "(1) the name of the limited liability company,  
8 which must comply with Article 5 of Chapter 1;

9           "(2) the address of the registered office required  
10 by Article 5 of Chapter 1;

11           "(3) the name of the registered agent at the  
12 registered office required by Article 5 of Chapter 1;

13           "(4) a statement that there is at least one member  
14 of the limited liability company;

15           "(5) if applicable, a statement as provided in  
16 Section 10A-5A-11.02(b) (3); and

17           "(6) any other matters the members determine to  
18 include therein.

19           "(b) A limited liability company is formed when its  
20 certificate of formation becomes effective in accordance with  
21 Article 4 of Chapter 1.

22           "(c) The fact that a certificate of formation has  
23 been filed and is effective in accordance with Article 4 of  
24 Chapter 1 is notice of the matters required to be included by  
25 subsections (a) (1), (a) (2), (a) (3), and (a) (4) and if  
26 applicable, (a) (5), but is not notice of any other fact.



1           "(d) A limited liability company agreement shall be  
2 entered into either before, after, or at the time of the  
3 filing of the certificate of formation and, whether entered  
4 into before, after, or at the time of the filing, may be made  
5 effective as of the filing of the certificate of formation or  
6 at any other time or date provided in the limited liability  
7 company agreement.

8           "(e) A certificate of formation shall be delivered  
9 for filing to the Secretary of State.

10           "§10A-5A-2.02.

11           "~~Notwithstanding~~ Division B of Article 3 of Chapter  
12 1 shall not apply to this chapter. Instead:

13           "(a) A certificate of formation may be amended at  
14 any time.

15           "(b) A certificate of formation may be restated with  
16 or without amendment at any time.

17           "(c) To amend its certificate of formation, a  
18 limited liability company must deliver a certificate of  
19 amendment for filing to the Secretary of State which  
20 certificate of amendment shall state:

21           "(1) the name of the limited liability company;

22           "(2) the unique identifying number or other  
23 designation as assigned by the Secretary of State; and

24           "(3) the changes the amendment makes to the  
25 certificate of formation as most recently amended or restated.

26           "(d) To restate its certificate of formation, a  
27 limited liability company must deliver a restated certificate

1 of formation for filing to the Secretary of State. A restated  
2 certificate of formation must:

3 "(1) be designated as such in the heading;

4 "(2) state the limited liability company's name;

5 "(3) state the unique identifying number or other  
6 designation as assigned by the Secretary of State; and

7 "(4) set forth any amendment or change effected in  
8 connection with the restatement of the certificate of  
9 formation.

10 Any such restatement that effects an amendment shall  
11 be subject to any other provision of this chapter, not  
12 inconsistent with this section, which would apply if a  
13 separate certificate of amendment were filed to effect the  
14 amendment or change.

15 "(e) The original certificate of formation, as  
16 theretofore amended, shall be superseded by the restated  
17 certificate of formation and thenceforth, the restated  
18 certificate of formation, including any further amendment or  
19 changes made thereby, shall be the certificate of formation of  
20 the limited liability company, but the original effective date  
21 of formation shall remain unchanged.

22 "(f) An amended or restated certificate of formation  
23 may contain only provisions that would be permitted at the  
24 time of the amendment if the amended or restated certificate  
25 of formation were a newly filed original certificate of  
26 formation.

27 "§10A-5A-7.02.

1                   ~~"Notwithstanding Section 10A-1-9.12:~~

2                   "(a) A dissolved limited liability company continues  
3 its existence as a limited liability company but may not carry  
4 on any activities and affairs except as is appropriate to wind  
5 up and liquidate its activities and affairs, including:

6                   "(1) collecting its assets;

7                   "(2) disposing of its properties that will not be  
8 distributed in kind to persons owning transferable interests;

9                   "(3) discharging or making provisions for  
10 discharging its liabilities;

11                   "(4) distributing its remaining property in  
12 accordance with Section 10A-5A-7.06; and

13                   "(5) doing every other act necessary to wind up and  
14 liquidate its activities and affairs.

15                   "(b) In winding up its activities and affairs, a  
16 limited liability company may:

17                   "(1) deliver for filing a statement of dissolution  
18 to the Secretary of State setting forth:

19                   "(A) The name of the limited liability company.

20                   "(B) The unique identifying number or other  
21 designation as assigned by the Secretary of State.

22                   "(C) That the limited liability company has  
23 dissolved.

24                   "(D) Any other information the limited liability  
25 company deems appropriate.

1           "(2) preserve the limited liability company's  
2 activities and affairs and property as a going concern for a  
3 reasonable time;

4           "(3) prosecute, defend, or settle actions or  
5 proceedings, whether civil, criminal, or administrative;

6           "(4) transfer the limited liability company's  
7 assets;

8           "(5) resolve disputes by mediation or arbitration;  
9 and

10          "(6) merge or convert in accordance with Article 10  
11 of this chapter or Article 8 of Chapter 1.

12          "(c) The dissolution of a limited liability company  
13 does not:

14           "(1) transfer title to the limited liability  
15 company's property;

16           "(2) prevent the commencement of a proceeding by or  
17 against the limited liability company in its limited liability  
18 company name;

19           "(3) terminate, abate, or suspend a proceeding  
20 pending by or against the limited liability company on the  
21 effective date of dissolution;

22           "(4) terminate the authority of its registered  
23 agent; or

24           "(5) abate, suspend, or otherwise alter the  
25 application of Section 10A-5A-3.01.

26          "(d) A statement of dissolution shall be deemed to  
27 be a filing instrument under Chapter 1.

1           "§10A-5A-7.04.

2           ~~"Notwithstanding Sections 10A-1-9.01 and 10A-1-9.21:~~

3           "(a) A dissolved limited liability company may  
4 dispose of any known claims against it by following the  
5 procedures described in subsection (b) at any time after the  
6 effective date of the dissolution of the limited liability  
7 company.

8           "(b) A dissolved limited liability company may give  
9 notice of the dissolution in a record to the holder of any  
10 known claim. The notice must:

11           "(1) identify the dissolved limited liability  
12 company;

13           "(2) describe the information required to be  
14 included in a claim;

15           "(3) provide a mailing address to which the claim is  
16 to be sent;

17           "(4) state the deadline, which may not be fewer than  
18 120 days from the effective date of the notice, by which the  
19 dissolved limited liability company must receive the claim;  
20 and

21           "(5) state that if not sooner barred, the claim will  
22 be barred if not received by the deadline.

23           "(c) Unless sooner barred by any other statute  
24 limiting actions, a claim against a dissolved limited  
25 liability company is barred:

1           "(1) if a claimant who was given notice under  
2 subsection (b) does not deliver the claim to the dissolved  
3 limited liability company by the deadline; or

4           "(2) if a claimant whose claim was rejected by the  
5 dissolved limited liability company does not commence a  
6 proceeding to enforce the claim within 90 days from the  
7 effective date of the rejection notice.

8           "(d) For purposes of this section, known claim or  
9 claim includes unliquidated claims, but does not include a  
10 contingent liability that has not matured so that there is no  
11 immediate right to bring suit or a claim based on an event  
12 occurring after the effective date of dissolution.

13           "(e) Nothing in this section shall be deemed to  
14 extend any otherwise applicable statute of limitations.

15           "§10A-5A-7.05.

16           ~~"Notwithstanding Sections 10A-1-9.01 and 10A-1-9.22:~~

17           "(a) A dissolved limited liability company may  
18 publish notice of its dissolution and request that persons  
19 with claims against the dissolved limited liability company  
20 present them in accordance with the notice.

21           "(b) The notice authorized by subsection (a) must:

22           "(1) be published at least one time in a newspaper  
23 of general circulation in the county in which the dissolved  
24 limited liability company's principal office is located or, if  
25 it has none in this state, in the county in which the  
26 dissolved limited liability company's most recent registered  
27 office is located;

1           "(2) describe the information that must be included  
2 in a claim and provide a mailing address to which the claim is  
3 to be sent; and

4           "(3) state that if not sooner barred, a claim  
5 against the dissolved limited liability company will be barred  
6 unless a proceeding to enforce the claim is commenced within  
7 two years after the publication of the notice.

8           "(c) If a dissolved limited liability company  
9 publishes a newspaper notice in accordance with subsection  
10 (b), unless sooner barred by any other statute limiting  
11 actions, the claim of each of the following claimants is  
12 barred unless the claimant commences a proceeding to enforce  
13 the claim against the dissolved limited liability company  
14 within two years after the publication date of the newspaper  
15 notice:

16           "(1) a claimant who was not given notice under  
17 Section 10A-5A-7.04(b);

18           "(2) a claimant whose claim was timely sent to the  
19 dissolved limited liability company but not acted on by the  
20 dissolved limited liability company; and

21           "(3) a claimant whose claim is contingent at the  
22 effective date of the dissolution of the limited liability  
23 company, or is based on an event occurring after the effective  
24 date of the dissolution of the limited liability company.

25           "(d) A claim that is not barred under this section,  
26 any other statute limiting actions, or Section 10A-5A-7.04 may  
27 be enforced:

1           "(1) against a dissolved limited liability company,  
2 to the extent of its undistributed assets; and

3           "(2) except as provided in subsection (h), if the  
4 assets of a dissolved limited liability company have been  
5 distributed after dissolution, against the person or persons  
6 owning the transferable interests to the extent of that  
7 person's proportionate share of the claim or of the assets  
8 distributed to that person after dissolution, whichever is  
9 less, but a person's total liability for all claims under  
10 subsection (d) may not exceed the total amount of assets  
11 distributed to that person after dissolution of the limited  
12 liability company.

13           "(e) A dissolved limited liability company that  
14 published a notice under this section may file an application  
15 with the circuit court for the county in which the dissolved  
16 limited liability company's principal office is located in  
17 this state, and if the limited liability company does not have  
18 a principal office within this state, with the circuit court  
19 for the county in which the dissolved limited liability  
20 company's most recent registered office is located, for a  
21 determination of the amount and form of security to be  
22 provided for payment of claims that are contingent or have not  
23 been made known to the dissolved limited liability company or  
24 that are based on an event occurring after the effective date  
25 of the dissolution of the limited liability company but that,  
26 based on the facts known to the dissolved limited liability  
27 company, are reasonably estimated to arise after the effective



1 date of the dissolution of the limited liability company.  
2 Provision need not be made for any claim that is or is  
3 reasonably anticipated to be barred under subsection (c).

4 "(f) Within 10 days after the filing of the  
5 application provided for in subsection (e), notice of the  
6 proceeding shall be given by the dissolved limited liability  
7 company to each potential claimant as described in subsection  
8 (e).

9 "(g) The circuit court under subsection (e) may  
10 appoint a guardian ad litem to represent all claimants whose  
11 identities are unknown in any proceeding brought under this  
12 section. The reasonable fees and expenses of the guardian,  
13 including all reasonable expert witness fees, shall be paid by  
14 the dissolved limited liability company.

15 "(h) Provision by the dissolved limited liability  
16 company for security in the amount and the form ordered by the  
17 circuit court under subsection (e) shall satisfy the dissolved  
18 limited liability company's obligation with respect to claims  
19 that are contingent, have not been made known to the dissolved  
20 limited liability company, or are based on an event occurring  
21 after the effective date of the dissolution of the limited  
22 liability company, and those claims may not be enforced  
23 against a person owning a transferable interest to whom assets  
24 have been distributed by the dissolved limited liability  
25 company after the effective date of the dissolution of the  
26 limited liability company.

1           "(i) Nothing in this section shall be deemed to  
2 extend any otherwise applicable statute of limitations.

3           "(j) If a claim has been satisfied, disposed of, or  
4 barred under Section 10A-5A-7.04, this section, or other law,  
5 the person or persons designated to wind up the affairs of a  
6 limited liability company, and the owners of the transferable  
7 interests receiving assets from the limited liability company,  
8 shall not be liable for that claim.

9           "§10A-5A-7.06.

10           ~~"Notwithstanding Section 10A-1-9.12, upon~~ Upon the  
11 winding up of a limited liability company, the assets shall be  
12 applied as follows:

13           "(a) Payment, or adequate provision for payment,  
14 shall be made to creditors, including, to the extent permitted  
15 by law, members who are creditors, in satisfaction of  
16 liabilities of the limited liability company.

17           "(b) After a limited liability company complies with  
18 subsection (a), any surplus must be distributed:

19           "(1) first, to each person owning a transferable  
20 interest that reflects contributions made on account of the  
21 transferable interest and not previously returned, an amount  
22 equal to the value of the person's unreturned contributions;  
23 and

24           "(2) then to each person owning a transferable  
25 interest in the proportions in which the owners of  
26 transferable interests share in distributions before  
27 dissolution.

1           "(c) If the limited liability company does not have  
2 sufficient surplus to comply with subsection (b)(1), any  
3 surplus must be distributed among the owners of transferable  
4 interests in proportion to the value of their respective  
5 unreturned contributions.

6           "§10A-5A-7.07.

7           ~~"Notwithstanding Sections 10A-1-9.31 and 10A-1-9.32,~~  
8 a A limited liability company that has been dissolved may be  
9 reinstated upon compliance with the following conditions:

10           "(a) the consent shall have been obtained from the  
11 members or other persons entitled to consent at the time that  
12 is:

13           "(1) required for reinstatement under the limited  
14 liability company agreement; or

15           "(2) if the limited liability company agreement does  
16 not state the consent required for reinstatement, sufficient  
17 for dissolution under the limited liability company agreement;  
18 or

19           "(3) if the limited liability company agreement  
20 neither states the consent required for reinstatement nor for  
21 dissolution, sufficient for dissolution under this chapter;

22           "(b) in the case of a written objection to  
23 reinstatement having been delivered to the limited liability  
24 company before or at the time of the consent required by  
25 subsection (a) by the members or other persons having  
26 authority under the limited liability company agreement to  
27 bring about or prevent dissolution of the limited liability

1 company, those members or persons withdrawing that written  
2 objection effective at the time of the consent required by  
3 subsection (a);

4 "(c) in the case of a limited liability company  
5 dissolved in a judicial proceeding initiated by one or more of  
6 the members, the consent of each of those members shall have  
7 been obtained and shall be included in the consent required by  
8 subsection (a); and

9 "(d) the filing of a certificate of reinstatement in  
10 accordance with Section 10A-5A-7.08.

11 "§10A-5A-11.10.

12 ~~"Notwithstanding Section 10A-1-9.12:~~

13 "(a) A dissolved series continues its existence as a  
14 series but may not carry on any activities and affairs except  
15 as is appropriate to wind up and liquidate its activities and  
16 affairs, including:

17 "(1) collecting the assets of the series;

18 "(2) disposing of the properties of the series that  
19 will not be distributed in kind to persons owning transferable  
20 interests;

21 "(3) discharging or making provisions for  
22 discharging the liabilities of the series;

23 "(4) distributing the remaining property of the  
24 series in accordance with Section 10A-5A-11.14; and

25 "(5) doing every other act necessary to wind up and  
26 liquidate the series' activities and affairs.

1           "(b) In winding up a series' activities and affairs,  
2 a series may:

3           "(1) preserve the series' activities and affairs and  
4 property as a going concern for a reasonable time;

5           "(2) prosecute, defend, or settle actions or  
6 proceedings whether civil, criminal, or administrative;

7           "(3) transfer the series' property; and

8           "(4) resolve disputes by mediation or arbitration.

9           "(c) The dissolution of a series does not:

10          "(1) transfer title to the series' property;

11          "(2) prevent the commencement of a proceeding by or  
12 against the series in the series' name;

13          "(3) terminate, abate, or suspend a proceeding  
14 pending by or against the series on the effective date of  
15 dissolution; or

16          "(4) abate, suspend, or otherwise alter the  
17 application of Section 10A-5A-3.01.

18          "§10A-5A-11.12.

19          ~~"Notwithstanding Sections 10A-1-9.01 and 10A-1-9.21:~~

20          "(a) A dissolved series may dispose of any known  
21 claims against it by following the procedures described in  
22 subsection (b), at any time after the effective date of the  
23 dissolution of the series.

24          "(b) A dissolved series may give notice of the  
25 dissolution in a writing to the holder of any known claim. The  
26 notice must:

1           "(1) identify the limited liability company and the  
2 dissolved series;

3           "(2) describe the information required to be  
4 included in a claim;

5           "(3) provide a mailing address to which the claim is  
6 to be sent;

7           "(4) state the deadline, which may not be fewer than  
8 120 days from the effective date of the notice, by which the  
9 dissolved series must receive the claim; and

10          "(5) state that if not sooner barred, the claim will  
11 be barred if not received by the deadline.

12          "(c) Unless sooner barred by any other statute  
13 limiting actions, a claim against a dissolved series is  
14 barred:

15           "(1) If a claimant who was given notice under  
16 subsection (b) does not deliver the claim to the dissolved  
17 series by the deadline; or

18           "(2) If a claimant whose claim was rejected by the  
19 dissolved series does not commence a proceeding to enforce the  
20 claim within 90 days from the effective date of the rejected  
21 notice.

22          "(d) For purposes of this section, known claim or  
23 claim includes unliquidated claims, but does not include a  
24 contingent liability that has not matured so that there is no  
25 immediate right to bring suit or a claim based on an event  
26 occurring after the effective date of dissolution.

1           "(e) Nothing in this section shall be deemed to  
2 extend any otherwise applicable statute of limitations.

3           "§10A-5A-11.13.

4           ~~"Notwithstanding Sections 10A-1-9.01 and 10A-1-9.22:~~

5           "(a) A dissolved series may publish notice of its  
6 dissolution and request that persons with claims against the  
7 dissolved series present them in accordance with the notice.

8           "(b) The notice authorized by subsection (a) must:

9           "(1) be published at least one time in a newspaper  
10 of general circulation in the county in which the limited  
11 liability company's principal office is located or, if it has  
12 none in this state, in the county in which the limited  
13 liability company's most recent registered office is located;

14           "(2) describe the information that must be included  
15 in a claim and provide a mailing address to which the claim is  
16 to be sent; and

17           "(3) state that if not sooner barred, a claim  
18 against the dissolved series will be barred unless a  
19 proceeding to enforce the claim is commenced within two years  
20 after the publication of the notice.

21           "(c) If a dissolved series publishes a newspaper  
22 notice in accordance with subsection (b), unless sooner barred  
23 by any other statute limiting actions, the claim of each of  
24 the following claimants is barred unless the claimant  
25 commences a proceeding to enforce the claim against the  
26 dissolved series within two years after the publication date  
27 of the newspaper notice:

1           "(1) a claimant who was not given notice under  
2 Section 10A-5A-11.12(b);

3           "(2) a claimant whose claim was timely sent to the  
4 dissolved series but not acted on by the dissolved series; and

5           "(3) a claimant whose claim is contingent at the  
6 effective date of the dissolution of the series, or is based  
7 on an event occurring after the effective date of the  
8 dissolution of the series.

9           "(d) A claim that is not barred under this section,  
10 any other statute limiting actions, or Section 10A-5A-11.12  
11 may be enforced:

12           "(1) against a dissolved series, to the extent of  
13 its undistributed assets associated with the series; and

14           "(2) except as provided in subsection (h), if the  
15 assets of a dissolved series have been distributed after  
16 dissolution, against the person or persons owning the  
17 transferable interests associated with the series to the  
18 extent of that person's proportionate share of the claim or of  
19 the assets of the series distributed to that person after  
20 dissolution, whichever is less, but a person's total liability  
21 for all claims under this subsection may not exceed the total  
22 amount of assets of the series distributed to that person  
23 after dissolution of the series.

24           "(e) A dissolved series that published a notice  
25 under this section may file an application with the circuit  
26 court for the county in which the limited liability company's  
27 principal office is located in this state and if the limited



1 liability company does not have a principal office within this  
2 state then the circuit court for the county in which the  
3 limited liability company's most recent registered office is  
4 located, for a determination of the amount and form of  
5 security to be provided for payment of claims that are  
6 contingent or have not been made known to the dissolved series  
7 or that are based on an event occurring after the effective  
8 date of the dissolution of the series but that, based on the  
9 facts known to the dissolved series, are reasonably estimated  
10 to arise after the effective date of the dissolution of the  
11 series. Provision need not be made for any claim that is or is  
12 reasonably anticipated to be barred under subsection (c).

13 "(f) Within 10 days after the filing of the  
14 application provided for in subsection (e), notice of the  
15 proceeding shall be given by the dissolved series to each  
16 potential claimant as described in subsection (e).

17 "(g) The circuit court under subsection (e) may  
18 appoint a guardian ad litem to represent all claimants whose  
19 identities are unknown in any proceeding brought under this  
20 section. The reasonable fees and expenses of the guardian,  
21 including all reasonable expert witness fees, shall be paid by  
22 the dissolved series.

23 "(h) Provision by the dissolved series for security  
24 in the amount and the form ordered by the circuit court under  
25 subsection (e) shall satisfy the dissolved series' obligation  
26 with respect to claims that are contingent, have not been made  
27 known to the dissolved series, or are based on an event

1 occurring after the effective date of the dissolution of the  
2 series, and those claims may not be enforced against a person  
3 owning a transferable interest to whom assets have been  
4 distributed by the dissolved series after the effective date  
5 of the dissolution of the series.

6 "(i) Nothing in this section shall be deemed to  
7 extend any otherwise applicable statute of limitations.

8 "(j) If a claim has been satisfied, disposed of, or  
9 barred under Section 10A-5A-11.12, this section, or other law,  
10 the person or persons designated to wind up the affairs of a  
11 limited liability company, and the owners of the transferable  
12 interests receiving assets from the limited liability company,  
13 shall not be liable for that claim.

14 "§10A-5A-11.14.

15 ~~"Notwithstanding Section 10A-1-9.12, upon~~ Upon the  
16 winding up of a series, the assets of the series shall be  
17 applied as follows:

18 "(a) Payment, or adequate provision for payment,  
19 shall be made to creditors of the series, including, to the  
20 extent permitted by law, members who are associated with the  
21 series and who are also creditors of the series, in  
22 satisfaction of liabilities of the series.

23 "(b) After a series complies with subsection (a),  
24 any surplus must be distributed:

25 "(1) first, to each person owning a transferable  
26 interest associated with that series that reflects  
27 contributions made on account of that transferable interest

1 and not previously returned, an amount equal to the value of  
2 the unreturned contributions; and

3 "(2) then to each person owning a transferable  
4 interest associated with that series in the proportions in  
5 which the owners of transferable interests associated with  
6 that series share in distributions prior to the dissolution of  
7 the series.

8 "(c) If the series does not have sufficient surplus  
9 to comply with subsection (b) (1), any surplus must be  
10 distributed among the owners of transferable interests  
11 associated with that series in proportion to the value of  
12 their respective unreturned contributions.

13 "§10A-5A-11.15.

14 ~~"Notwithstanding Sections 10A-1-9.31 and 10A-1-9.32,~~  
15 ~~a~~ A series that has been dissolved may be reinstated upon  
16 compliance with the following conditions:

17 "(a) the consent shall have been obtained from the  
18 members or other persons associated with the series entitled  
19 to consent at the time that is:

20 "(1) required for reinstatement of the series under  
21 the limited liability company agreement; or

22 "(2) if the limited liability company agreement does  
23 not state the consent required for reinstatement, sufficient  
24 for dissolution of the series under the limited liability  
25 company agreement; or

26 "(3) if the limited liability company agreement  
27 neither states the consent required for reinstatement nor for

1 dissolution, sufficient for dissolution of the series under  
2 this chapter;

3 "(b) in the case of a written objection to  
4 reinstatement having been delivered to the series before or at  
5 the time of the consent required by subsection (a) by the  
6 members or other persons having authority under the limited  
7 liability company agreement to bring about or prevent  
8 dissolution of the series, those members or persons  
9 withdrawing that written objection effective at the time of  
10 the consent required by subsection (a); and

11 "(c) In the case of a series dissolved in a judicial  
12 proceeding initiated by one or more of the members associated  
13 with the series, the consent of each of those members shall  
14 have been obtained and shall be included in the consent  
15 required by subsection (a) (1).

16 "§10A-8A-1.02.

17 ~~"Notwithstanding Section 10A-1-1.03, as As used in~~  
18 ~~this chapter, unless the context otherwise requires, the~~  
19 ~~following terms mean:~~

20 "(1) ~~"Business"~~ BUSINESS includes every trade,  
21 occupation, and profession for profit.

22 "(2) ~~"Disqualified person"~~ DISQUALIFIED PERSON means  
23 any person who is not a qualified person.

24 "(3) ~~"Distribution"~~ DISTRIBUTION except as otherwise  
25 provided in Section 10A-8A-4.09(f), means a transfer of money  
26 or other property from a partnership to another person on  
27 account of a transferable interest.

1           "~~Foreign limited liability partnership~~" FOREIGN  
2 LIMITED LIABILITY PARTNERSHIP means a foreign partnership  
3 whose partners have limited liability for the debts,  
4 obligations, or other liabilities of the foreign partnership  
5 under a provision similar to Section 10A-8A-3.06(c).

6           "~~Foreign partnership~~" FOREIGN PARTNERSHIP means  
7 a partnership governed by the laws of a jurisdiction other  
8 than this state which would be a partnership if governed by  
9 the laws of this state. The term includes a foreign limited  
10 liability partnership.

11           "~~Limited liability partnership~~" LIMITED  
12 LIABILITY PARTNERSHIP, except in the phrase "foreign limited  
13 liability partnership", means a partnership that has filed a  
14 statement of limited liability partnership under Section  
15 10A-8A-10.01, and does not have a similar statement in effect  
16 in any other jurisdiction.

17           "~~Not for profit activity~~" NOT FOR PROFIT  
18 ACTIVITY includes every undertaking not for profit.

19           "~~Partner~~" PARTNER means a person that:

20           "(A) has become a partner in a partnership under  
21 Section 10A-8A-4.02 or was a partner in a partnership when the  
22 partnership became subject to this chapter; and

23           "(B) has not dissociated as a partner under Section  
24 10A-8A-6.01.

25           "~~Partnership~~" PARTNERSHIP means an entity that  
26 is formed under this chapter or that is governed by this

1 chapter. The term includes, for all purposes of the laws of  
2 this state, a limited liability partnership.

3 "(10) ~~"Partnership agreement"~~ PARTNERSHIP AGREEMENT  
4 means any agreement (whether referred to as a partnership  
5 agreement or otherwise), written, oral or implied, of the  
6 partners as to the business or not for profit activity of a  
7 partnership. The partnership agreement includes any amendments  
8 to the partnership agreement.

9 "(11) ~~"Partnership at will"~~ PARTNERSHIP AT WILL  
10 means a partnership in which the partners have not agreed to  
11 remain partners until the expiration of a definite term or the  
12 completion of a particular undertaking.

13 "(12) ~~"Person dissociated as a partner"~~ PERSON  
14 DISSOCIATED AS A PARTNER means a person dissociated as a  
15 partner of a partnership.

16 "(13) ~~"Qualified person,"~~ QUALIFIED PERSON, with  
17 respect to a partnership rendering professional services in  
18 this state, means a person authorized by this state or a  
19 regulatory authority of this state to own a transferable  
20 interest in that partnership.

21 "(14) ~~"Required information"~~ REQUIRED INFORMATION  
22 means the information that a partnership is required to  
23 maintain under Section 10A-8A-1.11.

24 "(15) ~~"Statement"~~ STATEMENT means a statement of  
25 partnership under Section 10A-8A-2.02, a statement of not for  
26 profit partnership under Section 10A-8A-2.02, a statement of  
27 authority under Section 10A-8A-3.03, a statement of denial

1 under Section 10A-8A-3.04, a statement of dissociation under  
2 Section 10A-8A-7.04, a statement of dissolution under Section  
3 10A-8A-8.02 or under Section 10A-8A-8.03, a certificate of  
4 reinstatement under Section 10A-8A-8.11, a statement of  
5 limited liability partnership under Section 10A-8A-10.01, a  
6 statement of cancellation under Section 10A-8A-10.01, or any  
7 other document required or permitted to be delivered to the  
8 Secretary of State for filing under this chapter, or an  
9 amendment or cancellation of any of the foregoing.

10 "(16) ~~"Transfer"~~ TRANSFER means an assignment,  
11 conveyance, deed, bill of sale, lease, mortgage, security  
12 interest, encumbrance, gift, or transfer by operation of law.

13 "(17) ~~"Transferable interest"~~ TRANSFERABLE INTEREST  
14 means a partner's right to receive distributions from a  
15 partnership.

16 "(18) ~~"Transferee"~~ TRANSFeree means a person to  
17 which all or part of a transferable interest has been  
18 transferred, whether or not the transferor is a partner.

19 "§10A-8A-4.10.

20 ~~"Notwithstanding Sections 10A-1-3.32 and 10A-1-3.33:~~

21 "(a) Subject to subsection (f), a partner, without  
22 having any particular purpose for seeking the information, may  
23 inspect and copy during regular hours at a reasonable location  
24 specified by the partnership, required information and any  
25 other records maintained by the partnership regarding the  
26 partnership's business or not for profit activity and  
27 financial condition.

1           "(b) Subject to subsection (f), each partner and the  
2 partnership shall furnish to a partner:

3           "(1) without demand, any information concerning the  
4 partnership's business or not for profit activity reasonably  
5 required for the proper exercise of the partner's rights and  
6 duties under the partnership agreement or this chapter; and

7           "(2) on demand, any other information concerning the  
8 partnership's business or not for profit activity, except to  
9 the extent the demand or the information demanded is  
10 unreasonable or otherwise improper under the circumstances.

11           "(c) Subject to subsections (e) and (f), on 10 days'  
12 demand made in a writing received by the partnership, a person  
13 dissociated as a partner may have access to the information  
14 and records described in subsection (a) at the location  
15 specified in subsection (a) if:

16           "(1) the information or writing pertains to the  
17 period during which the person was a partner;

18           "(2) the person seeks the information or record in  
19 good faith; and

20           "(3) it is determined that:

21           "(i) the person seeks the information for a purpose  
22 reasonably related to the person's interest as a partner;

23           "(ii) the person's demand describes with reasonable  
24 particularity the information sought and the purpose for  
25 seeking the information; and

26           "(iii) the information sought is directly connected  
27 to the person's purpose.



1           "(d) Within 10 days after receiving a demand  
2 pursuant to subsection (c), the partnership in a writing shall  
3 inform the person that made the demand:

4           "(1) what information the partnership will provide  
5 in response to the demand;

6           "(2) when and where the partnership will provide the  
7 information;

8           "(3) if the partnership declines to provide any  
9 demanded information, the partnership's reasons for declining;  
10 and

11           "(4) what, if any, restrictions will be imposed  
12 pursuant to the partnership agreement or subsection (f).

13           "(e) If a partner dies, Section 10A-8A-5.04 applies.

14           "(f) In addition to any restriction or condition  
15 stated in its partnership agreement, a partnership, as to a  
16 matter within the ordinary course of its business or not for  
17 profit activity, may:

18           "(1) impose reasonable restrictions and conditions  
19 on access to and use of information to be furnished under this  
20 section, including designating information confidential and  
21 imposing nondisclosure and safeguarding obligations on the  
22 recipient; and

23           "(2) keep confidential from the partners and any  
24 other person, for such period of time as the partnership deems  
25 reasonable, any information that the partnership reasonably  
26 believes to be in the nature of trade secrets or other  
27 information the disclosure of which the partnership in good

1 faith believes is not in the best interest of the partnership  
2 or could damage the partnership or its business or not for  
3 profit activity, or that the partnership is required by law or  
4 by agreement with a third party to keep confidential.

5 "In any dispute concerning the reasonableness of a  
6 restriction under this subsection, the partnership has the  
7 burden of proving reasonableness.

8 "(g) A partnership may charge a person that makes a  
9 demand under this section reasonable costs of copying, limited  
10 to the costs of labor and material.

11 "(h) A partner or person dissociated as a partner  
12 may exercise the rights under this section through an attorney  
13 or other agent. Any restriction imposed under subsection (f)  
14 or by the partnership agreement applies both to the attorney  
15 or other agent and to the partner or person dissociated as a  
16 partner.

17 "(i) The rights under this section do not extend to  
18 a person as transferee, but the rights under subsection (c) of  
19 a person dissociated as a partner may be exercised by the  
20 legal representative of an individual who dissociated as a  
21 partner under Section 10A-8A-6.01(6).

22 "(j) Any partner who, without reasonable cause,  
23 refuses to allow any partner or person dissociated as a  
24 partner, or his or her agent or attorney to inspect or copy  
25 any records of the partnership to which such partner or person  
26 dissociated as a partner is entitled under this section, shall  
27 be personally liable to the partner or person dissociated as a

1 partner for a penalty in an amount not to exceed 10 percent of  
2 the fair market value of the transferable interest of the  
3 partner or person dissociated as a partner, in addition to any  
4 other damages or remedy.

5 "§10A-8A-8.02.

6 ~~"Notwithstanding Section 10A-1-9.12:~~

7 "(a) A dissolved partnership continues its existence  
8 as a partnership but may not carry on any business or not for  
9 profit activity except as is appropriate to wind up and  
10 liquidate its business or not for profit activity, including:

11 "(1) collecting its assets;

12 "(2) disposing of its properties that will not be  
13 distributed in kind to persons owning transferable interests;

14 "(3) discharging or making provisions for  
15 discharging its liabilities;

16 "(4) distributing its remaining property in  
17 accordance with Section 10A-8A-8.09; and

18 "(5) doing every other act necessary to wind up and  
19 liquidate its business or not for profit activity.

20 "(b) In winding up its business or not for profit  
21 activity, a partnership may:

22 "(1) deliver to the Secretary of State for filing a  
23 statement of dissolution setting forth:

24 "(A) The name of the partnership;

25 "(B) If the partnership has filed a statement of  
26 partnership, a statement of not for profit partnership, a  
27 statement of authority, or a statement of limited liability

1 partnership, the unique identifying number or other  
2 designation as assigned by the Secretary of State;

3 "(C) That the partnership has dissolved;

4 "(D) The name, street address, and mailing address  
5 of the partner who will be winding up the business or not for  
6 profit activity of the partnership pursuant to Section  
7 10A-8A-8.03(a), and if none, the name, street address, and  
8 mailing address of the person appointed pursuant to Section  
9 10A-8A-8.03(b) or (c) to wind up the business or not for  
10 profit activity of the partnership;

11 "(E) If the partnership has filed a statement of  
12 partnership, a statement of not for profit partnership, or a  
13 statement of limited liability partnership, the name, street  
14 address, and mailing address of the partnership's registered  
15 agent; and

16 "(F) Any other information the partnership deems  
17 appropriate;

18 "(2) preserve the partnership's business or not for  
19 profit activity as a going concern for a reasonable time;

20 "(3) prosecute, defend, or settle actions or  
21 proceedings, whether civil, criminal, or administrative;

22 "(4) transfer the partnership's assets;

23 "(5) resolve disputes by mediation or arbitration;

24 and

25 "(6) merge or convert in accordance with Article 9  
26 of this chapter or Article 8 of Chapter 1.

27 "(c) The dissolution of a partnership does not:

1           "(1) transfer title to the partnership's property;

2           "(2) prevent the commencement of a proceeding by or  
3 against the partnership in its partnership name;

4           "(3) terminate, abate, or suspend a proceeding  
5 pending by or against the partnership on the effective date of  
6 dissolution;

7           "(4) terminate the authority of its registered  
8 agent; or

9           "(5) abate, suspend, or otherwise alter the  
10 application of Section 10A-8A-3.06.

11           "(d) A statement of dissolution is a filing  
12 instrument under Chapter 1.

13           "§10A-8A-8.06.

14           ~~"Notwithstanding Sections 10A-1-9.01 and 10A-1-9.21:~~

15           "(a) A dissolved partnership may dispose of any  
16 known claims against it by following the procedures described  
17 in subsection (b) at any time after the effective date of the  
18 dissolution of the partnership.

19           "(b) A dissolved partnership may give notice of the  
20 dissolution in writing to the holder of any known claim. The  
21 notice must:

22           "(1) identify the dissolved partnership;

23           "(2) describe the information required to be  
24 included in a claim;

25           "(3) provide a mailing address to which the claim is  
26 to be sent;

1           "(4) state the deadline, which may not be fewer than  
2 120 days from the effective date of the notice, by which the  
3 dissolved partnership must receive the claim;

4           "(5) state that if not sooner barred, the claim will  
5 be barred if not received by the deadline; and

6           "(6) unless the partnership has been throughout its  
7 existence a limited liability partnership, state that the  
8 barring of a claim against the partnership will also bar any  
9 corresponding claim against any partner or person dissociated  
10 as a partner which is based on Section 10A-8A-3.06.

11           "(c) Unless sooner barred by any other statute  
12 limiting actions, a claim against a dissolved partnership is  
13 barred:

14           "(1) if a claimant who was given notice under  
15 subsection (b) does not deliver the claim to the dissolved  
16 partnership by the deadline; or

17           "(2) if a claimant whose claim was rejected by the  
18 dissolved partnership, does not commence a proceeding to  
19 enforce the claim within 90 days from the effective date of  
20 the rejection notice.

21           "(d) For purposes of this section, "known claim" or  
22 "claim" includes unliquidated claims, but does not include a  
23 contingent liability that has not matured so that there is no  
24 immediate right to bring suit or a claim based on an event  
25 occurring after the effective date of dissolution.

26           "(e) Nothing in this section shall be deemed to  
27 extend any otherwise applicable statute of limitations.

1           "§10A-8A-8.07.

2           ~~"Notwithstanding Sections 10A-1-9.01 and 10A-1-9.22:~~

3           "(a) A dissolved partnership may publish notice of  
4 its dissolution and request that persons with claims against  
5 the dissolved partnership present them in accordance with the  
6 notice.

7           "(b) The notice authorized by subsection (a) must:

8           "(1) be published at least one time in a newspaper  
9 of general circulation in the county in which the dissolved  
10 partnership's principal office in this state is located, and  
11 if none, was last located;

12           "(2) describe the information that must be included  
13 in a claim and provide a mailing address to which the claim is  
14 to be sent;

15           "(3) state that if not sooner barred, a claim  
16 against the dissolved partnership will be barred unless a  
17 proceeding to enforce the claim is commenced within two years  
18 after the publication of the notice; and

19           "(4) unless the partnership has been throughout its  
20 existence a limited liability partnership, state that the  
21 barring of a claim against the partnership will also bar any  
22 corresponding claim against any partner or person dissociated  
23 as a partner which is based on Section 10A-8A-3.06.

24           "(c) If a dissolved partnership publishes a  
25 newspaper notice in accordance with subsection (b), unless  
26 sooner barred by any other statute limiting actions, the claim  
27 of each of the following claimants is barred unless the

1 claimant commences a proceeding to enforce the claim against  
2 the dissolved partnership within two years after the  
3 publication date of the newspaper notice:

4 "(1) a claimant who was not given notice under  
5 Section 10A-8A-8.06;

6 "(2) a claimant whose claim was timely sent to the  
7 dissolved partnership but not acted on by the dissolved  
8 partnership; and

9 "(3) a claimant whose claim is contingent at the  
10 effective date of the dissolution of the partnership, or is  
11 based on an event occurring after the effective date of the  
12 dissolution of the partnership.

13 "(d) A claim that is not barred under this section,  
14 any other statute limiting actions, or Section 10A-8A-8.06 may  
15 be enforced:

16 "(1) against a partnership, to the extent of its  
17 undistributed assets;

18 "(2) except as provided in subsection (h), if the  
19 assets of a dissolved partnership have been distributed after  
20 dissolution, against the person or persons owning the  
21 transferable interests to the extent of that person's  
22 proportionate share of the claim or of the assets distributed  
23 to that person after dissolution, whichever is less, but a  
24 person's total liability for all claims under subsection (d)  
25 may not exceed the total amount of assets distributed to that  
26 person after dissolution of the partnership; or



1           "(3) against any person liable on the claim under  
2 Sections 10A-8A-3.06, 10A-8A-7.03, and 10A-8A-8.05.

3           "(e) A dissolved partnership that published a notice  
4 under this section may file an application with a court of  
5 competent jurisdiction for a determination of the amount and  
6 form of security to be provided for payment of claims that are  
7 contingent or have not been made known to the dissolved  
8 partnership or that are based on an event occurring after the  
9 effective date of the dissolution of the partnership but that,  
10 based on the facts known to the dissolved partnership, are  
11 reasonably estimated to arise after the effective date of the  
12 dissolution of the partnership. Provision need not be made for  
13 any claim that is or is reasonably anticipated to be barred  
14 under subsection (c).

15           "(f) Within 10 days after the filing of the  
16 application provided for in subsection (e), notice of the  
17 proceeding shall be given by the dissolved partnership to each  
18 potential claimant as described in subsection (e).

19           "(g) The court under subsection (e) may appoint a  
20 guardian ad litem to represent all claimants whose identities  
21 are unknown in any proceeding brought under this section. The  
22 reasonable fees and expenses of the guardian, including all  
23 reasonable expert witness fees, shall be paid by the dissolved  
24 partnership.

25           "(h) Provision by the dissolved partnership for  
26 security in the amount and the form ordered by the court under  
27 subsection (e) shall satisfy the dissolved partnership's

1 obligation with respect to claims that are contingent, have  
2 not been made known to the dissolved partnership, or are based  
3 on an event occurring after the effective date of the  
4 dissolution of the partnership, and those claims may not be  
5 enforced against a person owning a transferable interest to  
6 whom assets have been distributed by the dissolved partnership  
7 after the effective date of the dissolution of the  
8 partnership.

9 "(i) Nothing in this section shall be deemed to  
10 extend any otherwise applicable statute of limitations.

11 "(j) If a claim has been satisfied, disposed of, or  
12 barred under Section 10A-8A-8.06, this section, or other law,  
13 the person or persons designated to wind up the business or  
14 not for profit activity of a partnership, and the owners of  
15 the transferable interests receiving assets from the  
16 partnership, shall not be liable for that claim.

17 "§10A-8A-8.09.

18 "~~Notwithstanding Section 10A-1-9.12, upon~~ Upon the  
19 winding up of a partnership, the assets of the partnership,  
20 including any obligation under Sections 10A-8A-4.03,  
21 10A-8A-4.04, and 10A-8A-4.09, and any contribution required by  
22 this section, shall be applied as follows:

23 "(a) Payment, or adequate provision for payment,  
24 shall be made to creditors, including, to the extent permitted  
25 by law, partners who are creditors, in satisfaction of  
26 liabilities of the partnership.

1           "(b) After a partnership complies with subsection  
2 (a), any surplus must be distributed:

3           "(1) first, to each person owning a transferable  
4 interest that reflects contributions made on account of the  
5 transferable interest and not previously returned, an amount  
6 equal to the value of the person's unreturned contributions;  
7 and

8           "(2) then to each person owning a transferable  
9 interest in the proportions in which the owners of  
10 transferable interests share in distributions before  
11 dissolution.

12           "(c) If the partnership does not have sufficient  
13 surplus to comply with subsection (b)(1), any surplus must be  
14 distributed among the owners of transferable interests in  
15 proportion to the value of their respective unreturned  
16 contributions.

17           "(d) If a partnership's assets are insufficient to  
18 satisfy all of its obligations under subsection (a), with  
19 respect to each unsatisfied obligation incurred when the  
20 partnership was not a limited liability partnership, the  
21 following rules apply:

22           "(1) Each person that was a partner when the  
23 obligation was incurred and that has not been released from  
24 the obligation under Section 10A-8A-7.03(c) and (d) shall  
25 contribute to the partnership for the purpose of enabling the  
26 partnership to satisfy the obligation. The contribution due  
27 from each of those persons is in proportion to the right to

1 receive distributions in the capacity of partner in effect for  
2 each of those persons when the obligation was incurred.

3 "(2) If a person does not contribute the full amount  
4 required under paragraph (1) with respect to an unsatisfied  
5 obligation of the partnership, the other persons required to  
6 contribute by paragraph (1) on account of the obligation shall  
7 contribute the additional amount necessary to discharge the  
8 obligation. The additional contribution due from each of those  
9 other persons is in proportion to the right to receive  
10 distributions in the capacity of partner in effect for each of  
11 those other persons when the obligation was incurred.

12 "(3) If a person does not make the additional  
13 contribution required by paragraph (2), further additional  
14 contributions are determined and due in the same manner as  
15 provided in that paragraph.

16 "(e) A person that makes an additional contribution  
17 under subsection (d)(2) or (3) may recover from any person  
18 whose failure to contribute under subsection (d)(1) or (2)  
19 necessitated the additional contribution. A person may not  
20 recover under this subsection more than the amount  
21 additionally contributed. A person's liability under this  
22 subsection may not exceed the amount the person failed to  
23 contribute.

24 "(f) The estate of a deceased individual is liable  
25 for the person's obligations under this section.

26 "(g) An assignee for the benefit of creditors of a  
27 partnership or a partner, or a person appointed by a court to

1 represent creditors of a partnership or a partner, may enforce  
2 a person's obligation to contribute under subsection (d).

3 "§10A-8A-8.10.

4 ~~"Notwithstanding Sections 10A-1-9.31 and 10A-1-9.32,~~  
5 ~~a~~ A partnership that has been dissolved may be reinstated upon  
6 compliance with the following conditions:

7 "(a) the consent shall have been obtained from the  
8 partners or other persons entitled to consent at the time that  
9 is:

10 "(1) required for reinstatement under the  
11 partnership agreement; or

12 "(2) if the partnership agreement does not state the  
13 consent required for reinstatement, sufficient for dissolution  
14 under the partnership agreement; or

15 "(3) if the partnership agreement neither states the  
16 consent required for reinstatement nor for dissolution,  
17 sufficient for dissolution under this chapter;

18 "(b) in the case of a written objection to  
19 reinstatement having been delivered to the partnership before  
20 or at the time of the consent required by subsection (a) by  
21 the partners or other persons having authority under the  
22 partnership agreement to bring about or prevent dissolution of  
23 the partnership, those partners or persons withdrawing that  
24 written objection effective at the time of the consent  
25 required by subsection (a);

26 "(c) in the case of a partnership dissolved in a  
27 judicial proceeding initiated by one or more of the partners

1 pursuant to Section 10A-8A-8.01(4), the consent of each of  
2 those partners shall have been obtained and shall be included  
3 in the consent required by subsection (a);

4 "(d) in the case of a partnership dissolved in a  
5 judicial proceeding initiated by one or more of transferees  
6 pursuant to Section 10A-8A-8.01(5), the consent of each of  
7 those transferees shall have been obtained and shall be  
8 included in the consent required by subsection (a); and

9 "(e) in the case of a partnership that has filed a  
10 statement of dissolution, the filing of a certificate of  
11 reinstatement in accordance with Section 10A-8A-8.11.

12 "§10A-8A-9.01.

13 ~~"Notwithstanding Section 10A-1-1.03, as~~ As used in  
14 this article, unless the context otherwise requires, the  
15 following terms mean:

16 "(1) ~~"Constituent organization"~~ CONSTITUENT  
17 ORGANIZATION means an organization that is party to a merger  
18 under this article.

19 "(2) ~~"Constituent partnership"~~ CONSTITUENT  
20 PARTNERSHIP means a constituent organization that is a  
21 partnership.

22 "(3) ~~"Converted organization"~~ CONVERTED ORGANIZATION  
23 means the organization into which a converting organization  
24 converts pursuant to this article.

25 "(4) ~~"Converting organization"~~ CONVERTING  
26 ORGANIZATION means an organization that converts into another  
27 organization pursuant to this article.

1           "~~5) "Converting partnership"~~ CONVERTING PARTNERSHIP  
2 means a converting organization that is a partnership.

3           "~~6) "Governing statute"~~ GOVERNING STATUTE of an  
4 organization means the statute that governs the organization's  
5 internal affairs.

6           "~~7) "Organization"~~ ORGANIZATION means a  
7 partnership, including a limited liability partnership;  
8 limited partnership, including a limited liability limited  
9 partnership; limited liability company; business trust;  
10 corporation; nonprofit corporation; professional corporation;  
11 or any other person having a governing statute. The term  
12 includes domestic and foreign organizations whether or not  
13 organized for profit.

14           "~~8) "Organizational documents"~~ ORGANIZATIONAL  
15 DOCUMENTS means:

16           "(A) (i) for a partnership, its partnership agreement  
17 and, if applicable, its statement of partnership, statement of  
18 not for profit partnership, or statement of limited liability  
19 partnership; and (ii) for a foreign partnership, its  
20 partnership agreement and, if applicable, its statement of  
21 foreign limited liability partnership;

22           "(B) for a limited partnership or foreign limited  
23 partnership, its certificate of formation and partnership  
24 agreement, or comparable writings as provided in its governing  
25 statute;

26           "(C) for a limited liability company or foreign  
27 limited liability company, its certificate of formation and

1 limited liability company agreement, or comparable writings as  
2 provided in its governing statute;

3 "(D) for a business or statutory trust or foreign  
4 business or statutory trust its agreement of trust and  
5 declaration of trust, or comparable writings as provided in  
6 its governing statute;

7 "(E) for a corporation for profit or foreign  
8 corporation for profit, its certificate of formation, bylaws,  
9 and other agreements among its shareholders that are  
10 authorized by its governing statute, or comparable writings as  
11 provided in its governing statute;

12 "(F) for a nonprofit corporation or foreign  
13 nonprofit corporation, its certificate of formation, bylaws,  
14 and other agreements that are authorized by its governing  
15 statute, or comparable writings as provided in its governing  
16 statute;

17 "(G) for a professional corporation or foreign  
18 professional corporation, its certificate of formation,  
19 bylaws, and other agreements among its shareholders that are  
20 authorized by its governing statute, or comparable writings as  
21 provided in its governing statute; and

22 "(H) for any other organization, the basic writings  
23 that create the organization and determine its internal  
24 governance and the relations among the persons that own it,  
25 have an interest in it, or are members of it.

26 "(9) ~~"Surviving organization"~~ SURVIVING ORGANIZATION  
27 means an organization into which one or more other



1 organizations are merged under this article, whether the  
2 organization pre-existed the merger or was created pursuant to  
3 the merger.

4 "§10A-9A-1.02.

5 ~~"Notwithstanding Section 10A-1-1.03, as As used in~~  
6 this chapter, unless the context otherwise requires, the  
7 following terms mean:

8 "(1) "CERTIFICATE OF FORMATION" with respect to a  
9 limited partnership means the certificate of formation  
10 required by Section 10A-9A-2.01, and the certificate of  
11 formation as amended or restated.

12 "(2) "DISTRIBUTION" except as otherwise provided in  
13 Section 10A-9A-5.08(f), means a transfer of money or other  
14 property from a limited partnership to another person on  
15 account of a transferable interest.

16 "(3) "FOREIGN LIMITED LIABILITY LIMITED PARTNERSHIP"  
17 means a foreign limited partnership whose general partners  
18 have limited liability for the obligations of the foreign  
19 limited partnership under a provision similar to Section  
20 10A-9A-4.04(c).

21 "(4) "FOREIGN LIMITED PARTNERSHIP" means a  
22 partnership formed under the laws of a jurisdiction other than  
23 this state and required by those laws to have one or more  
24 general partners and one or more limited partners. The term  
25 includes a foreign limited liability limited partnership.

26 "(5) "GENERAL PARTNER" means:

1           "(A) with respect to a limited partnership, a person  
2 that:

3           "(i) is admitted as a general partner under Section  
4 10A-9A-4.01;

5           "or

6           "(ii) was a general partner in a limited partnership  
7 when the limited partnership became subject to this chapter  
8 under Section 10A-9A-11.01(a); and

9           "(B) with respect to a foreign limited partnership,  
10 a person that has rights, powers, and obligations similar to  
11 those of a general partner in a limited partnership.

12           "(6) "LIMITED LIABILITY LIMITED PARTNERSHIP," except  
13 in the phrase "foreign limited liability limited partnership,"  
14 means a limited partnership whose certificate of formation  
15 states that the limited partnership is a limited liability  
16 limited partnership.

17           "(7) "LIMITED PARTNER" means:

18           "(A) with respect to a limited partnership, a person  
19 that:

20           "(i) is admitted as a limited partner under Section  
21 10A-9A-3.01; or

22           "(ii) was a limited partner in a limited partnership  
23 when the limited partnership became subject to this chapter  
24 under Section 10A-9A-11.01(a); and

25           "(B) with respect to a foreign limited partnership,  
26 a person that has rights, powers, and obligations similar to  
27 those of a limited partner in a limited partnership.

1           "(8) "LIMITED PARTNERSHIP," except in the phrases  
2 "foreign limited partnership" and "foreign limited liability  
3 limited partnership," means an entity, having one or more  
4 general partners and one or more limited partners, which is  
5 formed under this chapter by two or more persons or becomes  
6 subject to this chapter under Article 10 or Section  
7 10A-9A-11.01(a). The term includes a limited liability limited  
8 partnership.

9           "(9) "PARTNER" means a limited partner or general  
10 partner.

11           "(10) "PARTNERSHIP AGREEMENT" means any agreement  
12 (whether referred to as a partnership agreement or otherwise),  
13 written, oral or implied, of the partners as to the activities  
14 and affairs of a limited partnership. The partnership  
15 agreement includes any amendments to the partnership  
16 agreement.

17           "(11) "PERSON DISSOCIATED AS A GENERAL PARTNER"  
18 means a person dissociated as a general partner of a limited  
19 partnership.

20           "(12) "REQUIRED INFORMATION" means the information  
21 that a limited partnership is required to maintain under  
22 Section 10A-9A-1.11.

23           "(13) "TRANSFER" means an assignment, conveyance,  
24 deed, bill of sale, lease, mortgage, security interest,  
25 encumbrance, gift, or transfer by operation of law.

26           "(14) "TRANSFERABLE INTEREST" means a partner's  
27 right to receive distributions from a limited partnership.

1           "(15) "TRANSFEE" means a person to which all or  
2 part of a transferable interest has been transferred, whether  
3 or not the transferor is a partner.

4           "§10A-9A-2.01.

5           "(a) In order to form a limited partnership, a  
6 person must deliver a certificate of formation for filing to  
7 the Secretary of State. ~~Notwithstanding~~ Section 10A-1-3.05  
8 shall not apply to this chapter. Instead, the certificate of  
9 formation shall set forth:

10           "(1) the name of the limited partnership, which must  
11 comply with Article 5 of Chapter 1;

12           "(2) the address of the registered office required  
13 by Article 5 of Chapter 1;

14           "(3) the name of the registered agent at the  
15 registered office as required by Article 5 of Chapter 1;

16           "(4) the name and the street and mailing address of  
17 each general partner;

18           "(5) whether the limited partnership is a limited  
19 liability limited partnership;

20           "(6) any additional information required by Article  
21 8 of Chapter 1 or by Article 10 of this chapter; and

22           "(7) any other matters the partners determine to  
23 include therein which comply with Section 10A-9A-1.08.

24           "(b) A limited partnership is formed when the  
25 certificate of formation becomes effective in accordance with  
26 Article 4 of Chapter 1.

1           "(c) The fact that a certificate of formation has  
2 been filed and is effective in accordance with Article 4 of  
3 Chapter 1 is notice of the matters required to be included by  
4 subsections (a) (1), (a) (2), (a) (3), (a) (4), if applicable,  
5 (a) (5), and (a) (6), but is not notice of any other fact.

6           "(d) A partnership agreement shall be entered into  
7 either before, after, or at the time of filing the certificate  
8 of formation and, whether entered into before, after, or at  
9 the time of filing, may be made effective as of the filing of  
10 the certificate of formation or at any other time or date  
11 provided in the partnership agreement.

12           "§10A-9A-2.02.

13           "~~Notwithstanding~~ Division B of Article 3 of Chapter  
14 1 shall not apply to this chapter. Instead:

15           "(a) A certificate of formation may be amended at  
16 any time.

17           "(b) A certificate of formation may be restated with  
18 or without amendment at any time.

19           "(c) To amend its certificate of formation, a  
20 limited partnership must deliver a certificate of amendment  
21 for filing to the Secretary of State which certificate of  
22 amendment shall state:

23           "(1) the name of the limited partnership;

24           "(2) the unique identifying number or other  
25 designation as assigned by the Secretary of State; and

26           "(3) the changes the amendment makes to the  
27 certificate of formation as most recently amended or restated.

1           "(d) Prior to a statement of dissolution being  
2 delivered to the Secretary of State for filing, a limited  
3 partnership shall promptly deliver a certificate of amendment  
4 for filing with the Secretary of State to reflect:

5           "(1) the admission of a new general partner; or

6           "(2) the dissociation of a person as a general  
7 partner.

8           "(e) Prior to a statement of dissolution being  
9 delivered to the Secretary of State for filing, if a general  
10 partner knows that any information in a filed certificate of  
11 formation was inaccurate when the certificate of formation was  
12 filed or has become inaccurate due to changed circumstances  
13 and if such information is required to be set forth in a newly  
14 filed certificate of formation under this chapter, the general  
15 partner shall promptly:

16           "(1) cause the certificate of formation to be  
17 amended; or

18           "(2) if appropriate, deliver for filing with the  
19 Secretary of State a certificate of correction in accordance  
20 with Chapter 1.

21           "(f) A certificate of formation may be amended at  
22 any time pursuant to this section for any other proper purpose  
23 as determined by the limited partnership. A certificate of  
24 formation may also be amended in a statement of merger  
25 pursuant to Article 8 of Chapter 1 or Article 10 of this  
26 chapter.

1           "(g) In order to restate its certificate of  
2 formation, a limited partnership must deliver a restated  
3 certificate of formation for filing with the Secretary of  
4 State. A restated certificate of formation must:

5           "(1) be designated as such in the heading;

6           "(2) state the name of the limited partnership;

7           "(3) state the unique identifying number or other  
8 designation as assigned by the Secretary of State;

9           "(4) set forth any amendment or change effected in  
10 connection with the restatement of the certificate of  
11 formation. Any such restatement that effects an amendment  
12 shall be subject to any other provision of this chapter not  
13 inconsistent with this section, which would apply if a  
14 separate certificate of amendment were filed to effect the  
15 amendment or change;

16           "(5) set forth the text of the restated certificate  
17 of formation; and

18           "(6) state that the restated certificate of  
19 formation consolidates all amendments into a single document.

20           "(h) The original certificate of formation, as  
21 theretofore amended, shall be superseded by the restated  
22 certificate of formation and thenceforth, the restated  
23 certificate of formation, including any further amendment or  
24 changes made thereby, shall be the certificate of formation of  
25 the limited partnership, but the original effective date of  
26 formation shall remain unchanged.

1           "(i) An amended or restated certificate of formation  
2 may contain only the provisions that would be permitted at the  
3 time of the amendment if the amended or restated certificate  
4 of formation were a newly filed original certificate of  
5 formation.

6           "(j) The filing of a certificate of amendment to the  
7 certificate of formation shall have the effect, and shall take  
8 effect, as provided in Section 10A-1-3.14.

9           "(k) The filing of a restated certificate of  
10 formation shall have the effect, and shall take effect, as  
11 provided in Section 10A-1-3.18.

12           "§10A-9A-4.06.

13           "(a) Each general partner has equal rights in the  
14 management and conduct of the limited partnership's activities  
15 and affairs. Except as expressly provided in this chapter, any  
16 matter relating to the activities and affairs of the limited  
17 partnership is decided exclusively by the general partner or,  
18 if there is more than one general partner, by a majority of  
19 the general partners.

20           "(b) The consent of all of the partners is necessary  
21 to:

22           "(1) amend the partnership agreement;

23           "(2) amend the certificate of formation to add or  
24 delete a statement that the limited partnership is a limited  
25 liability limited partnership; and

26           "(3) sell, lease, exchange, or otherwise dispose of  
27 all, or substantially all, of the limited partnership's



1 property, with or without the good will, other than in the  
2 usual and regular course of the limited partnership's  
3 activities and affairs.

4 "(c) A limited partnership shall reimburse a general  
5 partner for payments made and indemnify a general partner for  
6 liabilities incurred by the general partner in the ordinary  
7 course of the activities and affairs of the limited  
8 partnership or for the preservation of its activities and  
9 affairs or its property.

10 "(d) A limited partnership shall reimburse a general  
11 partner for an advance to the limited partnership beyond the  
12 amount of capital the general partner agreed to contribute.

13 "(e) A payment or advance made by a general partner  
14 which gives rise to an obligation of the limited partnership  
15 under subsection (c) or (d) constitutes a loan to the limited  
16 partnership which accrues interest from the date of the  
17 payment or advance.

18 "(f) A general partner is not entitled to  
19 remuneration for services performed for the partnership.

20 ~~"(g) Notwithstanding the provisions of Article 6 of~~  
21 ~~Chapter 1, a~~ A limited partnership may indemnify and hold  
22 harmless a partner or other person, pay in advance or  
23 reimburse expenses incurred by a partner or other person, and  
24 purchase and maintain insurance on behalf of a partner or  
25 other person.

26 "§10A-9A-4.07.

27 ~~"Notwithstanding Sections 10A-1-3.32 and 10A-1-3.33:~~

1           "(a) Subject to subsection (f), a general partner,  
2 without having any particular purpose for seeking the  
3 information, may inspect and copy during regular business  
4 hours at a reasonable location specified by the limited  
5 partnership, required information and any other records  
6 maintained by the limited partnership regarding the limited  
7 partnership's activities and affairs and financial condition.

8           "(b) Subject to subsection (f), each general partner  
9 and the limited partnership shall furnish to a general  
10 partner:

11           "(1) without demand, any information concerning the  
12 limited partnership's activities and affairs and activities  
13 and affairs reasonably required for the proper exercise of the  
14 general partner's rights and duties under the partnership  
15 agreement or this chapter; and

16           "(2) on demand, any other information concerning the  
17 limited partnership's activities and affairs, except to the  
18 extent the demand or the information demanded is unreasonable  
19 or otherwise improper under the circumstances.

20           "(c) Subject to subsections (e) and (f), on 10 days'  
21 demand made in a writing received by the limited partnership,  
22 a person dissociated as a general partner may have access to  
23 the information and records described in subsection (a) at the  
24 location specified in subsection (a) if:

25           "(1) the information or writing pertains to the  
26 period during which the person was a general partner;

1           "(2) the person seeks the information or record in  
2 good faith; and

3           "(3) the person satisfies the requirements imposed  
4 on a limited partner by Section 10A-9A-3.04(b).

5           "(d) The limited partnership shall respond to a  
6 demand made pursuant to subsection (c) in the same manner as  
7 provided in Section 10A-9A-3.04(c).

8           "(e) If a general partner dies, Section 10A-9A-7.04  
9 applies.

10           "(f) In addition to any restriction or condition  
11 stated in its limited partnership agreement, a limited  
12 partnership, as to a matter within the ordinary course of its  
13 activities and affairs, may:

14           "(1) impose reasonable restrictions and conditions  
15 on access to and use of information to be furnished under this  
16 section, including designating information confidential and  
17 imposing nondisclosure and safeguarding obligations on the  
18 recipient; and

19           "(2) keep confidential from the partners and any  
20 other person, for such period of time as the limited  
21 partnership deems reasonable, any information that the limited  
22 partnership reasonably believes to be in the nature of trade  
23 secrets or other information the disclosure of which the  
24 limited partnership in good faith believes is not in the best  
25 interest of the limited partnership or could damage the  
26 limited partnership or its activities and affairs, or that the

1 limited partnership is required by law or by agreement with a  
2 third party to keep confidential.

3 "In any dispute concerning the reasonableness of a  
4 restriction under this subsection, the limited partnership has  
5 the burden of proving reasonableness.

6 "(g) A limited partnership may charge a person that  
7 makes a demand under this section reasonable costs of copying,  
8 limited to the costs of labor and material.

9 "(h) A general partner or person dissociated as a  
10 general partner may exercise the rights under this section  
11 through an attorney or other agent. Any restriction imposed  
12 under subsection (f) or by the partnership agreement applies  
13 both to the attorney or other agent and to the general partner  
14 or person dissociated as a general partner.

15 "(i) The rights under this section do not extend to  
16 a person as transferee, but the rights under subsection (c) of  
17 a person dissociated as a general partner may be exercised by  
18 the legal representative of an individual who dissociated as a  
19 general partner under Section 10A-9A-6.03(6).

20 "(j) Any general partner who, without reasonable  
21 cause, refuses to allow any general partner or person  
22 dissociated as a general partner, or their agent or attorney  
23 to inspect or copy any records of the limited partnership to  
24 which such general partner or person disassociated as a  
25 general partner is entitled under this section, shall be  
26 personally liable to the general partner or person dissociated  
27 as a general partner for a penalty in an amount not to exceed

1 10 percent of the fair market value of the partnership  
2 interest of the general partner or person dissociated as a  
3 general partner, in addition to any other damages or remedy.

4 "§10A-9A-8.02.

5 ~~"Notwithstanding Section 10A-1-9.12:~~

6 "(a) A dissolved limited partnership continues its  
7 existence as a limited partnership but may not carry on any  
8 activities and affairs except as is appropriate to wind up and  
9 liquidate its activities and affairs, including:

10 "(1) collecting its assets;

11 "(2) disposing of its properties that will not be  
12 distributed in kind to persons owning transferable interests;

13 "(3) discharging or making provisions for  
14 discharging its liabilities;

15 "(4) distributing its remaining property in  
16 accordance with Section 10A-9A-8.09; and

17 "(5) doing every other act necessary to wind up and  
18 liquidate its activities and affairs.

19 "(b) In winding up its activities and affairs, a  
20 limited partnership may:

21 "(1) deliver for filing a statement of dissolution  
22 to the Secretary of State setting forth:

23 "(A) The name of the limited partnership;

24 "(B) The unique identifying number or other  
25 designation as assigned by the Secretary of State;

26 "(C) That the limited partnership has dissolved;

1           "(D) The name and street mailing address of the  
2 general partner who will be winding up the affairs of the  
3 limited partnership pursuant to Section 10A-9A-8.03(a), and if  
4 none, the name and street address of the person appointed  
5 pursuant to Section 10A-9A-8.03(b) or (c) to wind up the  
6 activities and affairs of the limited partnership; and

7           "(E) Any other information the limited partnership  
8 deems appropriate;

9           "(2) preserve the limited partnership's activities  
10 and affairs and property as a going concern for a reasonable  
11 time;

12           "(3) prosecute, defend, or settle actions or  
13 proceedings, whether civil, criminal, or administrative;

14           "(4) transfer the limited partnership's assets;

15           "(5) resolve disputes by mediation or arbitration;

16 and

17           "(6) merge or convert in accordance with Article 10  
18 of this chapter or Article 8 of Chapter 1.

19           "(c) The dissolution of a limited partnership does  
20 not:

21           "(1) transfer title to the limited partnership's  
22 property;

23           "(2) prevent the commencement of a proceeding by or  
24 against the limited partnership in its limited partnership  
25 name;

1           "(3) terminate, abate, or suspend a proceeding  
2 pending by or against the limited partnership on the effective  
3 date of dissolution;

4           "(4) terminate the authority of its registered  
5 agent; or

6           "(5) abate, suspend, or otherwise alter the  
7 application of Sections 10A-9A-3.03 and 10A-9A-4.04(b) and  
8 (c).

9           "(d) A statement of dissolution shall be deemed to  
10 be a filing instrument under Chapter 1.

11           "§10A-9A-8.06.

12           ~~"Notwithstanding Sections 10A-1-9.01 and 10A-1-9.21:~~

13           "(a) A dissolved limited partnership may dispose of  
14 any known claims against it by following the procedures  
15 described in subsection (b) at any time after the effective  
16 date of the dissolution of the limited partnership.

17           "(b) A dissolved limited partnership may give notice  
18 of the dissolution in a record to the holder of any known  
19 claim. The notice must:

20           "(1) identify the dissolved limited partnership;

21           "(2) describe the information required to be  
22 included in a claim;

23           "(3) provide a mailing address to which the claim is  
24 to be sent;

25           "(4) state the deadline, which may not be fewer than  
26 120 days from the effective date of the notice, by which the  
27 dissolved partnership must receive the claim;

1           "(5) state that if not sooner barred, the claim will  
2 be barred if not received by the deadline; and

3           "(6) unless the limited partnership has been  
4 throughout its existence a limited liability limited  
5 partnership, state that the barring of a claim against the  
6 limited partnership will also bar any corresponding claim  
7 against any general partner or person dissociated as a general  
8 partner which is based on Section 10A-9A-4.04.

9           "(c) Unless sooner barred by any other statute  
10 limiting actions, a claim against a dissolved limited  
11 partnership is barred:

12           "(1) if a claimant who was given notice under  
13 subsection (b) does not deliver the claim to the dissolved  
14 limited partnership by the deadline; or

15           "(2) if a claimant whose claim was rejected by the  
16 dissolved limited partnership, does not commence a proceeding  
17 to enforce the claim within 90 days from the effective date of  
18 the rejection notice.

19           "(d) For purposes of this section, "known claim" or  
20 "claim" includes unliquidated claims, but does not include a  
21 contingent liability that has not matured so that there is no  
22 immediate right to bring suit or a claim based on an event  
23 occurring after the effective date of dissolution.

24           "(e) Nothing in this section shall be deemed to  
25 extend any otherwise applicable statute of limitations.

26           "§10A-9A-8.07.

27           ~~"Notwithstanding Sections 10A-1-9.01 and 10A-1-9.22:~~



1           "(a) A dissolved limited partnership may publish  
2 notice of its dissolution and request that persons with claims  
3 against the dissolved limited partnership present them in  
4 accordance with the notice.

5           "(b) The notice authorized by subsection (a) must:

6           "(1) be published at least one time in a newspaper  
7 of general circulation in the county in which the dissolved  
8 limited partnership's principal office is located in this  
9 state, and if none in this state, in the county in which the  
10 limited partnership's most recent registered office is  
11 located;

12           "(2) describe the information that must be included  
13 in a claim and provide a mailing address to which the claim is  
14 to be sent;

15           "(3) state that if not sooner barred, a claim  
16 against the dissolved limited partnership will be barred  
17 unless a proceeding to enforce the claim is commenced within  
18 two years after the publication of the notice; and

19           "(4) unless the limited partnership has been  
20 throughout its existence a limited liability limited  
21 partnership, state that the barring of a claim against the  
22 limited partnership will also bar any corresponding claim  
23 against any general partner or person dissociated as a general  
24 partner which is based on Section 10A-9A-4.04.

25           "(c) If a dissolved limited partnership publishes a  
26 newspaper notice in accordance with subsection (b), unless  
27 sooner barred by any other statute limiting actions, the claim

1 of each of the following claimants is barred unless the  
2 claimant commences a proceeding to enforce the claim against  
3 the dissolved limited partnership within two years after the  
4 publication date of the newspaper notice:

5 "(1) a claimant who was not given notice under  
6 Section 10A-9A-8.06;

7 "(2) a claimant whose claim was timely sent to the  
8 dissolved limited partnership but not acted on by the  
9 dissolved limited partnership; and

10 "(3) a claimant whose claim is contingent at the  
11 effective date of the dissolution of the limited partnership,  
12 or is based on an event occurring after the effective date of  
13 the dissolution of the limited partnership.

14 "(d) A claim that is not barred under this section,  
15 any other statute limiting actions, or Section 10A-9A-8.06 may  
16 be enforced:

17 "(1) against a dissolved limited partnership, to the  
18 extent of its undistributed assets;

19 "(2) except as provided in subsection (h), if the  
20 assets of a dissolved limited partnership have been  
21 distributed after dissolution, against the person or persons  
22 owning the transferable interests to the extent of that  
23 person's proportionate share of the claim or of the assets  
24 distributed to that person after dissolution, whichever is  
25 less, but a person's total liability for all claims under  
26 subsection (d) may not exceed the total amount of assets

1 distributed to that person after dissolution of the limited  
2 partnership; or

3 "(3) against any person liable on the claim under  
4 Section 10A-9A-4.04 and 10A-9A-6.07.

5 "(e) A dissolved limited partnership that published  
6 a notice under this section may file an application with the  
7 designated court, and if none the circuit court for the county  
8 in which the dissolved limited partnership's principal office  
9 is located in this state and if the dissolved limited  
10 partnership does not have a principal office within this  
11 state, in the circuit court for the county in which the  
12 dissolved limited partnership's most recent registered office  
13 is located, for a determination of the amount and form of  
14 security to be provided for payment of claims that are  
15 contingent or have not been made known to the dissolved  
16 limited partnership or that are based on an event occurring  
17 after the effective date of the dissolution of the limited  
18 partnership but that, based on the facts known to the  
19 dissolved limited partnership, are reasonably estimated to  
20 arise after the effective date of the dissolution of the  
21 limited partnership. Provision need not be made for any claim  
22 that is or is reasonably anticipated to be barred under  
23 subsection (c).

24 "(f) Within 10 days after the filing of the  
25 application provided for in subsection (e), notice of the  
26 proceeding shall be given by the dissolved limited partnership  
27 to each potential claimant as described in subsection (e).

1           "(g) The circuit court under subsection (e) may  
2 appoint a guardian ad litem to represent all claimants whose  
3 identities are unknown in any proceeding brought under this  
4 section. The reasonable fees and expenses of the guardian,  
5 including all reasonable expert witness fees, shall be paid by  
6 the dissolved limited partnership.

7           "(h) Provision by the dissolved limited partnership  
8 for security in the amount and the form ordered by the circuit  
9 court under subsection (e) shall satisfy the dissolved limited  
10 partnership's obligation with respect to claims that are  
11 contingent, have not been made known to the dissolved limited  
12 partnership, or are based on an event occurring after the  
13 effective date of the dissolution of the limited partnership,  
14 and those claims may not be enforced against a person owning a  
15 transferable interest to whom assets have been distributed by  
16 the dissolved limited partnership after the effective date of  
17 the dissolution of the limited partnership.

18           "(i) Nothing in this section shall be deemed to  
19 extend any otherwise applicable statute of limitations.

20           "(j) If a claim has been satisfied, disposed of, or  
21 barred under Section 10A-9A-8.06, this section, or other law,  
22 the person or persons designated to wind up the affairs of a  
23 limited partnership, and the owners of the transferable  
24 interests receiving assets from the limited partnership, shall  
25 not be liable for that claim.

26           "§10A-9A-8.09.

1           ~~"Notwithstanding Section 10A-1-9.12, upon~~ Upon the  
2 winding up of a limited partnership, the assets of the limited  
3 partnership, including any obligation under Article 5 of this  
4 chapter, and any contribution required by this section, shall  
5 be applied as follows:

6           "(a) Payment, or adequate provision for payment,  
7 shall be made to creditors, including, to the extent permitted  
8 by law, partners who are creditors, in satisfaction of  
9 liabilities of the limited partnership.

10           "(b) After a limited partnership complies with  
11 subsection (a), any surplus must be distributed:

12           "(1) first, to each person owning a transferable  
13 interest that reflects contributions made on account of the  
14 transferable interest and not previously returned, an amount  
15 equal to the value of the person's unreturned contributions;  
16 and

17           "(2) then to each person owning a transferable  
18 interest in the proportions in which the owners of  
19 transferable interests share in distributions before  
20 dissolution.

21           "(c) If the limited partnership does not have  
22 sufficient surplus to comply with subsection (b)(1), any  
23 surplus must be distributed among the owners of transferable  
24 interests in proportion to the value of their respective  
25 unreturned contributions.

26           "(d) If a limited partnership's assets are  
27 insufficient to satisfy all of its obligations under

1 subsection (a), with respect to each unsatisfied obligation  
2 incurred when the limited partnership was not a limited  
3 liability limited partnership, the following rules apply:

4 "(1) Each person that was a general partner when the  
5 obligation was incurred and that has not been released from  
6 the obligation under Section 10A-9A-6.07 shall contribute to  
7 the limited partnership for the purpose of enabling the  
8 limited partnership to satisfy the obligation. The  
9 contribution due from each of those persons is in proportion  
10 to the right to receive distributions in the capacity of  
11 general partner in effect for each of those persons when the  
12 obligation was incurred.

13 "(2) If a person does not contribute the full amount  
14 required under paragraph (1) with respect to an unsatisfied  
15 obligation of the limited partnership, the other persons  
16 required to contribute by paragraph (1) on account of the  
17 obligation shall contribute the additional amount necessary to  
18 discharge the obligation. The additional contribution due from  
19 each of those other persons is in proportion to the right to  
20 receive distributions in the capacity of general partner in  
21 effect for each of those other persons when the obligation was  
22 incurred.

23 "(3) If a person does not make the additional  
24 contribution required by paragraph (2), further additional  
25 contributions are determined and due in the same manner as  
26 provided in that paragraph.

1           "(e) A person that makes an additional contribution  
2 under subsection (d)(2) or (3) may recover from any person  
3 whose failure to contribute under subsection (d)(1) or (2)  
4 necessitated the additional contribution. A person may not  
5 recover under this subsection more than the amount  
6 additionally contributed. A person's liability under this  
7 subsection may not exceed the amount the person failed to  
8 contribute.

9           "(f) The estate of a deceased individual is liable  
10 for the person's obligations under this section.

11           "(g) An assignee for the benefit of creditors of a  
12 limited partnership or a partner, or a person appointed by a  
13 court to represent creditors of a limited partnership or a  
14 partner, may enforce a person's obligation to contribute under  
15 subsection (d).

16           "§10A-9A-8.10.

17           ~~"Notwithstanding Sections 10A-1-9.31 and 10A-1-9.32,~~  
18 ~~a~~ A limited partnership that has been dissolved may be  
19 reinstated upon compliance with the following conditions:

20           "(a) the consent shall have been obtained from the  
21 partners or other persons entitled to consent at the time that  
22 is:

23           "(1) required for reinstatement under the  
24 partnership agreement; or

25           "(2) if the partnership agreement does not state the  
26 consent required for reinstatement, sufficient for dissolution  
27 under the partnership agreement; or

1           "(3) if the partnership agreement neither states the  
2 consent required for reinstatement nor for dissolution,  
3 sufficient for dissolution under this chapter;

4           "(b) in the case of a written objection to  
5 reinstatement having been delivered to the limited partnership  
6 before or at the time of the consent required by subsection  
7 (a) by the partners or other persons having authority under  
8 the partnership agreement to bring about or prevent  
9 dissolution of the limited partnership, those partners or  
10 persons withdrawing that written objection effective at the  
11 time of the consent required by subsection (a);

12           "(c) in the case of a limited partnership dissolved  
13 in a judicial proceeding initiated by one or more of the  
14 partners, the consent of each of those partners shall have  
15 been obtained and shall be included in the consent required by  
16 subsection (a); and

17           "(d) the filing of a certificate of reinstatement in  
18 accordance with Section 10A-9A-8.11.

19           "§10A-9A-10.01.

20           "~~Notwithstanding Section 10A-1-1.03, as~~ As used in  
21 this article, unless the context otherwise requires, the  
22 following terms mean:

23           "(1) "CONSTITUENT LIMITED PARTNERSHIP" means a  
24 constituent organization that is a limited partnership.

25           "(2) "CONSTITUENT ORGANIZATION" means an  
26 organization that is party to a merger under this article.



1           "(3) "CONVERTED ORGANIZATION" means the organization  
2 into which a converting organization converts pursuant to this  
3 article.

4           "(4) "CONVERTING LIMITED PARTNERSHIP" means a  
5 converting organization that is a limited partnership.

6           "(5) "CONVERTING ORGANIZATION" means an organization  
7 that converts into another organization pursuant to this  
8 article.

9           "(6) "GENERAL PARTNER" means a general partner of a  
10 limited partnership.

11           "(7) "GOVERNING STATUTE" of an organization means  
12 the statute that governs the organization's internal affairs.

13           "(8) "ORGANIZATION" means a general partnership,  
14 including a limited liability partnership; limited  
15 partnership, including a limited liability limited  
16 partnership; limited liability company; business trust;  
17 corporation; nonprofit corporation; professional corporation;  
18 or any other person having a governing statute. The term  
19 includes domestic and foreign organizations whether or not  
20 organized for profit.

21           "(9) "ORGANIZATIONAL DOCUMENTS" means:

22           "(A) for a general partnership or foreign general  
23 partnership, its partnership agreement and if applicable, its  
24 registration as a limited liability partnership or a foreign  
25 limited liability partnership;

26           "(B) for a limited partnership or foreign limited  
27 partnership, its certificate of formation and partnership

1 agreement, or comparable writings as provided in its governing  
2 statute;

3 "(C) for a limited liability company or foreign  
4 limited liability company, its certificate of formation and  
5 limited liability company agreement, or comparable writings as  
6 provided in its governing statute;

7 "(D) for a business or statutory trust or foreign  
8 business or statutory trust its agreement of trust and  
9 declaration of trust, or comparable writings as provided in  
10 its governing statute;

11 "(E) for a corporation for profit or foreign  
12 corporation for profit, its certificate of formation, bylaws,  
13 and other agreements among its shareholders that are  
14 authorized by its governing statute, or comparable writings as  
15 provided in its governing statute;

16 "(F) for a nonprofit corporation or foreign  
17 nonprofit corporation, its certificate of formation, bylaws,  
18 and other agreements that are authorized by its governing  
19 statute, or comparable writings as provided in its governing  
20 statute;

21 "(G) for a professional corporation or foreign  
22 professional corporation, its certificate of formation,  
23 bylaws, and other agreements among its shareholders that are  
24 authorized by its governing statute, or comparable writings as  
25 provided in its governing statute; and

26 "(H) for any other organization, the basic writings  
27 that create the organization and determine its internal

1 governance and the relations among the persons that own it,  
2 have an interest in it, or are members of it.

3 "(10) "SURVIVING ORGANIZATION" means an organization  
4 into which one or more other organizations are merged under  
5 this article, whether the organization pre-existed the merger  
6 or was created pursuant to the merger."

7 Section 6. This act shall become effective on  
8 January 1, 2022, following its passage and approval by the  
9 Governor, or its otherwise becoming law.