

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

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8 SYNOPSIS: Existing law authorizes the formation of
9 limited liability companies and the filing of
10 documentation of such formation with the Secretary
11 of State.

12 This bill would provide further for the
13 formation of limited liability companies by
14 replacing the current limited liability company law
15 with an updated Uniform Alabama Limited Liability
16 Company Law.

17 This bill would clarify that a limited
18 liability agreement is a contractual agreement
19 between the parties to the agreement and may be
20 modified to suit the needs of the parties.

21 This bill would provide that certain
22 obligations of the contractual agreement, such as
23 the obligation of good faith and fair dealing,
24 could not be modified.

25 This bill would require a limited liability
26 company to file with the Secretary of State certain
27 documents providing for the formation, dissolution,

1 merger, or conversion of the company as a means of
2 providing notice to third parties.

3 This bill would provide that the right of a
4 person to direct and oversee the activities and
5 affairs of the limited liability company would be
6 determined by the limited liability company
7 agreement, and, where the agreement is silent, by
8 the members of the company.

9 This bill would provide that a limited
10 liability company may establish in its certificate
11 of formation and its limited liability company
12 agreement, one or more designated series of assets
13 with which certain members may be associated and
14 would provide that the assets of one series could
15 not be used to satisfy the obligations of another
16 series.

17
18 A BILL
19 TO BE ENTITLED
20 AN ACT
21

22 To add Chapter 5A of Title 10A, comprised of
23 Sections 10A-5A-1.01 to 10A-5A-12.08, inclusive, to the Code
24 of Alabama 1975; to provide further for the formation of
25 limited liability companies; to provide what constitutes
26 notice for purposes of the law; to provide for the powers and
27 privileges of a limited liability company; to provide for the

1 limited liability company agreement and the certificate of
2 formation; to provide for the relations of members of the
3 limited liability company to third parties dealing with the
4 company; to provide for the transfer of an interest or other
5 right in a limited liability company to a third party or
6 creditor; to provide for the disassociation of a member; to
7 provide for dissolution and reinstatement; to provide for
8 legal actions by members; to provide for conversions and
9 mergers; to provide for the establishment of one or more
10 designated series of assets; to provide that this act applies
11 only to a limited liability company formed after January 1,
12 2014; and to amend Sections 10A-1-1.03 and 10A-1-1.08, Code of
13 Alabama 1975, to conform to this act; and to repeal Sections
14 10A-5-1.01 to 10A-5-9.06, Code of Alabama 1975, on January 1,
15 2016.

16 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

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

20 Chapter 5A Limited Liability Companies

21 ARTICLE 1

22 GENERAL PROVISIONS

23 §10A-5A-1.01. Short title.

24 This chapter and the provisions of Chapter 1, to the
25 extent applicable to limited liability companies, shall be
26 known and may be cited as the "Alabama Limited Liability
27 Company Law of 2014."

1 §10A-5A-1.02. Definitions.

2 Notwithstanding Section 10A-1-1.03, as used in this
3 chapter, unless the context otherwise requires, the following
4 terms mean:

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

9 (b) "Constituent limited liability company" means a
10 constituent organization that is a limited liability company.

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

13 (d) "Converted organization" means the organization
14 into which a converting organization converts pursuant to
15 Article 10.

16 (e) "Converting limited liability company" means a
17 converting organization that is a limited liability company.

18 (f) "Converting organization" means an organization
19 that converts into another organization pursuant to Article
20 10.

21 (g) "Disqualified person" means any person who is
22 not a qualified person.

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

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

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

6 (k) "Limited liability company agreement" means any
7 agreement (whether referred to as a limited liability company
8 agreement, operating agreement or otherwise), written, oral or
9 implied, of the member or members as to the activities and
10 affairs of a limited liability company or series thereof. The
11 limited liability company agreement of a limited liability
12 company having only one member shall not be unenforceable by
13 reason of there being only one person who is a party to the
14 limited liability company agreement. The limited liability
15 company agreement includes any amendments to the limited
16 liability company agreement.

17 (l) "Member" means a person admitted under Section
18 10A-5A-4.01 and not dissociated under Section 10A-5A-6.02.

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

27 (n) "Organizational documents" means:

1 (1) for a general partnership or foreign general
2 partnership, its partnership agreement and if applicable, its
3 registration as a limited liability partnership or a foreign
4 limited liability partnership;

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

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

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

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

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

26 (7) for a professional corporation or foreign
27 professional corporation, its certificate of formation,

1 bylaws, and other agreements among its shareholders that are
2 authorized by its governing statute, or comparable writings as
3 provided in its governing statute; and

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

8 (o) "Qualified person," with respect to a limited
9 liability company rendering professional services in this
10 state, means a person authorized by this state or a regulatory
11 authority of this state to own a transferrable interest in
12 that limited liability company.

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

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

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

23 (s) "Transferrable interest" means a member's right
24 to receive distributions from a limited liability company or a
25 series thereof.

26 §10A-5A-1.03. Knowledge; notice.

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

1 (1) has actual knowledge of it; or
2 (2) is deemed to know it under law other than this
3 chapter.

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

5 (1) knows of it;
6 (2) receives notification of it;
7 (3) has reason to know the fact from all of the
8 facts known to the person at the time in question; or

9 (4) is deemed to have notice of the fact under
10 subsection (d).

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

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

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

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

22 (3) merger or conversion, 90 days after a statement
23 of merger or statement of conversion under Article 10 becomes
24 effective; and

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

1 (e) A member's knowledge, notice or receipt of a
2 notification of a fact relating to the limited liability
3 company is not knowledge, notice or receipt of a notification
4 of a fact by the limited liability company solely by reason of
5 the member's capacity as a member.

6 §10A-5A-1.04. Powers and privileges.

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

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

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

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

23 (1) sue and be sued;

24 (2) contract;

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

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

3 §10A-5A-1.05. Governing law.

4 The law of this state governs:

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

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

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

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

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

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

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

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

26 (d) The use of any gender shall be applicable to all
27 genders. The captions contained in this chapter are for

1 purposes of convenience only and shall not control or affect
2 the construction of this chapter.

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

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

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

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

21 §10A-5A-1.07. Application of partnership provisions
22 to limited liability companies; classification for federal
23 income tax purposes.

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

25 (a) The terms "partnership" and "limited
26 partnership," when used in any chapter or title other than the
27 Alabama Limited Liability Company Law, the Alabama General

1 Partnership Law, and the Alabama Limited Partnership Law, and
2 any successors of those laws, include a limited liability
3 company organized under this chapter, unless the context
4 requires otherwise.

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

11 §10A-5A-1.08. Limited liability company agreement;
12 scope; function; and limitations.

13 (a) Except as otherwise provided in subsections (b)
14 and (c):

15 (1) the limited liability company agreement governs
16 relations among the members as members and between the members
17 and the limited liability company; and

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

21 (b) (1) To the extent that, at law or in equity, a
22 member or other person has duties, including fiduciary duties,
23 to the limited liability company, or to another member or to
24 another person that is a party to or is otherwise bound by a
25 limited liability company agreement, the member's or other
26 person's duties may be expanded or restricted or eliminated by
27 a written limited liability company agreement, but the implied

1 contractual covenant of good faith and fair dealing may not be
2 eliminated.

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

13 (3) A member or other person shall not be liable to
14 a limited liability company or to another member or to another
15 person that is a party to or is otherwise bound by a limited
16 liability company agreement for breach of fiduciary duty for
17 the member's or other person's good faith reliance on the
18 limited liability company agreement.

19 (4) A limited liability company agreement may
20 provide that:

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

25 (B) at the time or upon the happening of events
26 specified in the limited liability company agreement, a member

1 or transferee may be subject to specified penalties or
2 specified consequences.

3 (5) A penalty or consequence that may be specified
4 under paragraph (4) may include and take the form of reducing
5 or eliminating the defaulting member's or transferee's
6 proportionate interest in a limited liability company,
7 subordinating the member's or transferee's transferable
8 interest to that of non-defaulting members or transferees,
9 forcing a sale of that transferable interest, forfeiting the
10 defaulting member's or transferee's transferable interest, the
11 lending by other members or transferees of the amount
12 necessary to meet the defaulting member's or transferee's
13 commitment, a fixing of the value of the defaulting member's
14 or transferee's transferable interest by appraisal or by
15 formula and redemption or sale of the transferable interest at
16 that value, or other penalty or consequence.

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

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

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

23 (2) vary the law applicable under Section
24 10A-5A-1.05;

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

1 (4) vary the power of the court under Section
2 10A-5A-2.05;

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

6 (6) eliminate or limit the liability of a member or
7 other person for any act or omission that constitutes a bad
8 faith violation of the implied contractual covenant of good
9 faith and fair dealing as provided under Section
10 10A-5A-1.08(b) (2);

11 (7) waive the requirements of Section
12 10A-5A-4.04(c);

13 (8) vary the law applicable under Section
14 10A-5A-4.06(c);

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

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

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

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

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

1 (14) vary the right of a member under Section
2 10A-5A-10.09; or

3 (15) waive the requirements of Section
4 10A-5A-11.02(b) .

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

8 (a) A limited liability company is bound by and may
9 enforce the limited liability company agreement, whether or
10 not the limited liability company has itself manifested assent
11 to the limited liability company agreement.

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

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

25 §10A-5A-1.10. Limited liability company agreement;
26 effect on third parties and relationship to writings effective
27 on behalf of limited liability company.

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

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

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

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

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

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

27 ARTICLE 2

1 FORMATION

2 §10A-5A-2.01. Formation.

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

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

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

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

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

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

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

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

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

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

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

14 §10A-5A-2.02. Amendment or restatement of
15 certificate of formation.

16 Notwithstanding Division B of Article 3 of Chapter
17 1:

18 (a) A certificate of formation may be amended at any
19 time.

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

22 (c) To amend its certificate of formation, a limited
23 liability company must deliver a certificate of amendment for
24 filing to the filing officer provided for in subsection (g)
25 which certificate of amendment shall state:

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

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

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

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

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

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

12 (3) state the date of the filing of its certificate
13 of formation, and of all prior amendments and the filing
14 office or offices where filed; and

15 (4) set forth any amendment or change effected in
16 connection with the restatement of the certificate of
17 formation.

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

23 (e) The original certificate of formation, as
24 theretofore amended, shall be superseded by the restated
25 certificate of formation and thenceforth, the restated
26 certificate of formation, including any further amendment or
27 changes made thereby, shall be the certificate of formation of

1 the limited liability company, but the original effective date
2 of formation shall remain unchanged.

3 (f) An amended or restated certificate of formation
4 may contain only provisions that would be permitted at the
5 time of the amendment if the amended or restated certificate
6 of formation were a newly filed original certificate of
7 formation.

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

19 §10A-5A-2.03. Effect of filing amendment or
20 restatement of certificate of formation.

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

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

27 §10A-5A-2.04. Execution of documents.

1 (a) A writing delivered to a filing officer for
2 filing pursuant to this chapter must be signed as provided by
3 this section.

4 (1) A limited liability company's initial
5 certificate of formation must be signed by at least one
6 organizer.

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

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

16 (4) Any other writing must be signed by the person
17 on whose behalf the writing is delivered to the filing
18 officer.

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

23 §10A-5A-2.05. Signing and filing pursuant to
24 judicial order.

25 (a) If a person required by this chapter to sign a
26 writing or deliver a writing to a filing officer for filing
27 under this chapter does not do so, any other person that is

1 aggrieved by that failure may petition the circuit court in
2 the county in which the limited liability company's principal
3 place of business within this state is located, and if the
4 limited liability company does not have a principal place of
5 business within this state then the circuit court for the
6 county in which the limited liability company's most recent
7 registered office is located, to order:

8 (1) the person to sign the writing;

9 (2) the person to deliver the writing to the filing
10 officer for filing; or

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

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

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

25 (d) A court may award reasonable expenses, including
26 reasonable attorneys' fees, to the party or parties who

1 prevail, in whole or in part, with respect to any claim made
2 under subsection (a).

3 §10A-5A-2.06. Certificate of existence or
4 qualification.

5 (a) The Secretary of State, upon request and payment
6 of the requisite fee, shall furnish to any person a
7 certificate of existence for a limited liability company if
8 the writings filed in the office of the Secretary of State
9 show that the limited liability company has been formed under
10 the laws of this state. A certificate of existence shall
11 reflect only the information on file with the Secretary of
12 State. A certificate of existence must state:

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

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

17 (3) whether the limited liability company has
18 delivered to the Secretary of State for filing a statement of
19 dissolution;

20 (4) whether the limited liability company has
21 delivered to the Secretary of State for filing a certificate
22 of reinstatement; and

23 (5) other facts of record in the office of the
24 Secretary of State that are specified by the person requesting
25 the certificate.

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

1 certificate of qualification for a foreign limited liability
2 company if the writings filed in the office of the Secretary
3 of State show that the Secretary of State has filed an
4 application for registration for authority to conduct
5 activities and affairs in this state and the registration has
6 not been revoked, withdrawn or terminated. A certificate of
7 qualification must state:

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

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

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

14 (4) that the foreign limited liability company has
15 not filed with the Secretary of State a certificate of
16 withdrawal or otherwise terminated its registration; 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 (c) Subject to any qualification stated in the
21 certificate, a certificate of existence or certificate of
22 qualification issued by the Secretary of State is conclusive
23 evidence that the limited liability company is in existence or
24 the foreign limited liability company is authorized to conduct
25 activities and affairs in this state.

26 ARTICLE 3

1 RELATIONS OF MEMBERS TO PERSONS DEALING WITH LIMITED
2 LIABILITY COMPANY

3 §10A-5A-3.01. Liability of members to third parties.

4 A member of a limited liability company is not
5 liable, solely by reason of being a member, for a debt,
6 obligation, or liability of the limited liability company or a
7 series thereof, whether arising in contract, tort, or
8 otherwise or for the acts or omissions of any other member,
9 agent, or employee of the limited liability company or a
10 series thereof.

11 §10A-5A-3.02. Power to bind limited liability
12 company.

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

15 (a) to the extent the person is authorized to act as
16 the agent of the limited liability company or a series thereof
17 under or pursuant to the limited liability company agreement;

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

22 (c) to the extent provided by law other than this
23 chapter.

24 Article 4

25 RELATIONS OF MEMBERS TO EACH OTHER AND TO THE
26 LIMITED LIABILITY COMPANY

27 §10A-5A-4.01. Admission of members.

1 (a) The initial member or members of a limited
2 liability company are admitted as a member or members upon the
3 formation of the limited liability company.

4 (b) After formation of a limited liability company,
5 a person is admitted as a member of the limited liability
6 company:

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

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

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

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

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

17 (B) the designated person consents to be admitted as
18 a member effective as of the date the last person to have been
19 a member ceased to be a member.

20 (c) A person may be admitted as a member without
21 acquiring a transferable interest and without making or being
22 obligated to make a contribution to the limited liability
23 company. A person may be admitted as the sole member without
24 acquiring a transferable interest and without making or being
25 obligated to make a contribution to the limited liability
26 company.

27 §10A-5A-4.02. Limited liability company property.

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

3 §10A-5A-4.03. Contribution.

4 A contribution by a member may be made to a limited
5 liability company as agreed upon by the members. A
6 contribution by a member associated with a series may be made
7 to that series as agreed upon by the members associated with
8 that series.

9 §10A-5A-4.04. Liability for contribution.

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

23 (b) (1) The obligation of a member to make a
24 contribution to a limited liability company may be compromised
25 only by consent of all the members. A conditional obligation
26 of a member to make a contribution to a limited liability
27 company may not be enforced unless the conditions of the

1 obligation have been satisfied or waived as to or by that
2 member. Conditional obligations include contributions payable
3 upon a discretionary call of a limited liability company
4 before the time the call occurs.

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

14 (3) Subsection (b)(1) shall not apply to a member's
15 obligation to make a contribution to a series of a limited
16 liability company.

17 (c) A promise by a member to make a contribution to
18 a limited liability company, or a series thereof, is not
19 enforceable unless set forth in a writing signed by the
20 member.

21 §10A-5A-4.05. Sharing of and right to distributions
22 before dissolution.

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

26 (2) A member has a right to a distribution before
27 the dissolution and winding up of a limited liability company

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

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

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

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

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

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

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

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

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

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

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

1 is limited shall be included in the assets of the limited
2 liability company only to the extent that the fair value of
3 the property exceeds that liability.

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

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

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

13 (3) Subsection (a) shall not apply to a distribution
14 made by a series.

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

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

22 (e) For purposes of Sections 10A-5A-4.06(a) and
23 10A-5A-4.06(b), "distribution" does not include amounts
24 constituting reasonable compensation for present or past
25 services or reasonable payments made in the ordinary course of
26 the limited liability company's activities and affairs under a
27 bona fide retirement plan or other benefits program.

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

3 §10A-5A-4.07. Direction and oversight of the limited
4 liability company.

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

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

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

24 (B) The activities and affairs of a series shall be
25 under the direction, and subject to the oversight, of the
26 members associated with the series.

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

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

7 (B) Except as provided in paragraph (3), a matter in
8 the ordinary course of activities and affairs of a series may
9 be decided by a majority of the members associated with the
10 series.

11 (C) Subparagraph (A) shall not apply to matters of a
12 series.

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

14 (i) amend the limited liability company agreement;

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

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

21 (iv) undertake, authorize, or approve any other act
22 or matter for which this chapter requires the consent of all
23 members.

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

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

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

4 (c) Any matter requiring the consent of members may
5 be decided without a meeting, and a member may appoint a proxy
6 or other agent to consent or otherwise act for the member by
7 signing an appointing writing, personally or by the member's
8 agent.

9 (d) This chapter does not entitle a member to
10 remuneration for services performed for a limited liability
11 company, except for reasonable compensation for services
12 rendered in winding up the activities and affairs of the
13 limited liability company.

14 §10A-5A-4.08. Duties of persons with direction and
15 oversight.

16 (a) (1) The duties a person who has the authority to
17 direct and oversee the activities and affairs of a limited
18 liability company owes to the limited liability company and to
19 the members of the limited liability company include the duty
20 of loyalty and the duty of care as described in subsections
21 (b) and (d) (1).

22 (2) The duties a person who has the authority to
23 direct and oversee the activities and affairs of a series of a
24 limited liability company owes to that series and the members
25 associated with that series include the duty of loyalty and
26 the duty of care as described in subsections (c) and (d) (2).

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

4 (1) To account to the limited liability company and
5 to hold as trustee for it any property, profit, or benefit
6 derived by that person in the conduct or winding up of the
7 limited liability company's activities and affairs or derived
8 from a use by that person of the limited liability company's
9 property, including the appropriation of the limited liability
10 company's opportunity.

11 (2) To refrain from dealing with the limited
12 liability company in the conduct or winding up of the limited
13 liability company's activities and affairs as or on behalf of
14 a party having an interest adverse to the limited liability
15 company.

16 (3) To refrain from competing with the limited
17 liability company in the conduct of the limited liability
18 company's activities and affairs before the dissolution of the
19 limited liability company.

20 (c) The duty of loyalty of a person described in
21 subsection (a) (2) to a series of a limited liability company
22 and the members associated with that series includes each of
23 the following:

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

1 property, including the appropriation of the series'
2 opportunity.

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

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

10 (d)(1) The duty of care of a person described in
11 subsection (a)(1) to a limited liability company and its
12 members in the conduct or winding up of the limited liability
13 company's activities and affairs includes refraining from
14 engaging in grossly negligent or reckless conduct, intentional
15 misconduct, or a knowing violation of law.

16 (2) The duty of care of a person described in
17 subsection (a)(2) to a series of a limited liability company
18 and the members associated with that series in the conduct or
19 winding up of that series' activities and affairs includes
20 refraining from engaging in grossly negligent or reckless
21 conduct, intentional misconduct, or a knowing violation of
22 law.

23 (e)(1) A person described in subsection (a)(1) shall
24 discharge the duties to a limited liability company and its
25 members under this chapter and under the limited liability
26 company agreement and exercise any rights consistently with

1 the implied contractual covenant of good faith and fair
2 dealing.

3 (2) A person described in subsection (a) (2) shall
4 discharge the duties to a series of a limited liability
5 company and the members associated with that series under this
6 chapter and under the limited liability company agreement and
7 exercise any rights consistently with the implied contractual
8 covenant of good faith and fair dealing.

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

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

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

1 to the detriment of that series or the other members
2 associated with that series.

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

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

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

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

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

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

20 §10A-5A-4.09. Records to be kept; right of members
21 and dissociated members to information.

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

23 (a) Each limited liability company shall maintain
24 the following records:

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

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

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

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

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

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

1 the fair market value of the transferable interest of the
2 member, in addition to any other damages or remedy.

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

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

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

24 (f) The rights under this section do not extend to a
25 transferee.

26 (g) In addition to any restriction or condition
27 stated in its limited liability company agreement, a limited

1 liability company, as a matter within the ordinary course of
2 its activities and affairs, may:

3 (1) impose reasonable restrictions and conditions on
4 access to and use of information to be furnished under this
5 section, including designating information confidential and
6 imposing nondisclosure and safeguarding obligations on the
7 recipient; and

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

18 §10A-5A-4.10. Indemnification, advancement,
19 reimbursement, and insurance.

20 A limited liability company, or a series thereof,
21 may indemnify and hold harmless a member or other person, pay
22 in advance or reimburse expenses incurred by a member or other
23 person, and purchase and maintain insurance on behalf of a
24 member or other person.

25 §10A-5A-4.11. Reliance on reports and information.

26 A member of a limited liability company shall be
27 fully protected in relying in good faith upon the records of

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

16 ARTICLE 5

17 TRANSFERABLE INTERESTS AND RIGHTS OF TRANSFEREES AND
18 CREDITORS

19 §10A-5A-5.01. Member's transferable interest.

20 The only interest of a member that is transferable
21 is the member's transferable interest. A transferable interest
22 is personal property.

23 §10A-5A-5.02. Transfer of transferable interest.

24 (a) A transfer, in whole or in part, of a
25 transferable interest:

26 (1) is permissible;

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

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

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

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

10 (A) participate in the direction or oversight of the
11 activities and affairs of the limited liability company, or a
12 series thereof; or

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

16 (b) A transferee has the right to receive, in
17 accordance with the transfer, distributions to which the
18 transferor would otherwise be entitled.

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

1 (d) A limited liability company, or a series
2 thereof, need not give effect to a transferee's rights under
3 this section until the limited liability company, or a series
4 thereof, has notice of the transfer.

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

11 (f) When a member transfers a transferable interest
12 to a person that is admitted as a member with respect to the
13 transferred interest, the transferee is liable for the
14 member's obligations under Sections 10A-5A-4.04,
15 10A-5A-4.06(a)(2), and 10A-5A-4.06(b)(2) to the extent that
16 the obligations are known to the transferee when the
17 transferee voluntarily accepts admission as a member.

18 §10A-5A-5.03. Charging order.

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

1 judgment debtor would otherwise be entitled in respect of the
2 transferable interest.

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

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

3 (d) Subject to subsection (c):

4 (1) a judgment debtor that is a member retains the
5 rights of a member and remains subject to all duties and
6 obligations of a member; and

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

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

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

1 §10A-5A-5.04. Power of personal representative of
2 deceased member.

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

7 ARTICLE 6

8 MEMBER'S DISSOCIATION

9 §10A-5A-6.01. Member's power to dissociate; wrongful
10 dissociation.

11 (a) A person has the power to dissociate as a
12 member.

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

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

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

19 (3) the person is dissociated by becoming a debtor
20 in bankruptcy or making a general assignment for the benefit
21 of creditors.

22 (c) A person that wrongfully dissociates as a member
23 is liable to the limited liability company and, subject to
24 Section 10A-5A-9.01, to the other members for damages caused
25 by the dissociation. The liability is in addition to any other
26 debt, obligation, or liability of the member to the limited
27 liability company or the other members.

1 §10A-5A-6.02. Event causing dissociation.

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

4 (a) the limited liability company has notice of the
5 person's express will to dissociate as a member, except that
6 if the person specifies a dissociation date later than the
7 date the limited liability company had notice, then the person
8 is dissociated as a member on that later date;

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

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

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

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

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

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

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

7 (e) on application by the limited liability company,
8 the person is expelled as a member by judicial order because
9 the person:

10 (1) has engaged, or is engaging, in wrongful conduct
11 that has adversely and materially affected, or will adversely
12 and materially affect, the limited liability company's
13 activities and affairs;

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

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

22 (f) in the case of a person who is an individual,
23 the person dies, there is appointed a guardian or general
24 conservator for the person or there is a judicial
25 determination that the person has otherwise become incapable
26 of performing the person's duties as a member under this
27 chapter or the limited liability company agreement;

1 (g) the person becomes a debtor in bankruptcy,
2 executes an assignment for the benefit of creditors, or seeks,
3 consents, or acquiesces to the appointment of a trustee,
4 receiver, or liquidator of the person or of all or
5 substantially all of the person's property, but this
6 subsection (g) shall not apply to a person who is the sole
7 remaining member of a limited liability company;

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

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

19 (j) in the case of a member that is not an
20 individual, the legal existence of the person otherwise
21 terminates;

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

24 (l) the transfer of a member's entire remaining
25 transferable interest to a transferee upon the transferee's
26 becoming a member.

1 §10A-5A-6.03. Effect of person's dissociation as a
2 member.

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

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

13 ARTICLE 7

14 DISSOLUTION, WINDING UP AND REINSTATEMENT

15 §10A-5A-7.01. Events of dissolution.

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

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

21 (b) Consent of all members to dissolve.

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

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

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

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

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

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

19 Notwithstanding Section 10A-1-9.12:

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

24 (1) collecting its assets;

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

1 (3) discharging or making provisions for discharging
2 its liabilities;

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

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

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

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

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

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

14 (C) That the limited liability company has
15 dissolved.

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

19 (E) Any other information the limited liability
20 company deems appropriate.

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

24 (3) prosecute, defend, or settle actions or
25 proceedings whether civil, criminal or administrative;

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

1 (5) resolve disputes by mediation or arbitration;

2 and

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

4 (c) The dissolution of a limited liability company
5 does not:

6 (1) transfer title to the limited liability
7 company's property;

8 (2) prevent the commencement of a proceeding by or
9 against the limited liability company in its limited liability
10 company name;

11 (3) terminate, abate or suspend a proceeding pending
12 by or against the limited liability company on the effective
13 date of dissolution;

14 (4) terminate the authority of its registered agent;
15 or

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

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

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

1 shall deliver the statement of dissolution for filing to the
2 Secretary of State.

3 §10A-5A-7.03. Right to wind up activities and
4 affairs.

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

24 (b) The circuit court for the county in which the
25 limited liability company's principal place of business within
26 this state is located, and if the limited liability company
27 does not have a principal place of business within this state

1 then the circuit court for the county in which the limited
2 liability company's most recent registered office is located,
3 may order judicial supervision of the winding up of a
4 dissolved limited liability company, including the appointment
5 of a person to wind up the limited liability company's
6 activities and affairs:

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

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

10 (A) the limited liability company does not have any
11 members; and

12 (B) within a reasonable time following the
13 dissolution no person having the authority to wind up the
14 activities and affairs of the limited liability company
15 pursuant to subsection (a) is winding up the activities and
16 affairs of the limited liability company; or

17 (3) in connection with a proceeding under Section
18 10A-5A-7.01(d).

19 §10A-5A-7.04. Known claims against dissolved limited
20 liability company.

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

22 (a) A dissolved limited liability company may
23 dispose of any known claims against it by following the
24 procedures described in subsection (b) at any time after the
25 effective date of the dissolution of the limited liability
26 company.

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

4 (1) identify the dissolved limited liability
5 company;

6 (2) describe the information required to be included
7 in a claim;

8 (3) provide a mailing address to which the claim is
9 to be sent;

10 (4) state the deadline, which may not be fewer than
11 120 days from the effective date of the notice, by which the
12 dissolved limited liability company must receive the claim;
13 and

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

16 (c) Unless sooner barred by any other statute
17 limiting actions, a claim against a dissolved limited
18 liability company is barred:

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

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

26 (d) For purposes of this section, "known claim" or
27 "claim" includes unliquidated claims, but does not include a

1 contingent liability that has not matured so that there is no
2 immediate right to bring suit or a claim based on an event
3 occurring after the effective date of dissolution.

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

6 §10A-5A-7.05. Other claims against dissolved limited
7 liability company.

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

9 (a) A dissolved limited liability company may
10 publish notice of its dissolution and request that persons
11 with claims against the dissolved limited liability company
12 present them in accordance with the notice.

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

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

19 (2) describe the information that must be included
20 in a claim and provide a mailing address to which the claim is
21 to be sent; and

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

26 (c) If a dissolved limited liability company
27 publishes a newspaper notice in accordance with subsection

1 (b), unless sooner barred by any other statute limiting
2 actions, the claim of each of the following claimants is
3 barred unless the claimant commences a proceeding to enforce
4 the claim against the dissolved limited liability company
5 within two years after the publication date of the newspaper
6 notice:

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

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

12 (3) a claimant whose claim is contingent at the
13 effective date of the dissolution of the limited liability
14 company, or is based on an event occurring after the effective
15 date of the dissolution of the limited liability company.

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

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

21 (2) except as provided in subsection (h), if the
22 assets of a dissolved limited liability company have been
23 distributed after dissolution, against the person or persons
24 owning the transferable interests to the extent of that
25 person's proportionate share of the claim or of the assets
26 distributed to that person after dissolution, whichever is
27 less, but a person's total liability for all claims under this

1 subsection may not exceed the total amount of assets
2 distributed to that person after dissolution of the limited
3 liability company.

4 (e) A dissolved limited liability company that
5 published a notice under this section may file an application
6 with the circuit court in the county in which the dissolved
7 limited liability company's principal place of business is
8 located and if the limited liability company does not have a
9 principal place of business within this state, in the county
10 in which the dissolved limited liability company's most recent
11 registered office is located, for a determination of the
12 amount and form of security to be provided for payment of
13 claims that are contingent or have not been made known to the
14 dissolved limited liability company or that are based on an
15 event occurring after the effective date of the dissolution of
16 the limited liability company but that, based on the facts
17 known to the dissolved limited liability company, are
18 reasonably estimated to arise after the effective date of the
19 dissolution of the limited liability company. Provision need
20 not be made for any claim that is or is reasonably anticipated
21 to be barred under subsection (c).

22 (f) Within ten days after the filing of the
23 application provided for in subsection (e), notice of the
24 proceeding shall be given by the dissolved limited liability
25 company to each potential claimant as described in subsection
26 (e).

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

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

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

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

1 §10A-5A-7.06. Application of assets in winding up
2 limited liability company's activities and affairs.

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

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

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

12 (1) first, to each person owning a transferable
13 interest that reflects contributions made on account of the
14 transferable interest and not previously returned, an amount
15 equal to the value of the person's unreturned contributions;
16 and

17 (2) then to each person owning a transferable
18 interest in the proportions in which the owners of
19 transferable interests share in distributions before
20 dissolution.

21 (c) If the limited liability company does not have
22 sufficient surplus to comply with subsection (b)(1), any
23 surplus must be distributed among the owners of transferable
24 interests in proportion to the value of their respective
25 unreturned contributions.

26 §10A-5A-7.07. Reinstatement after dissolution.

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

4 (a) the consent shall have been obtained from the
5 members or other persons entitled to consent at the time that
6 is:

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

9 (2) if the limited liability company agreement does
10 not state the consent required for reinstatement, sufficient
11 for dissolution under the limited liability company agreement;
12 or

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

16 (b) in the case of a written objection to
17 reinstatement having been delivered to the limited liability
18 company before or at the time of the consent required by
19 subsection (a) by the members or other persons having
20 authority under the limited liability company agreement to
21 bring about or prevent dissolution of the limited liability
22 company, those members or persons withdrawing that written
23 objection effective at the time of the consent required by
24 subsection (a);

25 (c) in the case of a limited liability company
26 dissolved in a judicial proceeding initiated by one or more of
27 the members, the consent of each of those members shall have

1 been obtained and shall be included in the consent required by
2 subsection (a); and

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

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

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

13 (1) the name of the limited liability company before
14 reinstatement;

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

18 (3) the date of formation of the limited liability
19 company;

20 (4) the date of dissolution of the limited liability
21 company, if known;

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

24 (6) the address of the registered office and the
25 name of the registered agent at that address in compliance
26 with Article 5 of Chapter 1.

1 (b) A limited liability company shall not be
2 required to file a statement of dissolution in order to file a
3 certificate of reinstatement.

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

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

15 §10A-5A-7.09. Limited liability company name upon
16 reinstatement.

17 The name of a limited liability company following
18 reinstatement shall be determined as follows:

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

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

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

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

11 §10A-5A-7.10. Effect of reinstatement.

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

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

23 ARTICLE 8

24 LIMITED LIABILITY COMPANIES PERFORMING PROFESSIONAL
25 SERVICES

26 §10A-5A-8.01. Special rules for limited liability
27 companies performing professional services.

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

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

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

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

19 (e) Nothing in this article shall restrict or limit
20 in any manner the authority or duty of a licensing authority
21 with respect to individuals rendering a professional service
22 within the jurisdiction of the licensing authority. Nothing in
23 this article shall restrict or limit any law, rule, or
24 regulation pertaining to standards of professional conduct.

25 (f) Nothing in this article shall limit the
26 authority of a licensing authority to impose requirements in
27 addition to those stated in this chapter on any limited

1 liability company or foreign limited liability company
2 rendering professional services within the jurisdiction of the
3 licensing authority.

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

7 §10A-5A-8.02. Death or disqualification of member.

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

18 (b) If the price of the transferable interest is not
19 fixed by the limited liability company agreement, the limited
20 liability company, within six months after the death or 30 days
21 after the disqualification or transfer, as the case may be,
22 shall make a written offer to pay to the holder of the
23 transferable interest a specified price deemed by the limited
24 liability company to be the fair value of the transferable
25 interest as of the date of the death, disqualification, or
26 transfer. The offer shall be given to the personal
27 representative of the estate of the deceased member, the

1 disqualified person, or the transferee, as the case may be,
2 and shall be accompanied by a balance sheet of the limited
3 liability company, as of the latest available date and not
4 more than 12 months prior to the making of the offer, and a
5 profit and loss statement of the limited liability company for
6 the 12 months' period ended on the date of the balance sheet.

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

19 (d) If within 30 days from the date of the written
20 offer from the limited liability company, the personal
21 representative of the estate of the deceased member, the
22 disqualified person, or the transferee, as the case may be,
23 and the limited liability company do not so agree as to the
24 fair value of the transferable interest, then either party may
25 commence a civil action in the circuit court in the county in
26 which the limited liability company's principal place of
27 business within this state is located, and if the limited

1 liability company does not have a principal place of business
2 within this state, then the circuit court for the county in
3 which the limited liability company's most recent registered
4 office is located requesting that the fair value of the
5 transferrable interest be found and determined. The personal
6 representative of the estate of the deceased member, the
7 disqualified person, or the transferee, as the case may be,
8 wherever residing, shall be made a party to the proceeding as
9 an action against that person's transferable interest quasi in
10 rem. Service shall be made in accordance with the rules of
11 civil procedure. The personal representative of the estate of
12 the deceased member, the disqualified person, or the
13 transferee, as the case may be, shall be entitled to a
14 judgment against the limited liability company for the amount
15 of the fair value of that person's transferable interest as of
16 the date of death, disqualification, or transfer. The court
17 may, in its discretion, order that the judgment be paid in
18 installments and with interest and on terms as the court may
19 determine. The court may, if it so elects, appoint one or more
20 persons as appraisers to receive evidence and recommend a
21 decision on the question of fair value. The appraisers shall
22 have the power and authority as shall be specified in the
23 order of their appointment or an amendment thereof.

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

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

4 (g) The expenses shall include reasonable
5 compensation for and reasonable expenses of the appraisers and
6 a reasonable attorney's fee but shall exclude the fees and
7 expenses of counsel for and of experts employed by any party;
8 but: (1) if the fair value of the transferable interest as
9 determined materially exceeds the amount which the limited
10 liability company offered to pay therefor, or if no offer was
11 made by the limited liability company, the court in its
12 discretion may award to the personal representative of the
13 estate of the deceased member, the disqualified person, or the
14 transferee, as the case may be, the sum the court determines
15 to be reasonable compensation to any expert or experts
16 employed by the personal representative of the estate of the
17 deceased member, the disqualified person, or the transferee,
18 as the case may be, in the proceeding; and (2) if the offer of
19 the limited liability company for the transferable interest
20 materially exceeds the amount of the fair value of the
21 transferable interest as determined, the court in its
22 discretion may award to the limited liability company the sum
23 the court determines to be reasonable compensation to any
24 expert or experts employed by the limited liability company,
25 in the proceeding.

26 (h) If the purchase or transfer of the transferable
27 interest of a deceased member, a disqualified person or a

1 transferee is not completed within 12 months after the death
2 of the deceased member or 12 months after the disqualification
3 or transfer, as the case may be, the limited liability company
4 shall forthwith cancel the transferable interest on its books
5 and the personal representative of the estate of the deceased
6 member, the disqualified person, or the transferee, as the
7 case may be, shall have no further interest in the
8 transferable interest other than that person's right to
9 payment for the transferable interest under this section.

10 (i) This section shall not require a limited
11 liability company to purchase a transferable interest of a
12 disqualified person if the disqualification is for less than
13 12 months from the date of disqualification. A limited
14 liability company may require the disqualified person to sell
15 the disqualified person's transferable interest to the limited
16 liability company upon any disqualification.

17 (j) Any provision of a limited liability company
18 agreement regarding the purchase or transfer of a transferable
19 interest of a limited liability company performing
20 professional services shall be specifically enforceable in the
21 courts of Alabama.

22 (k) Nothing in this section shall prevent or relieve
23 a limited liability company from paying pension benefits or
24 other deferred compensation.

25 ARTICLE 9

26 ACTIONS BY MEMBERS

27 §10A-5A-9.01. Direct action by members.

1 (a) Subject to subsection (b), a member may maintain
2 a direct action against another member or members or the
3 limited liability company, or a series thereof, to enforce the
4 member's rights and otherwise protect the member's interests,
5 including rights and interests under the limited liability
6 company agreement or this chapter or arising independently of
7 the membership relationship.

8 (b) A member maintaining a direct action under
9 subsection (a) must plead and prove an actual or threatened
10 injury that is not solely the result of an injury suffered or
11 threatened to be suffered by the limited liability company, or
12 series thereof.

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

16 (2) A member associated with a series may maintain a
17 direct action to enforce a right of the series if all members
18 associated with the series at the time of suit are parties to
19 the action.

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

23 §10A-5A-9.02. Right of derivative action.

24 (a) A member may commence or maintain a derivative
25 action in the right of a limited liability company to enforce
26 a right of the limited liability company by complying with
27 this Article 9.

1 (b) A member associated with a series of a limited
2 liability company may commence or maintain a derivative action
3 in the right of the series to enforce a right of the series by
4 complying with this Article 9.

5 §10A-5A-9.03. Standing.

6 (a) A member may commence or maintain a derivative
7 action in the right of the limited liability company only if
8 the member:

9 (1) fairly and adequately represents the interests
10 of the limited liability company in enforcing the right of the
11 limited liability company; and

12 (2) either:

13 (A) was a member of the limited liability company at
14 the time of the act or omission of which the member complains;
15 or

16 (B) whose status as a member devolved upon the
17 person by operation of law or pursuant to the terms of the
18 limited liability company agreement from a person who was a
19 member at the time of the act or omission of which the member
20 complains.

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

24 (1) fairly and adequately represents the interests
25 of the series in enforcing the right of the series; and

26 (2) either:

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

3 (B) whose status as a member associated with the
4 series devolved upon the person by operation of law or
5 pursuant to the terms of the limited liability company
6 agreement from a person who was a member associated with the
7 series at the time of the act or omission of which the member
8 complains.

9 §10A-5A-9.04. Demand.

10 A member may commence a derivative action in the
11 right of the limited liability company, or a series thereof,
12 if:

13 (a) the member first makes a written demand upon the
14 limited liability company or the series, as the case may be,
15 to bring an action to enforce the right and the limited
16 liability company or the series, as the case may be, does not
17 bring the action within a reasonable time; or

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

19 §10A-5A-9.05. Pleading.

20 In a derivative action, the complaint must state
21 with particularity:

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

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

26 §10A-5A-9.06. Stay of proceedings

1 For the purpose of allowing the limited liability
2 company or the series thereof, as the case may be, time to
3 undertake an inquiry into the allegations made in the demand
4 or complaint commenced pursuant to this article, the court may
5 stay any derivative action for the period the court deems
6 appropriate.

7 §10A-5A-9.07. Discontinuance or settlement.

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

14 §10A-5A-9.08. Proceeds and expenses.

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

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

20 (2) if the derivative plaintiff receives any
21 proceeds, the derivative plaintiff shall immediately remit
22 them to the limited liability company or series thereof, as
23 the case may be.

24 (b) If a derivative action is successful in whole or
25 in part, the court may award the plaintiff reasonable
26 expenses, including reasonable attorney's fees, from the

1 recovery of the limited liability company or the series
2 thereof, as the case may be.

3 §10A-5A-9.09. Applicability to foreign limited
4 liability companies.

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

15 ARTICLE 10

16 CONVERSIONS AND MERGERS

17 §10A-5A-10.01. Conversion.

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

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

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

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

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

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

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

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

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

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

1 converted into cash, property, or rights or securities of or
2 interests in another organization or may be cancelled.

3 §10A-5A-10.02. Action on plan of conversion by
4 converting limited liability company.

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

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

13 (1) as provided in the plan; and

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

16 §10A-5A-10.03. Filings required for conversion;
17 effective date.

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

19 (1) if the converting organization is an
20 organization formed under the laws of this state, the
21 converting organization shall file a statement of conversion
22 in accordance with subsection (c), which statement of
23 conversion must be signed in accordance with Section
24 10A-5A-2.04(a) and which must include:

25 (A) the name of the converting organization;

26 (B) the date of the filing of the certificate of
27 formation of the converting organization, if any, and all

1 prior amendments and the filing office or offices, if any,
2 where such is filed;

3 (C) a statement that the converting organization has
4 been converted into the converted organization;

5 (D) the name and type of organization of the
6 converted organization and the jurisdiction of its governing
7 statute;

8 (E) the street and mailing address of the principal
9 office of the converted organization;

10 (F) the date the conversion is effective under the
11 governing statute of the converted organization;

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

14 (H) a statement that the conversion was approved as
15 required by the governing statute of the converted
16 organization; and

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

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

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

1 (B) the name and type of organization of the
2 converting organization and the jurisdiction of the converting
3 organization's governing statute; and

4 (C) a statement that the conversion was approved in
5 a manner that complied with the converting organization's
6 governing statute.

7 (b) A conversion becomes effective:

8 (1) if the converted organization is a limited
9 liability company, when the certificate of formation takes
10 effect; and

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

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

1 organization described in Section 10A-1-4.02(c)(4), then the
2 converting organization shall file the statement of conversion
3 required under subsection (a)(1) with the Secretary of State.

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

26 (e) In the case of a statement of conversion or a
27 certificate of formation that is to be filed with the judge of

1 probate pursuant to subsections (c) and (d), the judge of
2 probate shall within 10 days transmit a certified copy of the
3 statement of conversion or certificate of formation to the
4 Secretary of State, along with the proper fee.

5 (f) In the case of a statement of conversion that is
6 to be filed with the Secretary of State pursuant to
7 subsections (c):

8 (1) if the converting organization is, immediately
9 prior to the conversion becoming effective, an organization
10 described in Section 10A-1-4.02(c)(4), but which has a
11 certificate of formation filed with the judge of probate, the
12 Secretary of State shall within 10 days transmit a certified
13 copy of the statement of conversion to the office of the judge
14 of probate in the county in which the certificate of formation
15 for such converting organization was filed along with the
16 proper fee for the probate judge.

17 (2) if the converting organization is, immediately
18 prior to the conversion becoming effective, an organization
19 described in Section 10A-1-4.02(c)(4), and did not file its
20 certificate of formation with the probate judge, but rather in
21 accordance with Section 10A-1-4.02(c)(4) filed its certificate
22 of formation with the Secretary of State, the Secretary of
23 State shall not transmit a certified copy of the statement of
24 conversion to the office of the judge of probate and shall not
25 collect any fee for the judge of probate.

26 (3) if the converting organization is, immediately
27 prior to the conversion becoming effective, an organization

1 described in Section 10A-1-4.02(c)(4), but is not required
2 under this title to file its organizational documents with the
3 judge of probate, the Secretary of State shall not transmit a
4 certified copy of the statement of the statement of conversion
5 to the office of the judge of probate and shall not collect
6 any fee for the judge of probate.

7 (g) In the case of a certificate of formation that
8 is to be filed with the Secretary of State pursuant to
9 subsection (d), the Secretary of State shall not transmit a
10 certified copy of the statement of conversion to the office of
11 the judge of probate and shall not collect any fee for the
12 judge of probate.

13 (h) After a conversion becomes effective, if the
14 converted organization is a limited liability company, then
15 all filing instruments required to be filed under this title
16 regarding that converted organization shall be filed with the
17 Secretary of State.

18 (i) If:

19 (1) the converting organization is a filing entity
20 or a foreign filing entity registered to conduct activities
21 and affairs in this state;

22 (2) the converted organization will be a filing
23 entity or a foreign filing entity registered to conduct
24 activities and affairs in this state;

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

1 (4) the name of the converted organization complies
2 with Division A of Article 5 of Chapter 1 or
3 Section 10A-1-7.07, as the case may be; then notwithstanding
4 Division B of Article 5 of Chapter 1, no name reservation
5 shall be required and the converted organization shall for all
6 purpose of this title be entitled to utilize the name of the
7 converting organization without any further action by the
8 converting organization or the converted organization.

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

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

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

24 §10A-5A-10.04. Effect of conversion.

25 (a) When a conversion takes effect:

26 (1) all property owned by the converting
27 organization, or series thereof, remains vested in the

1 converted organization without reservation or impairment and
2 the title to any property vested by deed or otherwise in the
3 converting organization shall not revert or be in any way
4 impaired by reason of the conversion;

5 (2) all debts, obligations, or other liabilities of
6 the converting organization, or series thereof, continue as
7 debts, obligations, or other liabilities of the converted
8 organization and neither the rights of creditors, nor the
9 liens upon the property of the converting organization shall
10 be impaired by the conversion;

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

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

18 (5) except as otherwise provided in the plan of
19 conversion, the terms and conditions of the plan of conversion
20 take effect;

21 (6) except as otherwise agreed, for all purposes of
22 the laws of this state, the converting organization, and any
23 series thereof, shall not be required to wind up its affairs
24 or pay its liabilities and distribute its assets, and the
25 conversion shall not be deemed to constitute a dissolution of
26 the converting organization, or series thereof;

1 (7) for all purposes of the laws of this state, the
2 rights, privileges, powers, interests in property, debts,
3 liabilities and duties of the converting organization, and all
4 series thereof, shall be the rights, privileges, powers,
5 interests in property, debts, liabilities and duties of the
6 converted organization, and shall not be deemed as a
7 consequence of the conversion, to have been transferred to the
8 converted organization;

9 (8) if the converted organization is a limited
10 liability company, for all purposes of the laws of this state,
11 the limited liability company shall be deemed to be the same
12 organization as the converting organization, and the
13 conversion shall constitute a continuation of the existence of
14 the converting organization in the form of a limited liability
15 company;

16 (9) if the converted organization is a limited
17 liability company, the existence of the limited liability
18 company shall be deemed to have commenced on the date the
19 converting organization commenced its existence in the
20 jurisdiction in which the converting organization was first
21 created, formed, organized, incorporated, or otherwise came
22 into being; and

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

25 (b) A converted organization that is a foreign
26 entity consents to the jurisdiction of the courts of this
27 state to enforce any debt, obligation or other liability for

1 which the converting limited liability company, or series
2 thereof, is liable if, before the conversion, the converting
3 limited liability company was subject to suit in this state on
4 the debt, obligation or other liability. If a converted
5 organization that is a foreign entity fails to designate or
6 maintain a registered agent, or the designated registered
7 agent cannot with reasonable diligence be served, then service
8 of process on that converted organization for the purposes of
9 enforcing a debt, obligation, or other liability under this
10 subsection may be made in the same manner and has the same
11 consequences as provided in Section 10A-1-5.35.

12 §10A-5A-10.05. Merger.

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

17 (1) the governing statute of each of the other
18 organizations authorizes the merger;

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

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

23 (b) A plan of merger must be in writing and must
24 include:

25 (1) the name, type of organization, and mailing
26 address of the principal office of each constituent
27 organization;

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

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

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

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

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

24 §10A-5A-10.06. Action on plan of merger by
25 constituent limited liability company.

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

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

9 (1) as provided in the plan; and

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

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

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

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

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

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

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

26 (2) the name, type of organization, and mailing
27 address of the principal office of the surviving organization,

1 the jurisdiction of its governing statute, and, if the
2 surviving organization is created pursuant to the merger, a
3 statement to that effect;

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

9 (4) the date the merger is effective under the
10 governing statute of the surviving organization;

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

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

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

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

23 (7) a statement as to each constituent organization
24 that the merger was approved as required by the organization's
25 governing statute;

26 (8) if the surviving organization is a foreign
27 organization not authorized to conduct activities and affairs

1 in this state, the street and mailing address of an office for
2 the purposes of Section 10A-5A-10.08(b); and

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

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

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

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

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

12 (A) the filing of the statement of merger with the
13 Secretary of State; or

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

15 (2) if the surviving organization is not a limited
16 liability company, as provided by the governing statute of the
17 surviving organization.

18 (e) After a merger becomes effective, if the
19 surviving organization is a limited liability company, then
20 all filing instruments required to be filed under this Title
21 regarding that surviving organization shall be filed with the
22 Secretary of State.

23 (f) A certified copy of the statement of merger
24 required to be filed under this section may be filed in the
25 real estate records in the office of the judge of probate in
26 any county in which any constituent organization owned real
27 property, without payment and without collection by the judge

1 of probate of any deed or other transfer tax or fee. The judge
2 of probate, however, shall be entitled to collect the filing
3 fee of five dollars (\$5). Any such filing shall evidence chain
4 of title, but lack of filing shall not affect the surviving
5 organization's title to such real property.

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

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

12 §10A-5A-10.08. Effect of merger.

13 (a) When a merger becomes effective:

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

17 (2) each constituent organization that merges into
18 the surviving organization ceases to exist as a separate
19 entity;

20 (3) all property owned by each constituent
21 organization, or series thereof, that ceases to exist vests in
22 the surviving organization without reservation or impairment
23 and the title to any property vested by deed or otherwise in
24 the surviving organization shall not revert or be in any way
25 impaired by reason of the merger;

26 (4) all debts, obligations or other liabilities of
27 each constituent organization, or series thereof, that ceases

1 to exist continue as debts, obligations or other liabilities
2 of the surviving organization and neither the rights of
3 creditors, nor any liens upon the property of any constituent
4 organization, shall be impaired by the merger;

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

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

12 (7) except as otherwise provided in the plan of
13 merger, the terms and conditions of the plan of merger take
14 effect;

15 (8) except as otherwise agreed, if a constituent
16 limited liability company ceases to exist, the merger does not
17 dissolve the limited liability company for the purposes of
18 Article 7 and does not dissolve a series for purposes of
19 Article 11;

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

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

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

1 (10) if the surviving organization existed before
2 the merger, any amendments provided for in the statement of
3 merger for the organizational document that created the
4 organization become effective.

5 (11) if the surviving organization existed before
6 the merger, any amendments provided for in the statement of
7 merger for the organizational document that created the
8 organization become effective.

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

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

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

21 §10A-5A-10.10. Article not exclusive.

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

25 ARTICLE 11

26 SERIES PROVISIONS

27 §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 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.