

1 SB342
2 150033-3
3 By Senator Smitherman
4 RFD: Governmental Affairs
5 First Read: 14-MAR-13

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3
4 ENGROSSED

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7 A BILL
8 TO BE ENTITLED
9 AN ACT

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

1 2014; and to amend Sections 10A-1-1.03 and 10A-1-1.08, Code of
2 Alabama 1975, to conform to this act; and to repeal Sections
3 10A-5-1.01 to 10A-5-9.06, Code of Alabama 1975, on January 1,
4 2016.

5 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

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

9 Chapter 5A Limited Liability Companies

10 ARTICLE 1

11 GENERAL PROVISIONS

12 §10A-5A-1.01. Short title.

13 This chapter and the provisions of Chapter 1, to the
14 extent applicable to limited liability companies, shall be
15 known and may be cited as the "Alabama Limited Liability
16 Company Law of 2014."

17 §10A-5A-1.02. Definitions.

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

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

25 (b) "Constituent limited liability company" means a
26 constituent organization that is a limited liability company.

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

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

6 (e) "Converting limited liability company" means a
7 converting organization that is a limited liability company.

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

11 (g) "Disqualified person" means any person who is
12 not a qualified person.

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

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

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

22 (k) "Limited liability company agreement" means any
23 agreement (whether referred to as a limited liability company
24 agreement, operating agreement or otherwise), written, oral or
25 implied, of the member or members as to the activities and
26 affairs of a limited liability company or series thereof. The
27 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;

25 (3) for a limited liability company or foreign
26 limited liability company, its certificate of formation and

1 limited liability company agreement, or comparable writings as
2 provided in its governing statute;

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

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

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

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

21 (8) for any other organization, the basic writings
22 that create the organization and determine its internal
23 governance and the relations among the persons that own it,
24 have an interest in it, or are members of it.

25 (o) "Qualified person," with respect to a limited
26 liability company rendering professional services in this
27 state, means a person authorized by this state or a regulatory

1 authority of this state to own a transferrable interest in
2 that limited liability company.

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

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

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

13 (s) "Transferrable interest" means a member's right
14 to receive distributions from a limited liability company or a
15 series thereof.

16 §10A-5A-1.03. Knowledge; notice.

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

18 (1) has actual knowledge of it; or

19 (2) is deemed to know it under law other than this
20 chapter.

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

22 (1) knows of it;

23 (2) receives notification of it;

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

26 (4) is deemed to have notice of the fact under
27 subsection (d).

1 (c) A person notifies another of a fact by taking
2 steps reasonably required to inform the other person in
3 ordinary course, whether or not the other person knows the
4 fact.

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

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

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

12 (3) merger or conversion, 90 days after a statement
13 of merger or statement of conversion under Article 10 becomes
14 effective; and

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

17 (e) A member's knowledge, notice or receipt of a
18 notification of a fact relating to the limited liability
19 company is not knowledge, notice or receipt of a notification
20 of a fact by the limited liability company solely by reason of
21 the member's capacity as a member.

22 §10A-5A-1.04. Powers and privileges.

23 (a) A limited liability company is a separate legal
24 entity. A limited liability company's status for tax purposes
25 shall not affect its status as a separate legal entity formed
26 under this chapter.

1 (b) A limited liability company shall possess and
2 may exercise all the powers and privileges granted and
3 enumerated by Chapter 1 or by any other law or by its limited
4 liability company agreement, together with any powers
5 incidental thereto, including those powers and privileges
6 necessary or convenient to the conduct, promotion, or
7 attainment of the business, purposes, or activities and
8 affairs of the limited liability company.

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

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

13 (1) sue and be sued;

14 (2) contract;

15 (3) hold and convey title to assets of the series,
16 including real property, personal property, and intangible
17 property; and

18 (4) grant liens and security interests in assets of
19 the series.

20 §10A-5A-1.05. Governing law.

21 The law of this state governs:

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

24 (b) the liability of a member as a member for the
25 debts, obligations, or other liabilities of a limited
26 liability company, or series thereof;

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

3 (d) the availability of the assets of a series or
4 the limited liability company for the obligations of another
5 series or the limited liability company.

6 §10A-5A-1.06. Rules of construction.

7 (a) It is the policy of this chapter and this state
8 to give maximum effect to the principles of freedom of
9 contract and to the enforceability of limited liability
10 company agreements.

11 (b) Unless displaced by particular provisions of
12 this chapter, the principles of law and equity supplement this
13 chapter.

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

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

21 (e) Sections 7-9A-406 and 7-9A-408 of the Uniform
22 Commercial Code, and all successor statutes thereto, do not
23 apply to any interest in a limited liability company,
24 including all rights, powers, and interests arising under a
25 limited liability company agreement or this chapter. This
26 provision prevails over Sections 7-9A-406 and 7-9A-408 of the
27 Uniform Commercial Code, and all successor statutes thereto,

1 and is expressly intended to permit the enforcement of the
2 provisions of a limited liability company agreement that would
3 otherwise be ineffective under Sections 7-9A-406 and 7-9A-408
4 of the Uniform Commercial Code, and all successor statutes
5 thereto.

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

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

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

12 §10A-5A-1.07. Application of partnership provisions
13 to limited liability companies; classification for federal
14 income tax purposes.

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

16 (a) The terms "partnership" and "limited
17 partnership," when used in any chapter or title other than the
18 Alabama Limited Liability Company Law, the Alabama General
19 Partnership Law, and the Alabama Limited Partnership Law, and
20 any successors of those laws, include a limited liability
21 company organized under this chapter, unless the context
22 requires otherwise.

23 (b) Notwithstanding subsection (a), for purposes of
24 taxation, other than Chapter 14A of Title 40, a limited
25 liability company or foreign limited liability company shall
26 be treated as a partnership unless it is classified otherwise

1 for federal tax purposes, in which case it shall be classified
2 in the same manner as it is for federal tax purposes.

3 §10A-5A-1.08. Limited liability company agreement;
4 scope; function; and limitations.

5 (a) Except as otherwise provided in subsections (b)
6 and (c):

7 (1) the limited liability company agreement governs
8 relations among the members as members and between the members
9 and the limited liability company; and

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

13 (b) (1) To the extent that, at law or in equity, a
14 member or other person has duties, including fiduciary duties,
15 to the limited liability company, or to another member or to
16 another person that is a party to or is otherwise bound by a
17 limited liability company agreement, the member's or other
18 person's duties may be expanded or restricted or eliminated by
19 a written limited liability company agreement, but the implied
20 contractual covenant of good faith and fair dealing may not be
21 eliminated.

22 (2) A written limited liability company agreement
23 may provide for the limitation or elimination of any and all
24 liabilities for breach of contract and breach of duties,
25 including fiduciary duties, of a member or other person to a
26 limited liability company or to another member or to another
27 person that is a party to or is otherwise bound by a limited

1 liability company agreement, but a limited liability company
2 agreement may not limit or eliminate liability for any act or
3 omission that constitutes a bad faith violation of the implied
4 contractual covenant of good faith and fair dealing.

5 (3) A member or other person shall not be liable to
6 a limited liability company or to another member or to another
7 person that is a party to or is otherwise bound by a limited
8 liability company agreement for breach of fiduciary duty for
9 the member's or other person's good faith reliance on the
10 limited liability company agreement.

11 (4) A limited liability company agreement may
12 provide that:

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

17 (B) at the time or upon the happening of events
18 specified in the limited liability company agreement, a member
19 or transferee may be subject to specified penalties or
20 specified consequences.

21 (5) A penalty or consequence that may be specified
22 under paragraph (4) of this subsection may include and take
23 the form of reducing or eliminating the defaulting member's or
24 transferee's proportionate interest in a limited liability
25 company, subordinating the member's or transferee's
26 transferable interest to that of non-defaulting members or
27 transferees, forcing a sale of that transferable interest,

1 forfeiting the defaulting member's or transferee's
2 transferable interest, the lending by other members or
3 transferees of the amount necessary to meet the defaulting
4 member's or transferee's commitment, a fixing of the value of
5 the defaulting member's or transferee's transferable interest
6 by appraisal or by formula and redemption or sale of the
7 transferable interest at that value, or other penalty or
8 consequence.

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

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

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

15 (2) vary the law applicable under Section
16 10A-5A-1.05;

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

19 (4) vary the power of the court under Section
20 10A-5A-2.05;

21 (5) eliminate the implied contractual covenant of
22 good faith and fair dealing as provided under Section
23 10A-5A-1.08(b)(1);

24 (6) eliminate or limit the liability of a member or
25 other person for any act or omission that constitutes a bad
26 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).

24 §10A-5A-1.09. Limited liability company agreement;
25 effect on limited liability company and persons admitted as
26 members.

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

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

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

18 §10A-5A-1.10. Limited liability company agreement;
19 effect on third parties and relationship to writings effective
20 on behalf of limited liability company.

21 (a) If a limited liability company agreement
22 provides for the manner in which it may be amended, including
23 by requiring the approval of a person who is not a party to
24 the limited liability company agreement or the satisfaction of
25 conditions, it may be amended only in that manner or as
26 otherwise permitted by law, except that the approval of any
27 person may be waived by that person and any conditions may be

1 waived by all persons for whose benefit those conditions were
2 intended.

3 (b) A limited liability company agreement may
4 provide rights to any person, including a person who is not a
5 party to the limited liability company agreement, to the
6 extent set forth in the limited liability company agreement.

7 (c) The obligations of a limited liability company
8 and its members to a person in the person's capacity as a
9 transferee or dissociated member are governed by the limited
10 liability company agreement. A transferee and a dissociated
11 member are bound by the limited liability company agreement.

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

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

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

20 ARTICLE 2

21 FORMATION

22 §10A-5A-2.01. Formation.

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

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

3 (2) the address of the registered office required by
4 Article 5 of Chapter 1;

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

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

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

11 (6) any other matters the members determine to
12 include therein.

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

16 (c) The fact that a certificate of formation has
17 been filed and is effective in accordance with Article 4 of
18 Chapter 1 is notice of the matters required to be included by
19 Subsections (a) (1), (a) (2), (a) (3), and (a) (4) and if
20 applicable, (a) (5), but is not notice of any other fact.

21 (d) A limited liability company agreement shall be
22 entered into either before, after, or at the time of the
23 filing of the certificate of formation and, whether entered
24 into before, after, or at the time of the filing, may be made
25 effective as of the filing of the certificate of formation or
26 at any other time or date provided in the limited liability
27 company agreement.

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

7 §10A-5A-2.02. Amendment or restatement of
8 certificate of formation.

9 Notwithstanding Division B of Article 3 of Chapter
10 1:

11 (a) A certificate of formation may be amended at any
12 time.

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

15 (c) To amend its certificate of formation, a limited
16 liability company must deliver a certificate of amendment for
17 filing to the filing officer provided for in subsection (g)
18 which certificate of amendment shall state:

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

20 (2) the date of filing of its certificate of
21 formation, and of all prior amendments and the filing office
22 or offices where filed; and

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

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

1 of formation for filing to the filing officer provided for in
2 subsection (g). A restated certificate of formation must:

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

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

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

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

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

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

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

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

12 §10A-5A-2.03. Effect of filing amendment or
13 restatement of certificate of formation.

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

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

20 §10A-5A-2.04. Execution of documents.

21 (a) A writing delivered to a filing officer for
22 filing pursuant to this chapter must be signed as provided by
23 this section.

24 (1) A limited liability company's initial
25 certificate of formation must be signed by at least one
26 organizer.

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

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

10 (4) Any other writing must be signed by the person
11 on whose behalf the writing is delivered to the filing
12 officer.

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

17 §10A-5A-2.05. Signing and filing pursuant to
18 judicial order.

19 (a) If a person required by this chapter to sign a
20 writing or deliver a writing to a filing officer for filing
21 under this chapter does not do so, any other person that is
22 aggrieved by that failure may petition the circuit court in
23 the county in which the limited liability company's principal
24 place of business within this state is located, and if the
25 limited liability company does not have a principal place of
26 business within this state then the circuit court for the

1 county in which the limited liability company's most recent
2 registered office is located, to order:

3 (1) the person to sign the writing;

4 (2) the person to deliver the writing to the filing
5 officer for filing; or

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

7 (b) If a petitioner under subsection (a) is not the
8 limited liability company or foreign limited liability company
9 to whom the writing pertains, the petitioner shall make the
10 limited liability company or foreign limited liability company
11 a party to the action. A person aggrieved under subsection (a)
12 may seek the remedies provided in subsection (a) in a separate
13 action against the person required to sign or deliver the
14 writing or as a part of any other action concerning the
15 limited liability company or foreign limited liability company
16 in which the person required to sign or deliver the writing is
17 made a party.

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

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

24 §10A-5A-2.06. Certificate of existence or
25 qualification.

26 (a) The Secretary of State, upon request and payment
27 of the requisite fee, shall furnish to any person a

1 certificate of existence for a limited liability company if
2 the writings filed in the office of the Secretary of State
3 show that the limited liability company has been formed under
4 the laws of this state. A certificate of existence shall
5 reflect only the information on file with the Secretary of
6 State. A certificate of existence must state:

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

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

11 (3) whether the limited liability company has
12 delivered to the Secretary of State for filing a statement of
13 dissolution;

14 (4) whether the limited liability company has
15 delivered to the Secretary of State for filing a certificate
16 of reinstatement; and

17 (5) other facts of record in the office of the
18 Secretary of State that are specified by the person requesting
19 the certificate.

20 (b) The Secretary of State, upon request and payment
21 of the requisite fee, shall furnish to any person a
22 certificate of qualification for a foreign limited liability
23 company if the writings filed in the office of the Secretary
24 of State show that the Secretary of State has filed an
25 application for registration for authority to conduct
26 activities and affairs in this state and the registration has

1 not been revoked, withdrawn or terminated. A certificate of
2 qualification must state:

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

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

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

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

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

15 (c) Subject to any qualification stated in the
16 certificate, a certificate of existence or certificate of
17 qualification issued by the Secretary of State is conclusive
18 evidence that the limited liability company is in existence or
19 the foreign limited liability company is authorized to conduct
20 activities and affairs in this state.

21 ARTICLE 3

22 RELATIONS OF MEMBERS TO PERSONS DEALING WITH LIMITED
23 LIABILITY COMPANY

24 §10A-5A-3.01. Liability of members to third parties.

25 A member of a limited liability company is not
26 liable, solely by reason of being a member, for a debt,
27 obligation, or liability of the limited liability company or a

1 series thereof, whether arising in contract, tort, or
2 otherwise or for the acts or omissions of any other member,
3 agent, or employee of the limited liability company or a
4 series thereof.

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

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

9 (a) to the extent the person is authorized to act as
10 the agent of the limited liability company or a series thereof
11 under or pursuant to the limited liability company agreement;

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

16 (c) to the extent provided by law other than this
17 chapter.

18 Article 4

19 RELATIONS OF MEMBERS TO EACH OTHER AND TO THE 20 LIMITED LIABILITY COMPANY

21 §10A-5A-4.01. Admission of members.

22 (a) The initial member or members of a limited
23 liability company are admitted as a member or members upon the
24 formation of the limited liability company.

25 (b) After formation of a limited liability company,
26 a person is admitted as a member of the limited liability
27 company:

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

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

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

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

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

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

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

21 §10A-5A-4.02. Limited liability company property.

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

24 §10A-5A-4.03. Contribution.

25 A contribution by a member may be made to a limited
26 liability company as agreed upon by the members. A
27 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.

26 (2) The obligation of a member associated with a
27 series to make a contribution to the series may be compromised

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

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

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

15 §10A-5A-4.05. Sharing of and right to distributions
16 before dissolution.

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

20 (2) A member has a right to a distribution before
21 the dissolution and winding up of a limited liability company
22 as provided in the limited liability company agreement. A
23 decision to make a distribution before the dissolution and
24 winding up of the limited liability company is a decision in
25 the ordinary course of activities and affairs of the limited
26 liability company. A member's dissociation does not entitle
27 the dissociated member to a distribution.

1 (3) A member does not have a right to demand and
2 receive a distribution from a limited liability company in any
3 form other than money. Except as otherwise provided in Section
4 10A-5A-7.06(c), a limited liability company may distribute an
5 asset in kind if each member receives a percentage of the
6 asset in proportion to the member's share of distributions.

7 (4) If a member becomes entitled to receive a
8 distribution, the member has the status of, and is entitled to
9 all remedies available to, a creditor of the limited liability
10 company with respect to the distribution.

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

14 (2) A member associated with a series has a right to
15 a distribution before the dissolution and winding up of the
16 series as provided in the limited liability company agreement.
17 A decision of the series to make a distribution before the
18 dissolution and winding up of the series is a decision in the
19 ordinary course of activities and affairs of the series. A
20 member's dissociation from a series with which the member is
21 associated does not entitle the dissociated member to a
22 distribution from the series.

23 (3) A member associated with a series does not have
24 a right to demand and receive a distribution from the series
25 in any form other than money. Except as otherwise provided in
26 Section 10A-5A-11.14(c), a series may distribute an asset in
27 kind if each member associated with the series receives a

1 percentage of the asset in proportion to the member's share of
2 distributions from the series.

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

7 (c) Subsection (a) shall not apply to a distribution
8 made by a series.

9 §10A-5A-4.06. Limitation on distributions and
10 liability for improper distributions.

11 (a)(1) A limited liability company shall not make a
12 distribution to a member to the extent that at the time of the
13 distribution, after giving effect to the distribution, all
14 liabilities of the limited liability company, other than
15 liabilities to members on account of their transferable
16 interests and liabilities for which the recourse of creditors
17 is limited to specific property of the limited liability
18 company, exceed the fair value of the assets of the limited
19 liability company, except that the fair value of the property
20 that is subject to a liability for which recourse of creditors
21 is limited shall be included in the assets of the limited
22 liability company only to the extent that the fair value of
23 the property exceeds that liability.

24 (2) A member who receives a distribution in
25 violation of subsection (a)(1) or the limited liability
26 company agreement, and who knew at the time of the
27 distribution that the distribution violated subsection (a)(1)

1 or the limited liability company agreement, shall be liable to
2 the limited liability company for the amount of the
3 distribution. A member who receives a distribution in
4 violation of subsection (a)(1) or the limited liability
5 company agreement, and who did not know at the time of the
6 distribution that the distribution violated subsection (a)(1)
7 or the limited liability company agreement, shall not be
8 liable for the amount of the distribution.

9 (b)(1) A series shall not make a distribution to a
10 member associated with the series to the extent that at the
11 time of the distribution, after giving effect to the
12 distribution, all liabilities of the series, other than
13 liabilities to members associated with the series on account
14 of their transferable interests and liabilities for which the
15 recourse of creditors is limited to specific property of the
16 series, exceed the fair value of the assets of the series,
17 except that the fair value of the property that is subject to
18 a liability for which recourse of creditors is limited shall
19 be included in the assets of the series only to the extent
20 that the fair value of the property exceeds that liability.

21 (2) A member associated with a series who receives a
22 distribution in violation of paragraph (1) or the limited
23 liability company agreement, and who knew at the time of the
24 distribution that the distribution violated paragraph (1) or
25 the limited liability company agreement, shall be liable to
26 that series for the amount of the distribution. A member
27 associated with a series who receives a distribution in

1 violation of paragraph (1) or the limited liability company
2 agreement, and who did not know at the time of the
3 distribution that the distribution violated paragraph (1) or
4 the limited liability company agreement, shall not be liable
5 for the amount of the distribution.

6 (3) Subsection (a) shall not apply to a distribution
7 made by a series.

8 (c) Except as otherwise provided in subsection (d),
9 this section shall not affect any obligation or liability of a
10 member under other applicable law for the amount of a
11 distribution.

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

15 (e) For purposes of Sections 10A-5A-4.06(a) and
16 10A-5A-4.06(b), "distribution" does not include amounts
17 constituting reasonable compensation for present or past
18 services or reasonable payments made in the ordinary course of
19 the limited liability company's activities and affairs under a
20 bona fide retirement plan or other benefits program.

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

23 §10A-5A-4.07. Direction and oversight of the limited
24 liability company.

25 (a) The limited liability company agreement of a
26 limited liability company may provide that the activities and
27 affairs of the limited liability company shall be under the

1 direction, and subject to the oversight, of: (1) its members;
2 (2) one or more managers; or (3) such other governance
3 structure as provided in the limited liability company
4 agreement. The limited liability company agreement of a
5 limited liability company may provide that the activities and
6 affairs of a series shall be under the direction, and subject
7 to the oversight, of: (1) the members associated with that
8 series; (2) one or more managers; or (3) such other governance
9 structure as provided in the limited liability company
10 agreement.

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

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

17 (B) The activities and affairs of a series shall be
18 under the direction, and subject to the oversight, of the
19 members associated with the series.

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

22 (2) (A) Except as provided in paragraph (3), a matter
23 in the ordinary course of activities and affairs of the
24 limited liability company may be decided by a majority of the
25 members.

26 (B) Except as provided in paragraph (3), a matter in
27 the ordinary course of activities and affairs of a series may

1 be decided by a majority of the members associated with the
2 series.

3 (C) Subparagraph (A) shall not apply to matters of a
4 series.

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

6 (i) amend the limited liability company agreement;

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

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

13 (iv) undertake, authorize, or approve any other act
14 or matter for which this chapter requires the consent of all
15 members.

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

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

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

23 (c) Any matter requiring the consent of members may
24 be decided without a meeting, and a member may appoint a proxy
25 or other agent to consent or otherwise act for the member by
26 signing an appointing writing, personally or by the member's
27 agent.

1 (d) This chapter does not entitle a member to
2 remuneration for services performed for a limited liability
3 company, except for reasonable compensation for services
4 rendered in winding up the activities and affairs of the
5 limited liability company.

6 §10A-5A-4.08. Duties of persons with direction and
7 oversight.

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

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

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

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

1 property, including the appropriation of the limited liability
2 company's opportunity.

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

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

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

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

22 (2) To refrain from dealing with the series in the
23 conduct or winding up of the series' activities and affairs as
24 or on behalf of a party having an interest adverse to the
25 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
26 chapter and under the limited liability company agreement and

1 exercise any rights consistently with the implied contractual
2 covenant of good faith and fair dealing.

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

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

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

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

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

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

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

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

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

15 §10A-5A-4.09. Records to be kept; right of members
16 and dissociated members to information.

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

18 (a) Each limited liability company shall maintain
19 the following records:

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

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

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

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

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

8 (b) Subject to subsection (g), on ten days' notice
9 made in a writing received by the limited liability company,
10 the records set forth in subsection (a) above, and any other
11 books and records of the limited liability company, wherever
12 situated, are subject to inspection and copying for any proper
13 purpose by any member or the member's agent or attorney during
14 regular business hours. Subject to subsection (g), any person
15 with the authority to bind the limited liability company under
16 Section 10A-5A-3.02 and any person with the authority to
17 direct and oversee the activities and affairs of a limited
18 liability company who, without reasonable cause, refuses to
19 allow any member or the member's agent or attorney to inspect
20 or copy any books or records of the limited liability company
21 for any proper purpose shall be personally liable to the
22 member for a penalty in an amount not to exceed 10 percent of
23 the fair market value of the transferable interest of the
24 member, in addition to any other damages or remedy.

25 (c) Subject to subsection (g), on thirty days'
26 notice made in a writing received by a limited liability
27 company, a dissociated member may inspect and copy, during

1 regular business hours, at a reasonable location specified by
2 the limited liability company, any record maintained by the
3 limited liability company, to the extent the information
4 pertains to the period during which the person was a member,
5 was material to the person's rights and duties under the
6 limited liability company agreement or this chapter when the
7 person was a member, and the person seeks the information in
8 good faith and for a proper purpose.

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

12 (e) A member or dissociated member may exercise
13 rights under this section through an agent or attorney, or in
14 the case of an individual under legal disability, a legal
15 representative. Any restriction or condition imposed by the
16 limited liability company agreement or under subsection (g)
17 applies both to the agent, attorney, or legal representative
18 and to the member or dissociated member.

19 (f) The rights under this section do not extend to a
20 transferee.

21 (g) In addition to any restriction or condition
22 stated in its limited liability company agreement, a limited
23 liability company, as a matter within the ordinary course of
24 its activities and affairs, may:

25 (1) impose reasonable restrictions and conditions on
26 access to and use of information to be furnished under this
27 section, including designating information confidential and

1 imposing nondisclosure and safeguarding obligations on the
2 recipient; and

3 (2) keep confidential from the members and any other
4 persons, for such period of time as the limited liability
5 company deems reasonable, any information that the limited
6 liability company reasonably believes to be in the nature of
7 trade secrets or other information the disclosure of which the
8 limited liability company in good faith believes is not in the
9 best interest of the limited liability company or could damage
10 the limited liability company or its activities and affairs,
11 or that the limited liability company is required by law or by
12 agreement with a third party to keep confidential.

13 §10A-5A-4.10. Indemnification, advancement,
14 reimbursement, and insurance.

15 A limited liability company, or a series thereof,
16 may indemnify and hold harmless a member or other person, pay
17 in advance or reimburse expenses incurred by a member or other
18 person, and purchase and maintain insurance on behalf of a
19 member or other person.

20 §10A-5A-4.11. Reliance on reports and information.

21 A member of a limited liability company shall be
22 fully protected in relying in good faith upon the records of
23 the limited liability company and upon information, opinions,
24 reports, or statements presented by another member or agent of
25 the limited liability company, or by any other person as to
26 matters the member reasonably believes are within that other
27 person's professional or expert competence, including

1 information, opinions, reports, or statements as to the value
2 and amount of the assets, liabilities, profits, or losses of
3 the limited liability company or a series thereof, or the
4 value and amount of assets or reserves or contracts,
5 agreements, or other undertakings that would be sufficient to
6 pay claims and obligations of the limited liability company,
7 or series thereof, or to make reasonable provision to pay
8 those claims and obligations, or any other facts pertinent to
9 the existence and amount of assets from which distributions to
10 members or creditors might properly be paid.

11 ARTICLE 5

12 TRANSFERABLE INTERESTS AND RIGHTS OF TRANSFEREES AND
13 CREDITORS

14 §10A-5A-5.01. Member's transferable interest.

15 The only interest of a member that is transferable
16 is the member's transferable interest. A transferable interest
17 is personal property.

18 §10A-5A-5.02. Transfer of transferable interest.

19 (a) A transfer, in whole or in part, of a
20 transferable interest:

21 (1) is permissible;

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

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

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

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

6 (A) participate in the direction or oversight of the
7 activities and affairs of the limited liability company, or a
8 series thereof; or

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

12 (b) A transferee has the right to receive, in
13 accordance with the transfer, distributions to which the
14 transferor would otherwise be entitled.

15 (c) A transferable interest may be evidenced by a
16 certificate of transferable interest issued by the limited
17 liability company, or a series thereof. A limited liability
18 company agreement may provide for the transfer of the
19 transferable interest represented by the certificate and make
20 other provisions with respect to the certificate. No
21 certificate of transferable interest shall be issued in bearer
22 form.

23 (d) A limited liability company, or a series
24 thereof, need not give effect to a transferee's rights under
25 this section until the limited liability company, or a series
26 thereof, has notice of the transfer.

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

7 (f) When a member transfers a transferable interest
8 to a person that is admitted as a member with respect to the
9 transferred interest, the transferee is liable for the
10 member's obligations under Sections 10A-5A-4.04,
11 10A-5A-4.06(a)(2), and 10A-5A-4.06(b)(2) to the extent that
12 the obligations are known to the transferee when the
13 transferee voluntarily accepts admission as a member.

14 §10A-5A-5.03. Charging order.

15 (a) On application to a court of competent
16 jurisdiction by any judgment creditor of a member or
17 transferee, the court may charge the transferable interest of
18 the judgment debtor with payment of the unsatisfied amount of
19 the judgment with interest. To the extent so charged and after
20 the limited liability company has been served with the
21 charging order, the judgment creditor has only the right to
22 receive any distribution or distributions to which the
23 judgment debtor would otherwise be entitled in respect of the
24 transferable interest.

25 (b) A limited liability company, after being served
26 with a charging order and its terms, shall be entitled to pay
27 or deposit any distribution or distributions to which the

1 judgment debtor would otherwise be entitled in respect of the
2 charged transferable interest into the hands of the clerk of
3 the court so issuing the charging order, and the payment or
4 deposit shall discharge the limited liability company and the
5 judgment debtor from liability for the amount so paid or
6 deposited and any interest that might accrue thereon. Upon
7 receipt of the payment or deposit, the clerk of the court
8 shall notify the judgment creditor of the receipt of the
9 payment or deposit. The judgment creditor shall, after any
10 payment or deposit into the court, petition the court for
11 payment of so much of the amount paid or deposited as is held
12 by the court as may be necessary to pay the judgment
13 creditor's judgment. To the extent the court has excess
14 amounts paid or deposited on hand after the payment to the
15 judgment creditor, the excess amounts paid or deposited shall
16 be distributed to the judgment debtor and the charging order
17 shall be extinguished. The court, may in its discretion, order
18 the clerk to deposit, pending the judgment creditor's
19 petition, any money paid or deposited with the clerk, in an
20 interest bearing account at a bank authorized to receive
21 deposits of public funds.

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

24 (d) Subject to subsection (c):

25 (1) a judgment debtor that is a member retains the
26 rights of a member and remains subject to all duties and
27 obligations of a member; and

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

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

7 (f) This section provides the exclusive remedy by
8 which a judgment creditor of a member or transferee may
9 satisfy a judgment out of the judgment debtor's transferable
10 interest and the judgment creditor shall have no right to
11 foreclose, under this chapter or any other law, upon the
12 charging order, the charging order lien, or the judgment
13 debtor's transferable interest. A judgment creditor of a
14 member or transferee shall have no right to obtain possession
15 of, or otherwise exercise legal or equitable remedies with
16 respect to, the property of a limited liability company. Court
17 orders for actions or requests for accounts and inquiries that
18 the judgment debtor might have made, are not available to the
19 judgment creditor attempting to satisfy the judgment out of
20 the judgment debtor's transferable interest and may not be
21 ordered by a court.

22 §10A-5A-5.04. Power of personal representative of
23 deceased member.

24 If a member dies, the deceased member's personal
25 representative or other legal representative may, for purposes
26 of settling the estate, exercise the rights of a current
27 member under Section 10A-5A-4.09.

1 ARTICLE 6

2 MEMBER'S DISSOCIATION

3 §10A-5A-6.01. Member's power to dissociate; wrongful
4 dissociation.

5 (a) A person has the power to dissociate as a
6 member.

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

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

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

13 (3) the person is dissociated by becoming a debtor
14 in bankruptcy or making a general assignment for the benefit
15 of creditors.

16 (c) A person that wrongfully dissociates as a member
17 is liable to the limited liability company and, subject to
18 Section 10A-5A-9.01, to the other members for damages caused
19 by the dissociation. The liability is in addition to any other
20 debt, obligation, or liability of the member to the limited
21 liability company or the other members.

22 §10A-5A-6.02. Event causing dissociation.

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

25 (a) the limited liability company has notice of the
26 person's express will to dissociate as a member, except that
27 if the person specifies a dissociation date later than the

1 date the limited liability company had notice, then the person
2 is dissociated as a member on that later date;

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

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

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

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

11 (2) there has been a transfer of all of the person's
12 transferable interest other than a transfer for security
13 purposes;

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

22 (4) the person is an organization and, within 90
23 days after the limited liability company notifies the person
24 that it will be expelled as a member because the person has
25 been dissolved and its activities and affairs are being wound
26 up, the organization has not been reinstated or the
27 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
26 substantially all of the person's property, but this

1 subsection (g) shall not apply to a person who is the sole
2 remaining member of a limited liability company;

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

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

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

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

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

22 §10A-5A-6.03. Effect of person's dissociation as a
23 member.

24 (a) A person who has dissociated as a member shall
25 have no right to participate in the direction and oversight of
26 the activities and affairs of the limited liability company
27 and is entitled only to receive the distributions to which

1 that member would have been entitled if the member had not
2 dissociated.

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

7 ARTICLE 7

8 DISSOLUTION, WINDING UP AND REINSTATEMENT

9 §10A-5A-7.01. Events of dissolution.

10 A limited liability company is dissolved and its
11 affairs shall be wound up upon the occurrence of the first of
12 the following events:

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

15 (b) Consent of all members to dissolve.

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

18 (1) The holders of all the transferable interests in
19 the limited liability company agree in writing, within 90 days
20 after the dissociation of the last member, to continue the
21 legal existence and activities and affairs of the limited
22 liability company and to appoint one or more new members.

23 (2) The legal existence and activities and affairs
24 of the limited liability company are continued and one or more
25 new members are appointed in the manner stated in the limited
26 liability company agreement.

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

12 §10A-5A-7.02. Effect of dissolution.

13 Notwithstanding Section 10A-1-9.12:

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

18 (1) collecting its assets;

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

21 (3) discharging or making provisions for discharging
22 its liabilities;

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

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

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

3 (1) deliver for filing a statement of dissolution to
4 the filing officer provided for in subsection (e) setting
5 forth:

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

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

8 (C) That the limited liability company has
9 dissolved.

10 (D) The effective date of the statement of
11 dissolution, which shall be a date certain, if it is not to be
12 effective immediately.

13 (E) Any other information the limited liability
14 company deems appropriate.

15 (2) preserve the limited liability company's
16 activities and affairs and property as a going concern for a
17 reasonable time;

18 (3) prosecute, defend, or settle actions or
19 proceedings whether civil, criminal or administrative;

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

21 (5) resolve disputes by mediation or arbitration;

22 and

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

24 (c) The dissolution of a limited liability company
25 does not:

26 (1) transfer title to the limited liability
27 company's property;

1 (2) prevent the commencement of a proceeding by or
2 against the limited liability company in its limited liability
3 company name;

4 (3) terminate, abate or suspend a proceeding pending
5 by or against the limited liability company on the effective
6 date of dissolution;

7 (4) terminate the authority of its registered agent;
8 or

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

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

13 (e) 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 statement of
16 dissolution for filing to the judge of probate in whose office
17 the original certificate of formation is filed. If a limited
18 liability company is an organization described in
19 Section 10A-1-4.02(c) (4), then that limited liability company
20 shall deliver the statement of dissolution for filing to the
21 Secretary of State.

22 §10A-5A-7.03. Right to wind up activities and
23 affairs.

24 (a) The person or persons designated in the limited
25 liability company agreement to wind up the activities and
26 affairs of the dissolved limited liability company shall wind
27 up the activities and affairs of the limited liability company

1 in accordance with Section 10A-5A-7.02. If no person or
2 persons are designated in the limited liability company
3 agreement to wind up the activities and affairs of the
4 dissolved limited liability company, then the remaining
5 members of the dissolved limited liability company shall wind
6 up the activities and affairs of the limited liability company
7 in accordance with Section 10A-5A-7.02. If no person or
8 persons are designated in the limited liability company
9 agreement to wind up the activities and affairs of the
10 dissolved limited liability company and there are no remaining
11 members of the dissolved limited liability company, then all
12 of the holders of the transferable interests of the limited
13 liability company, or their designee, shall wind up the
14 activities and affairs of the limited liability company in
15 accordance with Section 10A-5A-7.02.

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

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

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

2 (A) the limited liability company does not have any
3 members; and

4 (B) within a reasonable time following the
5 dissolution no person having the authority to wind up the
6 activities and affairs of the limited liability company
7 pursuant to subsection (a) is winding up the activities and
8 affairs of the limited liability company; or

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

11 §10A-5A-7.04. Known claims against dissolved limited
12 liability company.

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

14 (a) A dissolved limited liability company may
15 dispose of any known claims against it by following the
16 procedures described in subsection (b) at any time after the
17 effective date of the dissolution of the limited liability
18 company.

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

22 (1) identify the dissolved limited liability
23 company;

24 (2) describe the information required to be included
25 in a claim;

26 (3) provide a mailing address to which the claim is
27 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 limited liability company must receive the claim;
4 and

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

7 (c) Unless sooner barred by any other statute
8 limiting actions, a claim against a dissolved limited
9 liability company is barred:

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

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

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

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

24 §10A-5A-7.05. Other claims against dissolved limited
25 liability company.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

25 (h) Provision by the dissolved limited liability
26 company for security in the amount and the form ordered by the
27 circuit court under subsection (e) shall satisfy the dissolved

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

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

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

18 §10A-5A-7.06. Application of assets in winding up
19 limited liability company's activities and affairs.

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

23 (a) Payment, or adequate provision for payment,
24 shall be made to creditors, including, to the extent permitted
25 by law, members who are creditors, in satisfaction of
26 liabilities of the limited liability company.

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

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

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

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

17 §10A-5A-7.07. Reinstatement after dissolution.

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

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

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

26 (2) if the limited liability company agreement does
27 not state the consent required for reinstatement, sufficient

1 for dissolution under the limited liability company agreement;
2 or

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

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

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

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

22 §10A-5A-7.08. Certificate of reinstatement.

23 (a) In order to reinstate a limited liability
24 company under this article, a certificate of reinstatement
25 shall be delivered for filing to the filing officer provided
26 for in subsection (d) which certificate of reinstatement shall
27 have attached thereto a true and complete copy of the limited

1 liability company's certificate of formation. The certificate
2 of reinstatement shall state:

3 (1) the name of the limited liability company before
4 reinstatement;

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

8 (3) the date of formation of the limited liability
9 company;

10 (4) the date of dissolution of the limited liability
11 company, if known;

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

14 (6) the address of the registered office and the
15 name of the registered agent at that address in compliance
16 with Article 5 of Chapter 1.

17 (b) A limited liability company shall not be
18 required to file a statement of dissolution in order to file a
19 certificate of reinstatement.

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

22 (d) If a limited liability company is not an
23 organization described in Section 10A-1-4.02(c)(4), then that
24 limited liability company shall deliver the certificate of
25 reinstatement for filing to the judge of probate in whose
26 office the original certificate of formation is filed. If a
27 limited liability company is an organization described in

1 Section 10A-1-4.02(c)(4), then that limited liability company
2 shall deliver the certificate of reinstatement for filing to
3 the Secretary of State.

4 §10A-5A-7.09. Limited liability company name upon
5 reinstatement.

6 The name of a limited liability company following
7 reinstatement shall be determined as follows:

8 (a) If the limited liability company remains in the
9 Secretary of State's records as a limited liability company
10 which has not been dissolved, then the name of the limited
11 liability company following reinstatement shall be that
12 limited liability company name at the time of reinstatement.

13 (b) If the limited liability company is listed in
14 the Secretary of State's records as a limited liability
15 company that has been dissolved, then the name of a limited
16 liability company following reinstatement shall be that
17 limited liability company name at the time of reinstatement if
18 that limited liability company name complies with Article 5 of
19 Chapter 1 at the time of reinstatement. If that limited
20 liability company name does not comply with Article 5 of
21 Chapter 1, the name of the limited liability company following
22 reinstatement shall be that limited liability company name
23 followed by the word "reinstated."

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

27 §10A-5A-7.10. Effect of reinstatement.

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

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

12 ARTICLE 8

13 LIMITED LIABILITY COMPANIES PERFORMING PROFESSIONAL
14 SERVICES

15 §10A-5A-8.01. Special rules for limited liability
16 companies performing professional services.

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

20 (b) Every individual who renders professional
21 services as a member or as an employee of a limited liability
22 company shall be liable for any negligent or wrongful act or
23 omission in which the individual personally participates to
24 the same extent the individual would be liable if the
25 individual rendered the services as a sole practitioner.

26 (c) Except as otherwise provided in subsection (b),
27 the personal liability of a member of any limited liability

1 company engaged in providing professional services shall be
2 governed by Section 10A-5A-3.01.

3 (d) The personal liability of a member, manager, or
4 employee of a foreign limited liability company engaged in
5 providing professional services shall be determined under the
6 law of the jurisdiction in which the foreign limited liability
7 company is organized.

8 (e) Nothing in this article shall restrict or limit
9 in any manner the authority or duty of a licensing authority
10 with respect to individuals rendering a professional service
11 within the jurisdiction of the licensing authority. Nothing in
12 this article shall restrict or limit any law, rule, or
13 regulation pertaining to standards of professional conduct.

14 (f) Nothing in this article shall limit the
15 authority of a licensing authority to impose requirements in
16 addition to those stated in this chapter on any limited
17 liability company or foreign limited liability company
18 rendering professional services within the jurisdiction of the
19 licensing authority.

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

23 §10A-5A-8.02. Death or disqualification of member.

24 (a) In the case of a limited liability company
25 performing professional services, upon the death of a member,
26 upon a member becoming a disqualified person, or upon a
27 transferable interest being transferred by operation of law or

1 court decree to a disqualified person, the transferable
2 interest of the deceased member or of the disqualified person
3 may be transferred to a qualified person and, if not so
4 transferred, subject to Section 10A-5A-4.06, shall be
5 purchased by the limited liability company as provided in this
6 section.

7 (b) If the price of the transferable interest is not
8 fixed by the limited liability company agreement, the limited
9 liability company, within six months after the death or 30 days
10 after the disqualification or transfer, as the case may be,
11 shall make a written offer to pay to the holder of the
12 transferable interest a specified price deemed by the limited
13 liability company to be the fair value of the transferable
14 interest as of the date of the death, disqualification, or
15 transfer. The offer shall be given to the personal
16 representative of the estate of the deceased member, the
17 disqualified person, or the transferee, as the case may be,
18 and shall be accompanied by a balance sheet of the limited
19 liability company, as of the latest available date and not
20 more than 12 months prior to the making of the offer, and a
21 profit and loss statement of the limited liability company for
22 the 12 months' period ended on the date of the balance sheet.

23 (c) If within 30 days after the date of the written
24 offer from the limited liability company the fair value of the
25 transferable interest is agreed upon between the personal
26 representative of the estate of the deceased member, the
27 disqualified person, or the transferee, as the case may be,

1 and the limited liability company, payment therefor shall be
2 made within 90 days, or such other period as the parties may
3 agree, after the date of the offer. Upon payment of the agreed
4 value, the personal representative of the estate of the
5 deceased member, the disqualified person, or the transferee,
6 as the case may be, shall cease to have any interest in, or
7 claim to, the transferable interest.

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

1 the deceased member, the disqualified person, or the
2 transferee, as the case may be, shall be entitled to a
3 judgment against the limited liability company for the amount
4 of the fair value of that person's transferable interest as of
5 the date of death, disqualification, or transfer. The court
6 may, in its discretion, order that the judgment be paid in
7 installments and with interest and on terms as the court may
8 determine. The court may, if it so elects, appoint one or more
9 persons as appraisers to receive evidence and recommend a
10 decision on the question of fair value. The appraisers shall
11 have the power and authority as shall be specified in the
12 order of their appointment or an amendment thereof.

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

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

20 (g) The expenses shall include reasonable
21 compensation for and reasonable expenses of the appraisers and
22 a reasonable attorney's fee but shall exclude the fees and
23 expenses of counsel for and of experts employed by any party;
24 but: (1) if the fair value of the transferable interest as
25 determined materially exceeds the amount which the limited
26 liability company offered to pay therefor, or if no offer was
27 made by the limited liability company, the court in its

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

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

26 (i) This section shall not require a limited
27 liability company to purchase a transferable interest of a

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

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

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

14 ARTICLE 9

15 ACTIONS BY MEMBERS

16 §10A-5A-9.01. Direct action by members.

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

24 (b) A member maintaining a direct action under
25 subsection (a) must plead and prove an actual or threatened
26 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
25 series at the time of the act or omission of which the member
26 complains.

27 §10A-5A-9.04. Demand.

1 A member may commence a derivative action in the
2 right of the limited liability company, or a series thereof,
3 if:

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

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

10 §10A-5A-9.05. Pleading.

11 In a derivative action, the complaint must state
12 with particularity:

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

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

17 §10A-5A-9.06. Stay of proceedings

18 For the purpose of allowing the limited liability
19 company or the series thereof, as the case may be, time to
20 undertake an inquiry into the allegations made in the demand
21 or complaint commenced pursuant to this article, the court may
22 stay any derivative action for the period the court deems
23 appropriate.

24 §10A-5A-9.07. Discontinuance or settlement.

25 A derivative action may not be dismissed or
26 compromised without the approval of the court, and notice of
27 the proposed dismissal or compromise shall be given to members

1 of the limited liability company or the members associated
2 with the series of the limited liability company, as the case
3 may be, in such manner as the court directs.

4 §10A-5A-9.08. Proceeds and expenses.

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

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

10 (2) if the derivative plaintiff receives any
11 proceeds, the derivative plaintiff shall immediately remit
12 them to the limited liability company or series thereof, as
13 the case may be.

14 (b) If a derivative action is successful in whole or
15 in part, the court may award the plaintiff reasonable
16 expenses, including reasonable attorney's fees, from the
17 recovery of the limited liability company or the series
18 thereof, as the case may be.

19 §10A-5A-9.09. Applicability to foreign limited
20 liability companies.

21 In any derivative action in the right of a foreign
22 limited liability company, or a series thereof, the right of a
23 person to commence or maintain a derivative action in the
24 right of a foreign limited liability company, or a series
25 thereof, and any matters raised in the action covered by
26 Sections 10A-5A-9.02 through 10A-5A-9.08 shall be governed by
27 the law of the jurisdiction under which the foreign limited

1 liability company was formed; except that any matters raised
2 in the action covered by Sections 10A-5A-9.06, 10A-5A-9.07,
3 and 10A-5A-9.08 shall be governed by the law of this state.

4 ARTICLE 10

5 CONVERSIONS AND MERGERS

6 §10A-5A-10.01. Conversion.

7 (a) An organization other than a limited liability
8 company may convert to a limited liability company, and a
9 limited liability company may convert to an organization other
10 than a limited liability company pursuant to this section,
11 Sections 10A-5A-10.02 through 10A-5A-10.03, and a plan of
12 conversion, if:

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

15 (2) the law of the jurisdiction governing the
16 converting organization and the converted organization does
17 not prohibit the conversion; and

18 (3) the converting organization and the converted
19 organization each comply with the governing statute and
20 organizational documents applicable to that organization in
21 effecting the conversion.

22 (b) A plan of conversion must be in writing and must
23 include:

24 (1) the name, type of organization, and mailing
25 address of the principal office of the converting organization
26 before conversion;

1 (2) the name, type of organization, and mailing
2 address of the principal office of the converted organization
3 after conversion;

4 (3) the terms and conditions of the conversion,
5 including the manner and basis for converting interests in the
6 converting organization into any combination of money,
7 interests in the converted organization, and other
8 consideration allowed in Section 10A-5A-10.01(c); and

9 (4) the organizational documents of the converted
10 organization.

11 (c) In connection with a conversion, rights or
12 securities of or interests in the converting organization may
13 be exchanged for or converted into cash, property, or rights
14 or securities of or interests in the converted organization,
15 or, in addition to or in lieu thereof, may be exchanged for or
16 converted into cash, property, or rights or securities of or
17 interests in another organization or may be cancelled.

18 §10A-5A-10.02. Action on plan of conversion by
19 converting limited liability company.

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

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

- 1 (1) as provided in the plan; and
- 2 (2) except as prohibited by the plan, by the same
- 3 consent as was required to approve the plan.

4 §10A-5A-10.03. Filings required for conversion;

5 effective date.

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

- 7 (1) if the converting organization is an
- 8 organization formed under the laws of this state, the
- 9 converting organization shall file a statement of conversion
- 10 in accordance with subsection (c), which statement of
- 11 conversion must be signed in accordance with Section
- 12 10A-5A-2.04(a) and which must include:

13 (A) the name of the converting organization;

14 (B) the date of the filing of the certificate of

15 formation of the converting organization, if any, and all

16 prior amendments and the filing office or offices, if any,

17 where such is filed;

18 (C) a statement that the converting organization has

19 been converted into the converted organization;

20 (D) the name and type of organization of the

21 converted organization and the jurisdiction of its governing

22 statute;

23 (E) the street and mailing address of the principal

24 office of the converted organization;

25 (F) the date the conversion is effective under the

26 governing statute of the converted organization;

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

3 (H) a statement that the conversion was approved as
4 required by the governing statute of the converted
5 organization; and

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

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

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

17 (B) the name and type of organization of the
18 converting organization and the jurisdiction of the converting
19 organization's governing statute; and

20 (C) a statement that the conversion was approved in
21 a manner that complied with the converting organization's
22 governing statute.

23 (b) A conversion becomes effective:

24 (1) if the converted organization is a limited
25 liability company, when the certificate of formation takes
26 effect; and

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

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

21 (d) If the converted organization is a limited
22 liability company, the converting organization is an
23 organization formed under the laws of this state, and the
24 converting organization is not an organization described in
25 Section 10A-1-4.02(c) (4), then the converting organization
26 shall file the certificate of formation required under
27 subsection (a) (2) with the judge of probate of the county in

1 which a certificate of formation of a limited liability
2 company is filed under this chapter. If the converted
3 organization is a limited liability company, the converting
4 organization is an organization formed under the laws of this
5 state, and the converting organization is an organization
6 described in Section 10A-1-4.02(c)(4), then the converting
7 organization shall file the certificate of formation required
8 under subsection (a)(2) with the Secretary of State. If the
9 converted organization is a limited liability company and the
10 converting organization is not an organization formed under
11 the laws of this state, then the converting organization shall
12 file the certificate of formation required under subsection
13 (a)(2) with the judge of probate of the county in which a
14 certificate of formation of a limited liability company is
15 filed under this chapter.

16 (e) In the case of a statement of conversion or a
17 certificate of formation that is to be filed with the judge of
18 probate pursuant to subsections (c) and (d), the judge of
19 probate shall within 10 days transmit a certified copy of the
20 statement of conversion or certificate of formation to the
21 Secretary of State, along with the proper fee.

22 (f) In the case of a statement of conversion that is
23 to be filed with the Secretary of State pursuant to
24 subsections (c):

25 (1) if the converting organization is, immediately
26 prior to the conversion becoming effective, an organization
27 described in Section 10A-1-4.02(c)(4), but which has a

1 certificate of formation filed with the judge of probate, the
2 Secretary of State shall within 10 days transmit a certified
3 copy of the statement of conversion to the office of the judge
4 of probate in the county in which the certificate of formation
5 for such converting organization was filed along with the
6 proper fee for the probate judge.

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

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

24 (g) In the case of a certificate of formation that
25 is to be filed with the Secretary of State pursuant to
26 subsection (d), the Secretary of State shall not transmit a
27 certified copy of the statement of conversion to the office of

1 the judge of probate and shall not collect any fee for the
2 judge of probate.

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

8 (i) If:

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

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

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

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

26 (j) A certified copy of any document required to be
27 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
26 liens upon the property of the converting organization shall
27 be impaired by the conversion;

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

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

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

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

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

25 (8) if the converted organization is a limited
26 liability company, for all purposes of the laws of this state,
27 the limited liability company shall be deemed to be the same

1 organization as the converting organization, and the
2 conversion shall constitute a continuation of the existence of
3 the converting organization in the form of a limited liability
4 company;

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

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

14 (b) A converted organization that is a foreign
15 entity consents to the jurisdiction of the courts of this
16 state to enforce any debt, obligation or other liability for
17 which the converting limited liability company, or series
18 thereof, is liable if, before the conversion, the converting
19 limited liability company was subject to suit in this state on
20 the debt, obligation or other liability. If a converted
21 organization that is a foreign entity fails to designate or
22 maintain a registered agent, or the designated registered
23 agent cannot with reasonable diligence be served, then service
24 of process on that converted organization for the purposes of
25 enforcing a debt, obligation, or other liability under this
26 subsection may be made in the same manner and has the same
27 consequences as provided in Section 10A-1-5.35.

1 §10A-5A-10.05. Merger.

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

6 (1) the governing statute of each of the other
7 organizations authorizes the merger;

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

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

12 (b) A plan of merger must be in writing and must
13 include:

14 (1) the name, type of organization, and mailing
15 address of the principal office of each constituent
16 organization;

17 (2) the name, type of organization, and mailing
18 address of the principal office of the surviving organization
19 and, if the surviving organization is to be created pursuant
20 to the merger, a statement to that effect;

21 (3) the terms and conditions of the merger,
22 including the manner and basis for converting the interests in
23 each constituent organization into any combination of money,
24 interests in the surviving organization, and other
25 consideration as allowed by subsection (c);

1 (4) if the surviving organization is to be created
2 pursuant to the merger, the surviving organization's
3 organizational documents; and

4 (5) if the surviving organization is not to be
5 created pursuant to the merger, any amendments to be made by
6 the merger to the surviving organization's organizational
7 documents.

8 (c) In connection with a merger, rights or
9 securities of or interests in a constituent organization may
10 be exchanged for or converted into cash, property, or rights
11 or securities of or interests in the surviving organization,
12 or, in addition to or in lieu thereof, may be exchanged for or
13 converted into cash, property, or rights or securities of or
14 interests in another organization or may be cancelled.

15 §10A-5A-10.06. Action on plan of merger by
16 constituent limited liability company.

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

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

25 (1) as provided in the plan; and

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

1 §10A-5A-10.07. Filings required for merger;
2 effective date.

3 (a) After each constituent organization has approved
4 the plan of merger, a statement of merger must be signed on
5 behalf of:

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

8 (2) each other constituent organization, as provided
9 by its governing statute.

10 (b) A statement of merger under this section must
11 include:

12 (1) the name, type of organization, and mailing
13 address of the principal office of each constituent
14 organization and the jurisdiction of its governing statute;

15 (2) the name, type of organization, and mailing
16 address of the principal office of the surviving organization,
17 the jurisdiction of its governing statute, and, if the
18 surviving organization is created pursuant to the merger, a
19 statement to that effect;

20 (3) the date of the filing of the certificate of
21 formation, if any, and all prior amendments and the filing
22 office or offices, if any, and where such is filed of each
23 constituent organization which was formed under the laws of
24 this state;

25 (4) the date the merger is effective under the
26 governing statute of the surviving organization;

1 (5) if the surviving organization is to be created
2 pursuant to the merger:

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

5 (B) if it will be an organization other than a
6 limited liability company, any organizational document that
7 creates the organization that is required to be in a public
8 writing;

9 (6) if the surviving organization exists before the
10 merger, any amendments provided for in the plan of merger for
11 the organizational document that created the organization that
12 are in a public writing;

13 (7) a statement as to each constituent organization
14 that the merger was approved as required by the organization's
15 governing statute;

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

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

22 (c) Each constituent organization which is formed
23 under the laws of this state shall file the statement of
24 merger with the Secretary of State. For each constituent
25 organization which is formed under the laws of this state and
26 which is not, immediately prior to the merger becoming
27 effective, an organization described in

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

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

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

3 (A) the filing of the statement of merger with the
4 Secretary of State; or

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

6 (2) if the surviving organization is not a limited
7 liability company, as provided by the governing statute of the
8 surviving organization.

9 (e) After a merger becomes effective, if the
10 surviving organization is a limited liability company, then
11 all filing instruments required to be filed under this Title
12 regarding that surviving organization shall be filed with the
13 Secretary of State.

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

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

26 (h) Except as provided in the last sentence of
27 subsection (c), the filing fees for a statement of merger

1 shall be the same fees as provided in
2 Section 10A-1-4.31(a) (5) .

3 §10A-5A-10.08. Effect of merger.

4 (a) When a merger becomes effective:

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

8 (2) each constituent organization that merges into
9 the surviving organization ceases to exist as a separate
10 entity;

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

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

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

26 (6) except as prohibited by law other than this
27 chapter, all of the rights, privileges, immunities, powers,

1 and purposes of each constituent organization, or series
2 thereof, vest in the surviving organization;

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

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

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

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

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

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

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

26 §10A-5A-11.01. Series of assets.

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

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

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

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

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

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

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

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

22 §10A-5A-11.02. Enforceability of obligations and
23 expenses of series against assets.

24 (a) Subject to subsection (b):

25 (1) the debts, liabilities, obligations, and
26 expenses incurred, contracted for, or otherwise existing with
27 respect to a series shall be enforceable against the assets of

1 that series only, and shall not be enforceable against the
2 assets of the limited liability company generally or any other
3 series thereof; and

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

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

10 (1) the records maintained for that series account
11 for the assets of that series separately from the other assets
12 of the limited liability company or any other series;

13 (2) the limited liability company agreement contains
14 a statement to the effect of the limitations provided in
15 subsection (a); and

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

20 §10A-5A-11.03. Assets of series.

21 (a) Assets of a series may be held directly or
22 indirectly, including being held in the name of the series or
23 in the name of the limited liability company.

24 (b) If the records of a series are maintained in a
25 manner so that the assets of the series can be reasonably
26 identified by specific listing, category, type, quantity, or
27 computational or allocational formula or procedure, including

1 a percentage or share of any assets, or by any other method in
2 which the identity of the assets can be objectively
3 determined, the records are considered to satisfy the
4 requirements of Section 10A-5A-11.02(b)(1).

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

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

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

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

15 §10A-5A-11.05. Member's power to dissociate as a
16 member associated with a series; wrongful dissociation.

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

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

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

23 (2) the person is expelled as a member associated
24 with the series by judicial determination under Section
25 10A-5A-11.06(f); or

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

4 (c) A person that wrongfully dissociates as a member
5 associated with a series is liable to the series and, subject
6 to Section 10A-5A-9.01, to the other members associated with
7 that series for damages caused by the dissociation. The
8 liability is in addition to any other debt, obligation, or
9 liability of the member associated with a series to the series
10 or the other members associated with that series.

11 §10A-5A-11.06. Event causing dissociation of a
12 member associated with a series.

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

15 (a) the series has notice of the person's express
16 will to dissociate from the series, except if the person
17 specifies a dissociation date later than the date the series
18 had notice, then the person is dissociated from the series on
19 that later date;

20 (b) an event stated in the limited liability company
21 agreement as causing the person's dissociation from the series
22 occurs;

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

25 (d) the person is expelled as a member associated
26 with that series pursuant to the limited liability company
27 agreement;

1 (e) the person is expelled as a member associated
2 with the series by the unanimous consent of the other members
3 associated with that series if:

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

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

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

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

1 (f) on application by the series, the person is
2 expelled as a member associated with that series by judicial
3 order because 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, that series' activities and affairs;

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

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

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

22 (h) 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
26 substantially all of the person's property but this subsection

1 shall not apply to a person who is the sole remaining member
2 associated with a series;

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

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

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

16 (l) the transfer of a member's entire remaining
17 transferable interest but not until the later of (1) the
18 transferee's becoming a member associated with the series or
19 (2) the time the transfer is completed.

20 §10A-5A-11.07. Effect of person's dissociation as a
21 member.

22 (a) A person who has dissociated as a member
23 associated with a series shall have no right to participate in
24 the direction and oversight of the activities and affairs of
25 that series and is entitled only to receive the distributions
26 to which that member would have been entitled if the member
27 had not dissociated from that series.

1 (b) A person's dissociation as a member associated
2 with a series does not of itself discharge the person from any
3 debt, obligation, or liability to that series, the limited
4 liability company or the other members that the person
5 incurred while a member associated with that series.

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

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

12 §10A-5A-11.08. Dissolution and winding up of series.

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

19 §10A-5A-11.09. Event requiring dissolution.

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

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

24 (b) an event or circumstance that the limited
25 liability company agreement states causes dissolution of the
26 series;

1 (c) the consent of all of the members associated
2 with the series;

3 (d) the passage of 90 days after the occurrence of
4 the dissociation of the last remaining member associated with
5 the series; or

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

17 §10A-5A-11.10. Effect of dissolution of series.

18 Notwithstanding Section 10A-1-9.12:

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

23 (1) collecting the assets of the series;

24 (2) disposing of the properties of the series that
25 will not be distributed in kind to persons owning transferable
26 interests;

1 (3) discharging or making provisions for discharging
2 the liabilities of the series;

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

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

7 (b) In winding up a series' activities and affairs,
8 a series may:

9 (1) preserve the series' activities and affairs and
10 property as a going concern for a reasonable time;

11 (2) prosecute, defend, or settle actions or
12 proceedings whether civil, criminal or administrative;

13 (3) transfer the series' property; and

14 (4) resolve disputes by mediation or arbitration.

15 (c) The dissolution of a series does not:

16 (1) transfer title to the series' property;

17 (2) prevent the commencement of a proceeding by or
18 against the series in the series' name;

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

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

24 §10A-5A-11.11. Right to wind up activities and
25 affairs of series.

26 (a) The person or persons designated in the limited
27 liability company agreement to wind up the activities and

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

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

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

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

3 (A) there are no members associated with the series;
4 and

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

8 (3) in connection with a proceeding under Section
9 10A-5A-11.09(e).

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

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

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

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

20 (1) identify the limited liability company and the
21 dissolved series;

22 (2) describe the information required to be included
23 in a claim;

24 (3) provide a mailing address to which the claim is
25 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);

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

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

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

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

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

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

1 of security to be provided for payment of claims that are
2 contingent or have not been made known to the dissolved series
3 or that are based on an event occurring after the effective
4 date of the dissolution of the series but that, based on the
5 facts known to the dissolved series, are reasonably estimated
6 to arise after the effective date of the dissolution of the
7 series. Provision need not be made for any claim that is or is
8 reasonably anticipated to be barred under subsection (c).

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

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

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

1 distributed by the dissolved series after the effective date
2 of the dissolution of the series.

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

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

11 §10A-5A-11.14. Application of assets in winding up
12 series' activities and affairs.

13 Notwithstanding Section 10A-1-9.12, upon the winding
14 up of a series, the assets of the series shall be applied as
15 follows:

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

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

23 (1) first, to each person owning a transferable
24 interest associated with that series that reflects
25 contributions made on account of that transferable interest
26 and not previously returned, an amount equal to the value of
27 the unreturned contributions; and

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

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

11 §10A-5A-11.15. Reinstatement after dissolution of a
12 series.

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

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

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

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

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

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

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

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

16 §10A-5A-11.16. Effect of reinstatement.

17 (a) Subject to subsection (b), upon reinstatement, a
18 series shall be deemed for all purposes to have continued its
19 activities and affairs as if dissolution had never occurred;
20 each right inuring to, and each debt, obligation, and
21 liability incurred by, the series after the dissolution shall
22 be determined as if the dissolution had never occurred.

23 (b) The rights of persons acting in reliance on the
24 dissolution of the series before those persons had notice of
25 the reinstatement shall not be adversely affected by the
26 reinstatement.

27 ARTICLE 12

1 TRANSITION RULES/MISCELLANEOUS PROVISIONS

2 §10A-5A-12.01. Application to existing
3 relationships.

4 (a) Before January 1, 2016, this chapter governs
5 only:

6 (1) a limited liability company formed on or after
7 January 1, 2014; and

8 (2) except as otherwise provided in subsection (c),
9 a limited liability company formed before January 1, 2014,
10 which elects, in the manner provided in the limited liability
11 company's operating agreement or as provided for by law for
12 amending or restating the limited liability company's
13 operating agreement, to be subject to this chapter.

14 (b) Except as otherwise provided in subsection (c),
15 on and after January 1, 2016, this chapter governs all limited
16 liability companies.

17 (c) For purposes of applying this chapter to a
18 limited liability company formed before January 1, 2014:

19 (1) the limited liability company's formation
20 document, whether articles of organization or certificate of
21 formation, is deemed to be the company's certificate of
22 formation;

23 (2) if the limited liability company's formation
24 document, whether articles of organization or certificate of
25 formation, contains the information required in
26 Section 10A-5A-2.01(a)(1)(5), the limited liability company
27 shall not be required to amend or restate its formation

1 document, whether articles of organization or certificate of
2 formation, to conform with this chapter;

3 (3) provisions in the limited liability company's
4 formation documents, whether articles of organization or
5 certificate of formation, shall operate as if those provisions
6 were in the limited liability company's limited liability
7 company agreement;

8 (4) if the limited liability company's formation
9 document, whether articles of organization or certificate of
10 formation, is amended or restated on or after January 1, 2014,
11 and the limited liability company's formation document,
12 whether articles of organization or certificate of formation,
13 is in conflict with the limited liability company's limited
14 liability agreement, then Section 10A-5A-1.10(d) shall govern;
15 and

16 (5) any amendment or restatement of the limited
17 liability company's formation document, whether articles of
18 organization or certificate of formation, on or after January
19 1, 2014, shall conform with this chapter.

20 §10A-5A-12.02. Relation to electronic signatures in
21 global and national commerce act.

22 This chapter modifies, limits, and supersedes the
23 federal Electronic Signatures in Global and National Commerce
24 Act, 15 U.S.C. Section 7001 et seq., but does not modify,
25 limit, or supersede Section 101(c) of that act, 15 U.S.C.
26 Section 7001(c), or authorize electronic delivery of any of

1 the notices described in Section 103(b) of that act, 15 U.S.C.
2 Section 7003(b).

3 §10A-5A-12.03. Interstate application.

4 A limited liability company formed and existing
5 under this chapter may conduct its activities and affairs,
6 carry on its operations, and have and exercise the powers
7 granted by this chapter in any state, foreign country, or
8 other jurisdiction.

9 §10A-5A-12.04. Savings clause.

10 (a) Except as provided in subsection (b), the repeal
11 of a statute by this chapter does not affect:

12 (1) the operation of the statute or any action taken
13 under it before its repeal;

14 (2) any ratification, right, remedy, privilege,
15 obligation, or liability acquired, accrued, or incurred under
16 the statute before its repeal;

17 (3) any violation of the statute, or any penalty,
18 forfeiture, or punishment incurred because of the violation,
19 before its repeal; or

20 (4) any proceeding, reorganization, or dissolution
21 commenced under the statute before its repeal, and the
22 proceeding, reorganization, or dissolution may be completed in
23 accordance with the statute as if it had not been repealed.

24 (b) If a penalty or punishment imposed for violation
25 of a statute repealed by this chapter is reduced by this
26 chapter, the penalty or punishment if not already imposed
27 shall be imposed in accordance with this chapter.

1 §10A-5A-12.05. Reserved power of the state to alter
2 or repeal chapter.

3 All provisions of this chapter may be altered from
4 time to time or repealed and all rights of members and agents
5 are subject to this reservation. Unless expressly stated to
6 the contrary in this chapter, all amendments of this chapter
7 shall apply to limited liability companies and members and
8 agents whether or not existing as such at the time of the
9 enactment of any such amendment.

10 Section 2. Sections 10A-1-1.03 and 10A-1-1.08, are
11 amended to read as follows:

12 "§10A-1-1.03.

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

25 "(2) ASSOCIATE. When used to indicate a relationship
26 with:

1 "(A) a domestic or foreign entity or organization
2 for which the person is:

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

4 "(ii) a beneficial owner of 10 percent or more of a
5 class of voting ownership interests or similar securities of
6 the entity or organization;

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

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

13 "(D) a governing person or an affiliate or officer
14 of the person.

15 "(3) ASSOCIATION. Includes, but is not limited to,
16 an unincorporated nonprofit association as defined in Section
17 10A-17-1.02(2) and an unincorporated professional association
18 as defined in Section 10A-30-1.01(2).

19 "(4) BUSINESS CORPORATION. A corporation within the
20 meaning of 10A-2-1.40(3) or Section 10A-2-1.40(9).

21 "(5) BUSINESS TRUST. A business trust within the
22 meaning of Section 10A-16-1.01.

23 "(6) CERTIFICATE OF FORMATION.

24 "(A) the document required to be filed publicly
25 under Article 3 to form a filing entity; and

1 "(B) if appropriate, a restated certificate of
2 formation and all amendments of an original or restated
3 certificate of formation.

4 "(7) CERTIFICATE OF OWNERSHIP. An instrument
5 evidencing an ownership interest or membership interest in an
6 entity.

7 "(8) CERTIFICATE OF TERMINATION. Any document, such
8 as articles of dissolution in the case of a corporation, or
9 certificate of cancellation, in the case of a limited
10 partnership, required by law to be filed publicly with respect
11 to an entity's dissolution and the winding up of its affairs
12 or the end of its existence. In the case of an entity whose
13 separate existence ceases as a result of a merger, the
14 articles of merger shall constitute the certificate of
15 termination.

16 "(9) CERTIFICATED OWNERSHIP INTEREST. An ownership
17 interest of a domestic entity represented by a certificate
18 issued in bearer or registered form.

19 "(10) CERTIFICATION. Duly authenticated by the
20 proper officer of the state or county under the laws of which
21 a domestic or foreign entity is formed.

22 "(11) CONTRIBUTION. A tangible or intangible benefit
23 that a person transfers to an entity in consideration for an
24 ownership interest in the entity or otherwise in the person's
25 capacity as an owner or a member. In the case of an entity to
26 which Section 234 of the Constitution of Alabama of 1901, now
27 appearing as Section 234 of the Official Recompilation of the

1 Constitution of Alabama of 1901, as amended, applies, the
2 benefit that may constitute a contribution transferred in
3 exchange for an ownership interest or transferred in the
4 transferor's capacity as an owner or member shall be limited
5 to money, work or labor done, or property actually received.
6 For entities to which Section 234 does not apply, the benefit
7 that may constitute a contribution transferred in exchange for
8 an ownership interest or transferred in the transferor's
9 capacity as an owner or member may include cash, property,
10 services rendered, a contract for services to be performed, a
11 promissory note or other obligation of a person to pay cash or
12 transfer property to the entity, or securities or other
13 interests in or obligations of an entity. In either case, the
14 benefit does not include cash or property received by the
15 entity:

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

19 "(B) that the person intends to be a loan to the
20 entity.

21 "(12) CONVERSION.

22 "(A) the continuance of a domestic entity as a
23 foreign entity of any type;

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

26 "(C) the continuance of a domestic entity of one
27 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.

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

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

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

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

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

14 "(22) DOMESTIC. With respect to an entity, that the
15 entity is formed and exists under this title.

16 "(23) DOMESTIC ENTITY. An organization formed and
17 existing under this title.

18 "(24) EFFECTIVE DATE OF THIS TITLE. January 1, 2011.

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

22 "(26) ENTITY. A domestic entity or foreign entity.

23 "(27) FILING ENTITY. A domestic entity that is a
24 corporation, limited partnership, limited liability company,
25 professional association, employee cooperative corporation, or
26 real estate investment trust.

1 "(28) FILING INSTRUMENT. An instrument, document, or
2 statement that is required or authorized by this title to be
3 filed by or for an entity with the filing officer in
4 accordance with Article 4.

5 "(29) FILING OFFICER. The officer with whom a filing
6 instrument is required or permitted to be filed under Article
7 4 or under any other provision of this title.

8 "(30) FOREIGN. With respect to an entity, that the
9 entity is formed and existing under the laws of a jurisdiction
10 other than this state.

11 "(31) FOREIGN ENTITY. An organization formed and
12 existing under the laws of a jurisdiction other than this
13 state.

14 "(32) FOREIGN FILING ENTITY. A foreign entity that
15 registers or is required to register as a foreign entity under
16 Section 10A-1-7.01(a) (1).

17 "(33) FOREIGN GOVERNMENTAL AUTHORITY. A governmental
18 official, agency, or instrumentality of a jurisdiction other
19 than this state.

20 "(34) FOREIGN LIMITED PARTNERSHIP. A limited
21 partnership within the meaning of Section 10A-9-1.02(7).

22 "(35) FOREIGN NONFILING ENTITY. A foreign entity
23 that is not a foreign filing entity.

24 "(36) FUNDAMENTAL BUSINESS TRANSACTION. A merger,
25 interest exchange, conversion, or sale of all or substantially
26 all of an entity's assets.

27 "(37) GENERAL PARTNER.

1 "(A) each partner in a general partnership; or

2 "(B) a person who is admitted to a limited
3 partnership as a general partner in accordance with the
4 governing documents of the limited partnership.

5 "(38) GENERAL PARTNERSHIP. A partnership within the
6 meaning of Section 10A-8-1.02(3). The term includes a
7 registered limited liability partnership within the meaning of
8 Section 10A-8-102(7).

9 "(39) GOVERNING AUTHORITY. A person or group of
10 persons who are entitled to manage and direct the affairs of
11 an entity under this title and the governing documents of the
12 entity, except that if the governing documents of the entity
13 or this title divide the authority to manage and direct the
14 affairs of the entity among different persons or groups of
15 persons according to different matters, governing authority
16 means the person or group of persons entitled to manage and
17 direct the affairs of the entity with respect to a matter
18 under the governing documents of the entity or this title. The
19 term includes the board of directors of a corporation, by
20 whatever name known, or other persons authorized to perform
21 the functions of the board of directors of a corporation, the
22 general partners of a general partnership or limited
23 partnership, the managers of a limited liability company that
24 is managed by managers, the members of a limited liability
25 company that is managed by members who are entitled to manage
26 the company, and the trust managers of a real estate

1 investment trust. The term does not include an officer who is
2 acting in the capacity of an officer.

3 "(40) GOVERNING DOCUMENTS.

4 "(A) in the case of a domestic entity:

5 "(i) the certificate of formation for a domestic
6 filing entity or the document or agreement under which a
7 domestic nonfiling entity is formed; and

8 "(ii) the other documents or agreements, including
9 bylaws, partnership agreements of limited partnerships,
10 operating agreements of limited liability companies, or
11 similar documents, adopted by the entity under this title to
12 govern the formation or the internal affairs of the entity; or

13 "(B) in the case of a foreign entity, the
14 instruments, documents, or agreements adopted under the law of
15 its jurisdiction of formation to govern the formation or the
16 internal affairs of the entity.

17 "(41) GOVERNING PERSON. A person serving as part of
18 the governing authority of an entity.

19 "(42) INDIVIDUAL. A natural person and the estate of
20 an incompetent or deceased natural person.

21 "(43) INSOLVENCY. The inability of a person to pay
22 the person's debts as they become due in the usual course of
23 business or affairs.

24 "(44) INSOLVENT. A person who is unable to pay the
25 person's debts as they become due in the usual course of
26 business or affairs.

1 "(45) JUDGE OF PROBATE. The judge of probate of the
2 county in which a domestic entity's certificate of formation
3 is filed, or, with respect to partnership statements provided
4 for in Section 10A-8-1.06, the judge of probate of the county
5 in which a statement is filed.

6 "(46) JURISDICTION OF FORMATION.

7 "(A) in the case of a domestic filing entity, this
8 state;

9 "(B) in the case of a foreign filing entity, the
10 jurisdiction in which the entity's certificate of formation or
11 similar organizational instrument is filed; or

12 "(C) in the case of a foreign or domestic nonfiling
13 entity:

14 "(i) the jurisdiction the laws of which are chosen
15 in the entity's governing documents to govern its internal
16 affairs if that jurisdiction bears a reasonable relation to
17 the owners or members or to the domestic or foreign nonfiling
18 entity's business and affairs under the principles of this
19 state that otherwise would apply to a contract among the
20 owners or members; or

21 "(ii) if subparagraph (i) does not apply, the
22 jurisdiction in which the entity has its principal place of
23 business.

24 "(47) LAW. Unless the context requires otherwise,
25 both statutory and common law.

26 "(48) LICENSE. A license, certificate of
27 registration, or other legal authorization.

1 "(49) LICENSING AUTHORITY. The state court, state
2 regulatory licensing board, or other like agency which has the
3 power to issue a license or other legal authorization to
4 render professional services.

5 "(50) LIMITED LIABILITY COMPANY. A limited liability
6 company within the meaning of ~~Section 10A-5-1.02(6) or Section~~
7 ~~10A-5-1.02(4)~~ Chapter 5 or Chapter 5A, as applicable.

8 "(51) LIMITED PARTNER. A person who has been
9 admitted to a limited partnership as a limited partner as
10 provided by:

11 "(A) in the case of a domestic limited partnership,
12 Section 10A-9-3.01; or

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

15 "(52) LIMITED PARTNERSHIP. A limited partnership
16 within the meaning of Section 10A-9-1.02(11) or Section
17 10A-9-1.02(7).

18 "~~(53) MANAGER. A person or persons designated by the~~
19 ~~members of a limited liability company as provided in the~~
20 ~~certificate of formation of the limited liability company.~~

21 "~~(54)~~ (53) MANAGERIAL OFFICIAL. An officer or a
22 governing person.

23 "~~(55)~~ (54) MEMBER.

24 "~~(A) in the case of a limited liability company~~
25 ~~governed by Chapter 5, a person reflected in the required~~
26 ~~records of a limited liability company or as the owner of some~~
27 ~~governance rights of a membership interest in the limited~~

1 ~~liability company as provided in Section 10A-5-1.02(5) a~~
2 ~~person defined as a member under Chapter 5 or Chapter 5A, as~~
3 ~~applicable;~~

4 "(B) in the case of a nonprofit corporation governed
5 by Article 3, a person having membership rights in a
6 corporation in accordance with its governing documents as
7 provided in Section 10A-3-1.02(5);

8 "(C) in the case of an employee cooperative
9 corporation governed by Chapter 11, a natural person who, as
10 provided in Section 10A-11-1.02(5), has been accepted for
11 membership in and owns a membership share in an employee
12 cooperative.

13 "(D) in the case of a nonprofit association, a
14 person who, as provided in Section 10A-17-1.02(1), may
15 participate in the selection of persons authorized to manage
16 the affairs of the nonprofit association or in the development
17 of its policy.

18 ~~"(56) MEMBERSHIP INTEREST. A member's interest in an~~
19 ~~entity.~~

20 ~~"(57) (55) MERGER.~~

21 "(A) the division of a domestic entity into two or
22 more new domestic entities or other organizations or into a
23 surviving domestic entity and one or more new domestic or
24 foreign entities or non-code organizations; or

25 "(B) the combination of one or more domestic
26 entities with one or more domestic entities or non-code
27 organizations resulting in:

1 "(i) one or more surviving domestic entities or
2 non-code organizations;

3 "(ii) the creation of one or more new domestic
4 entities or non-code organizations, or one or more surviving
5 domestic entities or non-code organizations; or

6 "(iii) one or more surviving domestic entities or
7 non-code organizations and the creation of one or more new
8 domestic entities or non-code organizations.

9 "~~(58)~~ (56) NON-CODE ORGANIZATION. An organization
10 other than a domestic entity.

11 "~~(59)~~ (57) NONFILING ENTITY. A domestic entity that
12 is not a filing entity. The term includes a domestic general
13 partnership, a registered limited liability partnership, and a
14 nonprofit association.

15 "~~(60)~~ (58) NONPROFIT ASSOCIATION. An unincorporated
16 nonprofit association within the meaning of Section
17 10A-17-1.02 (2).

18 "~~(61)~~ (59) NONPROFIT CORPORATION. A nonprofit
19 corporation within the meaning of Section 10A-3-1.02 (7) or
20 Section 10A-3-1.02 (4).

21 "~~(62)~~ (60) NONPROFIT ENTITY. An entity that is a
22 nonprofit corporation, nonprofit association, or other entity
23 that is organized solely for one or more of the purposes
24 specified by the chapter or article of this title applicable
25 to that form of nonprofit entity and no part of the income or
26 profit of which is distributable to its members, owners,
27 directors, officers, or other governing persons.

1 "~~(63)~~(61) OFFICER. An individual elected, appointed,
2 or designated as an officer of an entity by the entity's
3 governing authority or under the entity's governing documents.

4 "~~(64)~~(62) ORGANIZATION. A corporation, limited or
5 general partnership, limited liability company, business
6 trust, real estate investment trust, joint venture, joint
7 stock company, cooperative, association, bank, insurance
8 company, credit union, savings and loan association, or other
9 organization, regardless of whether the organization is for
10 profit, nonprofit, domestic, or foreign.

11 "~~(65)~~(63) ORGANIZER. A person, who need not be an
12 owner or member of the entity, who, having the capacity to
13 contract, is authorized to execute documents in connection
14 with the formation of the entity.

15 "~~(66)~~(64) OWNER.

16 "(A) with respect to a foreign or domestic business
17 corporation or real estate investment trust, a shareholder;

18 "(B) with respect to a foreign or domestic
19 partnership, a partner;

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

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

24 "~~(67)~~(65) OWNERSHIP INTEREST. An owner's interest in
25 an entity. The term includes the owner's share of profits and
26 losses or similar items and the right to receive
27 distributions. The term does not include an owner's right to

1 participate in management. An ownership interest is personal
2 property.

3 "~~(68)~~ (66) PARENT ENTITY or PARENT ORGANIZATION. An
4 entity or organization that:

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

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

9 "~~(69)~~ (67) PARTNER. A limited partner or general
10 partner.

11 "~~(70)~~ (68) PARTNERSHIP. Includes a general
12 partnership within the meaning of Section 10A-8-1.02(3),
13 including a registered limited liability partnership within
14 the meaning of Section 10A-8-1.02(7) and a foreign registered
15 limited liability partnership within the meaning of Section
16 10A-8-1.02(2) and also includes a limited partnership within
17 the meaning of Section 10A-9-1.02(7) or Section
18 10A-9-1.02(11).

19 "~~(71)~~ (69) PARTNERSHIP AGREEMENT. The agreement,
20 written or oral, among the partners concerning the affairs of
21 the general or limited partnership, as the case may be, and
22 the conduct of its business. In the case of limited
23 partnerships formed prior to October 1, 1988, partnership
24 agreement includes the certificate of partnership.

25 "~~(72)~~ (70) PARTNERSHIP INTEREST. In the case of a
26 general partnership, and in the case of a limited partnership,
27 the meaning set forth in Section 10A-8-1.02(5).

1 "~~(73)~~(71) PARTY TO THE MERGER. A domestic entity or
2 non-code organization that under a plan of merger is divided
3 or combined by a merger. The term does not include a domestic
4 entity or non-code organization that is not to be divided or
5 combined into or with one or more domestic entities or
6 non-code organizations, regardless of whether ownership
7 interests of the entity are to be issued under the plan of
8 merger.

9 "~~(74)~~(72) PERSON. An individual or an organization,
10 whether created by the laws of this state or another state or
11 foreign country, including, without limitation, a general
12 partnership, registered limited liability partnership, limited
13 partnership, limited liability company, corporation,
14 professional corporation, professional association, trustee,
15 personal representative, fiduciary, as defined in Section
16 19-3-150 or person performing in any similar capacity,
17 business trust, estate, trust, association, joint venture,
18 government, governmental subdivision, agency, or
19 instrumentality, or any other legal or commercial entity.

20 "~~(75)~~(73) PRESIDENT.

21 "(A) the individual designated as president of an
22 entity under the entity's governing documents; or

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

1 "~~(76)~~(74) PROFESSIONAL ASSOCIATION. A professional
2 association within the meaning of Section 10A-30-1.01.

3 "~~(77)~~(75) PROFESSIONAL CORPORATION. A professional
4 corporation within the meaning of Section 10A-4-1.03(2) or
5 Section 10A-4-1.03(3).

6 "~~(78)~~(76) PROFESSIONAL ENTITY. A professional
7 association, or a professional corporation, ~~or professional~~
8 ~~limited liability company~~.

9 "~~(79)~~ ~~PROFESSIONAL LIMITED LIABILITY COMPANY. A~~
10 ~~limited liability company formed for the purpose of providing~~
11 ~~a professional service within the meaning of Section~~
12 ~~10A-5-8.01.~~

13 "~~(80)~~(77) PROFESSIONAL SERVICE. Any type of service
14 that may lawfully be performed only pursuant to a license
15 issued by a state court, state regulatory licensing board, or
16 other like agency pursuant to state laws.

17 "~~(81)~~(78) PROPERTY. Includes tangible and intangible
18 property and an interest in that property.

19 "~~(82)~~(79) REAL ESTATE INVESTMENT TRUST. An
20 unincorporated trust, association, or other entity within the
21 meaning of Section 10A-10-1.02(1).

22 "~~(83)~~(80) REGISTERED LIMITED LIABILITY PARTNERSHIP.
23 A registered limited liability partnership within the meaning
24 of Section 10A-8-1.01(7).

25 "~~(84)~~(81) SECRETARY.

26 "(A) the individual designated as secretary of an
27 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:

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

1 "(B) the voting power of which is possessed by a
2 parent entity or parent organization.

3 "~~(91)~~(88) TREASURER.

4 "(A) the individual designated as treasurer of an
5 entity under the entity's governing documents; or

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

9 "~~(92)~~(89) TRUSTEE. A person who serves as a trustee
10 of a trust, including a real estate investment trust.

11 "~~(93)~~(90) UNCERTIFICATED OWNERSHIP INTEREST. An
12 ownership interest in a domestic entity that is not
13 represented by a certificate in bearer or registered form.

14 "~~(94)~~(91) VICE PRESIDENT.

15 "(A) the individual designated as vice president of
16 an entity under the governing documents of the entity; or

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

23 "~~(95)~~(92) WRITING or WRITTEN. Information that is
24 inscribed on a tangible medium or that is stored in an
25 electronic or other medium and is retrievable in perceivable
26 form.

27 "§10A-1-1.08.

1 "(a) The provisions of this title as described by
2 this section may be cited as provided by this section.

3 "(b) Chapter 2 and the provisions of Chapter 1 to
4 the extent applicable to business corporations may be cited as
5 the Alabama Business Corporation Law.

6 "(c) Chapter 3 and the provisions of Chapter 1 to
7 the extent applicable to nonprofit corporations may be cited
8 as the Alabama Nonprofit Corporation Law.

9 "(d) Chapter 4 and the provisions of Chapter 1 to
10 the extent applicable to professional corporations may be
11 cited as the Alabama Professional Corporation Law.

12 "(e) Chapter 5 and the provisions of Chapter 1 to
13 the extent applicable to limited liability companies may be
14 cited as the Alabama Limited Liability Company Law. Chapter 5A
15 and the provisions of Chapter 1 to the extent applicable to
16 limited liability companies may be cited as the Alabama
17 Limited Liability Company Law of 2014.

18 "(f) Chapter 8 and the provisions of Chapter 1 to
19 the extent applicable to general partnerships may be cited as
20 the Alabama ~~General~~ Uniform Partnership Law.

21 "(g) Chapter 9 and the provisions of Chapter 1 to
22 the extent applicable to limited partnerships may be cited as
23 the Alabama Uniform Limited Partnership Law of 2010.

24 "(h) Chapter 10 and the provisions of Chapter 1 to
25 the extent applicable to real estate investment trusts may be
26 cited as the Alabama Real Estate Investment Trust Law.

1 "(i) Chapter 11 and the provisions of Chapter 1 and
2 Chapter 2 to the extent applicable to employee cooperative
3 corporations may be cited as the Alabama Employee Cooperative
4 Corporations Law.

5 "(j) Chapter 17 may be cited as the Alabama
6 Unincorporated Nonprofit Association Law."

7 Section 3. Sections 10A-5-1.01 to 10A-5-9.06, Code
8 of Alabama 1975, are repealed on January 1, 2016.

9 Section 4. This act shall become effective on
10 January 1, 2014.

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Senate

Read for the first time and referred to the Senate
committee on Governmental Affairs..... 14-MAR-13

Read for the second time and placed on the calen-
dar..... 04-APR-13

Read for the third time and passed as amended 18-APR-13

Yeas 25
Nays 0

Patrick Harris
Secretary