

1 HB2
2 153996-3
3 By Representative DeMarco
4 RFD: Judiciary
5 First Read: 14-JAN-14
6 PFD: 10/02/2013

1
2 ENROLLED, An Act,

3 To add Chapter 5A of Title 10A, comprised of
4 Sections 10A-5A-1.01 to 10A-5A-12.08, inclusive, to the Code
5 of Alabama 1975; to provide further for the formation of
6 limited liability companies; to provide what constitutes
7 notice for purposes of the law; to provide for the powers and
8 privileges of a limited liability company; to provide for the
9 limited liability company agreement and the certificate of
10 formation; to provide for the relations of members of the
11 limited liability company to third parties dealing with the
12 company; to provide for the transfer of an interest or other
13 right in a limited liability company to a third party or
14 creditor; to provide for the disassociation of a member; to
15 provide for dissolution and reinstatement; to provide for
16 legal actions by members; to provide for conversions and
17 mergers; to provide for the establishment of one or more
18 designated series of assets; to provide that this act applies
19 only to a limited liability company formed after January 1,
20 2015; and to amend Sections 10A-1-1.03 and 10A-1-1.08, Code of
21 Alabama 1975, to conform to this act; and to repeal Sections
22 10A-5-1.01 to 10A-5-9.06, Code of Alabama 1975, on January 1,
23 2017.

24 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

1 Section 1. Chapter 5A of Title 10A, comprised of
2 Sections 10A-5A-1.01 to 10A-5A-12.08, inclusive, is added to
3 the Code of Alabama 1975, to read as follows:

4 Chapter 5A Limited Liability Companies

5 ARTICLE 1

6 GENERAL PROVISIONS

7 §10A-5A-1.01. Short title.

8 This chapter and the provisions of Chapter 1, to the
9 extent applicable to limited liability companies, shall be
10 known and may be cited as the "Alabama Limited Liability
11 Company Law of 2014."

12 §10A-5A-1.02. Definitions.

13 Notwithstanding Section 10A-1-1.03, as used in this
14 chapter, unless the context otherwise requires, the following
15 terms mean:

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

20 (b) "Constituent limited liability company" means a
21 constituent organization that is a limited liability company.

22 (c) "Constituent organization" means an organization
23 that is party to a merger under Article 10.

1 (d) "Converted organization" means the organization
2 into which a converting organization converts pursuant to
3 Article 10.

4 (e) "Converting limited liability company" means a
5 converting organization that is a limited liability company.

6 (f) "Converting organization" means an organization
7 that converts into another organization pursuant to Article
8 10.

9 (g) "Disqualified person" means any person who is
10 not a qualified person.

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

15 (i) "Governing statute" means the statute that
16 governs an organization's internal affairs.

17 (j) "Limited liability company," except in the
18 phrase "foreign limited liability company," means an entity
19 formed or existing under this chapter.

20 (k) "Limited liability company agreement" means any
21 agreement (whether referred to as a limited liability company
22 agreement, operating agreement or otherwise), written, oral or
23 implied, of the member or members as to the activities and
24 affairs of a limited liability company or series thereof. The
25 limited liability company agreement of a limited liability

1 company having only one member shall not be unenforceable by
2 reason of there being only one person who is a party to the
3 limited liability company agreement. The limited liability
4 company agreement includes any amendments to the limited
5 liability company agreement.

6 (l) "Member" means a person admitted under Section
7 10A-5A-4.01 and not dissociated under Section 10A-5A-6.02.

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

16 (n) "Organizational documents" means:

17 (1) for a general partnership or foreign general
18 partnership, its partnership agreement and if applicable, its
19 registration as a limited liability partnership or a foreign
20 limited liability partnership;

21 (2) for a limited partnership or foreign limited
22 partnership, its certificate of formation and partnership
23 agreement, or comparable writings as provided in its governing
24 statute;

1 (3) 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 (4) 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 (5) for a corporation for profit or foreign
10 corporation for profit, its certificate of formation, bylaws,
11 and other agreements among its shareholders that are
12 authorized by its governing statute, or comparable writings as
13 provided in its governing statute;

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

18 (7) for a professional corporation or foreign
19 professional corporation, its certificate of formation,
20 bylaws, and other agreements among its shareholders that are
21 authorized by its governing statute, or comparable writings as
22 provided in its governing statute; and

23 (8) for any other organization, the basic writings
24 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 (o) "Qualified person," with respect to a limited
4 liability company rendering professional services in this
5 state, means a person authorized by this state or a regulatory
6 authority of this state to own a transferrable interest in
7 that limited liability company.

8 (p) "Surviving organization" means an organization
9 into which one or more other organizations are merged under
10 Article 10, whether the organization pre-existed the merger or
11 was created pursuant to the merger.

12 (q) "Transfer" means an assignment, conveyance,
13 deed, bill of sale, lease, mortgage, security interest,
14 encumbrance, gift, or transfer by operation of law.

15 (r) "Transferee" means a person to which all or part
16 of a transferable interest has been transferred, whether or
17 not the transferor is a member.

18 (s) "Transferrable interest" means a member's right
19 to receive distributions from a limited liability company or a
20 series thereof.

21 §10A-5A-1.03. Knowledge; notice.

22 (a) A person knows a fact when the person:

23 (1) has actual knowledge of it; or

24 (2) is deemed to know it under law other than this
25 chapter.

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

2 (1) knows of it;

3 (2) receives notification of it;

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

6 (4) is deemed to have notice of the fact under
7 subsection (d).

8 (c) A person notifies another of a fact by taking
9 steps reasonably required to inform the other person in
10 ordinary course, whether or not the other person knows the
11 fact.

12 (d) A person is deemed to have notice of a limited
13 liability company's:

14 (1) matters included in the certificate of formation
15 under Sections 10A-5A-2.01(a)(1), (a)(2), (a)(3), (a)(4) and,
16 if applicable, (a)(5) upon filing;

17 (2) dissolution, 90 days after a statement of
18 dissolution under Section 10A-5A-7.02(b)(1) becomes effective;

19 (3) merger or conversion, 90 days after a statement
20 of merger or statement of conversion under Article 10 becomes
21 effective; and

22 (4) reinstatement, 90 days after a certificate of
23 reinstatement under Section 10A-5A-7.08 becomes effective.

24 (e) A member's knowledge, notice or receipt of a
25 notification of a fact relating to the limited liability

1 company is not knowledge, notice or receipt of a notification
2 of a fact by the limited liability company solely by reason of
3 the member's capacity as a member.

4 §10A-5A-1.04. Powers and privileges.

5 (a) A limited liability company is a separate legal
6 entity. A limited liability company's status for tax purposes
7 shall not affect its status as a separate legal entity formed
8 under this chapter.

9 (b) A limited liability company shall possess and
10 may exercise all the powers and privileges granted and
11 enumerated by Chapter 1 or by any other law or by its limited
12 liability company agreement, together with any powers
13 incidental thereto, including those powers and privileges
14 necessary or convenient to the conduct, promotion, or
15 attainment of the business, purposes, or activities and
16 affairs of the limited liability company.

17 (c) A limited liability company may carry on any
18 lawful activity, whether or not for profit.

19 (d) A series established under this chapter has the
20 power and capacity, in the series' own name, to:

21 (1) sue and be sued;

22 (2) contract;

23 (3) hold and convey title to assets of the series,
24 including real property, personal property, and intangible
25 property; and

1 (4) grant liens and security interests in assets of
2 the series.

3 §10A-5A-1.05. Governing law.

4 The law of this state governs:

5 (a) the organization and internal affairs of a
6 limited liability company, or series thereof;

7 (b) the liability of a member as a member for the
8 debts, obligations, or other liabilities of a limited
9 liability company, or series thereof;

10 (c) the authority of the members and agents of a
11 limited liability company, or series thereof; and

12 (d) the availability of the assets of a series or
13 the limited liability company for the obligations of another
14 series or the limited liability company.

15 §10A-5A-1.06. Rules of construction.

16 (a) It is the policy of this chapter and this state
17 to give maximum effect to the principles of freedom of
18 contract and to the enforceability of limited liability
19 company agreements.

20 (b) Unless displaced by particular provisions of
21 this chapter, the principles of law and equity supplement this
22 chapter.

23 (c) The rule that statutes in derogation of the
24 common law are to be strictly construed shall have no
25 application to this chapter.

1 (d) The use of any gender shall be applicable to all
2 genders. The captions contained in this chapter are for
3 purposes of convenience only and shall not control or affect
4 the construction of this chapter.

5 (e) Sections 7-9A-406 and 7-9A-408 of the Uniform
6 Commercial Code, and all successor statutes thereto, do not
7 apply to any interest in a limited liability company,
8 including all rights, powers, and interests arising under a
9 limited liability company agreement or this chapter. This
10 provision prevails over Sections 7-9A-406 and 7-9A-408 of the
11 Uniform Commercial Code, and all successor statutes thereto,
12 and is expressly intended to permit the enforcement of the
13 provisions of a limited liability company agreement that would
14 otherwise be ineffective under Sections 7-9A-406 and 7-9A-408
15 of the Uniform Commercial Code, and all successor statutes
16 thereto.

17 (f) Division E of Article 3 of Chapter 1 shall have
18 no application to this chapter.

19 (g) Sections 10A-1-1.03(75), (84), (91), and (94)
20 shall have no application to this chapter.

21 (h) Section 10A-1-2.13(c) shall have no application
22 to this chapter.

23 §10A-5A-1.07. Application of partnership provisions
24 to limited liability companies; classification for federal
25 income tax purposes.

1 Subject to Section 10A-5A-3.01:

2 (a) The terms "partnership" and "limited
3 partnership," when used in any chapter or title other than the
4 Alabama Limited Liability Company Law, the Alabama General
5 Partnership Law, and the Alabama Limited Partnership Law, and
6 any successors of those laws, include a limited liability
7 company organized under this chapter, unless the context
8 requires otherwise.

9 (b) Notwithstanding subsection (a), for purposes of
10 taxation, other than Chapter 14A of Title 40, a limited
11 liability company or foreign limited liability company shall
12 be treated as a partnership unless it is classified otherwise
13 for federal tax purposes, in which case it shall be classified
14 in the same manner as it is for federal tax purposes.

15 §10A-5A-1.08. Limited liability company agreement;
16 scope; function; and limitations.

17 (a) Except as otherwise provided in subsections (b)
18 and (c):

19 (1) the limited liability company agreement governs
20 relations among the members as members and between the members
21 and the limited liability company; and

22 (2) to the extent the limited liability company
23 agreement does not otherwise provide for a matter described in
24 subsection (a) (1), this chapter governs the matter.

1 (b) (1) To the extent that, at law or in equity, a
2 member or other person has duties, including fiduciary duties,
3 to the limited liability company, or to another member or to
4 another person that is a party to or is otherwise bound by a
5 limited liability company agreement, the member's or other
6 person's duties may be expanded or restricted or eliminated by
7 a written limited liability company agreement, but the implied
8 contractual covenant of good faith and fair dealing may not be
9 eliminated.

10 (2) A written limited liability company agreement
11 may provide for the limitation or elimination of any and all
12 liabilities for breach of contract and breach of duties,
13 including fiduciary duties, of a member or other person to a
14 limited liability company or to another member or to another
15 person that is a party to or is otherwise bound by a limited
16 liability company agreement, but a limited liability company
17 agreement may not limit or eliminate liability for any act or
18 omission that constitutes a bad faith violation of the implied
19 contractual covenant of good faith and fair dealing.

20 (3) A member or other person shall not be liable to
21 a limited liability company or to another member or to another
22 person that is a party to or is otherwise bound by a limited
23 liability company agreement for breach of fiduciary duty for
24 the member's or other person's good faith reliance on the
25 limited liability company agreement.

1 (4) A limited liability company agreement may
2 provide that:

3 (A) a member or transferee who fails to perform in
4 accordance with, or to comply with the terms and conditions
5 of, the limited liability company agreement shall be subject
6 to specified penalties or specified consequences; and

7 (B) at the time or upon the happening of events
8 specified in the limited liability company agreement, a member
9 or transferee may be subject to specified penalties or
10 specified consequences.

11 (5) A penalty or consequence that may be specified
12 under paragraph (4) of this subsection may include and take
13 the form of reducing or eliminating the defaulting member's or
14 transferee's proportionate interest in a limited liability
15 company, subordinating the member's or transferee's
16 transferable interest to that of non-defaulting members or
17 transferees, forcing a sale of that transferable interest,
18 forfeiting the defaulting member's or transferee's
19 transferable interest, the lending by other members or
20 transferees of the amount necessary to meet the defaulting
21 member's or transferee's commitment, a fixing of the value of
22 the defaulting member's or transferee's transferable interest
23 by appraisal or by formula and redemption or sale of the
24 transferable interest at that value, or other penalty or
25 consequence.

1 ~~(6) Any provision limiting the duties and rights of~~
2 ~~members or limiting or eliminating the liabilities for breach~~
3 ~~of contract or breach of duties must be conspicuous in the~~
4 ~~limited liability company agreement. A provision is~~
5 ~~conspicuous if it is printed in boldface and is printed in all~~
6 ~~capital letters.~~

7 ~~(6) (7)~~ (6) A written limited liability company
8 agreement may supersede, in whole or in part, the provisions
9 of Division C of Article 3 of Chapter 1.

10 (c) A limited liability company agreement may not:

11 (1) vary the nature of the limited liability company
12 as a separate legal entity under Section 10A-5A-1.04(a);

13 (2) vary the law applicable under Section
14 10A-5A-1.05;

15 (3) restrict the rights under this chapter of a
16 person other than a member, dissociated member, or transferee;

17 (4) vary the power of the court under Section
18 10A-5A-2.05;

19 (5) eliminate the implied contractual covenant of
20 good faith and fair dealing as provided under Section
21 10A-5A-1.08(b) (1);

22 (6) eliminate or limit the liability of a member or
23 other person for any act or omission that constitutes a bad
24 faith violation of the implied contractual covenant of good

1 faith and fair dealing as provided under Section
2 10A-5A-1.08(b)(2);

3 (7) waive the requirements of Section
4 10A-5A-4.04(c);

5 (8) vary the law applicable under Section
6 10A-5A-4.06(c);

7 (9) reduce the limitations period specified under
8 Section 10A-5A-4.06(d) for an action commenced under other
9 applicable law;

10 (10) waive the prohibition on issuance of a
11 certificate of a transferable interest in bearer form under
12 Section 10A-5A-5.02(c);

13 (11) vary the power of a court to decree dissolution
14 in the circumstances specified in Section 10A-5A-7.01(d) or in
15 Section 10A-5A-11.09(e);

16 (12) vary the requirement to wind up a limited
17 liability company's activities and affairs as specified in
18 Section 10A-5A-7.02(a);

19 (13) vary the provisions of Section 10A-5A-8.01;

20 (14) vary the right of a member under Section
21 10A-5A-10.09; or

22 (15) waive the requirements of Section
23 10A-5A-11.02(b).

1 §10A-5A-1.09. Limited liability company agreement;
2 effect on limited liability company and persons admitted as
3 members.

4 (a) A limited liability company is bound by and may
5 enforce the limited liability company agreement, whether or
6 not the limited liability company has itself manifested assent
7 to the limited liability company agreement.

8 (b) A person that is admitted as a member of a
9 limited liability company becomes a party to and assents to
10 the limited liability company agreement except as provided in
11 Section 10A-5A-4.04(c).

12 (c) Two or more persons intending to be the initial
13 members of a limited liability company may make an agreement
14 providing that upon the formation of the limited liability
15 company, the agreement will become the limited liability
16 company agreement. One person intending to be the initial
17 member of a limited liability company may assent to terms
18 providing that upon the formation of the limited liability
19 company the terms will become the limited liability company
20 agreement.

21 §10A-5A-1.10. Limited liability company agreement;
22 effect on third parties and relationship to writings effective
23 on behalf of limited liability company.

24 (a) If a limited liability company agreement
25 provides for the manner in which it may be amended, including

1 by requiring the approval of a person who is not a party to
2 the limited liability company agreement or the satisfaction of
3 conditions, it may be amended only in that manner or as
4 otherwise permitted by law, except that the approval of any
5 person may be waived by that person and any conditions may be
6 waived by all persons for whose benefit those conditions were
7 intended.

8 (b) A limited liability company agreement may
9 provide rights to any person, including a person who is not a
10 party to the limited liability company agreement, to the
11 extent set forth in the limited liability company agreement.

12 (c) The obligations of a limited liability company
13 and its members to a person in the person's capacity as a
14 transferee or dissociated member are governed by the limited
15 liability company agreement. A transferee and a dissociated
16 member are bound by the limited liability company agreement.

17 (d) If a writing that has been delivered by a
18 limited liability company for filing in accordance with
19 Article 3 of Chapter 1 and has become effective conflicts with
20 a provision of the limited liability company agreement:

21 (1) The limited liability company agreement prevails
22 as to members, dissociated members, and transferees; and

23 (2) The writing prevails as to other persons to the
24 extent they reasonably rely on the writing.

25 ARTICLE 2

1 FORMATION

2 §10A-5A-2.01. Formation.

3 (a) In order to form a limited liability company,
4 one or more organizers must execute a certificate of formation
5 and deliver it for filing to the filing officer provided for
6 in subsection (e). Notwithstanding Section 10A-1-3.05, the
7 certificate of formation shall set forth:

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

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

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

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

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

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

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

23 (c) The fact that a certificate of formation has
24 been filed and is effective in accordance with Article 4 of
25 Chapter 1 is notice of the matters required to be included by

1 Subsections (a) (1), (a) (2), (a) (3), and (a) (4) and if
2 applicable, (a) (5), but is not notice of any other fact.

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

10 (e) A certificate of formation shall be delivered
11 for filing to the judge of probate of the county in which the
12 initial registered office of the limited liability company is
13 located pursuant to Article 4 of Chapter 1 unless the
14 certificate of formation is required to be delivered for
15 filing to a different filing officer under Article 10.

16 §10A-5A-2.02. Amendment or restatement of
17 certificate of formation.

18 Notwithstanding Division B of Article 3 of Chapter
19 1:

20 (a) A certificate of formation may be amended at any
21 time.

22 (b) A certificate of formation may be restated with
23 or without amendment at any time.

24 (c) To amend its certificate of formation, a limited
25 liability company must deliver a certificate of amendment for

1 filing to the filing officer provided for in subsection (g)
2 which certificate of amendment shall state:

3 (1) the name of the limited liability company;

4 (2) the date of filing of its certificate of
5 formation, and of all prior amendments and the filing office
6 or offices where filed; and

7 (3) the changes the amendment makes to the
8 certificate of formation as most recently amended or restated.

9 (d) To restate its certificate of formation, a
10 limited liability company must deliver a restated certificate
11 of formation for filing to the filing officer provided for in
12 subsection (g). A restated certificate of formation must:

13 (1) be designated as such in the heading;

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

15 (3) state the date of the filing of its certificate
16 of formation, and of all prior amendments and the filing
17 office or offices where filed; and

18 (4) set forth any amendment or change effected in
19 connection with the restatement of the certificate of
20 formation.

21 Any such restatement that effects an amendment shall
22 be subject to any other provision of this chapter, not
23 inconsistent with this section, which would apply if a
24 separate certificate of amendment were filed to effect the
25 amendment or change.

1 (e) The original certificate of formation, as
2 theretofore amended, shall be superseded by the restated
3 certificate of formation and thenceforth, the restated
4 certificate of formation, including any further amendment or
5 changes made thereby, shall be the certificate of formation of
6 the limited liability company, but the original effective date
7 of formation shall remain unchanged.

8 (f) An amended or restated certificate of formation
9 may contain only provisions that would be permitted at the
10 time of the amendment if the amended or restated certificate
11 of formation were a newly filed original certificate of
12 formation.

13 (g) If a limited liability company is not an
14 organization described in Section 10A-1-4.02(c)(4), then that
15 limited liability company shall deliver the certificate of
16 amendment or the restated certificate of formation for filing
17 with the judge of probate in whose office the original
18 certificate of formation is filed. If a limited liability
19 company is an organization described in
20 Section 10A-1-4.02(c)(4), then that limited liability company
21 shall deliver the certificate of amendment or the restated
22 certificate of formation for filing with the Secretary of
23 State.

24 §10A-5A-2.03. Effect of filing amendment or
25 restatement of certificate of formation.

1 (a) The filing of a certificate of amendment to the
2 certificate of formation shall have the effect, and shall take
3 effect, as provided in Section 10A-1-3.14.

4 (b) The filing of a restated certificate of
5 formation shall have the effect, and shall take effect, as
6 provided in Section 10A-1-3.18.

7 §10A-5A-2.04. Execution of documents.

8 (a) A writing delivered to a filing officer for
9 filing pursuant to this chapter must be signed as provided by
10 this section.

11 (1) A limited liability company's initial
12 certificate of formation must be signed by at least one
13 organizer.

14 (2) A writing signed on behalf of a limited
15 liability company must be signed by a person authorized by the
16 limited liability company.

17 (3) A writing filed on behalf of a dissolved limited
18 liability company that has no members must be signed by the
19 person winding up the limited liability company's activities
20 and affairs under Section 10A-5A-7.03 or a person appointed or
21 designated under Section 10A-5A-7.03 to wind up those
22 activities and affairs.

23 (4) Any other writing must be signed by the person
24 on whose behalf the writing is delivered to the filing
25 officer.

1 (b) Any writing to be filed under this chapter may
2 be signed by an agent, including an attorney-in-fact. Powers
3 of attorney relating to the signing of the writing need not be
4 delivered to the filing officer.

5 §10A-5A-2.05. Signing and filing pursuant to
6 judicial order.

7 (a) If a person required by this chapter to sign a
8 writing or deliver a writing to a filing officer for filing
9 under this chapter does not do so, any other person that is
10 aggrieved by that failure may petition the circuit court in
11 the county in which the limited liability company's principal
12 place of business within this state is located, and if the
13 limited liability company does not have a principal place of
14 business within this state then the circuit court for the
15 county in which the limited liability company's most recent
16 registered office is located, to order:

17 (1) the person to sign the writing;

18 (2) the person to deliver the writing to the filing
19 officer for filing; or

20 (3) the filing officer to file the writing unsigned.

21 (b) If a petitioner under subsection (a) is not the
22 limited liability company or foreign limited liability company
23 to whom the writing pertains, the petitioner shall make the
24 limited liability company or foreign limited liability company
25 a party to the action. A person aggrieved under subsection (a)

1 may seek the remedies provided in subsection (a) in a separate
2 action against the person required to sign or deliver the
3 writing or as a part of any other action concerning the
4 limited liability company or foreign limited liability company
5 in which the person required to sign or deliver the writing is
6 made a party.

7 (c) A writing filed unsigned pursuant to this
8 section is effective without being signed.

9 (d) A court may award reasonable expenses, including
10 reasonable attorneys' fees, to the party or parties who
11 prevail, in whole or in part, with respect to any claim made
12 under subsection (a).

13 §10A-5A-2.06. Certificate of existence or
14 qualification.

15 (a) The Secretary of State, upon request and payment
16 of the requisite fee, shall furnish to any person a
17 certificate of existence for a limited liability company if
18 the writings filed in the office of the Secretary of State
19 show that the limited liability company has been formed under
20 the laws of this state. A certificate of existence shall
21 reflect only the information on file with the Secretary of
22 State. A certificate of existence must state:

23 (1) the limited liability company's name;

1 (2) that the limited liability company was formed
2 under the laws of this state, the date of formation, and the
3 filing office in which the certificate of formation was filed;

4 (3) whether the limited liability company has
5 delivered to the Secretary of State for filing a statement of
6 dissolution;

7 (4) whether the limited liability company has
8 delivered to the Secretary of State for filing a certificate
9 of reinstatement; and

10 (5) other facts of record in the office of the
11 Secretary of State that are specified by the person requesting
12 the certificate.

13 (b) The Secretary of State, upon request and payment
14 of the requisite fee, shall furnish to any person a
15 certificate of qualification for a foreign limited liability
16 company if the writings filed in the office of the Secretary
17 of State show that the Secretary of State has filed an
18 application for registration for authority to conduct
19 activities and affairs in this state and the registration has
20 not been revoked, withdrawn or terminated. A certificate of
21 qualification must state:

22 (1) the foreign limited liability company's name and
23 any alternate name adopted for use in this state;

24 (2) that the foreign limited liability company is
25 authorized to conduct activities and affairs in this state;

1 (3) that the Secretary of State has not revoked the
2 foreign limited liability company's registration;

3 (4) that the foreign limited liability company has
4 not filed with the Secretary of State a certificate of
5 withdrawal or otherwise terminated its registration; and

6 (5) other facts of record in the office of the
7 Secretary of State that are specified by the person requesting
8 the certificate.

9 (c) Subject to any qualification stated in the
10 certificate, a certificate of existence or certificate of
11 qualification issued by the Secretary of State is conclusive
12 evidence that the limited liability company is in existence or
13 the foreign limited liability company is authorized to conduct
14 activities and affairs in this state.

15 ARTICLE 3

16 RELATIONS OF MEMBERS TO PERSONS DEALING WITH LIMITED
17 LIABILITY COMPANY

18 §10A-5A-3.01. Liability of members to third parties.

19 A member of a limited liability company is not
20 liable, solely by reason of being a member, for a debt,
21 obligation, or liability of the limited liability company or a
22 series thereof, whether arising in contract, tort, or
23 otherwise or for the acts or omissions of any other member,
24 agent, or employee of the limited liability company or a
25 series thereof.

1 §10A-5A-3.02. Power to bind limited liability
2 company.

3 No person shall have the power to bind the limited
4 liability company, or a series thereof, except:

5 (a) to the extent the person is authorized to act as
6 the agent of the limited liability company or a series thereof
7 under or pursuant to the limited liability company agreement;

8 (b) to the extent the person is authorized to act as
9 the agent of the limited liability company or a series thereof
10 pursuant to Sections 10A-5A-4.07, 10A-5A-7.03 or 10A-5A-11.11;
11 or

12 (c) to the extent provided by law other than this
13 chapter.

14 Article 4

15 RELATIONS OF MEMBERS TO EACH OTHER AND TO THE
16 LIMITED LIABILITY COMPANY

17 §10A-5A-4.01. Admission of members.

18 (a) The initial member or members of a limited
19 liability company are admitted as a member or members upon the
20 formation of the limited liability company.

21 (b) After formation of a limited liability company,
22 a person is admitted as a member of the limited liability
23 company:

24 (1) as provided in the limited liability company
25 agreement;

1 (2) as the result of a transaction effective under
2 Article 10;

3 (3) with the consent of all the members; or

4 (4) if, within 90 consecutive days after the
5 occurrence of the dissociation of the last remaining member:

6 (A) all holders of the transferable interest last
7 transferred by the last person to have been a member consent
8 to the designation of a person to be admitted as a member; and

9 (B) the designated person consents to be admitted as
10 a member effective as of the date the last person to have been
11 a member ceased to be a member.

12 (c) A person may be admitted as a member without
13 acquiring a transferable interest and without making or being
14 obligated to make a contribution to the limited liability
15 company. A person may be admitted as the sole member without
16 acquiring a transferable interest and without making or being
17 obligated to make a contribution to the limited liability
18 company.

19 §10A-5A-4.02. Limited liability company property.

20 A member has no interest in any specific property of
21 a limited liability company or a series thereof.

22 §10A-5A-4.03. Contribution.

23 A contribution by a member may be made to a limited
24 liability company as agreed upon by the members. A
25 contribution by a member associated with a series may be made

1 to that series as agreed upon by the members associated with
2 that series.

3 §10A-5A-4.04. Liability for contribution.

4 (a) A member's obligation to make a contribution to
5 a limited liability company, or a series thereof, is not
6 excused by the member's death, disability, or other inability
7 to perform personally. If a member does not make a
8 contribution required by an enforceable promise, the member or
9 the member's estate is obligated, at the election of the
10 limited liability company, or series thereof, to contribute
11 money equal to the value of the portion of the contribution
12 that has not been made. The foregoing election shall be in
13 addition to, and not in lieu of, any other rights, including
14 the right to specific performance, that the limited liability
15 company, or series thereof, may have under the limited
16 liability company agreement or applicable law.

17 (b) (1) The obligation of a member to make a
18 contribution to a limited liability company may be compromised
19 only by consent of all the members. A conditional obligation
20 of a member to make a contribution to a limited liability
21 company may not be enforced unless the conditions of the
22 obligation have been satisfied or waived as to or by that
23 member. Conditional obligations include contributions payable
24 upon a discretionary call of a limited liability company
25 before the time the call occurs.

1 (2) The obligation of a member associated with a
2 series to make a contribution to the series may be compromised
3 only by consent of all the members associated with that
4 series. A conditional obligation of a member to make a
5 contribution to a series may not be enforced unless the
6 conditions of the obligation have been satisfied or waived as
7 to or by that member. Conditional obligations include
8 contributions payable upon a discretionary call of that series
9 before the time the call occurs.

10 (3) Subsection (b)(1) shall not apply to a member's
11 obligation to make a contribution to a series of a limited
12 liability company.

13 (c) A promise by a member to make a contribution to
14 a limited liability company, or a series thereof, is not
15 enforceable unless set forth in a writing signed by the
16 member.

17 §10A-5A-4.05. Sharing of and right to distributions
18 before dissolution.

19 (a) (1) All members shall share equally in any
20 distributions made by a limited liability company before its
21 dissolution and winding up.

22 (2) A member has a right to a distribution before
23 the dissolution and winding up of a limited liability company
24 as provided in the limited liability company agreement. A
25 decision to make a distribution before the dissolution and

1 winding up of the limited liability company is a decision in
2 the ordinary course of activities and affairs of the limited
3 liability company. A member's dissociation does not entitle
4 the dissociated member to a distribution.

5 (3) A member does not have a right to demand and
6 receive a distribution from a limited liability company in any
7 form other than money. Except as otherwise provided in Section
8 10A-5A-7.06(c), a limited liability company may distribute an
9 asset in kind if each member receives a percentage of the
10 asset in proportion to the member's share of distributions.

11 (4) If a member becomes entitled to receive a
12 distribution, the member has the status of, and is entitled to
13 all remedies available to, a creditor of the limited liability
14 company with respect to the distribution.

15 (b) (1) All members associated with a series shall
16 share equally in any distributions made by the series before
17 its dissolution and winding up.

18 (2) A member associated with a series has a right to
19 a distribution before the dissolution and winding up of the
20 series as provided in the limited liability company agreement.
21 A decision of the series to make a distribution before the
22 dissolution and winding up of the series is a decision in the
23 ordinary course of activities and affairs of the series. A
24 member's dissociation from a series with which the member is

1 associated does not entitle the dissociated member to a
2 distribution from the series.

3 (3) A member associated with a series does not have
4 a right to demand and receive a distribution from the series
5 in any form other than money. Except as otherwise provided in
6 Section 10A-5A-11.14(c), a series may distribute an asset in
7 kind if each member associated with the series receives a
8 percentage of the asset in proportion to the member's share of
9 distributions from the series.

10 (4) If a member associated with a series becomes
11 entitled to receive a distribution from the series, the member
12 has the status of, and is entitled to all remedies available
13 to, a creditor of the series with respect to the distribution.

14 (c) Subsection (a) shall not apply to a distribution
15 made by a series.

16 §10A-5A-4.06. Limitation on distributions and
17 liability for improper distributions.

18 (a)(1) A limited liability company shall not make a
19 distribution to a member to the extent that at the time of the
20 distribution, after giving effect to the distribution, all
21 liabilities of the limited liability company, other than
22 liabilities to members on account of their transferable
23 interests and liabilities for which the recourse of creditors
24 is limited to specific property of the limited liability
25 company, exceed the fair value of the assets of the limited

1 liability company, except that the fair value of the property
2 that is subject to a liability for which recourse of creditors
3 is limited shall be included in the assets of the limited
4 liability company only to the extent that the fair value of
5 the property exceeds that liability.

6 (2) A member who receives a distribution in
7 violation of subsection (a)(1) or the limited liability
8 company agreement, and who knew at the time of the
9 distribution that the distribution violated subsection (a)(1)
10 or the limited liability company agreement, shall be liable to
11 the limited liability company for the amount of the
12 distribution. A member who receives a distribution in
13 violation of subsection (a)(1) or the limited liability
14 company agreement, and who did not know at the time of the
15 distribution that the distribution violated subsection (a)(1)
16 or the limited liability company agreement, shall not be
17 liable for the amount of the distribution.

18 (b)(1) A series shall not make a distribution to a
19 member associated with the series to the extent that at the
20 time of the distribution, after giving effect to the
21 distribution, all liabilities of the series, other than
22 liabilities to members associated with the series on account
23 of their transferable interests and liabilities for which the
24 recourse of creditors is limited to specific property of the
25 series, exceed the fair value of the assets of the series,

1 except that the fair value of the property that is subject to
2 a liability for which recourse of creditors is limited shall
3 be included in the assets of the series only to the extent
4 that the fair value of the property exceeds that liability.

5 (2) A member associated with a series who receives a
6 distribution in violation of ~~paragraph (1)~~ subsection (b) (1)
7 or the limited liability company agreement, and who knew at
8 the time of the distribution that the distribution violated
9 ~~paragraph (1)~~ subsection (b) (1) or the limited liability
10 company agreement, shall be liable to that series for the
11 amount of the distribution. A member associated with a series
12 who receives a distribution in violation of ~~paragraph (1)~~
13 subsection (b) (1) or the limited liability company agreement,
14 and who did not know at the time of the distribution that the
15 distribution violated ~~paragraph (1)~~ subsection (b) (1) or the
16 limited liability company agreement, shall not be liable for
17 the amount of the distribution.

18 (3) Subsection (a) shall not apply to a distribution
19 made by a series.

20 (c) Except as ~~otherwise~~ provided in subsection (d),
21 this section shall not affect any obligation or liability of a
22 member under other applicable law for the amount of a
23 distribution.

1 (d) An action under this section or other applicable
2 law is barred if not commenced within two years after the
3 distribution.

4 (e) For purposes of Sections 10A-5A-4.06(a) and
5 10A-5A-4.06(b), "distribution" does not include amounts
6 constituting reasonable compensation for present or past
7 services or reasonable payments made in the ordinary course of
8 the limited liability company's activities and affairs under a
9 bona fide retirement plan or other benefits program.

10 (f) This section shall not apply to distributions
11 made in accordance with Section 10A-5A-7.06.

12 §10A-5A-4.07. Direction and oversight of the limited
13 liability company.

14 (a) The limited liability company agreement of a
15 limited liability company may provide that the activities and
16 affairs of the limited liability company shall be under the
17 direction, and subject to the oversight, of: (1) its members;
18 (2) one or more managers; or (3) such other governance
19 structure as provided in the limited liability company
20 agreement. The limited liability company agreement of a
21 limited liability company may provide that the activities and
22 affairs of a series shall be under the direction, and subject
23 to the oversight, of: (1) the members associated with that
24 series; (2) one or more managers; or (3) such other governance

1 structure as provided in the limited liability company
2 agreement.

3 (b) If the limited liability company agreement does
4 not specify who shall direct and oversee the activities and
5 affairs of the limited liability company or a series thereof:

6 (1) (A) The activities and affairs of the limited
7 liability company shall be under the direction, and subject to
8 the oversight, of its members.

9 (B) The activities and affairs of a series shall be
10 under the direction, and subject to the oversight, of the
11 members associated with the series.

12 (C) Subsection (b) (1) (A) shall not apply to the
13 activities and affairs of a series.

14 (2) (A) Except as provided in ~~paragraph (3)~~
15 subsection (b) (3), a matter in the ordinary course of
16 activities and affairs of the limited liability company may be
17 decided by a majority of the members.

18 (B) Except as provided in ~~paragraph (3)~~ subsection
19 (b) (3), a matter in the ordinary course of activities and
20 affairs of a series may be decided by a majority of the
21 members associated with the series.

22 (C) ~~Subparagraph (A)~~ Subsection (b) (2) (A) shall not
23 apply to matters of a series.

24 (3) (A) The consent of all members is required to:

25 (i) amend the limited liability company agreement;

1 (ii) file a petition of the limited liability
2 company for relief under Title 11 of the United States Code,
3 or a successor statute of general application, or a comparable
4 federal, state, or foreign law governing insolvency;

5 (iii) undertake any act outside the ordinary course
6 of the limited liability company's activities and affairs; and

7 (iv) undertake, authorize, or approve any other act
8 or matter for which this chapter requires the consent of all
9 members.

10 (B) The consent of all members associated with a
11 series is required to:

12 (i) undertake any act outside the ordinary course of
13 the series' activities and affairs; and

14 (ii) undertake, authorize, or approve any other act
15 or matter for which this chapter requires the consent of all
16 the members associated with a series.

17 (c) Any matter requiring the consent of members may
18 be decided without a meeting, and a member may appoint a proxy
19 or other agent to consent or otherwise act for the member by
20 signing an appointing writing, personally or by the member's
21 agent.

22 (d) This chapter does not entitle a member to
23 remuneration for services performed for a limited liability
24 company, except for reasonable compensation for services

1 rendered in winding up the activities and affairs of the
2 limited liability company.

3 §10A-5A-4.08. Duties of persons with direction and
4 oversight.

5 (a) (1) The duties a person who has the authority to
6 direct and oversee the activities and affairs of a limited
7 liability company owes to the limited liability company and to
8 the members of the limited liability company include the duty
9 of loyalty and the duty of care as described in subsections
10 (b) and (d) (1).

11 (2) The duties a person who has the authority to
12 direct and oversee the activities and affairs of a series of a
13 limited liability company owes to that series and the members
14 associated with that series include the duty of loyalty and
15 the duty of care as described in subsections (c) and (d) (2).

16 (b) The duty of loyalty of a person described in
17 subsection (a) (1) to a limited liability company and its
18 members includes each of the following:

19 (1) To account to the limited liability company and
20 to hold as trustee for it any property, profit, or benefit
21 derived by that person in the conduct or winding up of the
22 limited liability company's activities and affairs or derived
23 from a use by that person of the limited liability company's
24 property, including the appropriation of the limited liability
25 company's opportunity.

1 (2) To refrain from dealing with the limited
2 liability company in the conduct or winding up of the limited
3 liability company's activities and affairs as or on behalf of
4 a party having an interest adverse to the limited liability
5 company.

6 (3) To refrain from competing with the limited
7 liability company in the conduct of the limited liability
8 company's activities and affairs before the dissolution of the
9 limited liability company.

10 (c) The duty of loyalty of a person described in
11 subsection (a) (2) to a series of a limited liability company
12 and the members associated with that series includes each of
13 the following:

14 (1) To account to the series and to hold as trustee
15 for it any property, profit, or benefit derived by that person
16 in the conduct or winding up of the series' activities and
17 affairs or derived from a use by that person of the series'
18 property, including the appropriation of the series'
19 opportunity.

20 (2) To refrain from dealing with the series in the
21 conduct or winding up of the series' activities and affairs as
22 or on behalf of a party having an interest adverse to the
23 series.

1 (3) To refrain from competing with the series in the
2 conduct of the series' activities and affairs before the
3 dissolution of the series.

4 (d) (1) The duty of care of a person described in
5 subsection (a) (1) to a limited liability company and its
6 members in the conduct or winding up of the limited liability
7 company's activities and affairs includes refraining from
8 engaging in grossly negligent or reckless conduct, intentional
9 misconduct, or a knowing violation of law.

10 (2) The duty of care of a person described in
11 subsection (a) (2) to a series of a limited liability company
12 and the members associated with that series in the conduct or
13 winding up of that series' activities and affairs includes
14 refraining from engaging in grossly negligent or reckless
15 conduct, intentional misconduct, or a knowing violation of
16 law.

17 (e) (1) A person described in subsection (a) (1) shall
18 discharge the duties to a limited liability company and its
19 members under this chapter and under the limited liability
20 company agreement and exercise any rights consistently with
21 the implied contractual covenant of good faith and fair
22 dealing.

23 (2) A person described in subsection (a) (2) shall
24 discharge the duties to a series of a limited liability
25 company and the members associated with that series under this

1 chapter and under the limited liability company agreement and
2 exercise any rights consistently with the implied contractual
3 covenant of good faith and fair dealing.

4 (f) A person described in subsection (a) does not
5 violate a duty or obligation under this chapter or under the
6 limited liability company agreement merely because that
7 person's conduct furthers that person's own interest.

8 (g) (1) Other than the implied contractual covenant
9 of good faith and fair dealing, the only duty a member who
10 does not have the authority to direct and oversee the
11 activities and affairs of a limited liability company owes to
12 a limited liability company or to the other members solely by
13 reason of being a member is to not disclose or otherwise use
14 information of the limited liability company to the detriment
15 of the limited liability company or the other members.

16 (2) Other than the implied contractual covenant of
17 good faith and fair dealing, the only duty a member associated
18 with a series who does not have the authority to direct and
19 oversee the activities and affairs of that series owes to that
20 series or to the other members associated with that series
21 solely by reason of being a member associated with that series
22 is to not disclose or otherwise use information of that series
23 to the detriment of that series or the other members
24 associated with that series.

1 (h) When the authority of a person to direct and
2 oversee the activities and affairs of a limited liability
3 company is terminated, each of the following applies:

4 (1) Except as provided in subsection (h)(2), the
5 person's duties terminate.

6 (2) The person's duties continue only with regard to
7 matters arising and events occurring before the termination of
8 the person's authority.

9 (i) When the authority of a person to direct and
10 oversee the activities and affairs of a series of a limited
11 liability company is terminated, each of the following
12 applies:

13 (1) Except as provided in subsection (i)(2), the
14 person's duties terminate.

15 (2) The person's duties continue only with regard to
16 matters arising and events occurring before the termination of
17 the person's authority.

18 §10A-5A-4.09. Records to be kept; right of members
19 and dissociated members to information.

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

21 (a) Each limited liability company shall maintain
22 the following records:

23 (1) A current list of the full name and last known
24 business or residence street address of each member.

1 (2) A copy of the filed certificate of formation and
2 all amendments thereto, together with executed copies of any
3 powers of attorney pursuant to which any documents have been
4 executed.

5 (3) Copies of the limited liability company's
6 federal, state, and local income tax returns and reports, if
7 any, for the three most recent years.

8 (4) Copies of the then effective limited liability
9 company agreement including any amendments thereto.

10 (5) Copies of any financial statements of the
11 limited liability company for the three most recent years.

12 (b) Subject to subsection (g), on ten days' notice
13 made in a writing received by the limited liability company,
14 the records set forth in subsection (a) above, and any other
15 books and records of the limited liability company, wherever
16 situated, are subject to inspection and copying for any proper
17 purpose by any member or the member's agent or attorney during
18 regular business hours. Subject to subsection (g), any person
19 with the authority to bind the limited liability company under
20 Section 10A-5A-3.02 and any person with the authority to
21 direct and oversee the activities and affairs of a limited
22 liability company who, without reasonable cause, refuses to
23 allow any member or the member's agent or attorney to inspect
24 or copy any books or records of the limited liability company
25 for any proper purpose shall be personally liable to the

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

4 (c) Subject to subsection (g), on thirty days'
5 notice made in a writing received by a limited liability
6 company, a dissociated member may inspect and copy, during
7 regular business hours, at a reasonable location specified by
8 the limited liability company, any record maintained by the
9 limited liability company, to the extent the information
10 pertains to the period during which the person was a member,
11 was material to the person's rights and duties under the
12 limited liability company agreement or this chapter when the
13 person was a member, and the person seeks the information in
14 good faith and for a proper purpose.

15 (d) A limited liability company may charge a person
16 that makes a demand under this section the reasonable costs of
17 labor and material for copying.

18 (e) A member or dissociated member may exercise
19 rights under this section through an agent or attorney, or in
20 the case of an individual under legal disability, a legal
21 representative. Any restriction or condition imposed by the
22 limited liability company agreement or under subsection (g)
23 applies both to the agent, attorney, or legal representative
24 and to the member or dissociated member.

1 (f) The rights under this section do not extend to a
2 transferee.

3 (g) In addition to any restriction or condition
4 stated in its limited liability company agreement, a limited
5 liability company, as a matter within the ordinary course of
6 its activities and affairs, may:

7 (1) impose reasonable restrictions and conditions on
8 access to and use of information to be furnished under this
9 section, including designating information confidential and
10 imposing nondisclosure and safeguarding obligations on the
11 recipient; and

12 (2) keep confidential from the members and any other
13 persons, for such period of time as the limited liability
14 company deems reasonable, any information that the limited
15 liability company reasonably believes to be in the nature of
16 trade secrets or other information the disclosure of which the
17 limited liability company in good faith believes is not in the
18 best interest of the limited liability company or could damage
19 the limited liability company or its activities and affairs,
20 or that the limited liability company is required by law or by
21 agreement with a third party to keep confidential.

22 §10A-5A-4.10. Indemnification, advancement,
23 reimbursement, and insurance.

24 A limited liability company, or a series thereof,
25 may indemnify and hold harmless a member or other person, pay

1 in advance or reimburse expenses incurred by a member or other
 2 person, and purchase and maintain insurance on behalf of a
 3 member or other person.

4 §10A-5A-4.11. Reliance on reports and information.

5 A member of a limited liability company shall be
 6 fully protected in relying in good faith upon the records of
 7 the limited liability company and upon information, opinions,
 8 reports, or statements presented by another member or agent of
 9 the limited liability company, or by any other person as to
 10 matters the member reasonably believes are within that other
 11 person's professional or expert competence, including
 12 information, opinions, reports, or statements as to the value
 13 and amount of the assets, liabilities, profits, or losses of
 14 the limited liability company or a series thereof, or the
 15 value and amount of assets or reserves or contracts,
 16 agreements, or other undertakings that would be sufficient to
 17 pay claims and obligations of the limited liability company,
 18 or series thereof, or to make reasonable provision to pay
 19 those claims and obligations, or any other facts pertinent to
 20 the existence and amount of assets from which distributions to
 21 members or creditors might properly be paid.

22 ARTICLE 5

23 TRANSFERABLE INTERESTS AND RIGHTS OF TRANSFEREES AND
 24 CREDITORS

25 §10A-5A-5.01. Member's transferable interest.

1 The only interest of a member that is transferable
2 is the member's transferable interest. A transferable interest
3 is personal property.

4 §10A-5A-5.02. Transfer of transferable interest.

5 (a) A transfer, in whole or in part, of a
6 transferable interest:

7 (1) is permissible;

8 (2) (A) does not by itself cause a member to cease to
9 be a member of the limited liability company; and

10 (B) does not by itself cause a member to cease to be
11 associated with a series of the limited liability company;

12 (3) does not by itself cause a dissolution and
13 winding up of the limited liability company, or a series
14 thereof; and

15 (4) subject to Section 10A-5A-5.04, does not entitle
16 the transferee to:

17 (A) participate in the direction or oversight of the
18 activities and affairs of the limited liability company, or a
19 series thereof; or

20 (B) have access to records or other information
21 concerning the activities and affairs of the limited liability
22 company, or a series thereof.

23 (b) A transferee has the right to receive, in
24 accordance with the transfer, distributions to which the
25 transferor would otherwise be entitled.

1 (c) A transferable interest may be evidenced by a
2 certificate of transferable interest issued by the limited
3 liability company, or a series thereof. A limited liability
4 company agreement may provide for the transfer of the
5 transferable interest represented by the certificate and make
6 other provisions with respect to the certificate. No
7 certificate of transferable interest shall be issued in bearer
8 form.

9 (d) A limited liability company, or a series
10 thereof, need not give effect to a transferee's rights under
11 this section until the limited liability company, or a series
12 thereof, has notice of the transfer.

13 (e) Except as otherwise provided in Sections
14 10A-5A-6.02(d)(2), 10A-5A-6.02(k), and 10A-5A-6.02(1) when a
15 member transfers a transferable interest, the transferor
16 retains the rights of a member other than the right to
17 distributions transferred and retains all duties and
18 obligations of a member.

19 (f) When a member transfers a transferable interest
20 to a person that is admitted as a member with respect to the
21 transferred interest, the transferee is liable for the
22 member's obligations under Sections 10A-5A-4.04,
23 10A-5A-4.06(a)(2), and 10A-5A-4.06(b)(2) to the extent that
24 the obligations are known to the transferee when the
25 transferee voluntarily accepts admission as a member.

1 §10A-5A-5.03. Charging order.

2 (a) On application to a court of competent
3 jurisdiction by any judgment creditor of a member or
4 transferee, the court may charge the transferable interest of
5 the judgment debtor with payment of the unsatisfied amount of
6 the judgment with interest. To the extent so charged and after
7 the limited liability company has been served with the
8 charging order, the judgment creditor has only the right to
9 receive any distribution or distributions to which the
10 judgment debtor would otherwise be entitled in respect of the
11 transferable interest.

12 (b) A limited liability company, after being served
13 with a charging order and its terms, shall be entitled to pay
14 or deposit any distribution or distributions to which the
15 judgment debtor would otherwise be entitled in respect of the
16 charged transferable interest into the hands of the clerk of
17 the court so issuing the charging order, and the payment or
18 deposit shall discharge the limited liability company and the
19 judgment debtor from liability for the amount so paid or
20 deposited and any interest that might accrue thereon. Upon
21 receipt of the payment or deposit, the clerk of the court
22 shall notify the judgment creditor of the receipt of the
23 payment or deposit. The judgment creditor shall, after any
24 payment or deposit into the court, petition the court for
25 payment of so much of the amount paid or deposited as is held

1 by the court as may be necessary to pay the judgment
2 creditor's judgment. To the extent the court has excess
3 amounts paid or deposited on hand after the payment to the
4 judgment creditor, the excess amounts paid or deposited shall
5 be distributed to the judgment debtor and the charging order
6 shall be extinguished. The court, may in its discretion, order
7 the clerk to deposit, pending the judgment creditor's
8 petition, any money paid or deposited with the clerk, in an
9 interest bearing account at a bank authorized to receive
10 deposits of public funds.

11 (c) A charging order constitutes a lien on the
12 judgment debtor's transferable interest.

13 (d) Subject to subsection (c):

14 (1) a judgment debtor that is a member retains the
15 rights of a member and remains subject to all duties and
16 obligations of a member; and

17 (2) a judgment debtor that is a transferee retains
18 the rights of a transferee and remains subject to all duties
19 and obligations of a transferee.

20 (e) This chapter does not deprive any member or
21 transferee of the benefit of any exemption laws applicable to
22 the member's or transferee's transferable interest.

23 (f) This section provides the exclusive remedy by
24 which a judgment creditor of a member or transferee may
25 satisfy a judgment out of the judgment debtor's transferable

1 interest and the judgment creditor shall have no right to
2 foreclose, under this chapter or any other law, upon the
3 charging order, the charging order lien, or the judgment
4 debtor's transferable interest. A judgment creditor of a
5 member or transferee shall have no right to obtain possession
6 of, or otherwise exercise legal or equitable remedies with
7 respect to, the property of a limited liability company. Court
8 orders for actions or requests for accounts and inquiries that
9 the judgment debtor might have made, are not available to the
10 judgment creditor attempting to satisfy the judgment out of
11 the judgment debtor's transferable interest and may not be
12 ordered by a court.

13 §10A-5A-5.04. Power of personal representative of
14 deceased member.

15 If a member dies, the deceased member's personal
16 representative or other legal representative may, for purposes
17 of settling the estate, exercise the rights of a current
18 member under Section 10A-5A-4.09.

19 ARTICLE 6

20 MEMBER'S DISSOCIATION

21 §10A-5A-6.01. Member's power to dissociate; wrongful
22 dissociation.

23 (a) A person has the power to dissociate as a
24 member.

1 (b) A person's dissociation from a limited liability
2 company is wrongful only if:

3 (1) it is in breach of an express provision of the
4 limited liability company agreement;

5 (2) the person is expelled as a member by judicial
6 determination under Section 10A-5A-6.02(e); or

7 (3) the person is dissociated by becoming a debtor
8 in bankruptcy or making a general assignment for the benefit
9 of creditors.

10 (c) A person that wrongfully dissociates as a member
11 is liable to the limited liability company and, subject to
12 Section 10A-5A-9.01, to the other members for damages caused
13 by the dissociation. The liability is in addition to any other
14 debt, obligation, or liability of the member to the limited
15 liability company or the other members.

16 §10A-5A-6.02. Event causing dissociation.

17 A person is dissociated as a member from a limited
18 liability company when any of the following occurs:

19 (a) the limited liability company has notice of the
20 person's express will to dissociate as a member, except that
21 if the person specifies a dissociation date later than the
22 date the limited liability company had notice, then the person
23 is dissociated as a member on that later date;

24 (b) an event stated in the limited liability company
25 agreement as causing the person's dissociation occurs;

1 (c) the person is expelled as a member pursuant to
2 the limited liability company agreement;

3 (d) the person is expelled as a member by the
4 unanimous consent of the other members if:

5 (1) it is unlawful to carry on the limited liability
6 company's activities and affairs with the person as a member;

7 (2) there has been a transfer of all of the person's
8 transferable interest other than a transfer for security
9 purposes;

10 (3) the person is an organization and, within 90
11 days after the limited liability company notifies the person
12 that it will be expelled as a member because the person has
13 filed a statement of dissolution or the equivalent, or its
14 right to conduct activities and affairs has been suspended by
15 its jurisdiction of formation, the statement of dissolution or
16 the equivalent has not been revoked or its right to conduct
17 activities and affairs has not been reinstated; or

18 (4) the person is an organization and, within 90
19 days after the limited liability company notifies the person
20 that it will be expelled as a member because the person has
21 been dissolved and its activities and affairs are being wound
22 up, the organization has not been reinstated or the
23 dissolution and winding up have not been revoked or cancelled;

1 (e) on application by the limited liability company,
2 the person is expelled as a member by judicial order because
3 the person:

4 (1) has engaged, or is engaging, in wrongful conduct
5 that has adversely and materially affected, or will adversely
6 and materially affect, the limited liability company's
7 activities and affairs;

8 (2) has willfully or persistently committed, or is
9 willfully and persistently committing, a material breach of
10 the limited liability company agreement or the person's duty
11 or obligation under this chapter or other applicable law; or

12 (3) has engaged, or is engaging, in conduct relating
13 to the limited liability company's activities and affairs that
14 makes it not reasonably practicable to carry on the activities
15 and affairs with the person as a member;

16 (f) in the case of a person who is an individual,
17 the person dies, there is appointed a guardian or general
18 conservator for the person or there is a judicial
19 determination that the person has otherwise become incapable
20 of performing the person's duties as a member under this
21 chapter or the limited liability company agreement;

22 (g) the person becomes a debtor in bankruptcy,
23 executes an assignment for the benefit of creditors, or seeks,
24 consents, or acquiesces to the appointment of a trustee,
25 receiver, or liquidator of the person or of all or

1 substantially all of the person's property, but this
2 subsection (g) shall not apply to a person who is the sole
3 remaining member of a limited liability company;

4 (h) in the case of a person that is a trust or is
5 acting as a member by virtue of being a trustee of a trust,
6 the trust's entire transferable interest in the limited
7 liability company is distributed, but not solely by reason of
8 the substitution of a successor trustee;

9 (i) in the case of a person that is an estate or is
10 acting as a member by virtue of being a personal
11 representative of an estate, the estate's entire transferable
12 interest in the limited liability company is distributed, but
13 not solely by reason of the substitution of a successor
14 personal representative;

15 (j) in the case of a member that is not an
16 individual, the legal existence of the person otherwise
17 terminates;

18 (k) the transfer of a member's entire remaining
19 transferable interest to another member; or

20 (l) the transfer of a member's entire remaining
21 transferable interest to a transferee upon the transferee's
22 becoming a member.

23 §10A-5A-6.03. Effect of person's dissociation as a
24 member.

1 (a) A person who has dissociated as a member shall
2 have no right to participate in the direction and oversight of
3 the activities and affairs of the limited liability company
4 and is entitled only to receive the distributions to which
5 that member would have been entitled if the member had not
6 dissociated.

7 (b) A person's dissociation as a member does not of
8 itself discharge the person from any duty, debt, obligation,
9 or liability to a limited liability company or the other
10 members that the person incurred while a member.

11 ARTICLE 7

12 DISSOLUTION, WINDING UP AND REINSTATEMENT

13 §10A-5A-7.01. Events of dissolution.

14 A limited liability company is dissolved and its
15 affairs shall be wound up upon the occurrence of the first of
16 the following events:

17 (a) An event or circumstance that the limited
18 liability company agreement states causes dissolution.

19 (b) Consent of all members to dissolve.

20 (c) When there is no remaining member, unless either
21 of the following applies:

22 (1) The holders of all the transferable interests in
23 the limited liability company agree in writing, within 90 days
24 after the dissociation of the last member, to continue the

1 legal existence and activities and affairs of the limited
2 liability company and to appoint one or more new members.

3 (2) The legal existence and activities and affairs
4 of the limited liability company are continued and one or more
5 new members are appointed in the manner stated in the limited
6 liability company agreement.

7 (d) On application by a member, the entry of an
8 order dissolving the limited liability company on the grounds
9 that it is not reasonably practicable to carry on the limited
10 liability company's activities and affairs in conformity with
11 the limited liability company agreement, which order is
12 entered by the circuit court for the county in which the
13 limited liability company's principal place of business within
14 this state is located, and if the limited liability company
15 does not have a principal place of business within this state
16 then by the circuit court for the county in which the limited
17 liability company's most recent registered office is located.

18 §10A-5A-7.02. Effect of dissolution.

19 Notwithstanding Section 10A-1-9.12:

20 (a) A dissolved limited liability company continues
21 its existence as a limited liability company but may not carry
22 on any activities and affairs except as is appropriate to wind
23 up and liquidate its activities and affairs, including:

24 (1) collecting its assets;

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

3 (3) discharging or making provisions for discharging
4 its liabilities;

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

7 (5) doing every other act necessary to wind up and
8 liquidate its activities and affairs.

9 (b) In winding up its activities and affairs, a
10 limited liability company may:

11 (1) deliver for filing a statement of dissolution to
12 the filing officer provided for in subsection (e) setting
13 forth:

14 (A) The name of the limited liability company.

15 (B) The date of filing its certificate of formation.

16 (C) That the limited liability company has
17 dissolved.

18 (D) The effective date of the statement of
19 dissolution, which shall be a date certain, if it is not to be
20 effective immediately.

21 (E) Any other information the limited liability
22 company deems appropriate.

23 (2) preserve the limited liability company's
24 activities and affairs and property as a going concern for a
25 reasonable time;

1 (3) prosecute, defend, or settle actions or
2 proceedings whether civil, criminal or administrative;

3 (4) transfer the limited liability company's assets;

4 (5) resolve disputes by mediation or arbitration;

5 and

6 (6) merge or convert in accordance with Article 10.

7 (c) The dissolution of a limited liability company
8 does not:

9 (1) transfer title to the limited liability
10 company's property;

11 (2) prevent the commencement of a proceeding by or
12 against the limited liability company in its limited liability
13 company name;

14 (3) terminate, abate or suspend a proceeding pending
15 by or against the limited liability company on the effective
16 date of dissolution;

17 (4) terminate the authority of its registered agent;

18 or

19 (5) abate, suspend or otherwise alter the
20 application of Section 10A-5A-3.01.

21 (d) A statement of dissolution shall be deemed to be
22 a filing instrument under Chapter 1.

23 (e) If a limited liability company is not an
24 organization described in Section 10A-1-4.02(c)(4), then that
25 limited liability company shall deliver the statement of

1 dissolution for filing to the judge of probate in whose office
2 the original certificate of formation is filed. If a limited
3 liability company is an organization described in
4 Section 10A-1-4.02(c)(4), then that limited liability company
5 shall deliver the statement of dissolution for filing to the
6 Secretary of State.

7 §10A-5A-7.03. Right to wind up activities and
8 affairs.

9 (a) The person or persons designated in the limited
10 liability company agreement to wind up the activities and
11 affairs of the dissolved limited liability company shall wind
12 up the activities and affairs of the limited liability company
13 in accordance with Section 10A-5A-7.02. If no person or
14 persons are designated in the limited liability company
15 agreement to wind up the activities and affairs of the
16 dissolved limited liability company, then the remaining
17 members of the dissolved limited liability company shall wind
18 up the activities and affairs of the limited liability company
19 in accordance with Section 10A-5A-7.02. If no person or
20 persons are designated in the limited liability company
21 agreement to wind up the activities and affairs of the
22 dissolved limited liability company and there are no remaining
23 members of the dissolved limited liability company, then all
24 of the holders of the transferable interests of the limited
25 liability company, or their designee, shall wind up the

1 activities and affairs of the limited liability company in
2 accordance with Section 10A-5A-7.02.

3 (b) The circuit court for the county in which the
4 limited liability company's principal place of business within
5 this state is located, and if the limited liability company
6 does not have a principal place of business within this state
7 then the circuit court for the county in which the limited
8 liability company's most recent registered office is located,
9 may order judicial supervision of the winding up of a
10 dissolved limited liability company, including the appointment
11 of a person to wind up the limited liability company's
12 activities and affairs:

13 (1) on application of a member, if the applicant
14 establishes good cause;

15 (2) on application of a transferee, if:

16 (A) the limited liability company does not have any
17 members; and

18 (B) within a reasonable time following the
19 dissolution no person having the authority to wind up the
20 activities and affairs of the limited liability company
21 pursuant to subsection (a) is winding up the activities and
22 affairs of the limited liability company; or

23 (3) in connection with a proceeding under Section
24 10A-5A-7.01(d).

1 §10A-5A-7.04. Known claims against dissolved limited
2 liability company.

3 Notwithstanding Sections 10A-1-9.01 and 10A-1-9.21:

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

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

12 (1) identify the dissolved limited liability
13 company;

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

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

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

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

1 (c) Unless sooner barred by any other statute
2 limiting actions, a claim against a dissolved limited
3 liability company is barred:

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

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

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

16 (e) Nothing in this section shall be deemed to
17 extend any otherwise applicable statute of limitations.

18 §10A-5A-7.05. Other claims against dissolved limited
19 liability company.

20 Notwithstanding Sections 10A-1-9.01 and 10A-1-9.22:

21 (a) A dissolved limited liability company may
22 publish notice of its dissolution and request that persons
23 with claims against the dissolved limited liability company
24 present them in accordance with the notice.

25 (b) The notice authorized by subsection (a) must:

1 (1) be published at least one time in a newspaper of
2 general circulation in the county in which the dissolved
3 limited liability company's principal office is located or, if
4 it has none in this state, in the county in which the limited
5 liability company's registered office is or was last located;

6 (2) describe the information that must be included
7 in a claim and provide a mailing address to which the claim is
8 to be sent; and

9 (3) state that if not sooner barred, a claim against
10 the dissolved limited liability company will be barred unless
11 a proceeding to enforce the claim is commenced within two
12 years after the publication of the notice.

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

21 (1) a claimant who was not given notice under
22 Section 10A-5A-7.04(b);

23 (2) a claimant whose claim was timely sent to the
24 dissolved limited liability company but not acted on by the
25 dissolved limited liability company; and

1 (3) a claimant whose claim is contingent at the
 2 effective date of the dissolution of the limited liability
 3 company, or is based on an event occurring after the effective
 4 date of the dissolution of the limited liability company.

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

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

10 (2) except as provided in subsection (h), if the
 11 assets of a dissolved limited liability company have been
 12 distributed after dissolution, against the person or persons
 13 owning the transferable interests to the extent of that
 14 person's proportionate share of the claim or of the assets
 15 distributed to that person after dissolution, whichever is
 16 less, but a person's total liability for all claims under ~~this~~
 17 subsection (d) may not exceed the total amount of assets
 18 distributed to that person after dissolution of the limited
 19 liability company.

20 (e) A dissolved limited liability company that
 21 published a notice under this section may file an application
 22 with the circuit court in the county in which the dissolved
 23 limited liability company's principal place of business is
 24 located and if the limited liability company does not have a
 25 principal place of business within this state, in the county

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

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

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

24 (h) Provision by the dissolved limited liability
25 company for security in the amount and the form ordered by the

1 circuit court under subsection (e) shall satisfy the dissolved
2 limited liability company's obligation with respect to claims
3 that are contingent, have not been made known to the dissolved
4 limited liability company, or are based on an event occurring
5 after the effective date of the dissolution of the limited
6 liability company, and those claims may not be enforced
7 against a person owning a transferable interest to whom assets
8 have been distributed by the dissolved limited liability
9 company after the effective date of the dissolution of the
10 limited liability company.

11 (i) Nothing in this section shall be deemed to
12 extend any otherwise applicable statute of limitations.

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

19 §10A-5A-7.06. Application of assets in winding up
20 limited liability company's activities and affairs.

21 Notwithstanding Section 10A-1-9.12, upon the winding
22 up of a limited liability company, the assets shall be applied
23 as follows:

24 (a) Payment, or adequate provision for payment,
25 shall be made to creditors, including, to the extent permitted

1 by law, members who are creditors, in satisfaction of
2 liabilities of the limited liability company.

3 (b) After a limited liability company complies with
4 subsection (a), any surplus must be distributed:

5 (1) first, to each person owning a transferable
6 interest that reflects contributions made on account of the
7 transferable interest and not previously returned, an amount
8 equal to the value of the person's unreturned contributions;
9 and

10 (2) then to each person owning a transferable
11 interest in the proportions in which the owners of
12 transferable interests share in distributions before
13 dissolution.

14 (c) If the limited liability company does not have
15 sufficient surplus to comply with subsection (b)(1), any
16 surplus must be distributed among the owners of transferable
17 interests in proportion to the value of their respective
18 unreturned contributions.

19 §10A-5A-7.07. Reinstatement after dissolution.

20 Notwithstanding Sections 10A-1-9.31 and 10A-1-9.32,
21 a limited liability company that has been dissolved may be
22 reinstated upon compliance with the following conditions:

23 (a) the consent shall have been obtained from the
24 members or other persons entitled to consent at the time that
25 is:

1 (1) required for reinstatement under the limited
2 liability company agreement; or

3 (2) if the limited liability company agreement does
4 not state the consent required for reinstatement, sufficient
5 for dissolution under the limited liability company agreement;
6 or

7 (3) if the limited liability company agreement
8 neither states the consent required for reinstatement nor for
9 dissolution, sufficient for dissolution under this chapter;

10 (b) in the case of a written objection to
11 reinstatement having been delivered to the limited liability
12 company before or at the time of the consent required by
13 subsection (a) by the members or other persons having
14 authority under the limited liability company agreement to
15 bring about or prevent dissolution of the limited liability
16 company, those members or persons withdrawing that written
17 objection effective at the time of the consent required by
18 subsection (a);

19 (c) in the case of a limited liability company
20 dissolved in a judicial proceeding initiated by one or more of
21 the members, the consent of each of those members shall have
22 been obtained and shall be included in the consent required by
23 subsection (a); and

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

1 §10A-5A-7.08. Certificate of reinstatement.

2 (a) In order to reinstate a limited liability
3 company under this article, a certificate of reinstatement
4 shall be delivered for filing to the filing officer provided
5 for in subsection (d) which certificate of reinstatement shall
6 have attached thereto a true and complete copy of the limited
7 liability company's certificate of formation. The certificate
8 of reinstatement shall state:

9 (1) the name of the limited liability company before
10 reinstatement;

11 (2) the name of the limited liability company
12 following reinstatement, which limited liability company name
13 shall comply with Section 10A-5A-7.09;

14 (3) the date of formation of the limited liability
15 company;

16 (4) the date of dissolution of the limited liability
17 company, if known;

18 (5) a statement that all applicable conditions of
19 Section 10A-5A-7.07 have been satisfied; and

20 (6) the address of the registered office and the
21 name of the registered agent at that address in compliance
22 with Article 5 of Chapter 1.

23 (b) A limited liability company shall not be
24 required to file a statement of dissolution in order to file a
25 certificate of reinstatement.

1 (c) A certificate of reinstatement shall be deemed
2 to be a filing instrument under Chapter 1.

3 (d) If a limited liability company is not an
4 organization described in Section 10A-1-4.02(c) (4), then that
5 limited liability company shall deliver the certificate of
6 reinstatement for filing to the judge of probate in whose
7 office the original certificate of formation is filed. If a
8 limited liability company is an organization described in
9 Section 10A-1-4.02(c) (4), then that limited liability company
10 shall deliver the certificate of reinstatement for filing to
11 the Secretary of State.

12 §10A-5A-7.09. Limited liability company name upon
13 reinstatement.

14 The name of a limited liability company following
15 reinstatement shall be determined as follows:

16 (a) If the limited liability company remains in the
17 Secretary of State's records as a limited liability company
18 which has not been dissolved, then the name of the limited
19 liability company following reinstatement shall be that
20 limited liability company name at the time of reinstatement.

21 (b) If the limited liability company is listed in
22 the Secretary of State's records as a limited liability
23 company that has been dissolved, then the name of a limited
24 liability company following reinstatement shall be that
25 limited liability company name at the time of reinstatement if

1 that limited liability company name complies with Article 5 of
2 Chapter 1 at the time of reinstatement. If that limited
3 liability company name does not comply with Article 5 of
4 Chapter 1, the name of the limited liability company following
5 reinstatement shall be that limited liability company name
6 followed by the word "reinstated."

7 (c) A limited liability company shall not be
8 required to file a statement of dissolution in order to retain
9 or obtain the name of the limited liability company.

10 §10A-5A-7.10. Effect of reinstatement.

11 (a) Subject to subsection (b), upon reinstatement,
12 the limited liability company shall be deemed for all purposes
13 to have continued its activities and affairs as if dissolution
14 had never occurred; and each right inuring to, and each debt,
15 obligation, and liability incurred by, the limited liability
16 company after the dissolution shall be determined as if the
17 dissolution had never occurred.

18 (b) The rights of persons acting in reliance on the
19 dissolution before those persons had notice of the
20 reinstatement shall not be adversely affected by the
21 reinstatement.

22 ARTICLE 8

23 LIMITED LIABILITY COMPANIES PERFORMING PROFESSIONAL
24 SERVICES

1 §10A-5A-8.01. Special rules for limited liability
2 companies performing professional services.

3 (a) A limited liability company shall have the power
4 to render professional services if it complies with the rules
5 of the licensing authority for such profession.

6 (b) Every individual who renders professional
7 services as a member or as an employee of a limited liability
8 company shall be liable for any negligent or wrongful act or
9 omission in which the individual personally participates to
10 the same extent the individual would be liable if the
11 individual rendered the services as a sole practitioner.

12 (c) Except as otherwise provided in subsection (b),
13 the personal liability of a member of any limited liability
14 company engaged in providing professional services shall be
15 governed by Section 10A-5A-3.01.

16 (d) The personal liability of a member, manager, or
17 employee of a foreign limited liability company engaged in
18 providing professional services shall be determined under the
19 law of the jurisdiction in which the foreign limited liability
20 company is organized.

21 (e) Nothing in this article shall restrict or limit
22 in any manner the authority or duty of a licensing authority
23 with respect to individuals rendering a professional service
24 within the jurisdiction of the licensing authority. Nothing in

1 this article shall restrict or limit any law, rule, or
2 regulation pertaining to standards of professional conduct.

3 (f) Nothing in this article shall limit the
4 authority of a licensing authority to impose requirements in
5 addition to those stated in this chapter on any limited
6 liability company or foreign limited liability
7 company rendering professional services within the jurisdiction
8 of the licensing authority.

9 (g) A member's transferrable interest in a limited
10 liability company organized to render professional services
11 may be voluntarily transferred only to a qualified person.

12 §10A-5A-8.02. Death or disqualification of member.

13 (a) In the case of a limited liability company
14 performing professional services, upon the death of a member,
15 upon a member becoming a disqualified person, or upon a
16 transferable interest being transferred by operation of law or
17 court decree to a disqualified person, the transferable
18 interest of the deceased member or of the disqualified person
19 may be transferred to a qualified person and, if not so
20 transferred, subject to Section 10A-5A-4.06, shall be
21 purchased by the limited liability company as provided in this
22 section.

23 (b) If the price of the transferable interest is not
24 fixed by the limited liability company agreement, the limited
25 liability company, within six months after the death or 30 days

1 after the disqualification or transfer, as the case may be,
2 shall make a written offer to pay to the holder of the
3 transferable interest a specified price deemed by the limited
4 liability company to be the fair value of the transferable
5 interest as of the date of the death, disqualification, or
6 transfer. The offer shall be given to the personal
7 representative of the estate of the deceased member, the
8 disqualified person, or the transferee, as the case may be,
9 and shall be accompanied by a balance sheet of the limited
10 liability company, as of the latest available date and not
11 more than 12 months prior to the making of the offer, and a
12 profit and loss statement of the limited liability company for
13 the 12 months' period ended on the date of the balance sheet.

14 (c) If within 30 days after the date of the written
15 offer from the limited liability company the fair value of the
16 transferable interest is agreed upon between the personal
17 representative of the estate of the deceased member, the
18 disqualified person, or the transferee, as the case may be,
19 and the limited liability company, payment therefor shall be
20 made within 90 days, or such other period as the parties may
21 agree, after the date of the offer. Upon payment of the agreed
22 value, the personal representative of the estate of the
23 deceased member, the disqualified person, or the transferee,
24 as the case may be, shall cease to have any interest in, or
25 claim to, the transferable interest.

1 (d) If within 30 days from the date of the written
2 offer from the limited liability company, the personal
3 representative of the estate of the deceased member, the
4 disqualified person, or the transferee, as the case may be,
5 and the limited liability company do not so agree as to the
6 fair value of the transferable interest, then either party may
7 commence a civil action in the circuit court in the county in
8 which the limited liability company's principal place of
9 business within this state is located, and if the limited
10 liability company does not have a principal place of business
11 within this state, then the circuit court for the county in
12 which the limited liability company's most recent registered
13 office is located requesting that the fair value of the
14 transferrable interest be found and determined. The personal
15 representative of the estate of the deceased member, the
16 disqualified person, or the transferee, as the case may be,
17 wherever residing, shall be made a party to the proceeding as
18 an action against that person's transferable interest quasi in
19 rem. Service shall be made in accordance with the rules of
20 civil procedure. The personal representative of the estate of
21 the deceased member, the disqualified person, or the
22 transferee, as the case may be, shall be entitled to a
23 judgment against the limited liability company for the amount
24 of the fair value of that person's transferable interest as of
25 the date of death, disqualification, or transfer. The court

1 may, in its discretion, order that the judgment be paid in
2 installments and with interest and on terms as the court may
3 determine. The court may, if it so elects, appoint one or more
4 persons as appraisers to receive evidence and recommend a
5 decision on the question of fair value. The appraisers shall
6 have the power and authority as shall be specified in the
7 order of their appointment or an amendment thereof.

8 (e) The judgment shall include an allowance for
9 interest at the rate the court finds to be fair and equitable
10 in all the circumstances, from the date of death,
11 disqualification, or transfer.

12 (f) The costs and expenses of any proceeding shall
13 be determined by the court and shall be assessed against the
14 parties in a manner the court deems equitable.

15 (g) The expenses shall include reasonable
16 compensation for and reasonable expenses of the appraisers and
17 a reasonable attorney's fee but shall exclude the fees and
18 expenses of counsel for and of experts employed by any party;
19 but: (1) if the fair value of the transferable interest as
20 determined materially exceeds the amount which the limited
21 liability company offered to pay therefor, or if no offer was
22 made by the limited liability company, the court in its
23 discretion may award to the personal representative of the
24 estate of the deceased member, the disqualified person, or the
25 transferee, as the case may be, the sum the court determines

1 to be reasonable compensation to any expert or experts
2 employed by the personal representative of the estate of the
3 deceased member, the disqualified person, or the transferee,
4 as the case may be, in the proceeding; and (2) if the offer of
5 the limited liability company for the transferable interest
6 materially exceeds the amount of the fair value of the
7 transferable interest as determined, the court in its
8 discretion may award to the limited liability company the sum
9 the court determines to be reasonable compensation to any
10 expert or experts employed by the limited liability company,
11 in the proceeding.

12 (h) If the purchase or transfer of the transferable
13 interest of a deceased member, a disqualified person or a
14 transferee is not completed within 12 months after the death
15 of the deceased member or 12 months after the disqualification
16 or transfer, as the case may be, the limited liability company
17 shall forthwith cancel the transferable interest on its books
18 and the personal representative of the estate of the deceased
19 member, the disqualified person, or the transferee, as the
20 case may be, shall have no further interest in the
21 transferable interest other than that person's right to
22 payment for the transferable interest under this section.

23 (i) This section shall not require a limited
24 liability company to purchase a transferable interest of a
25 disqualified person if the disqualification is for less than

1 12 months from the date of disqualification. A limited
 2 liability company may require the disqualified person to sell
 3 the disqualified person's transferable interest to the limited
 4 liability company upon any disqualification.

5 (j) Any provision of a limited liability company
 6 agreement regarding the purchase or transfer of a transferable
 7 interest of a limited liability company performing
 8 professional services shall be specifically enforceable in the
 9 courts of Alabama.

10 (k) Nothing in this section shall prevent or relieve
 11 a limited liability company from paying pension benefits or
 12 other deferred compensation.

13 ARTICLE 9

14 ACTIONS BY MEMBERS

15 §10A-5A-9.01. Direct action by members.

16 (a) Subject to subsection (b), a member may maintain
 17 a direct action against another member or members or the
 18 limited liability company, or a series thereof, to enforce the
 19 member's rights and otherwise protect the member's interests,
 20 including rights and interests under the limited liability
 21 company agreement or this chapter or arising independently of
 22 the membership relationship.

23 (b) A member maintaining a direct action under
 24 subsection (a) must plead and prove an actual or threatened
 25 injury that is not solely the result of an injury suffered or

1 threatened to be suffered by the limited liability company, or
2 series thereof.

3 (c) (1) A member may maintain a direct action to
4 enforce a right of a limited liability company if all members
5 at the time of suit are parties to the action.

6 (2) A member associated with a series may maintain a
7 direct action to enforce a right of the series if all members
8 associated with the series at the time of suit are parties to
9 the action.

10 (d) The accrual of, and any time limitation on, a
11 right of action for a remedy under this section is governed by
12 other law.

13 §10A-5A-9.02. Right of derivative action.

14 (a) A member may commence or maintain a derivative
15 action in the right of a limited liability company to enforce
16 a right of the limited liability company by complying with
17 this article.

18 (b) A member associated with a series of a limited
19 liability company may commence or maintain a derivative action
20 in the right of the series to enforce a right of the series by
21 complying with this article.

22 §10A-5A-9.03. Standing.

23 (a) A member may commence or maintain a derivative
24 action in the right of the limited liability company only if
25 the member:

1 (1) fairly and adequately represents the interests
2 of the limited liability company in enforcing the right of the
3 limited liability company; and

4 (2) either:

5 (A) was a member of the limited liability company at
6 the time of the act or omission of which the member complains;
7 or

8 (B) whose status as a member devolved upon the
9 person by operation of law or pursuant to the terms of the
10 limited liability company agreement from a person who was a
11 member at the time of the act or omission of which the member
12 complains.

13 (b) A member associated with a series of a limited
14 liability company may commence or maintain a derivative action
15 in the right of the series only if the member:

16 (1) fairly and adequately represents the interests
17 of the series in enforcing the right of the series; and

18 (2) either:

19 (A) was associated with the series at the time of
20 the act or omission of which the member complains; or

21 (B) whose status as a member associated with the
22 series devolved upon the person by operation of law or
23 pursuant to the terms of the limited liability company
24 agreement from a person who was a member associated with the

1 series at the time of the act or omission of which the member
2 complains.

3 §10A-5A-9.04. Demand.

4 A member may commence a derivative action in the
5 right of the limited liability company, or a series thereof,
6 if:

7 (a) the member first makes a written demand upon the
8 limited liability company or the series, as the case may be,
9 to bring an action to enforce the right and the limited
10 liability company or the series, as the case may be, does not
11 bring the action within a reasonable time; or

12 (b) a demand under subsection (a) would be futile.

13 §10A-5A-9.05. Pleading.

14 In a derivative action, the complaint must state
15 with particularity:

16 (a) the date and content of plaintiff's demand and
17 the response by the limited liability company or the series,
18 as the case may be, to the demand; or

19 (b) why the demand should be excused as futile.

20 §10A-5A-9.06. Stay of proceedings

21 For the purpose of allowing the limited liability
22 company or the series thereof, as the case may be, time to
23 undertake an inquiry into the allegations made in the demand
24 or complaint commenced pursuant to this article, the court may

1 stay any derivative action for the period the court deems
2 appropriate.

3 §10A-5A-9.07. Discontinuance or settlement.

4 A derivative action may not be dismissed or
5 compromised without the approval of the court, and notice of
6 the proposed dismissal or compromise shall be given to members
7 of the limited liability company or the members associated
8 with the series of the limited liability company, as the case
9 may be, in such manner as the court directs.

10 §10A-5A-9.08. Proceeds and expenses.

11 (a) Except as otherwise provided in subsection (b):

12 (1) any proceeds or other benefits of a derivative
13 action, whether by judgment, compromise, or settlement, belong
14 to the limited liability company or series thereof, as the
15 case may be, and not to the derivative plaintiff; and

16 (2) if the derivative plaintiff receives any
17 proceeds, the derivative plaintiff shall immediately remit
18 them to the limited liability company or series thereof, as
19 the case may be.

20 (b) If a derivative action is successful in whole or
21 in part, the court may award the plaintiff reasonable
22 expenses, including reasonable attorney's fees, from the
23 recovery of the limited liability company or the series
24 thereof, as the case may be.

1 §10A-5A-9.09. Applicability to foreign limited
2 liability companies.

3 In any derivative action in the right of a foreign
4 limited liability company, or a series thereof, the right of a
5 person to commence or maintain a derivative action in the
6 right of a foreign limited liability company, or a series
7 thereof, and any matters raised in the action covered by
8 Sections 10A-5A-9.02 through 10A-5A-9.08 shall be governed by
9 the law of the jurisdiction under which the foreign limited
10 liability company was formed; except that any matters raised
11 in the action covered by Sections 10A-5A-9.06, 10A-5A-9.07,
12 and 10A-5A-9.08 shall be governed by the law of this state.

13 ARTICLE 10

14 CONVERSIONS AND MERGERS

15 §10A-5A-10.01. Conversion.

16 (a) An organization other than a limited liability
17 company may convert to a limited liability company, and a
18 limited liability company may convert to an organization other
19 than a limited liability company pursuant to this section,
20 Sections 10A-5A-10.02 through 10A-5A-10.03, and a plan of
21 conversion, if:

22 (1) the governing statute of the organization that
23 is not a limited liability company authorizes the conversion;

1 (2) the law of the jurisdiction governing the
2 converting organization and the converted organization does
3 not prohibit the conversion; and

4 (3) the converting organization and the converted
5 organization each comply with the governing statute and
6 organizational documents applicable to that organization in
7 effecting the conversion.

8 (b) A plan of conversion must be in writing and must
9 include:

10 (1) the name, type of organization, and mailing
11 address of the principal office of the converting organization
12 before conversion;

13 (2) the name, type of organization, and mailing
14 address of the principal office of the converted organization
15 after conversion;

16 (3) the terms and conditions of the conversion,
17 including the manner and basis for converting interests in the
18 converting organization into any combination of money,
19 interests in the converted organization, and other
20 consideration allowed in Section 10A-5A-10.01(c); and

21 (4) the organizational documents of the converted
22 organization.

23 (c) In connection with a conversion, rights or
24 securities of or interests in the converting organization may
25 be exchanged for or converted into cash, property, or rights

1 or securities of or interests in the converted organization,
2 or, in addition to or in lieu thereof, may be exchanged for or
3 converted into cash, property, or rights or securities of or
4 interests in another organization or may be cancelled.

5 §10A-5A-10.02. Action on plan of conversion by
6 converting limited liability company.

7 (a) Subject to Section 10A-5A-10.09, a plan of
8 conversion must be consented to by all the members of a
9 converting limited liability company.

10 (b) Subject to Section 10A-5A-10.09 and any
11 contractual rights, after a conversion is approved, and at any
12 time before a filing is made under Section 10A-5A-10.03, a
13 converting limited liability company may amend the plan or
14 abandon the planned conversion:

15 (1) as provided in the plan; and

16 (2) except as prohibited by the plan, by the same
17 consent as was required to approve the plan.

18 §10A-5A-10.03. Filings required for conversion;
19 effective date.

20 (a) After a plan of conversion is approved:

21 (1) if the converting organization is an
22 organization formed under the laws of this state, the
23 converting organization shall file a statement of conversion
24 in accordance with subsection (c), which statement of

1 conversion must be signed in accordance with Section
2 10A-5A-2.04(a) and which must include:

3 (A) the name of the converting organization;

4 (B) the date of the filing of the certificate of
5 formation of the converting organization, if any, and all
6 prior amendments and the filing office or offices, if any,
7 where such is filed;

8 (C) a statement that the converting organization has
9 been converted into the converted organization;

10 (D) the name and type of organization of the
11 converted organization and the jurisdiction of its governing
12 statute;

13 (E) the street and mailing address of the principal
14 office of the converted organization;

15 (F) the date the conversion is effective under the
16 governing statute of the converted organization;

17 (G) a statement that the conversion was approved as
18 required by this chapter;

19 (H) a statement that the conversion was approved as
20 required by the governing statute of the converted
21 organization; and

22 (I) if the converted organization is a foreign
23 organization not authorized to conduct activities and affairs
24 in this state, the street and mailing address of an office for
25 the purposes of Section 10A-5A-10.04(b); and

1 (2) if the converted organization is a limited
2 liability company, the converting organization shall file a
3 certificate of formation in accordance with subsection (d),
4 which certificate of formation must include, in addition to
5 the information required by Section 10A-5A-2.01(a):

6 (A) a statement that the limited liability company
7 was converted from the converting organization;

8 (B) the name and type of organization of the
9 converting organization and the jurisdiction of the converting
10 organization's governing statute; and

11 (C) a statement that the conversion was approved in
12 a manner that complied with the converting organization's
13 governing statute.

14 (b) A conversion becomes effective:

15 (1) if the converted organization is a limited
16 liability company, when the certificate of formation takes
17 effect; and

18 (2) if the converted organization is not a limited
19 liability company, as provided by the governing statute of the
20 converted organization.

21 (c) If the converting organization is an
22 organization formed under the laws of this state and the
23 converting organization is not an organization described in
24 Section 10A-1-4.02(c)(4), then the converting organization
25 shall file the statement of conversion required under

1 subsection (a) (1) in the office of the judge of probate in the
2 county required by this title for the filing of its
3 organizational documents, if any, and if the organizational
4 documents were not required by this title to be filed in the
5 office of the judge of probate, then the converting
6 organization shall file the statement of conversion required
7 under subsection (a) (1) with the Secretary of State. If the
8 converting organization is an organization formed under the
9 laws of this state and the converting organization is an
10 organization described in Section 10A-1-4.02(c) (4), then the
11 converting organization shall file the statement of conversion
12 required under subsection (a) (1) with the Secretary of State.

13 (d) If the converted organization is a limited
14 liability company, the converting organization is an
15 organization formed under the laws of this state, and the
16 converting organization is not an organization described in
17 Section 10A-1-4.02(c) (4), then the converting organization
18 shall file the certificate of formation required under
19 subsection (a) (2) with the judge of probate of the county in
20 which a certificate of formation of a limited liability
21 company is filed under this chapter. If the converted
22 organization is a limited liability company, the converting
23 organization is an organization formed under the laws of this
24 state, and the converting organization is an organization
25 described in Section 10A-1-4.02(c) (4), then the converting

1 organization shall file the certificate of formation required
2 under subsection (a)(2) with the Secretary of State. If the
3 converted organization is a limited liability company and the
4 converting organization is not an organization formed under
5 the laws of this state, then the converting organization shall
6 file the certificate of formation required under subsection
7 (a)(2) with the judge of probate of the county in which a
8 certificate of formation of a limited liability company is
9 filed under this chapter.

10 (e) In the case of a statement of conversion or a
11 certificate of formation that is to be filed with the judge of
12 probate pursuant to subsections (c) and (d), the judge of
13 probate shall within 10 days transmit a certified copy of the
14 statement of conversion or certificate of formation to the
15 Secretary of State, along with the proper fee.

16 (f) In the case of a statement of conversion that is
17 to be filed with the Secretary of State pursuant to
18 subsections (c):

19 (1) if the converting organization is, immediately
20 prior to the conversion becoming effective, an organization
21 described in Section 10A-1-4.02(c)(4), but which has a
22 certificate of formation filed with the judge of probate, the
23 Secretary of State shall within 10 days transmit a certified
24 copy of the statement of conversion to the office of the judge
25 of probate in the county in which the certificate of formation

1 for such converting organization was filed along with the
2 proper fee for the probate judge.

3 (2) if the converting organization is, immediately
4 prior to the conversion becoming effective, an organization
5 described in Section 10A-1-4.02(c)(4), and did not file its
6 certificate of formation with the probate judge, but rather in
7 accordance with Section 10A-1-4.02(c)(4) filed its certificate
8 of formation with the Secretary of State, the Secretary of
9 State shall not transmit a certified copy of the statement of
10 conversion to the office of the judge of probate and shall not
11 collect any fee for the judge of probate.

12 (3) if the converting organization is, immediately
13 prior to the conversion becoming effective, an organization
14 described in Section 10A-1-4.02(c)(4), but is not required
15 under this title to file its organizational documents with the
16 judge of probate, the Secretary of State shall not transmit a
17 certified copy of the statement of the statement of conversion
18 to the office of the judge of probate and shall not collect
19 any fee for the judge of probate.

20 (g) In the case of a certificate of formation that
21 is to be filed with the Secretary of State pursuant to
22 subsection (d), the Secretary of State shall not transmit a
23 certified copy of the statement of conversion to the office of
24 the judge of probate and shall not collect any fee for the
25 judge of probate.

1 (h) After a conversion becomes effective, if the
2 converted organization is a limited liability company, then
3 all filing instruments required to be filed under this title
4 regarding that converted organization shall be filed with the
5 Secretary of State.

6 (i) If:

7 (1) the converting organization is a filing entity
8 or a foreign filing entity registered to conduct activities
9 and affairs in this state;

10 (2) the converted organization will be a filing
11 entity or a foreign filing entity registered to conduct
12 activities and affairs in this state;

13 (3) the name of the converting organization and the
14 converted organization are to be the same, other than words,
15 phrases or abbreviations indicating the type of entity; and

16 (4) the name of the converted organization complies
17 with Division A of Article 5 of Chapter 1 or
18 Section 10A-1-7.07, as the case may be; then notwithstanding
19 Division B of Article 5 of Chapter 1, no name reservation
20 shall be required and the converted organization shall for all
21 purpose of this title be entitled to utilize the name of the
22 converting organization without any further action by the
23 converting organization or the converted organization.

24 (j) A certified copy of any document required to be
25 filed under this section may be filed in the real estate

1 records in the office of the judge of probate in any county in
2 which the converting organization owned real property, without
3 payment and without collection by the judge of probate of any
4 deed or other transfer tax or fee. The judge of probate shall,
5 however, be entitled to collect a filing fee of five dollars
6 (\$5). Any such filing shall evidence chain of title, but lack
7 of filing shall not affect the converted organization's title
8 to such real property.

9 (k) A statement of conversion shall be a filing
10 instrument under Chapter 1.

11 (l) Except as set forth in subsection (f) (2), the
12 filing fees for a statement of conversion shall be the same
13 fee as provided in Section 10A-1-4.31(a) (5).

14 §10A-5A-10.04. Effect of conversion.

15 (a) When a conversion takes effect:

16 (1) all property owned by the converting
17 organization, or series thereof, remains vested in the
18 converted organization without reservation or impairment and
19 the title to any property vested by deed or otherwise in the
20 converting organization shall not revert or be in any way
21 impaired by reason of the conversion;

22 (2) all debts, obligations, or other liabilities of
23 the converting organization, or series thereof, continue as
24 debts, obligations, or other liabilities of the converted
25 organization and neither the rights of creditors, nor the

1 liens upon the property of the converting organization shall
2 be impaired by the conversion;

3 (3) an action or proceeding pending by or against
4 the converting organization, or series thereof, continues as
5 if the conversion had not occurred;

6 (4) except as prohibited by law other than this
7 chapter, all of the rights, privileges, immunities, powers,
8 and purposes of the converting organization, or series
9 thereof, remain vested in the converted organization;

10 (5) except as otherwise provided in the plan of
11 conversion, the terms and conditions of the plan of conversion
12 take effect;

13 (6) except as otherwise agreed, for all purposes of
14 the laws of this state, the converting organization, and any
15 series thereof, shall not be required to wind up its affairs
16 or pay its liabilities and distribute its assets, and the
17 conversion shall not be deemed to constitute a dissolution of
18 the converting organization, or series thereof;

19 (7) for all purposes of the laws of this state, the
20 rights, privileges, powers, interests in property, debts,
21 liabilities and duties of the converting organization, and all
22 series thereof, shall be the rights, privileges, powers,
23 interests in property, debts, liabilities and duties of the
24 converted organization, and shall not be deemed as a

1 consequence of the conversion, to have been transferred to the
2 converted organization;

3 (8) if the converted organization is a limited
4 liability company, for all purposes of the laws of this state,
5 the limited liability company shall be deemed to be the same
6 organization as the converting organization, and the
7 conversion shall constitute a continuation of the existence of
8 the converting organization in the form of a limited liability
9 company;

10 (9) if the converted organization is a limited
11 liability company, the existence of the limited liability
12 company shall be deemed to have commenced on the date the
13 converting organization commenced its existence in the
14 jurisdiction in which the converting organization was first
15 created, formed, organized, incorporated, or otherwise came
16 into being; and

17 (10) the conversion shall not affect the choice of
18 law applicable to matters arising prior to conversion.

19 (b) A converted organization that is a foreign
20 entity consents to the jurisdiction of the courts of this
21 state to enforce any debt, obligation or other liability for
22 which the converting limited liability company, or series
23 thereof, is liable if, before the conversion, the converting
24 limited liability company was subject to suit in this state on
25 the debt, obligation or other liability. If a converted

1 organization that is a foreign entity fails to designate or
2 maintain a registered agent, or the designated registered
3 agent cannot with reasonable diligence be served, then service
4 of process on that converted organization for the purposes of
5 enforcing a debt, obligation, or other liability under this
6 subsection may be made in the same manner and has the same
7 consequences as provided in Section 10A-1-5.35.

8 §10A-5A-10.05. Merger.

9 (a) A limited liability company may merge with one
10 or more other constituent organizations pursuant to this
11 section, Sections 10A-5A-10.06 through 10A-5A-10.08, and a
12 plan of merger, if:

13 (1) the governing statute of each of the other
14 organizations authorizes the merger;

15 (2) the merger is not prohibited by the law of a
16 jurisdiction that enacted any of those governing statutes; and

17 (3) each of the other organizations complies with
18 its governing statute in effecting the merger.

19 (b) A plan of merger must be in writing and must
20 include:

21 (1) the name, type of organization, and mailing
22 address of the principal office of each constituent
23 organization;

24 (2) the name, type of organization, and mailing
25 address of the principal office of the surviving organization

1 and, if the surviving organization is to be created pursuant
2 to the merger, a statement to that effect;

3 (3) the terms and conditions of the merger,
4 including the manner and basis for converting the interests in
5 each constituent organization into any combination of money,
6 interests in the surviving organization, and other
7 consideration as allowed by subsection (c);

8 (4) if the surviving organization is to be created
9 pursuant to the merger, the surviving organization's
10 organizational documents; and

11 (5) if the surviving organization is not to be
12 created pursuant to the merger, any amendments to be made by
13 the merger to the surviving organization's organizational
14 documents.

15 (c) In connection with a merger, rights or
16 securities of or interests in a constituent organization may
17 be exchanged for or converted into cash, property, or rights
18 or securities of or interests in the surviving organization,
19 or, in addition to or in lieu thereof, may be exchanged for or
20 converted into cash, property, or rights or securities of or
21 interests in another organization or may be cancelled.

22 §10A-5A-10.06. Action on plan of merger by
23 constituent limited liability company.

1 (a) Subject to Section 10A-5A-10.09, a plan of
2 merger must be consented to by all the members of a
3 constituent limited liability company.

4 (b) Subject to Section 10A-5A-10.09 and any
5 contractual rights, after a merger is approved, and at any
6 time before a filing is made under Section 10A-5A-10.07, a
7 constituent limited liability company may amend the plan or
8 abandon the merger:

9 (1) as provided in the plan; and

10 (2) except as prohibited by the plan, with the same
11 consent as was required to approve the plan.

12 §10A-5A-10.07. Filings required for merger;
13 effective date.

14 (a) After each constituent organization has approved
15 the plan of merger, a statement of merger must be signed on
16 behalf of:

17 (1) each constituent limited liability company, as
18 provided in Section 10A-5A-2.04(a); and

19 (2) each other constituent organization, as provided
20 by its governing statute.

21 (b) A statement of merger under this section must
22 include:

23 (1) the name, type of organization, and mailing
24 address of the principal office of each constituent
25 organization and the jurisdiction of its governing statute;

1 (2) the name, type of organization, and mailing
2 address of the principal office of the surviving organization,
3 the jurisdiction of its governing statute, and, if the
4 surviving organization is created pursuant to the merger, a
5 statement to that effect;

6 (3) the date of the filing of the certificate of
7 formation, if any, and all prior amendments and the filing
8 office or offices, if any, and where such is filed of each
9 constituent organization which was formed under the laws of
10 this state;

11 (4) the date the merger is effective under the
12 governing statute of the surviving organization;

13 (5) if the surviving organization is to be created
14 pursuant to the merger:

15 (A) if it will be a limited liability company, the
16 limited liability company's certificate of formation; or

17 (B) if it will be an organization other than a
18 limited liability company, any organizational document that
19 creates the organization that is required to be in a public
20 writing;

21 (6) if the surviving organization exists before the
22 merger, any amendments provided for in the plan of merger for
23 the organizational document that created the organization that
24 are in a public writing;

1 (7) a statement as to each constituent organization
2 that the merger was approved as required by the organization's
3 governing statute;

4 (8) if the surviving organization is a foreign
5 organization not authorized to conduct activities and affairs
6 in this state, the street and mailing address of an office for
7 the purposes of Section 10A-5A-10.08(b); and

8 (9) any additional information required by the
9 governing statute of any constituent organization.

10 (c) Each constituent organization which is formed
11 under the laws of this state shall file the statement of
12 merger with the Secretary of State. For each constituent
13 organization which is formed under the laws of this state and
14 which is not, immediately prior to the merger becoming
15 effective, an organization described in
16 Section 10A-1-4.02(c)(4), the Secretary of State shall within
17 10 days transmit a certified copy of the statement of merger
18 to the office of the judge of probate in the county in which
19 the certificate of formation for each such constituent
20 organization was filed along with the proper fee for the
21 probate judge. For each constituent organization which is
22 formed under the laws of this state and which is, immediately
23 prior to the merger becoming effective, an organization
24 described in Section 10A-1-4.02(c)(4), but which has a
25 certificate of formation filed with the judge of probate, the

1 Secretary of State shall transmit a certified copy of the
2 statement of merger to the office of the judge of probate in
3 the county in which the certificate of formation for each such
4 constituent organization was filed along with the proper fee
5 for the judge of probate. For each constituent organization
6 which (1) is formed under the laws of this state, (2) is,
7 immediately prior to the merger becoming effective, an
8 organization described in Section 10A-1-4.02(c) (4), and (3)
9 did not file its certificate of formation with the probate
10 judge, but rather in accordance with Section 10A-1-4.02(c) (4)
11 filed its certificate of formation with the Secretary of
12 State, the Secretary of State shall not transmit a certified
13 copy of the statement of merger to the office of the judge of
14 probate and shall not collect any fee for the judge of
15 probate.

16 (d) A merger becomes effective under this article:

17 (1) if the surviving organization is a limited
18 liability company, upon the later of:

19 (A) the filing of the statement of merger with the
20 Secretary of State; or

21 (B) as specified in the statement of merger; or

22 (2) if the surviving organization is not a limited
23 liability company, as provided by the governing statute of the
24 surviving organization.

1 (e) After a merger becomes effective, if the
2 surviving organization is a limited liability company, then
3 all filing instruments required to be filed under this Title
4 regarding that surviving organization shall be filed with the
5 Secretary of State.

6 (f) A certified copy of the statement of merger
7 required to be filed under this section may be filed in the
8 real estate records in the office of the judge of probate in
9 any county in which any constituent organization owned real
10 property, without payment and without collection by the judge
11 of probate of any deed or other transfer tax or fee. The judge
12 of probate, however, shall be entitled to collect the filing
13 fee of five dollars (\$5). Any such filing shall evidence chain
14 of title, but lack of filing shall not affect the surviving
15 organization's title to such real property.

16 (g) A statement of merger shall be a filing
17 instrument under Chapter 1.

18 (h) Except as provided in the last sentence of
19 subsection (c), the filing fees for a statement of merger
20 shall be the same fees as provided in
21 Section 10A-1-4.31(a) (5).

22 §10A-5A-10.08. Effect of merger.

23 (a) When a merger becomes effective:

1 (1) the surviving organization continues or, in the
2 case of a surviving organization created pursuant to the
3 merger, comes into existence;

4 (2) each constituent organization that merges into
5 the surviving organization ceases to exist as a separate
6 entity;

7 (3) all property owned by each constituent
8 organization, or series thereof, that ceases to exist vests in
9 the surviving organization without reservation or impairment
10 and the title to any property vested by deed or otherwise in
11 the surviving organization shall not revert or be in any way
12 impaired by reason of the merger;

13 (4) all debts, obligations or other liabilities of
14 each constituent organization, or series thereof, that ceases
15 to exist continue as debts, obligations or other liabilities
16 of the surviving organization and neither the rights of
17 creditors, nor any liens upon the property of any constituent
18 organization, shall be impaired by the merger;

19 (5) an action or proceeding pending by or against
20 any constituent organization, or series thereof, continues as
21 if the merger had not occurred;

22 (6) except as prohibited by law other than this
23 chapter, all of the rights, privileges, immunities, powers,
24 and purposes of each constituent organization, or series
25 thereof, vest in the surviving organization;

1 (7) except as otherwise provided in the plan of
2 merger, the terms and conditions of the plan of merger take
3 effect;

4 (8) except as otherwise agreed, if a constituent
5 limited liability company ceases to exist, the merger does not
6 dissolve the limited liability company for the purposes of
7 Article 7 and does not dissolve a series for purposes of
8 Article 11;

9 (9) if the surviving organization is created
10 pursuant to the merger:

11 (A) if it is a limited liability company, the
12 certificate of formation becomes effective; or

13 (B) if it is an organization other than a limited
14 liability company, the organizational document that creates
15 the organization becomes effective; and

16 (10) if the surviving organization existed before
17 the merger, any amendments provided for in the statement of
18 merger for the organizational document that created the
19 organization become effective.

20 (b) A surviving organization that is a foreign
21 entity consents to the jurisdiction ~~of the courts~~ of this
22 state to enforce any debt, obligation, or other liability owed
23 by a constituent organization, if before the merger the
24 constituent organization was subject to suit in this state on
25 the debt, obligation, or other liability. If a surviving

1 organization that is a foreign entity fails to designate or
 2 maintain a registered agent, or the designated registered
 3 agent cannot with reasonable diligence be served, then the
 4 service of process on that surviving organization for the
 5 purposes of enforcing a debt, obligation, or other liability
 6 under this subsection may be made in the same manner and has
 7 the same consequences as provided in Section 10A-1-5.35.

8 §10A-5A-10.09. Restrictions on approval of mergers
 9 and conversions.

10 (a) If a member of a converting or constituent
 11 limited liability company will have personal liability with
 12 respect to a converted or surviving organization, approval and
 13 amendment of a plan of conversion or plan of merger are
 14 ineffective without that member's consent to the plan.

15 (b) A member does not give the consent required by
 16 subsection (a) merely by consenting to a provision of the
 17 limited liability company agreement that permits the limited
 18 liability company agreement to be amended with the consent of
 19 fewer than all the members.

20 §10A-5A-10.10. Article not exclusive.

21 This article is not exclusive. This article does not
 22 preclude an entity from being converted or merged under law
 23 other than this chapter.

24 ARTICLE 11

25 SERIES PROVISIONS

1 §10A-5A-11.01. Series of assets.

2 (a) If a limited liability company complies with
3 Section 10A-5A-11.02, a limited liability company agreement
4 may establish or provide for the establishment of one or more
5 designated series of assets that:

6 (1) has separate rights, powers, or duties with
7 respect to specified property or obligations of the limited
8 liability company or profits and losses associated with
9 specified property or obligations; or

10 (2) has a separate purpose or investment objective.

11 (b) A series established in accordance with
12 subsection (a) may carry on any activity, whether or not for
13 profit.

14 (c) After a person is admitted as a member of a
15 limited liability company in accordance with Section
16 10A-5A-4.01, a member is associated with a series of the
17 limited liability company:

18 (1) as provided in the limited liability agreement;

19 (2) as the result of a transaction effective under
20 Article 10; or

21 (3) with the consent of all members associated with
22 that series.

23 §10A-5A-11.02. Enforceability of obligations and
24 expenses of series against assets.

25 (a) Subject to subsection (b):

1 (1) the debts, liabilities, obligations, and
2 expenses incurred, contracted for, or otherwise existing with
3 respect to a series shall be enforceable against the assets of
4 that series only, and shall not be enforceable against the
5 assets of the limited liability company generally or any other
6 series thereof; and

7 (2) none of the debts, liabilities, obligations, and
8 expenses incurred, contracted for, or otherwise existing with
9 respect to the limited liability company generally or any
10 other series thereof shall be enforceable against the assets
11 of a series.

12 (b) Subsection (a) applies only if:

13 (1) the records maintained for that series account
14 for the assets of that series separately from the other assets
15 of the limited liability company or any other series;

16 (2) the limited liability company agreement contains
17 a statement to the effect of the limitations provided in
18 subsection (a); and

19 (3) the limited liability company's certificate of
20 formation contains a statement that the limited liability
21 company may have one or more series of assets subject to the
22 limitations provided in subsection (a).

23 §10A-5A-11.03. Assets of series.

1 (a) Assets of a series may be held directly or
2 indirectly, including being held in the name of the series or
3 in the name of the limited liability company.

4 (b) If the records of a series are maintained in a
5 manner so that the assets of the series can be reasonably
6 identified by specific listing, category, type, quantity, or
7 computational or allocational formula or procedure, including
8 a percentage or share of any assets, or by any other method in
9 which the identity of the assets can be objectively
10 determined, the records are considered to satisfy the
11 requirements of Section 10A-5A-11.02 (b) (1).

12 §10A-5A-11.04. Statement of limitation on
13 liabilities of series.

14 The statement of limitation on liabilities of a
15 series required by Section 10A-5A-11.02 (b) (3) is sufficient
16 regardless of whether:

17 (a) the limited liability company has established
18 any series under this chapter when the statement of
19 limitations is contained in the certificate of formation; and

20 (b) the statement of limitations makes reference to
21 a specific series of the limited liability company.

22 §10A-5A-11.05. Member's power to dissociate as a
23 member associated with a series; wrongful dissociation.

24 (a) A person has the power to dissociate as a member
25 associated with a series.

1 (b) A person's dissociation from a series is
2 wrongful only if:

3 (1) it is in breach of an express provision of the
4 limited liability company agreement; or

5 (2) the person is expelled as a member associated
6 with the series by judicial determination under Section
7 10A-5A-11.06(f); or

8 (3) the person is dissociated as a member associated
9 with a series by becoming a debtor in bankruptcy or making a
10 general assignment for the benefit of creditors.

11 (c) A person that wrongfully dissociates as a member
12 associated with a series is liable to the series and, subject
13 to Section 10A-5A-9.01, to the other members associated with
14 that series for damages caused by the dissociation. The
15 liability is in addition to any other debt, obligation, or
16 liability of the member associated with a series to the series
17 or the other members associated with that series.

18 §10A-5A-11.06. Event causing dissociation of a
19 member associated with a series.

20 A person is dissociated as a member associated with
21 a series when any of the following occurs:

22 (a) the series has notice of the person's express
23 will to dissociate from the series, except if the person
24 specifies a dissociation date later than the date the series

1 had notice, then the person is dissociated from the series on
2 that later date;

3 (b) an event stated in the limited liability company
4 agreement as causing the person's dissociation from the series
5 occurs;

6 (c) the person is dissociated as a member of the
7 limited liability company pursuant to Section 10A-5A-6.02;

8 (d) the person is expelled as a member associated
9 with that series pursuant to the limited liability company
10 agreement;

11 (e) the person is expelled as a member associated
12 with the series by the unanimous consent of the other members
13 associated with that series if:

14 (1) it is unlawful to carry on the series'
15 activities and affairs with the person as a member associated
16 with that series; or

17 (2) there has been a transfer of all of the person's
18 transferable interest other than a transfer for security
19 purposes; or

20 (3) the person is an organization and, within 90
21 days after the series notifies the person that it will be
22 expelled as a member associated with that series because the
23 person has filed a statement of dissolution or the equivalent,
24 or its right to conduct activities and affairs has been
25 suspended by its jurisdiction of formation, the statement of

1 dissolution or the equivalent has not been revoked or its
2 right to conduct activities and affairs has not been
3 reinstated; or

4 (4) the person is an organization and, within 90
5 days after the series notifies the person that it will be
6 expelled as a member associated with that series because the
7 person has been dissolved and its activities and affairs are
8 being wound up, the organization has not been reinstated or
9 the dissolution and winding up have not been revoked or
10 cancelled;

11 (f) on application by the series, the person is
12 expelled as a member associated with that series by judicial
13 order because the person:

14 (1) has engaged, or is engaging, in wrongful conduct
15 that has adversely and materially affected, or will adversely
16 and materially affect, that series' activities and affairs;

17 (2) has willfully or persistently committed, or is
18 willfully and persistently committing, a material breach of
19 the limited liability company agreement or the person's duty
20 or obligation under this chapter or other applicable law; or

21 (3) has engaged, or is engaging, in conduct relating
22 to that series' activities and affairs that makes it not
23 reasonably practicable to carry on the activities and affairs
24 with the person as a member associated with that series;

1 (g) in the case of a person who is an individual,
2 the person dies, there is appointed a guardian or general
3 conservator for the person or there is a judicial
4 determination that the person has otherwise become incapable
5 of performing the person's duties as a member associated with
6 a series under this chapter or the limited liability company
7 agreement;

8 (h) the person becomes a debtor in bankruptcy,
9 executes an assignment for the benefit of creditors, or seeks,
10 consents, or acquiesces to the appointment of a trustee,
11 receiver, or liquidator of the person or of all or
12 substantially all of the person's property but this subsection
13 shall not apply to a person who is the sole remaining member
14 associated with a series;

15 (i) in the case of a person that is a trust or is
16 acting as a member by virtue of being a trustee of a trust,
17 the trust's entire transferable interest is distributed, but
18 not solely by reason of the substitution of a successor
19 trustee;

20 (j) in the case of a person that is an estate or is
21 acting as a member by virtue of being a personal
22 representative of an estate, the estate's entire transferable
23 interest is distributed, but not solely by reason of the
24 substitution of a successor personal representative;

1 (k) in the case of a member associated with a series
2 that is not an individual, the legal existence of the person
3 otherwise terminates;

4 (1) the transfer of a member's entire remaining
5 transferable interest but not until the later of (1) the
6 transferee's becoming a member associated with the series or
7 (2) the time the transfer is completed.

8 §10A-5A-11.07. Effect of person's dissociation as a
9 member.

10 (a) A person who has dissociated as a member
11 associated with a series shall have no right to participate in
12 the direction and oversight of the activities and affairs of
13 that series and is entitled only to receive the distributions
14 to which that member would have been entitled if the member
15 had not dissociated from that series.

16 (b) A person's dissociation as a member associated
17 with a series does not of itself discharge the person from any
18 debt, obligation, or liability to that series, the limited
19 liability company or the other members that the person
20 incurred while a member associated with that series.

21 (c) A member's dissociation from a series does not,
22 in itself, cause the member to dissociate from any other
23 series or require the winding up of the series.

1 (d) A member's dissociation from a series does not,
2 in itself, cause the member to dissociate from the limited
3 liability company.

4 §10A-5A-11.08. Dissolution and winding up of series.

5 A series may be dissolved and its activities and
6 affairs may be wound up without causing the dissolution of the
7 limited liability company. The dissolution and winding up of a
8 series does not abate, suspend, or otherwise affect the
9 limitation on liabilities of the series provided by
10 Section 10A-5A-11.02.

11 §10A-5A-11.09. Event requiring dissolution.

12 A series is dissolved and its activities and affairs
13 shall be wound up upon the first to occur of the following:

14 (a) the dissolution of the limited liability company
15 under Section 10A-5A-7.01;

16 (b) an event or circumstance that the limited
17 liability company agreement states causes dissolution of the
18 series;

19 (c) the consent of all of the members associated
20 with the series;

21 (d) the passage of 90 days after the occurrence of
22 the dissociation of the last remaining member associated with
23 the series; or

24 (e) on application by a member associated with the
25 series, an order dissolving the series on the grounds that it

1 is not reasonably practicable to carry on the series'
2 activities and affairs in conformity with the limited
3 liability company agreement which order is entered by the
4 circuit court for the county in which the limited liability
5 company's principal place of business within this state is
6 located, and if the limited liability company does not have a
7 principal place of business within this state then by the
8 circuit court for the county in which the limited liability
9 company's most recent registered office is located.

10 §10A-5A-11.10. Effect of dissolution of series.

11 Notwithstanding Section 10A-1-9.12:

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

16 (1) collecting the assets of the series;

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

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

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

24 (5) doing every other act necessary to wind up and
25 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 pending
14 by or against the series on the effective date of dissolution;
15 or

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

18 §10A-5A-11.11. Right to wind up activities and
19 affairs of series.

20 (a) The person or persons designated in the limited
21 liability company agreement to wind up the activities and
22 affairs of the dissolved series shall wind up the activities
23 and affairs of the dissolved series in accordance with Section
24 10A-5A-11.10. If no person or persons are designated in the
25 limited liability company agreement to wind up the activities

1 and affairs of the dissolved series, then the remaining
2 members associated with the dissolved series shall wind up the
3 activities and affairs of the dissolved series in accordance
4 with Section 10A-5A-11.10. If no person or persons are
5 designated in the limited liability company agreement to wind
6 up the activities and affairs of the dissolved series and
7 there are no remaining members associated with the dissolved
8 series, then all of the holders of the transferable interests
9 associated with the series, or their designee, shall wind up
10 the activities and affairs of the dissolved series in
11 accordance with Section 10A-5A-11.10.

12 (b) The circuit court for the county in which the
13 limited liability company's principal place of business within
14 this state is located, and if the limited liability company
15 does not have a principal place of business within this state
16 then the circuit court for the county in which the limited
17 liability company's most recent registered office is located
18 may order judicial supervision of the winding up of a
19 dissolved series, including the appointment of a person to
20 wind up the series' activities and affairs:

21 (1) on application of a member associated with the
22 series, if the applicant establishes good cause;

23 (2) on the application of a transferee associated
24 with a series, if:

1 (A) there are no members associated with the series;
2 and

3 (B) within a reasonable time following the
4 dissolution a person has not been appointed pursuant to
5 subsection (a); or

6 (3) in connection with a proceeding under Section
7 10A-5A-11.09(e).

8 §10A-5A-11.12. Known claims against dissolved
9 series.

10 Notwithstanding Sections 10A-1-9.01 and 10A-1-9.21:

11 (a) A dissolved series may dispose of any known
12 claims against it by following the procedures described in
13 subsection (b), at any time after the effective date of the
14 dissolution of the series.

15 (b) A dissolved series may give notice of the
16 dissolution in a writing to the holder of any known claim. The
17 notice must:

18 (1) identify the limited liability company and the
19 dissolved series;

20 (2) describe the information required to be included
21 in a claim;

22 (3) provide a mailing address to which the claim is
23 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 series must receive the claim; and

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

6 (c) Unless sooner barred by any other statute
7 limiting actions, a claim against a dissolved series is
8 barred:

9 (1) If a claimant who was given notice under
10 subsection (b) does not deliver the claim to the dissolved
11 series by the deadline; or

12 (2) If a claimant whose claim was rejected by the
13 dissolved series does not commence a proceeding to enforce the
14 claim within 90 days from the effective date of the rejected
15 notice.

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

21 (e) Nothing in this section shall be deemed to
22 extend any otherwise applicable statute of limitations.

23 §10A-5A-11.13. Other claims against dissolved
24 series.

25 Notwithstanding Sections 10A-1-9.01 and 10A-1-9.22:

1 (a) A dissolved series may publish notice of its
2 dissolution and request that persons with claims against the
3 dissolved series present them in accordance with the notice.

4 (b) The notice authorized by subsection (a) must:

5 (1) be published at least one time in a newspaper of
6 general circulation in the county in which the limited
7 liability company's principal office is located or, if it has
8 none in this state, in the county in which the limited
9 liability company's registered office is or was last located;

10 (2) describe the information that must be included
11 in a claim and provide a mailing address to which the claim is
12 to be sent; and

13 (3) state that if not sooner barred, a claim against
14 the dissolved series will be barred unless a proceeding to
15 enforce the claim is commenced within two years after the
16 publication of the notice.

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

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

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

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

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

10 (1) against a dissolved series, to the extent of its
11 undistributed assets associated with the series; and

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

22 (e) A dissolved series that published a notice under
23 this section may file an application with the circuit court in
24 the county in which the limited liability company's principal
25 place of business office is located and if the limited

1 liability company does not have a principal place of business
2 within this state then the circuit court for the county in
3 which the limited liability company's most recent registered
4 office is located, for a determination of the amount and form
5 of 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

1 with respect to claims that are contingent, have not been made
2 known to the dissolved series or are based on an event
3 occurring after the effective date of the dissolution of the
4 series, and those claims may not be enforced against a person
5 owning a transferable interest to whom assets have been
6 distributed by the dissolved series after the effective date
7 of the dissolution of the series.

8 (i) Nothing in this section shall be deemed to
9 extend any otherwise applicable statute of limitations.

10 (j) If a claim has been satisfied, disposed of, or
11 barred under Section 10A-5A-11.12, this Section 10A-5A-11.13
12 or other law, the person or persons designated to wind up the
13 affairs of a limited liability company, and the owners of the
14 transferable interests receiving assets from the limited
15 liability company, shall not be liable for that claim.

16 §10A-5A-11.14. Application of assets in winding up
17 series' activities and affairs.

18 Notwithstanding Section 10A-1-9.12, upon the winding
19 up of a series, the assets of the series shall be applied as
20 follows:

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

1 (b) After a series complies with subsection (a), any
2 surplus must be distributed:

3 (1) first, to each person owning a transferable
4 interest associated with that series that reflects
5 contributions made on account of that transferable interest
6 and not previously returned, an amount equal to the value of
7 the unreturned contributions; and

8 (2) then to each person owning a transferable
9 interest associated with that series in the proportions in
10 which the owners of transferable interests associated with
11 that series share in distributions prior to the dissolution of
12 the series.

13 (c) If the series does not have sufficient surplus
14 to comply with subsection (b) (1), any surplus must be
15 distributed among the owners of transferable interests
16 associated with that series in proportion to the value of
17 their respective unreturned contributions.

18 §10A-5A-11.15. Reinstatement after dissolution of a
19 series.

20 Notwithstanding Sections 10A-1-9.31 and 10A-1-9.32,
21 a series that has been dissolved may be reinstated upon
22 compliance with the following conditions:

23 (a) the consent shall have been obtained from the
24 members or other persons associated with the series entitled
25 to consent at the time that is:

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

3 (2) if the limited liability company agreement does
4 not state the consent required for reinstatement, sufficient
5 for dissolution of the series under the limited liability
6 company agreement; or

7 (3) if the limited liability company agreement
8 neither states the consent required for reinstatement nor for
9 dissolution, sufficient for dissolution of the series under
10 this chapter;

11 (b) in the case of a written objection to
12 reinstatement having been delivered to the series before or at
13 the time of the consent required by subsection (a) by the
14 members or other persons having authority under the limited
15 liability company agreement to bring about or prevent
16 dissolution of the series, those members or persons
17 withdrawing that written objection effective at the time of
18 the consent required by subsection (a); and

19 (c) In the case of a series dissolved in a judicial
20 proceeding initiated by one or more of the members associated
21 with the series, the consent of each of those members shall
22 have been obtained and shall be included in the consent
23 required by subsection (a) (1).

24 §10A-5A-11.16. Effect of reinstatement.

1 (a) Subject to subsection (b), upon reinstatement, a
 2 series shall be deemed for all purposes to have continued its
 3 activities and affairs as if dissolution had never occurred;
 4 each right inuring to, and each debt, obligation, and
 5 liability incurred by, the series after the dissolution shall
 6 be determined as if the dissolution had never occurred.

7 (b) The rights of persons acting in reliance on the
 8 dissolution of the series before those persons had notice of
 9 the reinstatement shall not be adversely affected by the
 10 reinstatement.

11 ARTICLE 12

12 TRANSITION RULES/MISCELLANEOUS PROVISIONS

13 §10A-5A-12.01. Application to existing
 14 relationships.

15 (a) Before January 1, ~~2016~~ 2017, this chapter
 16 governs only:

17 (1) a limited liability company formed on or after
 18 January 1, ~~2014~~ 2015; and

19 (2) except as otherwise provided in subsection (c),
 20 a limited liability company formed before January 1, ~~2014~~
 21 2015, which elects, in the manner provided in the limited
 22 liability company's operating agreement or as provided for by
 23 law for amending or restating the limited liability company's
 24 operating agreement, to be subject to this chapter.

1 (b) Except as otherwise provided in subsection (c),
2 on and after January 1, ~~2016~~ 2017, this chapter governs all
3 limited liability companies.

4 (c) For purposes of applying this chapter to a
5 limited liability company formed before January 1, ~~2014~~ 2015:

6 (1) the limited liability company's formation
7 document, whether articles of organization or certificate of
8 formation, is deemed to be the company's certificate of
9 formation;

10 (2) if the limited liability company's formation
11 document, whether articles of organization or certificate of
12 formation, contains the information required in
13 Section 10A-5A-2.01(a)(1)(5), the limited liability company
14 shall not be required to amend or restate its formation
15 document, whether articles of organization or certificate of
16 formation, to conform with this chapter;

17 (3) provisions in the limited liability company's
18 formation documents, whether articles of organization or
19 certificate of formation, shall operate as if those provisions
20 were in the limited liability company's limited liability
21 company agreement;

22 (4) if the limited liability company's formation
23 document, whether articles of organization or certificate of
24 formation, is amended or restated on or after January 1, ~~2014~~
25 2015, and the limited liability company's formation document,

1 whether articles of organization or certificate of formation,
2 is in conflict with the limited liability company's limited
3 liability agreement, then Section 10A-5A-1.10(d) shall govern;
4 and

5 (5) any amendment or restatement of the limited
6 liability company's formation document, whether articles of
7 organization or certificate of formation, on or after January
8 1, ~~2014~~ 2015, shall conform with this chapter.

9 §10A-5A-12.02. Relation to electronic signatures in
10 global and national commerce act.

11 This chapter modifies, limits, and supersedes the
12 federal Electronic Signatures in Global and National Commerce
13 Act, 15 U.S.C. Section 7001 et seq., but does not modify,
14 limit, or supersede Section 101(c) of that act, 15 U.S.C.
15 Section 7001(c), or authorize electronic delivery of any of
16 the notices described in Section 103(b) of that act, 15 U.S.C.
17 Section 7003(b).

18 §10A-5A-12.03. Interstate application.

19 A limited liability company formed and existing
20 under this chapter may conduct its activities and affairs,
21 carry on its operations, and have and exercise the powers
22 granted by this chapter in any state, foreign country, or
23 other jurisdiction.

24 §10A-5A-12.04. Savings clause.

1 (a) Except as provided in subsection (b), the repeal
2 of a statute by this chapter does not affect:

3 (1) the operation of the statute or any action taken
4 under it before its repeal;

5 (2) any ratification, right, remedy, privilege,
6 obligation, or liability acquired, accrued, or incurred under
7 the statute before its repeal;

8 (3) any violation of the statute, or any penalty,
9 forfeiture, or punishment incurred because of the violation,
10 before its repeal; or

11 (4) any proceeding, reorganization, or dissolution
12 commenced under the statute before its repeal, and the
13 proceeding, reorganization, or dissolution may be completed in
14 accordance with the statute as if it had not been repealed.

15 (b) If a penalty or punishment imposed for violation
16 of a statute repealed by this chapter is reduced by this
17 chapter, the penalty or punishment if not already imposed
18 shall be imposed in accordance with this chapter.

19 §10A-5A-12.05. Reserved power of the state to alter
20 or repeal chapter.

21 All provisions of this chapter may be altered from
22 time to time or repealed and all rights of members and agents
23 are subject to this reservation. Unless expressly stated to
24 the contrary in this chapter, all amendments of this chapter
25 shall apply to limited liability companies and members and

1 agents whether or not existing as such at the time of the
2 enactment of any such amendment.

3 Section 2. Sections 10A-1-1.03 and 10A-1-1.08, are
4 amended to read as follows:

5 "§10A-1-1.03.

6 "(1) AFFILIATE. A person who controls, is controlled
7 by, or is under common control with another person. An
8 affiliate of an individual includes the spouse, or a parent or
9 sibling thereof, of the individual, or a child, grandchild,
10 sibling, parent, or spouse of any thereof, of the individual,
11 or an individual having the same home as the individual, or a
12 trust or estate of which an individual specified in this
13 sentence is a substantial beneficiary; a trust, estate,
14 incompetent, conservatee, protected person, or minor of which
15 the individual is a fiduciary; or an entity of which the
16 individual is director, general partner, agent, employee or
17 the governing authority or member of the governing authority.

18 "(2) ASSOCIATE. When used to indicate a relationship
19 with:

20 "(A) a domestic or foreign entity or organization
21 for which the person is:

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

23 "(ii) a beneficial owner of 10 percent or more of a
24 class of voting ownership interests or similar securities of
25 the entity or organization;

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

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

7 "(D) a governing person or an affiliate or officer
8 of the person.

9 "(3) ASSOCIATION. Includes, but is not limited to,
10 an unincorporated nonprofit association as defined in Section
11 10A-17-1.02(2) and an unincorporated professional association
12 as defined in Section 10A-30-1.01(2).

13 "(4) BUSINESS CORPORATION. A corporation within the
14 meaning of 10A-2-1.40(3) or Section 10A-2-1.40(9).

15 "(5) BUSINESS TRUST. A business trust within the
16 meaning of Section 10A-16-1.01.

17 "(6) CERTIFICATE OF FORMATION.

18 "(A) the document required to be filed publicly
19 under Article 3 to form a filing entity; and

20 "(B) if appropriate, a restated certificate of
21 formation and all amendments of an original or restated
22 certificate of formation.

23 "(7) CERTIFICATE OF OWNERSHIP. An instrument
24 evidencing an ownership interest or membership interest in an
25 entity.

1 "(8) CERTIFICATE OF TERMINATION. Any document, such
2 as articles of dissolution in the case of a corporation, or
3 certificate of cancellation, in the case of a limited
4 partnership, required by law to be filed publicly with respect
5 to an entity's dissolution and the winding up of its affairs
6 or the end of its existence. In the case of an entity whose
7 separate existence ceases as a result of a merger, the
8 articles of merger shall constitute the certificate of
9 termination.

10 "(9) CERTIFICATED OWNERSHIP INTEREST. An ownership
11 interest of a domestic entity represented by a certificate
12 issued in bearer or registered form.

13 "(10) CERTIFICATION. Duly authenticated by the
14 proper officer of the state or county under the laws of which
15 a domestic or foreign entity is formed.

16 "(11) CONTRIBUTION. A tangible or intangible benefit
17 that a person transfers to an entity in consideration for an
18 ownership interest in the entity or otherwise in the person's
19 capacity as an owner or a member. In the case of an entity to
20 which Section 234 of the Constitution of Alabama of 1901, now
21 appearing as Section 234 of the Official Recompilation of the
22 Constitution of Alabama of 1901, as amended, applies, the
23 benefit that may constitute a contribution transferred in
24 exchange for an ownership interest or transferred in the
25 transferor's capacity as an owner or member shall be limited

1 to money, work or labor done, or property actually received.
2 For entities to which Section 234 does not apply, the benefit
3 that may constitute a contribution transferred in exchange for
4 an ownership interest or transferred in the transferor's
5 capacity as an owner or member may include cash, property,
6 services rendered, a contract for services to be performed, a
7 promissory note or other obligation of a person to pay cash or
8 transfer property to the entity, or securities or other
9 interests in or obligations of an entity. In either case, the
10 benefit does not include cash or property received by the
11 entity:

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

15 "(B) that the person intends to be a loan to the
16 entity.

17 "(12) CONVERSION.

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

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

22 "(C) the continuance of a domestic entity of one
23 type as a domestic entity of another type.

1 "(13) CONVERTED ENTITY. An entity resulting from a
2 conversion. The term converted entity is synonymous with the
3 term resulting entity.

4 "(14) CONVERTING ENTITY. An entity as the entity
5 existed before the entity's conversion.

6 "(15) COOPERATIVE. Includes an employee cooperative
7 within the meaning of Section 10A-11-11.02(2).

8 "(16) CORPORATION. Includes a business corporation
9 within the meaning of Section 10A-2-1.40(3) or Section
10 10A-2-1.40(9), a nonprofit corporation within the meaning of
11 Section 10A-3-1.02(7) or Section 10A-3-1.02(4), a professional
12 corporation within the meaning of Section 10A-4-1.03(3) or
13 Section 10A-4-1.03(4), and those entities specified in Chapter
14 20 as corporate.

15 "(17) COURT. Every court and judge having
16 jurisdiction in a case.

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

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

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

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

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

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

16 "(22) DOMESTIC. With respect to an entity, that the
17 entity is formed and exists under this title.

18 "(23) DOMESTIC ENTITY. An organization formed and
19 existing under this title.

20 "(24) EFFECTIVE DATE OF THIS TITLE. January 1, 2011.

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

24 "(26) ENTITY. A domestic entity or foreign entity.

1 "(27) FILING ENTITY. A domestic entity that is a
2 corporation, limited partnership, limited liability company,
3 professional association, employee cooperative corporation, or
4 real estate investment trust.

5 "(28) FILING INSTRUMENT. An instrument, document, or
6 statement that is required or authorized by this title to be
7 filed by or for an entity with the filing officer in
8 accordance with Article 4.

9 "(29) FILING OFFICER. The officer with whom a filing
10 instrument is required or permitted to be filed under Article
11 4 or under any other provision of this title.

12 "(30) FOREIGN. With respect to an entity, that the
13 entity is formed and existing under the laws of a jurisdiction
14 other than this state.

15 "(31) FOREIGN ENTITY. An organization formed and
16 existing under the laws of a jurisdiction other than this
17 state.

18 "(32) FOREIGN FILING ENTITY. A foreign entity that
19 registers or is required to register as a foreign entity under
20 Section 10A-1-7.01(a) (1).

21 "(33) FOREIGN GOVERNMENTAL AUTHORITY. A governmental
22 official, agency, or instrumentality of a jurisdiction other
23 than this state.

24 "(34) FOREIGN LIMITED PARTNERSHIP. A limited
25 partnership within the meaning of Section 10A-9-1.02(7).

1 "(35) FOREIGN NONFILING ENTITY. A foreign entity
2 that is not a foreign filing entity.

3 "(36) FUNDAMENTAL BUSINESS TRANSACTION. A merger,
4 interest exchange, conversion, or sale of all or substantially
5 all of an entity's assets.

6 "(37) GENERAL PARTNER.

7 "(A) each partner in a general partnership; or

8 "(B) a person who is admitted to a limited
9 partnership as a general partner in accordance with the
10 governing documents of the limited partnership.

11 "(38) GENERAL PARTNERSHIP. A partnership within the
12 meaning of Section 10A-8-1.02(3). The term includes a
13 registered limited liability partnership within the meaning of
14 Section 10A-8-102(7).

15 "(39) GOVERNING AUTHORITY. A person or group of
16 persons who are entitled to manage and direct the affairs of
17 an entity under this title and the governing documents of the
18 entity, except that if the governing documents of the entity
19 or this title divide the authority to manage and direct the
20 affairs of the entity among different persons or groups of
21 persons according to different matters, governing authority
22 means the person or group of persons entitled to manage and
23 direct the affairs of the entity with respect to a matter
24 under the governing documents of the entity or this title. The
25 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 managers of a limited liability company that
5 is managed by managers, the members of a limited liability
6 company that is managed by members who are entitled to manage
7 the company, and the trust managers of a real estate
8 investment trust. The term does not include an officer who is
9 acting in the capacity of an officer.

10 "(40) GOVERNING DOCUMENTS.

11 "(A) in the case of a domestic entity:

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

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

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

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

1 "(42) INDIVIDUAL. A natural person and the estate of
2 an incompetent or deceased natural person.

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

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

9 "(45) JUDGE OF PROBATE. The judge of probate of the
10 county in which a domestic entity's certificate of formation
11 is filed, or, with respect to partnership statements provided
12 for in Section 10A-8-1.06, the judge of probate of the county
13 in which a statement is filed.

14 "(46) JURISDICTION OF FORMATION.

15 "(A) in the case of a domestic filing entity, this
16 state;

17 "(B) in the case of a foreign filing entity, the
18 jurisdiction in which the entity's certificate of formation or
19 similar organizational instrument is filed; or

20 "(C) in the case of a foreign or domestic nonfiling
21 entity:

22 "(i) the jurisdiction the laws of which are chosen
23 in the entity's governing documents to govern its internal
24 affairs if that jurisdiction bears a reasonable relation to
25 the owners or members or to the domestic or foreign nonfiling

1 entity's business and affairs under the principles of this
2 state that otherwise would apply to a contract among the
3 owners or members; or

4 "(ii) if subparagraph (i) does not apply, the
5 jurisdiction in which the entity has its principal place of
6 business.

7 "(47) LAW. Unless the context requires otherwise,
8 both statutory and common law.

9 "(48) LICENSE. A license, certificate of
10 registration, or other legal authorization.

11 "(49) LICENSING AUTHORITY. The state court, state
12 regulatory licensing board, or other like agency which has the
13 power to issue a license or other legal authorization to
14 render professional services.

15 "(50) LIMITED LIABILITY COMPANY. A limited liability
16 company within the meaning of ~~Section 10A-5-1.02(6) or Section~~
17 ~~10A-5-1.02(4)~~ Chapter 5 or Chapter 5A, as applicable.

18 "(51) LIMITED PARTNER. A person who has been
19 admitted to a limited partnership as a limited partner as
20 provided by:

21 "(A) in the case of a domestic limited partnership,
22 Section 10A-9-3.01; or

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

1 "(52) LIMITED PARTNERSHIP. A limited partnership
2 within the meaning of Section 10A-9-1.02(11) or Section
3 10A-9-1.02(7).

4 "~~(53) MANAGER. A person or persons designated by the~~
5 ~~members of a limited liability company as provided in the~~
6 ~~certificate of formation of the limited liability company.~~

7 "~~(54)~~ (53) MANAGERIAL OFFICIAL. An officer or a
8 governing person.

9 "~~(55)~~ (54) MEMBER.

10 "~~(A) in the case of a limited liability company~~
11 ~~governed by Chapter 5, a person reflected in the required~~
12 ~~records of a limited liability company or as the owner of some~~
13 ~~governance rights of a membership interest in the limited~~
14 ~~liability company as provided in Section 10A-5-1.02(5) a~~
15 ~~person defined as a member under Chapter 5 or Chapter 5A, as~~
16 applicable;

17 "(B) in the case of a nonprofit corporation governed
18 by Article 3, a person having membership rights in a
19 corporation in accordance with its governing documents as
20 provided in Section 10A-3-1.02(5);

21 "(C) in the case of an employee cooperative
22 corporation governed by Chapter 11, a natural person who, as
23 provided in Section 10A-11-1.02(5), has been accepted for
24 membership in and owns a membership share in an employee
25 cooperative.

1 "(D) in the case of a nonprofit association, a
 2 person who, as provided in Section 10A-17-1.02(1), may
 3 participate in the selection of persons authorized to manage
 4 the affairs of the nonprofit association or in the development
 5 of its policy.

6 "~~(56)~~ MEMBERSHIP INTEREST. A member's interest in an
 7 entity.

8 "~~(57)~~ (55) MERGER.

9 "(A) the division of a domestic entity into two or
 10 more new domestic entities or other organizations or into a
 11 surviving domestic entity and one or more new domestic or
 12 foreign entities or non-code organizations; or

13 "(B) the combination of one or more domestic
 14 entities with one or more domestic entities or non-code
 15 organizations resulting in:

16 "(i) one or more surviving domestic entities or
 17 non-code organizations;

18 "(ii) the creation of one or more new domestic
 19 entities or non-code organizations, or one or more surviving
 20 domestic entities or non-code organizations; or

21 "(iii) one or more surviving domestic entities or
 22 non-code organizations and the creation of one or more new
 23 domestic entities or non-code organizations.

24 "~~(58)~~ (56) NON-CODE ORGANIZATION. An organization
 25 other than a domestic entity.

1 "~~(59)~~(57) NONFILING ENTITY. A domestic entity that
2 is not a filing entity. The term includes a domestic general
3 partnership, a registered limited liability partnership, and a
4 nonprofit association.

5 "~~(60)~~(58) NONPROFIT ASSOCIATION. An unincorporated
6 nonprofit association within the meaning of Section
7 10A-17-1.02(2).

8 "~~(61)~~(59) NONPROFIT CORPORATION. A nonprofit
9 corporation within the meaning of Section 10A-3-1.02(7) or
10 Section 10A-3-1.02(4).

11 "~~(62)~~(60) NONPROFIT ENTITY. An entity that is a
12 nonprofit corporation, nonprofit association, or other entity
13 that is organized solely for one or more of the purposes
14 specified by the chapter or article of this title applicable
15 to that form of nonprofit entity and no part of the income or
16 profit of which is distributable to its members, owners,
17 directors, officers, or other governing persons.

18 "~~(63)~~(61) OFFICER. An individual elected, appointed,
19 or designated as an officer of an entity by the entity's
20 governing authority or under the entity's governing documents.

21 "~~(64)~~(62) ORGANIZATION. A corporation, limited or
22 general partnership, limited liability company, business
23 trust, real estate investment trust, joint venture, joint
24 stock company, cooperative, association, bank, insurance
25 company, credit union, savings and loan association, or other

1 organization, regardless of whether the organization is for
2 profit, nonprofit, domestic, or foreign.

3 "~~(65)~~(63) ORGANIZER. A person, who need not be an
4 owner or member of the entity, who, having the capacity to
5 contract, is authorized to execute documents in connection
6 with the formation of the entity.

7 "~~(66)~~(64) OWNER.

8 "(A) with respect to a foreign or domestic business
9 corporation or real estate investment trust, a shareholder;

10 "(B) with respect to a foreign or domestic
11 partnership, a partner;

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

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

16 "~~(67)~~(65) OWNERSHIP INTEREST. An owner's interest in
17 an entity. The term includes the owner's share of profits and
18 losses or similar items and the right to receive
19 distributions. The term does not include an owner's right to
20 participate in management. An ownership interest is personal
21 property.

22 "~~(68)~~(66) PARENT ENTITY or PARENT ORGANIZATION. An
23 entity or organization that:

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

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

3 "~~(69)~~ (67) PARTNER. A limited partner or general
4 partner.

5 "~~(70)~~ (68) PARTNERSHIP. Includes a general
6 partnership within the meaning of Section 10A-8-1.02(3),
7 including a registered limited liability partnership within
8 the meaning of Section 10A-8-1.02(7) and a foreign registered
9 limited liability partnership within the meaning of Section
10 10A-8-1.02(2) and also includes a limited partnership within
11 the meaning of Section 10A-9-1.02(7) or Section
12 10A-9-1.02(11).

13 "~~(71)~~ (69) PARTNERSHIP AGREEMENT. The agreement,
14 written or oral, among the partners concerning the affairs of
15 the general or limited partnership, as the case may be, and
16 the conduct of its business. In the case of limited
17 partnerships formed prior to October 1, 1988, partnership
18 agreement includes the certificate of partnership.

19 "~~(72)~~ (70) PARTNERSHIP INTEREST. In the case of a
20 general partnership, and in the case of a limited partnership,
21 the meaning set forth in Section 10A-8-1.02(5).

22 "~~(73)~~ (71) PARTY TO THE MERGER. A domestic entity or
23 non-code organization that under a plan of merger is divided
24 or combined by a merger. The term does not include a domestic
25 entity or non-code organization that is not to be divided or

1 combined into or with one or more domestic entities or
2 non-code organizations, regardless of whether ownership
3 interests of the entity are to be issued under the plan of
4 merger.

5 "~~(74)~~ (72) PERSON. An individual or an organization,
6 whether created by the laws of this state or another state or
7 foreign country, including, without limitation, a general
8 partnership, registered limited liability partnership, limited
9 partnership, limited liability company, corporation,
10 professional corporation, professional association, trustee,
11 personal representative, fiduciary, as defined in Section
12 19-3-150 or person performing in any similar capacity,
13 business trust, estate, trust, association, joint venture,
14 government, governmental subdivision, agency, or
15 instrumentality, or any other legal or commercial entity.

16 "~~(75)~~ (73) PRESIDENT.

17 "(A) the individual designated as president of an
18 entity under the entity's governing documents; or

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

23 "~~(76)~~ (74) PROFESSIONAL ASSOCIATION. A professional
24 association within the meaning of Section 10A-30-1.01.

1 "~~(77)~~(75) PROFESSIONAL CORPORATION. A professional
2 corporation within the meaning of Section 10A-4-1.03(2) or
3 Section 10A-4-1.03(3).

4 "~~(78)~~(76) PROFESSIONAL ENTITY. A professional
5 association, or a professional corporation, ~~or professional~~
6 ~~limited liability company.~~

7 "~~(79)~~ PROFESSIONAL LIMITED LIABILITY COMPANY. A
8 ~~limited liability company formed for the purpose of providing~~
9 ~~a professional service within the meaning of Section~~
10 ~~10A-5-8.01.~~

11 "~~(80)~~(77) PROFESSIONAL SERVICE. Any type of service
12 that may lawfully be performed only pursuant to a license
13 issued by a state court, state regulatory licensing board, or
14 other like agency pursuant to state laws.

15 "~~(81)~~(78) PROPERTY. Includes tangible and intangible
16 property and an interest in that property.

17 "~~(82)~~(79) REAL ESTATE INVESTMENT TRUST. An
18 unincorporated trust, association, or other entity within the
19 meaning of Section 10A-10-1.02(1).

20 "~~(83)~~(80) REGISTERED LIMITED LIABILITY PARTNERSHIP.
21 A registered limited liability partnership within the meaning
22 of Section 10A-8-1.01(7).

23 "~~(84)~~(81) SECRETARY.

24 "(A) the individual designated as secretary of an
25 entity under the entity's governing documents; or

1 "(B) the officer or committee of persons authorized
2 to perform the functions of secretary of an entity without
3 regard to the designated name of the officer or committee.

4 "~~(85)~~(82) SECRETARY OF STATE. The Secretary of State
5 of the State of Alabama.

6 "~~(86)~~(83) SIGNATURE. Any symbol executed or adopted
7 by a person with present intention to authenticate a writing.
8 Unless the context requires otherwise, the term includes an
9 electronic signature and a facsimile of a signature.

10 "~~(87)~~(84) STATE. Includes, when referring to a part
11 of the United States, a state or commonwealth, and its
12 agencies and governmental subdivisions, and a territory or
13 possession, and its agencies and governmental subdivisions, of
14 the United States.

15 "~~(88)~~(85) SUBSCRIBER. A person who agrees with or
16 makes an offer to an entity to purchase by subscription an
17 ownership interest in the entity.

18 "~~(89)~~(86) 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)~~(87) SUBSIDIARY. An entity or organization at
24 least 50 percent of:

1 "(A) the ownership or membership interest of which
2 is owned by a parent entity or parent organization; or

3 "(B) the voting power of which is possessed by a
4 parent entity or parent organization.

5 "~~(91)~~(88) TREASURER.

6 "(A) the individual designated as treasurer of an
7 entity under the entity's governing documents; or

8 "(B) the officer or committee of persons authorized
9 to perform the functions of treasurer of an entity without
10 regard to the designated name of the officer or committee.

11 "~~(92)~~(89) TRUSTEE. A person who serves as a trustee
12 of a trust, including a real estate investment trust.

13 "~~(93)~~(90) UNCERTIFICATED OWNERSHIP INTEREST. An
14 ownership interest in a domestic entity that is not
15 represented by a certificate in bearer or registered form.

16 "~~(94)~~(91) VICE PRESIDENT.

17 "(A) the individual designated as vice president of
18 an entity under the governing documents of the entity; or

19 "(B) the officer or committee of persons authorized
20 to perform the functions of the president of the entity on the
21 death, absence, or resignation of the president or on the
22 inability of the president to perform the functions of office
23 without regard to the designated name of the officer or
24 committee.

1 "~~(95)~~(92) WRITING or WRITTEN. Information that is
 2 inscribed on a tangible medium or that is stored in an
 3 electronic or other medium and is retrievable in perceivable
 4 form.

5 "§10A-1-1.08.

6 "(a) The provisions of this title as described by
 7 this section may be cited as provided by this section.

8 "(b) Chapter 2 and the provisions of Chapter 1 to
 9 the extent applicable to business corporations may be cited as
 10 the Alabama Business Corporation Law.

11 "(c) Chapter 3 and the provisions of Chapter 1 to
 12 the extent applicable to nonprofit corporations may be cited
 13 as the Alabama Nonprofit Corporation Law.

14 "(d) Chapter 4 and the provisions of Chapter 1 to
 15 the extent applicable to professional corporations may be
 16 cited as the Alabama Professional Corporation Law.

17 "(e) Chapter 5 and the provisions of Chapter 1 to
 18 the extent applicable to limited liability companies may be
 19 cited as the Alabama Limited Liability Company Law. Chapter 5A
 20 and the provisions of Chapter 1 to the extent applicable to
 21 limited liability companies may be cited as the Alabama
 22 Limited Liability Company Law of 2014.

23 "(f) Chapter 8 and the provisions of Chapter 1 to
 24 the extent applicable to general partnerships may be cited as
 25 the Alabama ~~General~~ Uniform Partnership Law.

1 "(g) Chapter 9 and the provisions of Chapter 1 to
2 the extent applicable to limited partnerships may be cited as
3 the Alabama Uniform Limited Partnership Law of 2010.

4 "(h) Chapter 10 and the provisions of Chapter 1 to
5 the extent applicable to real estate investment trusts may be
6 cited as the Alabama Real Estate Investment Trust Law.

7 "(i) Chapter 11 and the provisions of Chapter 1 and
8 Chapter 2 to the extent applicable to employee cooperative
9 corporations may be cited as the Alabama Employee Cooperative
10 Corporations Law.

11 "(j) Chapter 17 may be cited as the Alabama
12 Unincorporated Nonprofit Association Law."

13 Section 3. Sections 10A-5-1.01 to 10A-5-9.06, Code
14 of Alabama 1975, are repealed on January 1, ~~2016~~ 2017.

15 Section 4. This act shall become effective on
16 January 1, 2015.

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Speaker of the House of Representatives

President and Presiding Officer of the Senate

House of Representatives

I hereby certify that the within Act originated in
and was passed by the House 12-FEB-14, as amended.

Jeff Woodard
Clerk

Senate	<hr/> 27-FEB-14 <hr/>	Amended and Passed
House	<hr/> 04-MAR-14 <hr/>	Concurred in Senate Amendment