

HB267 ENROLLED



1 G3XLC2-3
2 By Representative Wadsworth
3 RFD: Judiciary
4 First Read: 06-Apr-23
5 2023 Regular Session



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1 Enrolled, An Act,

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4 Relating to the Alabama Business and Nonprofit Entity
5 Code; to add Chapter 3A to Title 10A, Code of Alabama 1975, by
6 revising the Alabama Nonprofit Corporation Law to reflect the
7 national standards set by the Model Nonprofit Corporation Act
8 of 2021 and the Delaware General Corporation Law; and to make
9 conforming changes throughout the Alabama Business and
10 Nonprofit Entity Code in order to effectuate the changes to
11 the Alabama Nonprofit Corporation Law and conform with the
12 other entities governed by the Alabama Business and Nonprofit
13 Entity Code by amending Sections 10A-1-1.03, 10A-1-1.08,
14 10A-1-3.32, 10A-1-8.01, 10A-1-8.02, 10A-1-9.01, 10A-2A-1.40,
15 10A-2A-1.43, 10A-2A-1.51, 10A-2A-2.02, 10A-2A-2.06,
16 10A-2A-7.04, 10A-2A-7.20, 10A-2A-7.32, 10A-2A-8.10,
17 10A-2A-8.21, 10A-2A-8.22, 10A-2A-8.24, 10A-2A-10.06,
18 10A-2A-10.07, 10A-2A-10.08, 10A-2A-11.02, 10A-2A-11.06,
19 10A-2A-12.02, and 10A-2A-14.13, Code of Alabama 1975; adding
20 Sections 10A-2A-10.00 and 10A-2A-10.10 to the Code of Alabama
21 1975; and amending Sections 10A-5A-2.03, 10A-5A-10.07,
22 10A-8A-9.08, 10A-9A-2.02, and 10A-9A-10.08, Code of Alabama
23 1975.

24 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

25 Section 1. A new Chapter 3A is added to Title 10A of
26 the Code of Alabama 1975, to read as follows:

27 CHAPTER 3A. ALABAMA NONPROFIT CORPORATION LAW.

28 ARTICLE 1. GENERAL PROVISIONS.



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29 DIVISION A. SHORT TITLE AND SAVINGS PROVISIONS.

30 §10A-3A-1.01. Short title and application of chapter.

31 (a) This chapter and the provisions of Chapter 1 to the
32 extent applicable to nonprofit corporations may be cited as
33 the Alabama Nonprofit Corporation Law.

34 (b) The provisions of this chapter relating to
35 nonprofit corporations shall apply to:

36 (1) All nonprofit corporations organized hereunder; and

37 (2) All nonprofit corporations heretofore organized
38 under any act hereby or heretofore repealed, for a purpose or
39 purposes for which a nonprofit corporation might be organized
40 under this chapter.

41 (c) The provisions of this chapter relating to foreign
42 nonprofit corporations shall apply to all foreign nonprofit
43 corporations conducting affairs in Alabama for a purpose or
44 purposes for which a nonprofit corporation might be organized
45 under this chapter.

46 (d) Beginning May 1, 2004, the Young Men's Christian
47 Association (YMCA) of Mobile which was incorporated by Act 405
48 approved on February 18, 1895, shall be subject to this
49 chapter. Prospectively from May 1, 2004, the YMCA of Mobile
50 shall be entitled to all of the rights and privileges of a
51 nonprofit corporation including, but not limited to, the right
52 to amend its charter and bylaws as provided by this chapter.

53 §10A-3A-1.02. Chapter definitions.

54 As used in this chapter, unless otherwise specified or
55 unless the context otherwise requires, the following terms
56 have the following meanings:



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57 (1) CERTIFICATE OF INCORPORATION means the certificate
58 of incorporation described in Section 10A-3A-2.02, all
59 amendments to the certificate of incorporation, and any other
60 documents permitted or required to be delivered for filing by
61 a nonprofit corporation with the Secretary of State under this
62 chapter or Chapter 1 that modify, amend, supplement, restate,
63 or replace the certificate of incorporation. After an
64 amendment of the certificate of incorporation or any other
65 document filed under this chapter or Chapter 1 that restates
66 the certificate of incorporation in its entirety, the
67 certificate of incorporation shall not include any prior
68 documents. When used with respect to a nonprofit corporation
69 incorporated and existing on December 31, 2023, under a
70 predecessor law of this state, the term "certificate of
71 incorporation" means articles of incorporation, charter, or
72 similar incorporating document, and all amendments and
73 restatements to the articles of incorporation, charter, or
74 similar incorporating document. When used with respect to a
75 foreign nonprofit corporation, a business corporation, or a
76 foreign business corporation, the "certificate of
77 incorporation" of that entity means the document of that
78 entity that is equivalent to the certificate of incorporation
79 of a corporation. The term "certificate of incorporation" as
80 used in this chapter is synonymous to the term certificate of
81 formation used in Chapter 1.

82 (2) BOARD or BOARD OF DIRECTORS means the group of
83 individuals responsible for the management or direction, and
84 oversight, of the activities and affairs of the nonprofit



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85 corporation, regardless of the name used to refer to the group
86 or other persons authorized to perform the functions of the
87 board of directors.

88 (3) BUSINESS CORPORATION, except in the phrase foreign
89 business corporation, means an entity incorporated or existing
90 under the Alabama Business Corporation Law.

91 (4) BYLAWS means the code or codes of rules (other than
92 the certificate of incorporation) adopted for the regulation
93 or management of the affairs of the nonprofit corporation,
94 regardless of the name or names by which the rules are
95 designated.

96 (5) DELIVER or DELIVERY means any method of delivery
97 used in conventional commercial practice, including delivery
98 by hand, mail, commercial delivery, and, if authorized in
99 accordance with Section 10A-3A-1.03, by electronic
100 transmission.

101 (6) DIRECTOR means an individual designated, elected,
102 or appointed, by that or any other name or title, to act as a
103 member of the board of directors, while the individual is
104 holding that position.

105 (7) DISTRIBUTION means a direct or indirect transfer of
106 cash or other property from a nonprofit corporation to a
107 member, director, or officer of that nonprofit corporation in
108 that person's capacity as a member, director, or officer, but
109 does not mean payments or benefits made in accordance with
110 Section 10A-3A-6.41.

111 (8) DOCUMENT means a writing as defined in Chapter 1.

112 (9) EFFECTIVE DATE when referring to a document



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113 accepted for filing by the Secretary of State, means the time
114 and date determined in accordance with Article 4 of Chapter 1.

115 (10) ELECTRONIC MAIL means an electronic transmission
116 directed to a unique electronic mail address.

117 (11) ELECTRONIC MAIL ADDRESS means a destination,
118 commonly expressed as a string of characters, consisting of a
119 unique user name or mailbox (commonly referred to as the
120 "local part" of the address) and a reference to an internet
121 domain (commonly referred to as the "domain part" of the
122 address), whether or not displayed, to which electronic mail
123 can be sent or delivered.

124 (12) EMPLOYEE does not include an individual serving as
125 an officer or director who is not otherwise employed by the
126 nonprofit corporation.

127 (13) ENTITLED TO VOTE means entitled to vote on the
128 matter under consideration pursuant to the certificate of
129 incorporation or bylaws of the nonprofit corporation, or
130 applicable provisions of this chapter or Chapter 1.

131 (14) ENTITY includes nonprofit corporation; foreign
132 nonprofit corporation; business corporation; foreign business
133 corporation; estate; trust; unincorporated entity; foreign
134 unincorporated entity; and state, United States, and foreign
135 government.

136 (15) EXPENSES means reasonable expenses of any kind
137 that are incurred in connection with a matter.

138 (16) FOREIGN BUSINESS CORPORATION means a business
139 corporation incorporated under a law other than the law of
140 this state which would be a business corporation if



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141 incorporated under the law of this state.

142 (17) FOREIGN NONPROFIT CORPORATION means a nonprofit
143 corporation incorporated under a law other than the law of
144 this state which would be a nonprofit corporation if
145 incorporated under the law of this state.

146 (18) FOREIGN UNINCORPORATED ENTITY means an
147 unincorporated entity whose internal affairs are governed by
148 the law of a jurisdiction other than this state.

149 (19) FUNDAMENTAL TRANSACTION means an amendment of the
150 certificate of incorporation, an amendment to the bylaws, a
151 merger, a conversion, a sale of all or substantially all of
152 the assets, or the dissolution of a nonprofit corporation.

153 (20) GOVERNING STATUTE means the statute governing the
154 internal affairs of a nonprofit corporation, foreign nonprofit
155 corporation, business corporation, foreign business
156 corporation, unincorporated entity, or foreign unincorporated
157 entity.

158 (21) INCLUDES and INCLUDING denote a partial definition
159 or a nonexclusive list.

160 (22) INTEREST means:

161 (a) a share;

162 (b) a membership or membership interests; or

163 (c) either or both of the following rights under the
164 governing statute governing an organization other than a
165 nonprofit corporation, foreign nonprofit corporation, business
166 corporation, foreign business corporation:

167 (i) the right to receive distributions from that
168 organization either in the ordinary course or upon



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169 liquidation; or

170 (ii) the right to receive notice or vote on issues
171 involving that organization's internal affairs, other than as
172 an agent, assignee, proxy, or person responsible for managing
173 that organization's business and affairs.

174 (23) INTEREST HOLDER means a person who holds of record
175 an interest.

176 (24) KNOWLEDGE is determined as follows:

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

178 (1) has actual knowledge of it; or

179 (2) is deemed to know it under law other than this
180 chapter.

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

182 (1) knows of it;

183 (2) receives notification of it in accordance with
184 Section 10A-3A-1.03;

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

187 (4) is deemed to have notice of the fact under
188 subsection (d).

189 (c) A person notifies another of a fact by taking steps
190 reasonably required to inform the other person in ordinary
191 course in accordance with Section 10A-3A-1.03, whether or not
192 the other person knows the fact.

193 (d) A person is deemed to have notice of a nonprofit
194 corporation's:

195 (1) matters included in the certificate of
196 incorporation upon filing;



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197 (2) dissolution, 90 days after a certificate of
198 dissolution under Section 10A-3A-11.05 becomes effective;

199 (3) conversion or merger under Article 13 or Article
200 12, 90 days after a statement of conversion or statement of
201 merger becomes effective;

202 (4) conversion or merger under Article 8 of Chapter 1,
203 90 days after a statement of conversion or statement of merger
204 becomes effective; and

205 (5) revocation of dissolution and reinstatement, 90
206 days after certificate of revocation of dissolution and
207 reinstatement under Section 10A-3A-11.06 becomes effective.

208 (e) A member's knowledge, notice, or receipt of a
209 notification of a fact relating to the nonprofit corporation
210 is not knowledge, notice, or receipt of a notification of a
211 fact by that nonprofit corporation solely by reason of the
212 member's capacity as a member.

213 (f) The date and time of the effectiveness of a notice
214 delivered in accordance with Section 10A-3A-1.03, is
215 determined by Section 10A-3A-1.03.

216 (25) MEANS denotes an exhaustive definition.

217 (26) MEMBER means a person in whose name a membership
218 is registered on the records of the membership nonprofit
219 corporation and who has the right to (i) select or vote for
220 the election of directors or (ii) vote on any type of
221 fundamental transaction.

222 (27) MEMBERSHIP or MEMBERSHIP INTERESTS means the
223 rights and any obligations of a member in a membership
224 nonprofit corporation or a foreign membership nonprofit



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225 corporation.

226 (28) MEMBERSHIP NONPROFIT CORPORATION means, except as
227 provided in Section 10A-3A-14.01(c)(1), a nonprofit
228 corporation whose certificate of incorporation provides that
229 it will have members.

230 (29) NONMEMBERSHIP NONPROFIT CORPORATION means a
231 nonprofit corporation whose certificate of incorporation
232 provides that it will not have members.

233 (30) NONPROFIT CORPORATION, except in the phrase
234 foreign nonprofit corporation, means a nonprofit corporation
235 incorporated under or existing under this chapter.

236 (31) ORGANIZATIONAL DOCUMENTS means the public organic
237 record and private organizational documents of a nonprofit
238 corporation, foreign nonprofit corporation, business
239 corporation, foreign business corporation, or other
240 organization.

241 (32) PRINCIPAL OFFICE means the office (in or out of
242 this state) where the principal executive offices of a
243 nonprofit corporation or foreign nonprofit corporation are
244 located.

245 (33) PRIVATE ORGANIZATIONAL DOCUMENTS means (i) the
246 bylaws of a nonprofit corporation, foreign nonprofit
247 corporation, business corporation, or foreign business
248 corporation or (ii) the rules, regardless of whether in
249 writing, that govern the internal affairs of an unincorporated
250 entity or foreign unincorporated entity, are binding on all
251 its interest holders, and are not part of its public organic
252 record, if any. Where private organizational documents have



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253 been amended or restated, the term means the private
254 organizational documents as last amended or restated.

255 (34) PROCEEDING includes any civil suit and criminal,
256 administrative, and investigatory action.

257 (35) PUBLIC ORGANIC RECORD means (i) the certificate of
258 incorporation of a nonprofit corporation, foreign nonprofit
259 corporation, business corporation, or foreign business
260 corporation, or (ii) the document, if any, the filing of which
261 is required to create an unincorporated entity or foreign
262 unincorporated entity, or which creates the unincorporated
263 entity or foreign unincorporated entity and is required to be
264 filed. Where a public organic record has been amended or
265 restated, the term means the public organic record as last
266 amended or restated.

267 (36) RECORD DATE means the date fixed for determining
268 the identity of the nonprofit corporation's members and their
269 interests for purposes of this chapter. Unless another time is
270 specified when the record date is fixed, the determination
271 shall be made as of the close of business at the principal
272 office of the nonprofit corporation on the date so fixed.

273 (37) SECRETARY means the corporate officer to whom the
274 certificate of incorporation, bylaws, or board of directors
275 has delegated responsibility under Section 10A-3A-8.40(c) to
276 maintain the minutes of the meetings of the board of
277 directors, committees, and the members, and for authenticating
278 records of the nonprofit corporation.

279 (38) SHARES means the units into which the proprietary
280 interests in a domestic or foreign business corporation are



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281 divided.

282 (39) TYPE OF ENTITY means a generic form of entity: (i)
283 recognized at common law; or (ii) formed under a governing
284 statute, regardless of whether some entities formed under that
285 law are subject to provisions of that law that create
286 different categories of the form of entity.

287 (40) UNINCORPORATED ENTITY means an organization or
288 artificial legal person that either has a separate legal
289 existence or has the power to acquire an estate in real
290 property in its own name and that is not any of the following:
291 a corporation, foreign corporation, nonprofit corporation,
292 foreign nonprofit corporation, a series of a limited liability
293 company or of another type of entity, an estate, a trust, a
294 state, United States, or foreign government. The term includes
295 a general partnership, limited liability company, limited
296 partnership, business trust, joint stock association, and
297 unincorporated nonprofit association.

298 (41) UNITED STATES includes a district, authority,
299 bureau, commission, department, and any other agency of the
300 United States.

301 (42) VOTE, VOTING, or CASTING A VOTE includes the
302 giving of consent in writing without a meeting. The term does
303 not include either recording the fact of abstention or failing
304 to vote for a candidate or for approval or disapproval of a
305 matter, whether or not the person entitled to vote
306 characterizes that conduct as voting or casting a vote.

307 (43) VOTING GROUP means one or more classes of members
308 that under the certificate of incorporation, bylaws, or this



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309 chapter are entitled to vote and be counted together
310 collectively on a matter at a meeting of members. All members
311 entitled by the certificate of incorporation, bylaws, or this
312 chapter to vote generally on the matter are for that purpose a
313 single voting group.

314 (44) VOTING POWER means the current power to vote in
315 the election of directors, or to vote on approval of any type
316 of fundamental transaction.

317 §10A-3A-1.03. Notice.

318 (a) A notice under this chapter must be in writing
319 unless oral notice is reasonable in the circumstances. Unless
320 otherwise agreed between the sender and the recipient, words
321 in a notice or other communication under this chapter must be
322 in English.

323 (b) A notice or other communication may be given by any
324 method of delivery, except that notice or other communication
325 by electronic transmission must be in accordance with this
326 section. If the methods of delivery are impracticable, a
327 notice or other communication from the nonprofit corporation
328 may be given by means of a broad non-exclusionary distribution
329 to the public (which may include a newspaper of general
330 circulation in the area where published; radio, television, or
331 other form of public broadcast communication; or other methods
332 of distribution that the nonprofit corporation has previously
333 identified to its recipients).

334 (c) A notice or other communication to a nonprofit
335 corporation or to a foreign nonprofit corporation registered
336 to transact business in this state may be delivered to the



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337 registered agent of the nonprofit corporation or the foreign
338 nonprofit corporation at that registered agent's registered
339 office or to the secretary at the principal office of the
340 nonprofit corporation or the foreign nonprofit corporation.

341 (d) A notice or other communication from a nonprofit
342 corporation to a member may be delivered by electronic mail to
343 the electronic mail address for that member maintained
344 pursuant to Section 10A-3A-4.01(d), unless that member has
345 previously notified the nonprofit corporation in writing that
346 the member objects to receiving notices and other
347 communications by electronic mail. Any notice or other
348 communication may be delivered to a member by another form of
349 electronic transmission if consented to by that member or if
350 authorized by subsection (j). Any notice or other
351 communication from a nonprofit corporation to any other person
352 may be delivered by electronic transmission if consented to by
353 the recipient or if authorized by subsection (j). Any consent
354 under this subsection or subsection (j) may be revoked with
355 respect to future notices or communications by the person who
356 consented by written notice to the person to whom the consent
357 was delivered.

358 (e) A notice or other communication may no longer be
359 delivered to an electronic mail address or other electronic
360 transmission address pursuant to subsection (d) if (i) the
361 nonprofit corporation receives notice from the information
362 processing system into which the notice or other communication
363 was entered that two consecutive notices or other
364 communications given by electronic transmission have not been



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365 delivered to the electronic mail address or other electronic
366 transmission address to which the notice or other
367 communication was directed, and (ii) the notice of
368 non-delivery becomes known to the secretary or an assistant
369 secretary, or another person responsible for the giving of
370 notices or other communications for the nonprofit corporation;
371 provided, however, that the inadvertent failure to recognize
372 the notice of non-delivery as a cessation of authority to
373 provide a member with notice by electronic mail or other
374 electronic transmission shall not invalidate any meeting or
375 other action.

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

379 (1) it enters an information processing system directed
380 to: (i) in the case of a member, the electronic mail address
381 for the member maintained pursuant to Section 10A-3A-4.01(d)
382 or other electronic transmission address at which the member
383 has consented to receive notice or other communication by
384 electronic transmission; or (ii) in the case of any other
385 recipient, the electronic transmission address at which the
386 recipient has consented to receive notice or other
387 communication by electronic transmission; and

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

390 (g) Receipt of an electronic acknowledgment from an
391 information processing system described in subsection (f) (1)
392 establishes that an electronic transmission was received but,



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393 by itself, does not establish that the content sent
394 corresponds to the content received.

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

397 (i) A notice or other communication, if in a
398 comprehensible form or manner, is effective at the earliest of
399 the following:

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

402 (i) a member's address included in the record of
403 members maintained pursuant to Section 10A-3A-4.01(d);

404 (ii) a director's residence or usual place of business;
405 or

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

407 (2) if mailed by United States mail postage prepaid and
408 addressed to a member at the member's address included in the
409 record of members maintained pursuant to Section
410 10A-3A-4.01(d), upon deposit in the United States mail;

411 (3) if mailed by United States mail postage prepaid and
412 addressed to a recipient other than a member, at the address
413 of the recipient reflected in the books and records of the
414 nonprofit corporation, the earliest of when it is actually
415 received, or:

416 (i) if sent by registered or certified mail, return
417 receipt requested, the date shown on the return receipt signed
418 by or on behalf of the addressee; or

419 (ii) five days after it is deposited in the United
420 States mail;



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421 (4) if sent by a nationally recognized commercial
422 carrier that issues a receipt or other confirmation of
423 delivery, the earliest of when it is actually received or the
424 date shown on the receipt or other confirmation of delivery
425 issued by the commercial carrier;

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

428 (6) if oral, when communicated.

429 (j) A notice or other communication may be in the form
430 of an electronic transmission that cannot be directly
431 reproduced in paper form by the recipient through an automated
432 process used in conventional commercial practice only if (i)
433 the electronic transmission is otherwise retrievable in
434 perceivable form and (ii) the sender and the recipient have
435 consented in writing to the use of that form of electronic
436 transmission.

437 (k) If this chapter prescribes requirements for notices
438 or other communications in particular circumstances, those
439 requirements govern. If the certificate of incorporation or
440 bylaws prescribe requirements for notices or other
441 communications, not inconsistent with this section or other
442 provisions of this chapter, those requirements govern. The
443 certificate of incorporation or bylaws may authorize or
444 require delivery of notices of meetings of directors by
445 electronic transmission.

446 (l) In the event that any provisions of this chapter
447 are deemed to modify, limit, or supersede the federal
448 Electronic Signatures in Global and National Commerce Act, 15



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449 U.S.C. §§ 7001 et seq., the provisions of this chapter shall
450 control to the maximum extent permitted by Section 102(a)(2)
451 of that federal act.

452 (m) Whenever a notice or communication would otherwise
453 be required to be given under any provision of this chapter to
454 a member, the notice or communication need not be given if the
455 nonprofit corporation is not permitted to deliver the notice
456 or communication by electronic transmission pursuant to
457 subsections (d) and (e) and:

458 (1) notices and communications to members of two
459 consecutive annual meetings, and all notices and
460 communications of meetings during the period between those two
461 consecutive annual meetings, have been sent to that member at
462 that member's address included in the record of members
463 maintained pursuant to Section 10A-3A-4.01(d) and have been
464 returned undeliverable or could not be delivered; or

465 (2) no address has been provided to the nonprofit
466 corporation by or on behalf of a member and the nonprofit
467 corporation has not otherwise obtained an address for that
468 member it believes to be reliable.

469 In addition if any member to which this subsection (m)
470 applies delivers to the nonprofit corporation a written notice
471 or communication setting forth that member's then-current
472 address, the requirement that notice and communication be
473 given to that member shall be reinstated.

474 (n) Whenever a notice or communication is required to
475 be given, under any provision of this chapter or of the
476 certificate of incorporation or bylaws of any nonprofit



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477 corporation, to any person with whom notice to or
478 communication with is unlawful, the giving of the notice or
479 communication to that person shall not be required and there
480 shall be no duty to apply to any governmental authority or
481 agency for a license or permit to give the notice or
482 communication to that person. Any action or meeting which
483 shall be taken or held without notice or communication to the
484 person with whom notice to or communication with is unlawful
485 shall have the same force and effect as if the notice or
486 communication had been duly given. In the event that the
487 action taken by the nonprofit corporation requires the filing
488 of a certificate or other filing instrument under any of the
489 other sections of this chapter, the certificate or other
490 filing instrument shall state, if that is the fact and if
491 notice or communication is required, that notice or
492 communication was given to all persons entitled to receive
493 notice or communication except those persons with whom notice
494 to or communication with is unlawful.

495 §10A-3A-1.04. Requirements for filing instruments;
496 extrinsic facts.

497 (a) Whenever any filing instrument is to be delivered
498 to the Secretary of State for filing in accordance with this
499 chapter, the instrument shall be executed as follows:

500 (1) Except as provided in subsection (a)(3), the
501 certificate of incorporation, and any other instrument to be
502 filed before the election of the initial board of directors if
503 the initial directors were not named in the certificate of
504 incorporation, shall be signed by the incorporator or



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505 incorporators or the successors and assigns of the
506 incorporator or incorporators. If any incorporator is not
507 available then any other instrument may be signed, with the
508 same effect as if the incorporator had signed it, by any
509 person for whom or on whose behalf the incorporator, in
510 executing the certificate of incorporation, was acting
511 directly or indirectly as employee or agent, provided that the
512 other instrument shall state that the incorporator is not
513 available and the reason therefor, that the incorporator in
514 executing the certificate of incorporation was acting directly
515 or indirectly as employee or agent for or on behalf of the
516 person, and that the person's signature on the instrument is
517 otherwise authorized and not wrongful.

518 (2) Except as provided in subsection (a)(3), all other
519 filing instruments shall be signed:

520 (i) by any authorized officer of the nonprofit
521 corporation; or

522 (ii) if it shall appear from the filing instrument that
523 there are no authorized officers, then by a majority of the
524 directors or by the directors as may be designated by a
525 majority of the board of directors; or

526 (iii) if it shall appear from the filing instrument
527 that there are no authorized officers or directors, then by a
528 majority of the members or by the members as may be designated
529 by a majority of the members.

530 (3) If the nonprofit corporation is in the hands of a
531 receiver, trustee, or other court-appointed fiduciary, by that
532 fiduciary.



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533 (b) The person executing the filing instrument shall
534 sign it and state beneath or opposite the person's signature
535 the person's name and the capacity in which the filing
536 instrument is signed. The filing instrument may, but need not,
537 contain a corporate seal, attestation, acknowledgment, or
538 verification.

539 (c) Whenever a provision of this chapter permits any of
540 the terms of a plan or a filing instrument to be dependent on
541 facts objectively ascertainable outside the plan or filing
542 instrument, the following provisions apply:

543 (1) The manner in which the facts will operate upon the
544 terms of the plan or filing instrument must be set forth in
545 the plan or filing instrument.

546 (2) The facts may include:

547 (i) any of the following that are available in a
548 nationally recognized news or information medium either in
549 print or electronically: statistical or market indices, market
550 prices of any security or group of securities, interest rates,
551 currency exchange rates, or similar economic or financial
552 data;

553 (ii) a determination or action by any person or body,
554 including the nonprofit corporation or any other party to a
555 plan or filing instrument; or

556 (iii) the terms of, or actions taken under, an
557 agreement to which the nonprofit corporation is a party, or
558 any other agreement or document.

559 (3) As used in this subsection (c), "plan" means a plan
560 of conversion or merger.



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561 (4) The following provisions of a plan or filing
562 instrument may not be made dependent on facts outside the plan
563 or filed document:

564 (i) the name and address of any person required in a
565 filing instrument;

566 (ii) the registered office of any entity required in a
567 filing instrument;

568 (iii) the registered agent of any entity required in a
569 filing instrument;

570 (iv) the effective date and time of a filing instrument
571 as determined under Article 4 of Chapter 1; and

572 (v) any required statement in a filing instrument of
573 the date on which the underlying transaction was approved or
574 the manner in which that approval was given.

575 (5) If a provision of a filing instrument is made
576 dependent on a fact ascertainable outside of the filing
577 instrument, and that fact is neither ascertainable by
578 reference to a source described in subsection (c)(2)(i) or a
579 document that is a matter of public record, nor have the
580 affected members, if any, and if none, the affected directors,
581 received notice of the fact from the nonprofit corporation,
582 then the nonprofit corporation shall deliver to the Secretary
583 of State for filing a certificate of amendment to the filing
584 instrument setting forth the fact promptly after the time when
585 the fact referred to is first ascertainable or thereafter
586 changes. A certificate of amendment under this subsection is
587 deemed to be authorized by the authorization of the original
588 filing instrument to which it relates and may be filed by the



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589 nonprofit corporation without further action by the board of
590 directors or the members.

591 §10A-3A-1.05. Certificate of existence or registration.

592 (a) The Secretary of State, upon request and payment of
593 the requisite fee, shall furnish to any person a certificate
594 of existence for a nonprofit corporation if the writings filed
595 in the office of the Secretary of State show that the
596 nonprofit corporation has been incorporated under the laws of
597 this state. A certificate of existence shall reflect only the
598 information on file with the Secretary of State. A certificate
599 of existence must state:

600 (1) the nonprofit corporation's name;

601 (2) that the nonprofit corporation was incorporated
602 under the laws of this state, the date of incorporation, and
603 the filing office in which the certificate of incorporation
604 was filed;

605 (3) whether the nonprofit corporation has delivered to
606 the Secretary of State for filing a certificate of
607 dissolution;

608 (4) whether the nonprofit corporation has delivered to
609 the Secretary of State for filing a certificate of
610 reinstatement; and

611 (5) other facts of record in the office of the
612 Secretary of State that are specified by the person requesting
613 the certificate.

614 (b) The Secretary of State, upon request and payment of
615 the requisite fee, shall furnish to any person a certificate
616 of registration for a foreign nonprofit corporation if the



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617 writings filed in the office of the Secretary of State show
618 that the Secretary of State has filed an application for
619 registration for authority to transact business in this state
620 and the registration has not been revoked, withdrawn, or
621 terminated. A certificate of registration must state:

622 (1) the foreign nonprofit corporation's name and any
623 alternate name adopted for use in this state;

624 (2) that the foreign nonprofit corporation is
625 authorized to transact business in this state;

626 (3) that the Secretary of State has not revoked the
627 foreign nonprofit corporation's registration;

628 (4) that the foreign nonprofit corporation has not
629 filed with the Secretary of State a certificate of withdrawal
630 or otherwise terminated its registration; and

631 (5) other facts of record in the office of the
632 Secretary of State that are specified by the person requesting
633 the certificate.

634 (c) Subject to any qualification stated in the
635 certificate, a certificate of existence or certificate of
636 registration issued by the Secretary of State is conclusive
637 evidence that the nonprofit corporation is in existence or the
638 foreign nonprofit corporation is authorized to transact
639 business in this state.

640 DIVISION B. RATIFICATION OF DEFECTIVE CORPORATE ACTIONS
641 §10A-3A-1.20. Division definitions.

642 In this Division:

643 (1) "CORPORATE ACTION" means any action taken by or on
644 behalf of the nonprofit corporation, including any action



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645 taken by the incorporator, the board of directors, a committee
646 of the board of directors, an officer or agent of the
647 nonprofit corporation, or the members, if any.

648 (2) "DATE OF THE DEFECTIVE CORPORATE ACTION" means the
649 date (or the approximate date, if the exact date is unknown)
650 the defective corporate action was purported to have been
651 taken.

652 (3) "DEFECTIVE CORPORATE ACTION" means (i) any
653 corporate action purportedly taken that is, and at the time
654 that corporate action was purportedly taken would have been,
655 within the power of the nonprofit corporation, but is void or
656 voidable due to a failure of authorization, and (ii) an
657 overissue.

658 (4) "FAILURE OF AUTHORIZATION" means the failure to
659 authorize, approve, or otherwise effect a corporate action in
660 compliance with the provisions of this chapter, the
661 certificate of incorporation or bylaws, a corporate
662 resolution, or any plan or agreement to which the nonprofit
663 corporation is a party, if and to the extent that failure
664 would render that corporate action void or voidable.

665 (5) "OVERISSUE" means the purported issuance of:

666 (i) membership interests of a class in excess of the
667 number, if any, of membership interests of a class the
668 nonprofit corporation has the power to issue under its
669 certificate of incorporation or bylaws at the time of
670 issuance; or

671 (ii) membership interests of any class that is not then
672 authorized for issuance by the certificate of incorporation or



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673 bylaws.

674 (6) "PUTATITVE MEMBERSHIP INTEREST" means a membership
675 interest of any class (including a membership interest issued
676 upon exercise of rights, options, warrants, or other
677 securities convertible into a membership interest of the
678 nonprofit corporation, or interests with respect to that
679 membership interest) that was created or issued as a result of
680 a defective corporate action, that (i) but for any failure of
681 authorization would constitute a valid membership interest, or
682 (ii) cannot be determined by the board of directors to be a
683 valid membership interest.

684 (7) "VALID MEMBERSHIP INTEREST" means the membership
685 interest of any class that has been duly authorized and
686 validly issued in accordance with this chapter, including as a
687 result of ratification or validation under this article.

688 (8) "VALIDATION EFFECTIVE TIME" with respect to any
689 defective corporate action ratified under this article means
690 the later of:

691 (i) the time at which the ratification of the defective
692 corporate action is approved by the members, if any, and if
693 none, by the board of directors; and

694 (ii) the time at which any certificate of validation
695 filed in accordance with Section 10A-3A-1.26 becomes
696 effective.

697 The validation effective time shall not be affected by
698 the filing or pendency of a judicial proceeding under Section
699 10A-3A-1.27 or otherwise, unless otherwise ordered by the
700 court.



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701 §10A-3A-1.21. Defective corporate actions.

702 (a) A defective corporate action shall not be void or
703 voidable if ratified in accordance with Section 10A-3A-1.22 or
704 validated in accordance with Section 10A-3A-1.27.

705 (b) Ratification under Section 10A-3A-1.22 or
706 validation under Section 10A-2A-1.27 shall not be deemed to be
707 the exclusive means of ratifying or validating any defective
708 corporate action, and the absence or failure of ratification
709 in accordance with this Division shall not, of itself, affect
710 the validity or effectiveness of any corporate action properly
711 ratified under common law or otherwise, nor shall it create a
712 presumption that any such corporate action is or was a
713 defective corporate action or void or voidable.

714 (c) In the case of an overissue, a putative membership
715 interest shall be valid a membership interest effective as of
716 the date originally issued or purportedly issued upon:

717 (1) the effectiveness under this article and under
718 Article 9 of an amendment to the certificate of incorporation
719 or bylaws authorizing, designating, or creating that
720 membership interest; or

721 (2) the effectiveness of any other corporate action
722 under this article ratifying the authorization, designation,
723 or creation of a membership interest.

724 §10A-3A-1.22. Ratification of defective corporate
725 actions.

726 (a) To ratify a defective corporate action under this
727 section (other than the ratification of an election of the
728 initial board of directors under subsection (b)), the board of



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729 directors shall take action ratifying the action in accordance
730 with Section 10A-3A-1.23, stating:

731 (1) the defective corporate action to be ratified and,
732 if the defective corporate action involved the issuance of a
733 putative membership interest, the number and types of putative
734 membership interests purportedly issued;

735 (2) the date of the defective corporate action;

736 (3) the nature of the failure of authorization with
737 respect to the defective corporate action to be ratified; and

738 (4) that the board of directors approves the
739 ratification of the defective corporate action.

740 (b) In the event that a defective corporate action to
741 be ratified relates to the election of the initial board of
742 directors of the nonprofit corporation under Section
743 10A-3A-2.04(a)(2), a majority of the persons who, at the time
744 of the ratification, are exercising the powers of directors
745 may take an action stating:

746 (1) the name of the person or persons who first took
747 action in the name of the nonprofit corporation as the initial
748 board of directors of the nonprofit corporation;

749 (2) the earlier of the date on which those persons
750 first took the action or were purported to have been elected
751 as the initial board of directors; and

752 (3) that the ratification of the election of the person
753 or persons as the initial board of directors is approved.

754 (c) If any provision of this chapter, the certificate
755 of incorporation or bylaws, any corporate resolution, or any
756 plan or agreement to which a membership nonprofit corporation



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757 is a party in effect at the time action under subsection (a)
758 is taken requires member approval or would have required
759 member approval at the date of the occurrence of the defective
760 corporate action, the ratification of the defective corporate
761 action approved in the action taken by the directors under
762 subsection (a) shall be submitted to the members for approval
763 in accordance with Section 10A-3A-1.23.

764 (d) If the certificate of incorporation of a nonprofit
765 corporation in effect at the time action under subsection (a)
766 is taken requires the approval of a person or group of persons
767 specified in the certificate of incorporation or would have
768 required approval of that person or group of persons at the
769 date of the occurrence of the defective corporate action, the
770 ratification of the defective corporate action approved in the
771 action taken by the directors under subsection (a) shall be
772 submitted to that person or group of persons for approval in
773 accordance with Section 10A-3A-1.23.

774 (e) Unless otherwise provided in the action taken by
775 the board of directors under subsection (a), after the action
776 by the board of directors has been taken and, if required,
777 approved in accordance with subsection (c) or subsection (d),
778 the board of directors may abandon the ratification at any
779 time before the validation effective time without further
780 action of the members, if any, or the person or group of
781 persons, if any, specified in the certificate of
782 incorporation.

783 §10A-3A-1.23. Action on ratification.

784 (a) The quorum and voting requirements applicable to a



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785 ratifying action by the board of directors under Section
786 10A-3A-1.22(a) shall be the quorum and voting requirements
787 applicable to the corporate action proposed to be ratified at
788 the time the ratifying action is taken.

789 (b) If the ratification of the defective corporate
790 action requires approval by the members under Section
791 10A-3A-1.22(c), and if the approval is to be given at a
792 meeting, the membership nonprofit corporation shall notify
793 each holder of valid and putative membership interests,
794 regardless of whether entitled to vote, as of the record date
795 for notice of the meeting and as of the date of the occurrence
796 of defective corporate action, provided that notice shall not
797 be required to be given to holders of valid or putative
798 membership interests whose identities or addresses for notice
799 cannot be determined from the records of the membership
800 nonprofit corporation. The notice must state that the purpose,
801 or one of the purposes, of the meeting, is to consider
802 ratification of a defective corporate action and must be
803 accompanied by (i) either a copy of the action taken by the
804 board of directors in accordance with Section 10A-3A-1.22(a)
805 or the information required by Section 10A-3A-1.22(a)(1)
806 through (a)(4), and (ii) a statement that any claim that the
807 ratification of the defective corporate action and any
808 putative membership interest issued as a result of the
809 defective corporate action should not be effective, or should
810 be effective only on certain conditions, shall be brought
811 within 120 days from the applicable validation effective time.

812 (c) Except as provided in subsection (d) with respect



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813 to the voting requirements to ratify the election of a
814 director, the quorum and voting requirements applicable to the
815 approval by the members, if any, and if none, by the directors
816 shall be the quorum and voting requirements applicable to the
817 corporate action proposed to be ratified at the time of the
818 member or director approval.

819 (d) The approval by members to ratify the election of a
820 director requires that the votes cast within the voting group
821 favoring the ratification exceed the votes cast opposing the
822 ratification of the election at a meeting at which a quorum is
823 present.

824 (e) Putative membership interest on the record date for
825 determining the members entitled to vote on any matter
826 submitted to members under Section 10A-3A-1.22(c) (and without
827 giving effect to any ratification of putative membership
828 interests that becomes effective as a result of the vote)
829 shall neither be entitled to vote nor counted for quorum
830 purposes in any vote to approve the ratification of any
831 defective corporate action.

832 (f) If the approval under this section of putative
833 membership interests would result in an overissue, in addition
834 to the approval required by Section 10A-3A-1.22, approval of
835 an amendment to the certificate of incorporation under Article
836 9 to increase the number of membership interests of an
837 authorized class or to authorize the creation of a class of
838 membership interests so there would be no overissue shall also
839 be required.

840 (g) If the ratification of the defective corporate



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841 action requires approval by a person or group of persons
842 specified in the certificate of incorporation, the directors
843 shall provide that person or group of persons with (i) either
844 a copy of the action taken by the board of directors in
845 accordance with Section 10A-3A-1.22(a) or the information
846 required by Section 10A-3A-1.22(a)(1) through (a)(4), and (ii)
847 a statement that any claim that the ratification of the
848 defective corporate action and any putative membership
849 interest issued as a result of the defective corporate action
850 should not be effective, or should be effective only on
851 certain conditions, shall be brought within 120 days from the
852 applicable validation effective time.

853 §10A-3A-1.24. Notice requirements.

854 (a) In a membership nonprofit corporation, unless
855 member approval is required under Section 10A-3A-1.22(c),
856 prompt notice of an action taken under Section 10A-3A-1.22
857 shall be given to each holder of a valid and putative
858 membership interest in the membership nonprofit corporation,
859 regardless of whether entitled to vote, as of: (i) the date of
860 the action by the board of directors; and (ii) the date of the
861 defective corporate action ratified, provided that notice
862 shall not be required to be given to holders of a valid and
863 putative membership interest whose identities or addresses for
864 notice cannot be determined from the records of the nonprofit
865 corporation.

866 (b) The notice set forth in subsection (a) must
867 contain: (i) either a copy of the action taken by the board of
868 directors in accordance with Section 10A-3A-1.22(a) or (b) or



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869 the information required by Section 10A-3A-1.22(a)(1) through
870 (a)(4) or Section 10A-3A-1.22(b)(1) through (b)(3), as
871 applicable; and (ii) a statement that any claim that the
872 ratification of the defective corporate action and any
873 putative membership interest issued as a result of the
874 defective corporate action should not be effective, or should
875 be effective only on certain conditions, shall be brought
876 within 120 days from the applicable validation effective time.

877 (c) In a membership nonprofit corporation, no notice
878 under this section is required with respect to any action
879 required to be submitted to members for approval under Section
880 10A-3A-1.22(c) if notice is given in accordance with Section
881 10A-3A-1.24(b).

882 (d) A notice required by this section may be given in
883 any manner permitted by Section 10A-3A-1.03.

884 §10A-3A-1.25. Effect of ratification.

885 From and after the validation effective time, and
886 without regard to the 120-day period during which a claim may
887 be brought under Section 10A-3A-1.27:

888 (a) Each defective corporate action ratified in
889 accordance with Section 10A-3A-1.22 shall not be void or
890 voidable as a result of the failure of authorization
891 identified in the action taken under Section 10A-3A-1.22(a) or
892 (b) and shall be deemed a valid corporate action effective as
893 of the date of the defective corporate action;

894 (b) The issuance of each putative membership interest
895 purportedly issued pursuant to a defective corporate action
896 identified in the action taken under Section 10A-3A-1.22 shall



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897 not be void or voidable, and each putative membership interest
898 shall be deemed to be an identical membership interest as of
899 the time it was purportedly issued; and

900 (c) Any corporate action taken subsequent to the
901 defective corporate action ratified in accordance with this
902 Division B of Article 1 in reliance on the defective corporate
903 action having been validly effected and any subsequent
904 defective corporate action resulting directly or indirectly
905 from the original defective corporate action shall be valid as
906 of the time taken.

907 §10A-3A-1.26. Filings.

908 (a) If the defective corporate action ratified under
909 this Division B of Article 1 would have required under any
910 other section of this chapter a filing in accordance with this
911 chapter, then, regardless of whether a filing was previously
912 made in respect of the defective corporate action and in lieu
913 of a filing otherwise required by this chapter, the nonprofit
914 corporation shall file a certificate of validation in
915 accordance with this section, and that certificate of
916 validation shall serve to amend or substitute for any other
917 filing with respect to the defective corporate action required
918 by this chapter.

919 (b) The certificate of validation must set forth:

920 (1) the name of the nonprofit corporation;

921 (2) the unique identifying number or other designation
922 as assigned by the Secretary of State;

923 (3) the defective corporate action that is the subject
924 of the certificate of validation (including, in the case of



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925 any defective corporate action involving the issuance of
926 putative membership interests, the number and type of shares
927 of putative membership interests issued and the date or dates
928 upon which that putative membership interest was purported to
929 have been issued);

930 (4) the date of the defective corporate action;

931 (5) the nature of the failure of authorization in
932 respect of the defective corporate action;

933 (6) a statement that the defective corporate action was
934 ratified in accordance with Section 10A-3A-1.22, including the
935 date on which the board of directors ratified that defective
936 corporate action, and if applicable, the date on which the
937 members approved the ratification of that defective corporate
938 action, and the date on which the person or group of persons
939 specified in the certificate of incorporation approved the
940 ratification of that defective corporate action; and

941 (7) the information required by subsection (c).

942 (c) The certificate of validation must also contain the
943 following information:

944 (1) if a filing was previously made in respect of the
945 defective corporate action and no changes to that filing are
946 required to give effect to the ratification of that defective
947 corporate action in accordance with Section 10A-3A-1.22, the
948 certificate of validation must set forth (i) the name, title,
949 and filing date of the filing previously made and any
950 certificate of correction to that filing, and (ii) a statement
951 that a copy of the filing previously made, together with any
952 certificate of correction to that filing, is attached as an



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953 exhibit to the certificate of validation;

954 (2) if a filing was previously made in respect of the
955 defective corporate action and that filing requires any change
956 to give effect to the ratification of that defective corporate
957 action in accordance with Section 10A-3A-1.22, the certificate
958 of validation must set forth (i) the name, title, and filing
959 date of the filing previously made and any certificate of
960 correction to that filing, and (ii) a statement that a filing
961 containing all of the information required to be included
962 under the applicable section or sections of this chapter to
963 give effect to that defective corporate action is attached as
964 an exhibit to the certificate of validation, and (iii) the
965 date and time that filing is deemed to have become effective;
966 or

967 (3) if a filing was not previously made in respect of
968 the defective corporate action and the defective corporate
969 action ratified under Section 10A-3A-1.22 would have required
970 a filing under any other section of this chapter, the
971 certificate of validation must set forth (i) a statement that
972 a filing containing all of the information required to be
973 included under the applicable section or sections of this
974 chapter to give effect to that defective corporate action is
975 attached as an exhibit to the certificate of validation, and
976 (ii) the date and time that filing is deemed to have become
977 effective.

978 §10A-3A-1.27. Judicial proceedings regarding validity
979 of corporate actions.

980 (a) Upon application by the nonprofit corporation, any



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981 successor entity to the nonprofit corporation, a director of
982 the nonprofit corporation, any member (if applicable) of the
983 nonprofit corporation, including any member as of the date of
984 the defective corporate action ratified under Section
985 10A-3A-1.22, the person or group of persons (if applicable)
986 specified in the certificate of incorporation, or any other
987 person claiming to be substantially and adversely affected by
988 a ratification under Section 10A-3A-1.22, the designated
989 court, and if none, the circuit court for the county in which
990 the nonprofit corporation's principal office is located in
991 this state, and if none in this state, the circuit court for
992 the county in which the nonprofit corporation's most recent
993 registered office, is located, may:

994 (1) determine the validity and effectiveness of any
995 corporate action or defective corporate action;

996 (2) determine the validity and effectiveness of any
997 ratification under Section 10A-3A-1.22;

998 (3) determine the validity of any putative membership
999 interest; and

1000 (4) modify or waive any of the procedures specified in
1001 Section 10A-3A-1.22 or Section 10A-3A-1.23 to ratify a
1002 defective corporate action.

1003 (b) In connection with an action under this section,
1004 the court may make findings or orders, and take into account
1005 any factors or considerations, regarding any matters as it
1006 deems proper under the circumstances.

1007 (c) Service of process of the application under
1008 subsection (a) on the nonprofit corporation may be made in any



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1009 manner provided by statute of this state or by rule of the
1010 applicable court for service on the nonprofit corporation, and
1011 no other party need be joined in order for the court to
1012 adjudicate the matter. In an action filed by the nonprofit
1013 corporation, the court may require notice of the action be
1014 provided to other persons specified by the court and permit
1015 those other persons to intervene in the action.

1016 (d) Notwithstanding any other provision of this section
1017 or otherwise under applicable law, any action asserting that
1018 the ratification of any defective corporate action and any
1019 putative membership interest issued as a result of a defective
1020 corporate action should not be effective, or should be
1021 effective only on certain conditions, shall be brought within
1022 120 days of the validation effective time.

1023 DIVISION C. MISCELLANEOUS.

1024 §10A-3A-1.60. Qualified director.

1025 (a) A "qualified director" is a director who, at the
1026 time action is to be taken under:

1027 (1) Section 10A-3A-2.02(b)(6), is not a director (i) to
1028 whom the limitation or elimination of the duty of an officer
1029 to offer potential business opportunities to the nonprofit
1030 corporation would apply, or (ii) who has a material
1031 relationship with any other person to whom the limitation or
1032 elimination would apply;

1033 (2) Section 10A-3A-8.53 or Section 10A-3A-8.55 (i) is
1034 not a party to the proceeding, (ii) is not a director as to
1035 whom a transaction is a director's conflicting interest
1036 transaction or who sought a disclaimer of the nonprofit



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1037 corporation's interest in a business opportunity under Section
1038 10A-2A-8.60, which transaction or disclaimer is challenged,
1039 and (iii) does not have a material relationship with a
1040 director described in either clause (i) or clause (ii) of this
1041 subsection (a)(2); or

1042 (3) Section 10A-2A-8.60, is not a director (i) as to
1043 whom the contract or transaction is a director's conflicting
1044 interest transaction, (ii) who has a material relationship
1045 with another director as to whom the transaction is a
1046 director's conflicting interest transaction, (iii) who pursues
1047 or takes advantage of the business opportunity, directly, or
1048 indirectly through or on behalf of another person, or (iv) has
1049 a material relationship with a director or officer who pursues
1050 or takes advantage of the business opportunity, directly, or
1051 indirectly through or on behalf of another person.

1052 (b) For purposes of this section:

1053 (1) "MATERIAL RELATIONSHIP" means a familial,
1054 financial, professional, employment, or other relationship
1055 that would reasonably be expected to impair the objectivity of
1056 the director's judgment when participating in the action to be
1057 taken; and

1058 (2) "MATERIAL INTEREST" means an actual or potential
1059 benefit or detriment (other than one which would devolve on
1060 the nonprofit corporation or the members generally) that would
1061 reasonably be expected to impair the objectivity of the
1062 director's judgment when participating in the action to be
1063 taken.

1064 (c) The presence of one or more of the following



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1065 circumstances shall not automatically prevent a director from
1066 being a qualified director:

1067 (1) nomination or election of the director to the
1068 current board of directors by any director who is not a
1069 qualified director with respect to the matter (or by any
1070 person that has a material relationship with that director),
1071 acting alone or participating with others; or

1072 (2) service as a director of another nonprofit
1073 corporation of which a director who is not a qualified
1074 director with respect to the matter (or any individual who has
1075 a material relationship with that director), is or was also a
1076 director.

1077 §10A-3A-1.61. Householding.

1078 (a) A membership nonprofit corporation has delivered
1079 written notice or any other report or statement under this
1080 chapter, the certificate of incorporation, or the bylaws to
1081 all members who share a common address if:

1082 (1) the membership nonprofit corporation delivers one
1083 copy of the notice, report, or statement to the common
1084 address;

1085 (2) the membership nonprofit corporation addresses the
1086 notice, report, or statement to those members either as a
1087 group or to each of those members individually or to the
1088 members in a form to which each of those members has
1089 consented; and

1090 (3) each of those members consents to delivery of a
1091 single copy of the notice, report, or statement to the
1092 members' common address.



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1093 (b) A consent described in subsection (a)(2) or (a)(3)
1094 shall be revocable by any members who deliver written notice
1095 of revocation to the membership nonprofit corporation. If a
1096 written notice of revocation is delivered, the membership
1097 nonprofit corporation shall begin providing individual
1098 notices, reports, or other statements to the revoking member
1099 no later than 30 days after delivery of the written notice of
1100 revocation.

1101 (c) Any member who fails to object by written notice to
1102 the membership nonprofit corporation, within 60 days of
1103 written notice by the membership nonprofit corporation of its
1104 intention to deliver single copies of notices, reports, or
1105 statements to members who share a common address as permitted
1106 by subsection (a), shall be deemed to have consented to
1107 receiving a single copy at the common address; provided that
1108 the notice of intention explains that consent may be revoked
1109 and the method for revoking.

1110 §10A-3A-1.62. Governing law of foreign nonprofit
1111 corporations.

1112 (a) The law of the jurisdiction of formation of a
1113 foreign nonprofit corporation governs:

1114 (1) the incorporation and internal affairs of the
1115 foreign nonprofit corporation;

1116 (2) the liability of its members as members for the
1117 debts, obligations, or other liabilities of the foreign
1118 nonprofit corporation; and

1119 (3) the authority of the directors and officers of the
1120 foreign nonprofit corporation.



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1121 (b) A foreign nonprofit corporation is not precluded
1122 from registering to do business in this state because of any
1123 difference between the law of the foreign nonprofit
1124 corporation's jurisdiction of formation and the law of this
1125 state.

1126 ARTICLE 2. INCORPORATION.

1127 §10A-3A-2.01. Incorporators.

1128 Section 10A-1-3.04 shall not apply to this chapter. In
1129 order to incorporate a nonprofit corporation, one or more
1130 incorporators must execute a certificate of incorporation and
1131 deliver it for filing to the Secretary of State.

1132 §10A-3A-2.02. Certificate of incorporation.

1133 Section 10A-1-3.05 shall not apply to this chapter.

1134 Instead:

1135 (a) The certificate of incorporation must set forth:

1136 (1) a name for the nonprofit corporation that satisfies
1137 the requirements of Article 5 of Chapter 1;

1138 (2) the street and mailing address of the nonprofit
1139 corporation's initial registered office, the county within
1140 this state in which the street and mailing address is located,
1141 and the name of the nonprofit corporation's initial registered
1142 agent at that office as required by Article 5 of Chapter 1;

1143 (3) that the nonprofit corporation is incorporated
1144 under this chapter;

1145 (4) the name and address of each incorporator; and

1146 (5) (i) if the nonprofit corporation will have members,
1147 a statement to that effect; or

1148 (ii) if the nonprofit corporation will not have



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1149 members, a statement to that effect.

1150 (b) The certificate of incorporation may set forth:

1151 (1) the names and addresses of the individuals who are
1152 to serve as the initial directors;

1153 (2) provisions not inconsistent with law regarding:

1154 (i) the purpose or purposes for which the nonprofit
1155 corporation is organized;

1156 (ii) managing the activities and regulating the affairs
1157 of the nonprofit corporation;

1158 (iii) defining, limiting, and regulating the powers of
1159 the nonprofit corporation, its board of directors, and the
1160 members;

1161 (iv) the characteristics, qualifications, rights,
1162 limitations, and obligations attaching to each or any class of
1163 members;

1164 (v) subject to Section 10A-3A-4.20, limiting a member's
1165 right to inspect and copy the records of the nonprofit
1166 corporation under Section 10A-3A-4.02 (b);

1167 (vi) the distribution of assets on dissolution;

1168 (vii) provisions for the election, appointment, or
1169 designation of directors;

1170 (viii) provisions granting inspection rights to a
1171 person or group of persons under Section 10A-3A-4.07; and

1172 (ix) provisions specifying a person or group of persons
1173 whose approval is required under Sections 10A-3A-9.30,
1174 10A-3A-10.04, 10A-3A-11.04, 10A-3A-12.08, or 10A-3A-13.08;

1175 (3) any provision that under this chapter is permitted
1176 to be set forth in the certificate of incorporation or



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1177 required or permitted to be set forth in the bylaws;

1178 (4) a provision eliminating or limiting the liability
1179 of a director to a nonprofit corporation or its members for
1180 money damages for any action taken, or any failure to take any
1181 action, as a director, except liability for (i) the amount of
1182 a financial benefit received by a director to which the
1183 director is not entitled (ii) an intentional infliction of
1184 harm on the nonprofit corporation or its members, (iii) a
1185 violation of Section 10A-3A-8.32, or (iv) an intentional
1186 violation of criminal law;

1187 (5) a provision permitting or making obligatory
1188 indemnification of a director for liability as defined in
1189 Section 10A-3A-8.50 to any person for any action taken, or any
1190 failure to take any action, as a director, except liability
1191 for (i) receipt of a financial benefit to which the director
1192 is not entitled, (ii) an intentional infliction of harm on the
1193 nonprofit corporation or its members, (iii) a violation of
1194 Section 10A-3A-8.32, or (iv) an intentional violation of
1195 criminal law;

1196 (6) a provision limiting or eliminating any duty of a
1197 director or any other person to offer the nonprofit
1198 corporation the right to have or participate in any, or one or
1199 more classes or categories of, corporate opportunities, before
1200 the pursuit or taking of the opportunity by the director or
1201 other person; provided that the application of that provision
1202 to an officer or a related person of that officer (i) also
1203 requires approval of that application by the board of
1204 directors, subsequent to the effective date of the provision,



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1205 by action of the disinterested or qualified directors taken in
1206 compliance with the same procedures as are set forth in
1207 Section 10A-3A-8.60, and (ii) may be limited by the
1208 authorizing action of the board of directors; and

1209 (7) provisions required if the nonprofit corporation is
1210 to be exempt from taxation under federal, state, or local law.

1211 (c) The certificate of incorporation need not set forth
1212 any of the corporate powers enumerated in Sections 10A-1-2.11,
1213 10A-1-2.12, and 10A-1-2.13.

1214 (d) Provisions of the certificate of incorporation may
1215 be made dependent upon facts objectively ascertainable outside
1216 the certificate of incorporation in accordance with Section
1217 10A-3A-1.04.

1218 (e) As used in this section, "related person" means:

1219 (i) the individual's spouse; (ii) a child, stepchild,
1220 grandchild, parent, stepparent, grandparent, sibling,
1221 stepsibling, half sibling, aunt, uncle, niece, or nephew (or
1222 spouse of any such person) of the individual or of the
1223 individual's spouse; (iii) a natural person living in the same
1224 home as the individual; (iv) an entity (other than the
1225 nonprofit corporation or an entity controlled by the nonprofit
1226 corporation) controlled by the individual or any person
1227 specified above in this definition; (v) a domestic or foreign
1228 (A) business or nonprofit corporation (other than the
1229 nonprofit corporation or an entity controlled by the nonprofit
1230 corporation) of which the individual is a director, (B)
1231 unincorporated entity of which the individual is a general
1232 partner or a member of the governing authority, or (C)



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1233 individual, trust or estate for whom or of which the
1234 individual is a trustee, guardian, personal representative, or
1235 like fiduciary; or (vi) a person that is, or an entity that
1236 is, controlled by, an employer of the individual.

1237 (f) The certificate of incorporation may not contain
1238 any provision that would impose liability on a member or a
1239 director for the attorney's fees or expenses of the nonprofit
1240 corporation or any other party in connection with an internal
1241 corporate claim, as defined in Section 10A-3A-2.07(d).

1242 (g) The certificate of incorporation is a part of a
1243 binding contract between the nonprofit corporation and (i) the
1244 members in a membership nonprofit corporation and (ii) the
1245 directors in a nonmembership nonprofit corporation, subject to
1246 the provisions of this chapter.

1247 §10A-3A-2.03. Liability for preincorporation
1248 transactions.

1249 All persons purporting to act as or on behalf of a
1250 nonprofit corporation, knowing there was no incorporation
1251 under this chapter, are jointly and severally liable for all
1252 liabilities created while so acting.

1253 §10A-3A-2.04. Organization of nonprofit corporation.

1254 (a) After incorporation:

1255 (1) if initial directors are named in the certificate
1256 of incorporation, the initial directors shall hold an
1257 organizational meeting, at the call of a majority of the
1258 directors, to complete the organization of the nonprofit
1259 corporation by appointing officers, adopting bylaws, and
1260 carrying on any other business brought before the meeting; or



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1261 (2) if initial directors are not named in the
1262 certificate of incorporation, the incorporator or
1263 incorporators shall hold an organizational meeting at the call
1264 of a majority of the incorporators:

1265 (i) to elect initial directors and complete the
1266 organization of the nonprofit corporation; or

1267 (ii) to elect a board of directors who shall complete
1268 the organization of the nonprofit corporation.

1269 (b) Action required or permitted by this chapter to be
1270 taken by incorporators at an organizational meeting may be
1271 taken without a meeting if the action taken is evidenced by
1272 one or more written consents describing the action taken and
1273 signed by each incorporator.

1274 §10A-3A-2.05. Bylaws.

1275 (a) The incorporators or board of directors of a
1276 nonprofit corporation shall adopt initial bylaws for the
1277 nonprofit corporation.

1278 (b) The bylaws of a nonprofit corporation may contain
1279 any provision that is not inconsistent with law or the
1280 certificate of incorporation.

1281 (c) The bylaws are a part of a binding contract between
1282 the nonprofit corporation and (i) the members in a membership
1283 nonprofit corporation and (ii) the directors in a
1284 nonmembership nonprofit corporation, subject to the provisions
1285 of this chapter.

1286 §10A-3A-2.06. Emergency bylaws.

1287 (a) Unless the certificate of incorporation provides
1288 otherwise, bylaws may be adopted to be effective only in an



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1289 emergency defined in subsection (d). The emergency bylaws,
1290 which are subject to amendment or repeal in accordance with
1291 Section 10A-3A-9.20, may make all provisions necessary for
1292 managing the nonprofit corporation during the emergency,
1293 including:

1294 (1) procedures for calling a meeting of the board of
1295 directors;

1296 (2) quorum requirements for the meeting; and

1297 (3) designation of additional or substitute directors.

1298 (b) All provisions of the regular bylaws not
1299 inconsistent with the emergency bylaws remain effective during
1300 the emergency. The emergency bylaws are not effective after
1301 the emergency ends.

1302 (c) Corporate action taken in good faith in accordance
1303 with the emergency bylaws:

1304 (1) binds the nonprofit corporation; and

1305 (2) may not be used to impose liability on a member,
1306 director, officer, employee, or agent of the nonprofit
1307 corporation.

1308 (d) An emergency exists for purposes of this section if
1309 a quorum of the board of directors cannot readily be assembled
1310 because of some catastrophic event.

1311 §10A-3A-2.07. Forum selection provisions.

1312 (a) The certificate of incorporation or the bylaws may
1313 require that any or all internal corporate claims shall be
1314 brought exclusively in any specified court or courts of this
1315 state and, if so specified, in any additional courts in this
1316 state or in any other jurisdictions with which the nonprofit



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1317 corporation has a reasonable relationship.

1318 (b) A provision of the certificate of incorporation or
1319 bylaws adopted under subsection (a) shall not have the effect
1320 of conferring jurisdiction on any court or over any person or
1321 claim, and shall not apply if none of the courts specified by
1322 that provision has the requisite personal and subject matter
1323 jurisdiction. If the court or courts of this state specified
1324 in a provision adopted under subsection (a) do not have the
1325 requisite personal and subject matter jurisdiction and another
1326 court of this state does have jurisdiction, then the internal
1327 corporate claim may be brought in the other court of this
1328 state, notwithstanding that the other court of this state is
1329 not specified in that provision, and in any other court
1330 specified in that provision that has the requisite
1331 jurisdiction.

1332 (c) No provision of the certificate of incorporation or
1333 the bylaws may prohibit bringing an internal corporate claim
1334 in the courts of this state or require those claims to be
1335 determined by arbitration.

1336 (d) "Internal corporate claim" means, for the purposes
1337 of this section, (i) any claim that is based upon a violation
1338 of a duty under the laws of this state by a current or former
1339 director, officer, or member in their capacities as such, (ii)
1340 any action asserting a claim arising pursuant to any provision
1341 of this chapter or the certificate of incorporation or bylaws,
1342 or (iii) any action asserting a claim governed by the internal
1343 affairs doctrine that is not included in (i) through (ii)
1344 above.



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1345 ARTICLE 3. PURPOSES AND POWERS.

1346 §10A-3A-3.01. Purposes.

1347 (a) Every nonprofit corporation has the purpose of
1348 engaging in any lawful activity unless a more limited purpose
1349 is set forth in the certificate of incorporation.

1350 (b) If a nonprofit corporation will engage in an
1351 activity that is subject to regulation under another statute
1352 of the state, the nonprofit corporation may incorporate under
1353 this chapter only if not prohibited by, and subject to all
1354 limitations of, the other statute.

1355 (c) Labor unions, cooperative organizations, and
1356 organizations subject to any of the provisions of the
1357 insurance laws of Alabama may not be organized under this
1358 chapter.

1359 (d) Whenever 10 or more retail merchants wish to form a
1360 nonprofit association, cooperative society, or corporation in
1361 the sense of paying interest or dividends on stock, but for
1362 mutual benefit through the application of cooperation or other
1363 economic principles, they may become a body corporate in the
1364 manner provided in this chapter.

1365 (e) Whenever 10 or more wholesale merchants wish to
1366 form a nonprofit association, cooperative society, or
1367 corporation in the sense of paying interest or dividends on
1368 stock, but for mutual benefit through the application of
1369 cooperation or other economic principles, they may become a
1370 body corporate in the manner provided in this chapter.

1371 §10A-3A-3.02. General powers.

1372 Unless its certificate of incorporation provides



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1373 otherwise, every nonprofit corporation has perpetual duration
1374 and succession in its corporate name and has the same powers
1375 as an individual to do all things necessary or convenient to
1376 carry out its activities and affairs, including all entity
1377 powers provided in Section 10A-1-2.11, Section 10A-1-2.12, and
1378 Section 10A-1-2.13.

1379 §10A-3A-3.03. Emergency powers.

1380 (a) In anticipation of or during an emergency defined
1381 in subsection (d), the board of directors of a nonprofit
1382 corporation may:

1383 (1) modify lines of succession to accommodate the
1384 incapacity of any director, officer, employee, or agent; and

1385 (2) relocate the principal office, designate
1386 alternative principal offices or regional offices, or
1387 authorize the officers to do so.

1388 (b) During an emergency defined in subsection (d),
1389 unless emergency bylaws provide otherwise:

1390 (1) notice of a meeting of the board of directors need
1391 be given only to those directors whom it is practicable to
1392 reach and may be given in any practicable manner; and

1393 (2) one or more officers of the nonprofit corporation
1394 present at a meeting of the board of directors may be deemed
1395 to be directors for the meeting, in order of rank and within
1396 the same rank in order of seniority, as necessary to achieve a
1397 quorum.

1398 (c) Corporate action taken in good faith during an
1399 emergency under this section to further the ordinary business
1400 affairs of the nonprofit corporation:



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1401 (1) binds the nonprofit corporation; and

1402 (2) may not be used to impose liability on a member,
1403 director, officer, employee, or agent.

1404 (d) An emergency exists for purposes of this section if
1405 a quorum of the board of directors cannot readily be assembled
1406 because of some catastrophic event.

1407 §10A-3A-3.04. Lack of power.

1408 (a) Except as provided in subsection (b), the validity
1409 of corporate action may not be challenged on the ground that
1410 the nonprofit corporation lacks or lacked power to act.

1411 (b) The power of a nonprofit corporation to act may be
1412 challenged:

1413 (1) in a proceeding by a member or director against the
1414 nonprofit corporation to enjoin the act;

1415 (2) in a proceeding by the nonprofit corporation,
1416 directly, or through a receiver, trustee, or other legal
1417 representative, against an incumbent or former director,
1418 officer, employee, or agent of the nonprofit corporation; or

1419 (3) in a proceeding by the Attorney General.

1420 (c) In a proceeding by a member or a director under
1421 subsection (b)(1) to enjoin an unauthorized corporate act, the
1422 court may enjoin or set aside the act, if equitable and if all
1423 affected persons are parties to the proceeding, and may award
1424 damages for loss (other than anticipated profits) suffered by
1425 the nonprofit corporation or another party because of
1426 enjoining the unauthorized corporate act.

1427 ARTICLE 4. RECORDS AND REPORTS.

1428 DIVISION A. RECORDS.



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1429 §10A-3A-4.01. Corporate records.

1430 (a) A nonprofit corporation must maintain the following
1431 records:

1432 (1) its certificate of incorporation as currently in
1433 effect;

1434 (2) any notices to members referred to in Section
1435 10A-3A-1.04(c) (5) specifying facts on which a filed document
1436 is dependent if those facts are not included in the
1437 certificate of incorporation or otherwise available as
1438 specified in Section 10A-3A-1.04(c) (5);

1439 (3) its bylaws as currently in effect;

1440 (4) all written communications within the past three
1441 years to members generally;

1442 (5) minutes of all meetings of, and records of all
1443 actions taken without a meeting by, its members, its board of
1444 directors, and board committees established under Section
1445 10A-3A-8.25; and

1446 (6) a list of the names and business addresses of its
1447 current directors and officers.

1448 (b) A nonprofit corporation shall maintain all annual
1449 financial statements prepared for the nonprofit corporation
1450 for its last three fiscal years (or such shorter period of
1451 existence) and any audit or other reports with respect to
1452 those financial statements.

1453 (c) A nonprofit corporation shall maintain accounting
1454 records in a form that permits preparation of the financial
1455 statements.

1456 (d) A membership nonprofit corporation must maintain a



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1457 record of its current members in alphabetical order by class
1458 of membership showing the address for each member to which
1459 notices and other communications from the membership nonprofit
1460 corporation are to be sent. In addition if a member has
1461 provided an electronic mail address to the membership
1462 nonprofit corporation or has consented to receive notices or
1463 other communications by electronic mail or other electronic
1464 transmission, the record of members shall include the
1465 electronic mail or other electronic transmission address of
1466 the member if notices or other communications are being
1467 delivered by the membership nonprofit corporation to the
1468 member at that electronic mail or other electronic
1469 transmission address pursuant to Section 10A-3A-1.03(d). An
1470 electronic mail address of a member shall be deemed to be
1471 provided by a member if it is contained in a communication to
1472 the membership nonprofit corporation by or on behalf of the
1473 member, unless the communication expressly indicates that the
1474 electronic mail address may not be used to deliver notices or
1475 other communications.

1476 (e) A nonprofit corporation must maintain the records
1477 specified in this section in a manner so that they may be made
1478 available for inspection within a reasonable time.

1479 §10A-3A-4.02. Inspection rights of members.

1480 (a) A member of a membership nonprofit corporation is
1481 entitled to inspect and copy, during regular business hours at
1482 the membership nonprofit corporation's principal office, any
1483 of the records of the membership nonprofit corporation
1484 described in Section 10A-3A-4.01(a), excluding minutes of



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1485 meetings of, and records of actions taken without a meeting
1486 by, the membership nonprofit corporation's board of directors
1487 and board committees established under Section 10A-3A-8.25, if
1488 the member gives the membership nonprofit corporation a signed
1489 written notice of the member's demand at least five business
1490 days before the date on which the member wishes to inspect and
1491 copy.

1492 (b) A member of a membership nonprofit corporation is
1493 entitled to inspect and copy, during regular business hours at
1494 a reasonable location specified by the membership nonprofit
1495 corporation, any of the following records of the membership
1496 nonprofit corporation if the member meets the requirements of
1497 subsection (c) and gives the membership nonprofit corporation
1498 a signed written notice of the member's demand at least five
1499 business days before the date on which the member wishes to
1500 inspect and copy:

1501 (1) the financial statements of the membership
1502 nonprofit corporation maintained in accordance with Section
1503 10A-3A-4.01(b);

1504 (2) accounting records of the membership nonprofit
1505 corporation; and

1506 (3) excerpts from minutes of any meeting of, or records
1507 of any actions taken without a meeting by, the board of
1508 directors and board committees maintained in accordance with
1509 Section 10A-3A-4.01(a); and

1510 (4) subject to Section 10A-3A-4.06, the record of
1511 members maintained in accordance with Section 10A-3A-4.01(d).

1512 (c) A member may inspect and copy the records described



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1513 in subsection (b) only if:

1514 (1) the member's demand is made in good faith and for a
1515 proper purpose;

1516 (2) the member's demand describes with reasonable
1517 particularity the member's purpose and the records the member
1518 desires to inspect; and

1519 (3) the records are directly connected with the
1520 member's purpose.

1521 (d) The membership nonprofit corporation may impose
1522 reasonable restrictions and conditions on access to and use of
1523 the records to be inspected and copied under subsections (a)
1524 and (b), including designating information confidential and
1525 imposing nondisclosure and safeguarding, and may further keep
1526 confidential from its members and other persons, for a period
1527 of time as the membership nonprofit corporation deems
1528 reasonable any information that the membership nonprofit
1529 corporation reasonably believes to be in the nature of a trade
1530 secret or other information the disclosure of which the
1531 membership nonprofit corporation in good faith believes is not
1532 in the best interest of the membership nonprofit corporation
1533 or could damage the membership nonprofit corporation or its
1534 activities or affairs, or that the membership nonprofit
1535 corporation is required by law or by agreement with a third
1536 party to keep confidential. In any dispute concerning the
1537 reasonableness of a restriction under this subsection, the
1538 membership nonprofit corporation has the burden of proving
1539 reasonableness.

1540 (e) For any meeting of members for which the record



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1541 date for determining members entitled to vote at the meeting
1542 is different than the record date for notice of the meeting,
1543 any person who becomes a member subsequent to the record date
1544 for notice of the meeting and is entitled to vote at the
1545 meeting is entitled to obtain from the membership nonprofit
1546 corporation upon request the notice and any other information
1547 provided by the membership nonprofit corporation to members in
1548 connection with the meeting, unless the membership nonprofit
1549 corporation has made that information generally available to
1550 members by posting it on its website or by other generally
1551 recognized means. Failure of a membership nonprofit
1552 corporation to provide that information does not affect the
1553 validity of action taken at the meeting.

1554 (f) Subject to Section 10A-3A-4.20, the right of
1555 inspection granted by Section 10A-3A-4.02(b) may be limited by
1556 a membership nonprofit corporation's certificate of
1557 incorporation.

1558 (g) This section does not affect:

1559 (1) the right of a member to inspect records under
1560 Section 10A-3A-7.20 or, if the member is in litigation with
1561 the membership nonprofit corporation, to the same extent as
1562 any other litigant; or

1563 (2) the power of a court, independently of this
1564 chapter, to compel the production of corporate records for
1565 examination and to impose reasonable restrictions as provided
1566 in Section 10A-3A-4.04(c), provided that, in the case of
1567 production of records described in subsection (b) of this
1568 section at the request of the member, the member has met the



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1569 requirements of subsection (c) of this section.

1570 §10A-3A-4.03. Scope of inspection right of members.

1571 (a) A member may appoint an agent or attorney to
1572 exercise the member's inspection and copying rights under
1573 Section 10A-3A-4.02.

1574 (b) The membership nonprofit corporation may, if
1575 reasonable, satisfy the right of a member to copy records
1576 under Section 10A-3A-4.02 by furnishing to the member copies
1577 by photocopy or other means as are chosen by the membership
1578 nonprofit corporation, including furnishing copies through
1579 electronic transmission.

1580 (c) The membership nonprofit corporation may comply at
1581 its expense with a member's demand to inspect the record of
1582 members under Section 10A-3A-4.02(b)(4) by providing the
1583 member with a list of members that was compiled no earlier
1584 than the date of the member's demand.

1585 (d) The membership nonprofit corporation may impose a
1586 reasonable charge to cover the costs of providing copies of
1587 documents to the member, which may be based on an estimate of
1588 those costs.

1589 §10A-3A-4.04. Court-ordered inspection of membership
1590 nonprofit corporation.

1591 (a) If a membership nonprofit corporation does not
1592 allow a member who complies with Section 10A-3A-4.02(a) to
1593 inspect and copy any records required by that section to be
1594 available for inspection, the designated court, and if none,
1595 the circuit court for the county in which the membership
1596 nonprofit corporation's principal office is located in this



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1597 state, and if none in this state, the circuit court for the
1598 county in which the membership nonprofit corporation's most
1599 recent registered office is located may summarily order
1600 inspection and copying of the records demanded at the
1601 membership nonprofit corporation's expense upon application of
1602 the member.

1603 (b) If a membership nonprofit corporation does not
1604 within a reasonable time allow a member who complies with
1605 Section 10A-3A-4.02(b) to inspect and copy the records as
1606 required by that section, the member who complies with Section
1607 10A-3A-4.02(c) may apply to the designated court, and if none,
1608 the circuit court for the county in which the membership
1609 nonprofit corporation's principal office is located in this
1610 state, and if none in this state, the circuit court for the
1611 county in which the membership nonprofit corporation's most
1612 recent registered office is located for an order to permit
1613 inspection and copying of the records demanded. The court
1614 shall dispose of an application under this subsection on an
1615 expedited basis.

1616 (c) If the court orders inspection and copying of the
1617 records demanded under Section 10A-3A-4.02(b), it may impose
1618 reasonable restrictions on their confidentiality, use or
1619 distribution by the demanding member and it shall also order
1620 the membership nonprofit corporation to pay the member's
1621 expenses incurred to obtain the order unless the membership
1622 nonprofit corporation establishes that it refused inspection
1623 in good faith because the membership nonprofit corporation
1624 had:



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1625 (1) a reasonable basis for doubt about the right of the
1626 member to inspect the records demanded; or

1627 (2) required reasonable restrictions on the
1628 confidentiality, use, or distribution of the records demanded
1629 to which the demanding member had been unwilling to agree.

1630 §10A-3A-4.05. Inspection rights of directors.

1631 (a) A director of a nonprofit corporation is entitled
1632 to inspect and copy the books, records, and documents of the
1633 nonprofit corporation at any reasonable time to the extent
1634 reasonably related to the performance of the director's duties
1635 as a director, including duties as a member of a board
1636 committee, but not for any other purpose or in any manner that
1637 would violate any duty to the nonprofit corporation.

1638 (b) The designated court, and if none, the circuit
1639 court for the county in which the nonprofit corporation's
1640 principal office is located in this state, and if none in this
1641 state, the circuit court for the county in which the nonprofit
1642 corporation's most recent registered office is located may
1643 order inspection and copying of the books, records, and
1644 documents at the nonprofit corporation's expense, upon
1645 application of a director who has been refused inspection
1646 rights, unless the nonprofit corporation establishes that the
1647 director is not entitled to inspection rights. The court shall
1648 dispose of an application under this subsection on an
1649 expedited basis.

1650 (c) If an order is issued, the court may include
1651 provisions protecting the nonprofit corporation from undue
1652 burden or expense, and prohibiting the director from using



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1653 information obtained upon exercise of the inspection rights in
1654 a manner that would violate a duty to the nonprofit
1655 corporation, and may also order the nonprofit corporation to
1656 reimburse the director for the director's expenses incurred in
1657 connection with the application.

1658 §10A-3A-4.06. Limitations on use of membership list.

1659 (a) Unless otherwise permitted by the certificate of
1660 incorporation or bylaws of a membership nonprofit corporation,
1661 a membership list or any part thereof may not be obtained or
1662 used by any person for any purpose unrelated to a member's
1663 interest as a member without the consent of the board of
1664 directors, including without limitation:

1665 (1) to solicit money or property unless the money or
1666 property will be used solely to solicit the votes of the
1667 members in an election to be held by the membership nonprofit
1668 corporation;

1669 (2) for any commercial purpose; or

1670 (3) to be sold or purchased by any person.

1671 (b) Instead of making a membership list available for
1672 inspection and copying under this Division, a membership
1673 nonprofit corporation may elect to proceed under the
1674 procedures set forth in Section 10A-3A-7.20(e).

1675 §10A-3A-4.07. Grant of inspection rights to designated
1676 persons.

1677 If the certificate of incorporation provides approval
1678 rights to a person or group of persons as authorized in
1679 Section 10A-3A-2.02(b)(ix), then the certificate of
1680 incorporation may grant inspection rights to that person or



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1681 group of persons. Any grant of inspection rights under this
1682 section may set forth the scope, rights, limits, restrictions,
1683 conditions, confidentiality, and any other matter related to
1684 that grant of the inspection rights.

DIVISION B. FINANCIAL STATEMENTS FOR MEMBERS.

§10A-3A-4.20. Financial statements for members.

1687 (a) Upon the written request of a member, a membership
1688 nonprofit corporation shall deliver or make available to the
1689 requesting member by posting on its website or by other
1690 generally recognized means annual financial statements for the
1691 most recent fiscal year of the membership nonprofit
1692 corporation for which annual financial statements have been
1693 prepared for the membership nonprofit corporation. If
1694 financial statements have been prepared for the membership
1695 nonprofit corporation on the basis of generally accepted
1696 accounting principles for that specified period, the
1697 membership nonprofit corporation shall deliver or make
1698 available those financial statements to the requesting member.
1699 If the annual financial statements to be delivered or made
1700 available to the requesting member are audited or otherwise
1701 reported upon by a public accountant, the report shall also be
1702 delivered or made available to the requesting member.

1703 (b) A membership nonprofit corporation shall deliver,
1704 or make available and provide written notice of availability
1705 of, the financial statements required under subsection (a) to
1706 the requesting member within five business days of delivery of
1707 the written request to the membership nonprofit corporation.

1708 (c) Notwithstanding the provisions of subsections (a)



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1709 and (b) of this section:

1710 (1) as a condition to delivering or making available
1711 financial statements to a requesting member, the membership
1712 nonprofit corporation may require the requesting member to
1713 agree to reasonable restrictions on the confidentiality, use,
1714 and distribution of the financial statements; and

1715 (2) the membership nonprofit corporation may, if it
1716 reasonably determines that the member's request is not made in
1717 good faith or for a proper purpose, decline to deliver or make
1718 available the financial statements to that member.

1719 (d) If a membership nonprofit corporation does not
1720 respond to a member's request for annual financial statements
1721 pursuant to this section in accordance with subsection (b)
1722 within five business days of delivery of the request to the
1723 membership nonprofit corporation:

1724 (1) The requesting member may apply to the designated
1725 court, and if none, the circuit court for the county in which
1726 the membership nonprofit corporation's principal office is
1727 located in this state, and if none in this state, the circuit
1728 court for the county in which the membership nonprofit
1729 corporation's most recent registered office is located for an
1730 order requiring delivery of or access to the requested
1731 financial statements. The court shall dispose of an
1732 application under this subsection on an expedited basis.

1733 (2) If the court orders delivery or access to the
1734 requested financial statements, it may impose reasonable
1735 restrictions on their confidentiality, use, or distribution.

1736 (3) In the proceeding, if the membership nonprofit



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1737 corporation has declined to deliver or make available the
1738 financial statements because the member had been unwilling to
1739 agree to restrictions proposed by the membership nonprofit
1740 corporation on the confidentiality, use, and distribution of
1741 the financial statements, the membership nonprofit corporation
1742 shall have the burden of demonstrating that the restrictions
1743 proposed by the membership nonprofit corporation were
1744 reasonable.

1745 (4) In the proceeding, if the membership nonprofit
1746 corporation has declined to deliver or make available the
1747 financial statements pursuant to Section 10A-3A-4.20(c)(2),
1748 the membership nonprofit corporation shall have the burden of
1749 demonstrating that it had reasonably determined that the
1750 member's request was not made in good faith or for a proper
1751 purpose.

1752 (5) If the court orders delivery or access to the
1753 requested financial statements, it shall order the membership
1754 nonprofit corporation to pay the member's expenses incurred to
1755 obtain the order unless the membership nonprofit corporation
1756 establishes that it had refused delivery or access to the
1757 requested financial statements because the member had refused
1758 to agree to reasonable restrictions on the confidentiality,
1759 use, or distribution of the financial statements or that the
1760 membership nonprofit corporation had reasonably determined
1761 that the member's request was not made in good faith or for a
1762 proper purpose.

1763 ARTICLE 6. MEMBERSHIPS AND FINANCIAL PROVISIONS.

1764 DIVISION A. ADMISSION OF MEMBERS.



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1765 §10A-3A-6.01. Members.

1766 (a) A nonprofit corporation may have one or more
1767 classes of members or may have no members. If the nonprofit
1768 corporation has one or more classes of members, the
1769 designation of the class or classes, the manner of admission
1770 and the qualifications and rights of the members of each class
1771 shall be set forth in the certificate of incorporation or
1772 bylaws. Subject to Section 10A-3A-14.01(c), if the nonprofit
1773 corporation will have members, that fact shall be set forth in
1774 the certificate of incorporation. If the nonprofit corporation
1775 will not have members, that fact shall be set forth in the
1776 certificate of incorporation.

1777 (b) Except as otherwise provided in this chapter or in
1778 the certificate of incorporation, if the certificate of
1779 incorporation of a nonprofit corporation states that the
1780 nonprofit corporation will have members, but that nonprofit
1781 corporation has in fact no members entitled to vote on a
1782 matter, then any provision of this chapter or any other
1783 provision of law requiring notice to, the presence of, or the
1784 vote, consent, or other action by members of that nonprofit
1785 corporation in connection with the matter shall be satisfied
1786 by notice to, the presence of, or the vote, consent, or other
1787 action by the board of directors of the nonprofit corporation.

1788 (c) Except as otherwise provided in the certificate of
1789 incorporation, if the certificate of incorporation of a
1790 nonprofit corporation states that the nonprofit corporation
1791 will not have members, then notice to, the presence of, or the
1792 vote, consent, or other action by board of directors of the



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1793 nonprofit corporation in connection with the matter shall be
1794 satisfied by notice to, the presence of, or the vote, consent,
1795 or other action by the board of directors of the nonprofit
1796 corporation.

1797 §10A-3A-6.02. Membership status.

1798 (a) A person may not be admitted as a member of a
1799 nonprofit corporation without that person's consent.

1800 (b) If a membership nonprofit corporation provides
1801 certificates of membership to the members, the certificates
1802 shall not be registered or transferable except as provided in
1803 the certificate of incorporation or bylaws. Each certificate
1804 of membership shall comply with Sections 10A-1-3.42,
1805 10A-1-3.43(b), and 10A-1-3.44. No membership certificate shall
1806 be issued in bearer form.

1807 (c) A person is not a member of a nonprofit corporation
1808 unless (i) the nonprofit corporation is a membership nonprofit
1809 corporation and (ii) the person meets the definition of a
1810 "member" in Section 10A-3A-1.02, regardless of whether the
1811 nonprofit corporation designates or refers to the person as a
1812 member.

1813 (d) A person is not a member of a nonmembership
1814 nonprofit corporation, regardless of whether the nonmembership
1815 nonprofit corporation designates or refers to the person as a
1816 member.

1817 §10A-3A-6.03. Admission of members.

1818 Unless otherwise provided by law or in the certificate
1819 of incorporation or bylaws of a membership nonprofit
1820 corporation, the board of directors shall establish conditions



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1821 for admission of members (for such contribution, if any, as
1822 the board of directors may determine), admit members, and
1823 issue memberships.

1824 DIVISION B. RIGHTS AND OBLIGATIONS OF MEMBERS.

1825 §10A-3A-6.10. Differences in rights and obligations of
1826 members.

1827 Except as otherwise provided in the certificate of
1828 incorporation or bylaws, each member of a membership nonprofit
1829 corporation has the same rights and obligations as every other
1830 member with respect to voting, dissolution, membership
1831 transfer, and other matters.

1832 §10A-3A-6.11. Transfers.

1833 (a) Except as provided in the certificate of
1834 incorporation or bylaws, a member of a membership nonprofit
1835 corporation may not transfer a membership or any right arising
1836 therefrom.

1837 (b) Where the right to transfer a membership has been
1838 provided, a restriction on that right shall not be binding
1839 with respect to a member holding a membership issued prior to
1840 the adoption of the restriction unless the restriction is
1841 approved by the affected member.

1842 §10A-3A-6.12. Member's liability to third parties.

1843 A member of a nonprofit corporation is not personally
1844 liable for any liabilities of the nonprofit corporation
1845 (including liabilities arising from acts of the nonprofit
1846 corporation).

1847 §10A-3A-6.13. Member's liability for dues, assessments,
1848 and fees.



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1849 (a) A membership nonprofit corporation may levy dues,
1850 assessments, fees, fines, late charges, interest, penalties,
1851 and other such sums on its members to the extent authorized in
1852 the certificate of incorporation or bylaws. Dues, assessments,
1853 fees, fines, late charges, interest, penalties, and other such
1854 sums may be imposed on members of the same class either alike
1855 or in different amounts or proportions, and may be imposed on
1856 a different basis on different classes of members. Members of
1857 a class may be made exempt from dues, assessments, fees,
1858 fines, late charges, interest, penalties, and other such sums
1859 to the extent provided in the certificate of incorporation or
1860 bylaws.

1861 (b) The amount and method of collection of dues,
1862 assessments, fees, fines, late charges, interest, penalties,
1863 and other such sums may be fixed in the certificate of
1864 incorporation or bylaws, or the certificate of incorporation
1865 or bylaws may authorize the board of directors or members to
1866 fix the amount and method of collection.

1867 (c) The certificate of incorporation or bylaws may
1868 provide reasonable means to enforce the collection of dues,
1869 assessments, fees, fines, late charges, interest, penalties,
1870 and other such sums, including, but not limited to,
1871 termination, suspension, or reinstatement of membership.

1872 DIVISION C. RESIGNATION AND TERMINATION.

1873 §10A-3A-6.20. Resignation.

1874 (a) A member of a membership nonprofit corporation may
1875 resign at any time.

1876 (b) The resignation of a member does not relieve the



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1877 member from any obligations incurred or commitments made prior
1878 to resignation.

1879 §10A-3A-6.21. Termination and suspension.

1880 (a) A membership in a membership nonprofit corporation
1881 may be terminated or suspended for the reasons and in the
1882 manner provided in the certificate of incorporation or bylaws.

1883 (b) A proceeding challenging a termination or
1884 suspension for any reason must be commenced within one year
1885 after the effective date of the termination or suspension.

1886 (c) The termination or suspension of a member does not
1887 relieve the member from any obligations incurred or
1888 commitments made prior to the termination or suspension.

1889 DIVISION D. FINANCIAL PROVISIONS.

1890 §10A-3A-6.40. Distributions.

1891 (a) Except as permitted or required by law other than
1892 this chapter, or contractual obligations, a nonprofit
1893 corporation shall not make distributions to its members,
1894 directors, or officers. Any permitted or required distribution
1895 is subject to the limitations set forth in subsection (c).

1896 (b) The board of directors of a membership nonprofit
1897 corporation may fix the record date for determining members
1898 entitled to a distribution, which date may not be retroactive.
1899 If the board of directors does not fix a record date for
1900 determining members entitled to a distribution, the record
1901 date is the date the board of directors authorizes the
1902 distribution.

1903 (c) No distribution may be made if, after giving it
1904 effect:



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1905 (1) the nonprofit corporation would not be able to pay
1906 its debts as they become due in the usual course of its
1907 activities and affairs; or

1908 (2) the nonprofit corporation's unrestricted total
1909 assets would be less than the sum of its total liabilities
1910 other than those liabilities which are solely secured by the
1911 nonprofit corporation's restricted assets.

1912 (d) The board of directors may base a determination
1913 that a distribution is not prohibited under subsection (c)
1914 either on financial statements prepared on the basis of
1915 accounting practices and principles that are reasonable in the
1916 circumstances or on a fair valuation or other method that is
1917 reasonable in the circumstances.

1918 (e) The effect of a distribution under subsection (c)
1919 is measured as of (i) the date the distribution is authorized
1920 if the payment occurs within 120 days after the date of
1921 authorization or (ii) the date the payment is made if it
1922 occurs more than 120 days after the date of authorization.

1923 (f) This section shall not apply to distributions in
1924 liquidation under Article 11.

1925 (g) This section shall not apply to a contract or
1926 transaction with a member, director, or officer, which
1927 contract or transaction is authorized pursuant to Section
1928 10A-3A-8.60.

1929 §10A-3A-6.41. Compensation and benefits.

1930 A nonprofit corporation may pay reasonable
1931 compensation, reasonable payments made in the ordinary course
1932 of the nonprofit corporation's activities and affairs, or



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1933 reimburse reasonable expenses to its members, directors, or
1934 officers for services rendered and may confer reasonable
1935 benefits upon its members or nonmembers in conformity with its
1936 purposes.

1937 §10A-3A-6.42. Capital contributions of members.

1938 (a) A membership nonprofit corporation may provide in
1939 its certificate of incorporation or bylaws that members, upon
1940 or subsequent to admission, must make capital contributions.
1941 Except as provided in the certificate of incorporation or
1942 bylaws, the amount shall be fixed by the board of directors.
1943 The requirement of a capital contribution may apply to all
1944 members, or to the members of a single class, or to members of
1945 different classes in different amounts or proportions.

1946 (b) The adoption or amendment of a capital contribution
1947 requirement, whether or not approved by the members, shall not
1948 apply to a member who did not vote in favor of the adoption or
1949 amendment until 30 days after notice of the adoption or
1950 amendment has been delivered to the member.

1951 §10A-3A-6.43. Shares of stock prohibited.

1952 A nonprofit corporation shall not have or issue shares
1953 of stock.

1954 ARTICLE 7. MEMBER MEETINGS.

1955 DIVISION A. PROCEDURES.

1956 §10A-3A-7.01. Annual and regular meetings of the
1957 members.

1958 (a) Unless otherwise provided in the certificate of
1959 incorporation, a membership nonprofit corporation shall hold a
1960 meeting of members annually at a time stated in or fixed in



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1961 accordance with the certificate of incorporation or bylaws.

1962 (b) A membership nonprofit corporation may hold regular
1963 meetings of the members at times stated in or fixed in
1964 accordance with the certificate of incorporation or bylaws.

1965 (c) Unless the board of directors determines to hold
1966 the meeting solely by means of remote communication in
1967 accordance with Section 10A-3A-7.09(c), annual and regular
1968 meetings of the members may be held (i) in or out of this
1969 state at the place stated in or fixed in accordance with the
1970 certificate of incorporation or bylaws or (ii) if no place is
1971 stated in or fixed in accordance with the certificate of
1972 incorporation or bylaws, at the membership nonprofit
1973 corporation's principal office.

1974 (d) The failure to hold an annual or regular meeting of
1975 the members at the time stated in or fixed in accordance with
1976 a membership nonprofit corporation's certificate of
1977 incorporation or bylaws does not affect the validity of any
1978 corporate action.

1979 §10A-3A-7.02. Special meetings.

1980 (a) Special meetings of the members in a membership
1981 nonprofit corporation may be called by the board of directors
1982 or by the person or persons as may be authorized by the
1983 certificate of incorporation or by the bylaws.

1984 (b) In the event that the certificate of incorporation
1985 or bylaws of a membership nonprofit corporation allow members
1986 to demand a special meeting of the members, then if not
1987 otherwise fixed under Section 10A-3A-7.03 or Section
1988 10A-3A-7.07, the record date for determining members entitled



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1989 to demand a special meeting shall be the first date on which a
1990 signed member's demand is delivered to the membership
1991 nonprofit corporation. No written demand for a special meeting
1992 shall be effective unless, within 60 days of the earliest date
1993 on which the demand delivered to the membership nonprofit
1994 corporation as allowed by the certificate of incorporation or
1995 bylaws was signed, written demands signed by members holding
1996 at least the percentage of votes specified in or fixed in
1997 accordance with the certificate of incorporation or bylaws
1998 have been delivered to the membership nonprofit corporation.

1999 (c) Unless the board of directors determines to hold
2000 the meeting solely by means of remote participation in
2001 accordance with Section 10A-3A-7.09(c), special meetings of
2002 members may be held (i) in or out of this state at the place
2003 stated in or fixed in accordance with the certificate of
2004 incorporation or bylaws or (ii) if no place is stated in or
2005 fixed in accordance with the certificate of incorporation or
2006 bylaws, at the membership nonprofit corporation's principal
2007 office.

2008 (d) Only business within the purpose or purposes
2009 described in the meeting notice required by Section
2010 10A-3A-7.05(c) may be conducted at a special meeting of
2011 members.

2012 §10A-3A-7.03. Court-ordered meetings.

2013 (a) The designated court, and if none, the circuit
2014 court for the county in which the membership nonprofit
2015 corporation's principal office is located in this state, and,
2016 if none in this state, the circuit court for the county in



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2017 which the membership nonprofit corporation's most recent
2018 registered office is located may summarily order a meeting to
2019 be held:

2020 (1) on application of any member of the membership
2021 nonprofit corporation entitled to participate in an annual
2022 meeting if an annual meeting was not held or action by written
2023 consent in lieu of an annual meeting did not become effective
2024 within the earlier of 12 months after the end of the
2025 membership nonprofit corporation's fiscal year or 15 months
2026 after its last annual meeting; or

2027 (2) on application of one or more members who signed a
2028 demand for a special meeting valid under Section 10A-3A-7.02,
2029 if:

2030 (i) notice of the special meeting was not given within
2031 30 days after the first day on which the requisite number of
2032 demands have been delivered to the membership nonprofit
2033 corporation; or

2034 (ii) the special meeting was not held in accordance
2035 with the notice.

2036 (b) The court may fix the time and place of the
2037 meeting, determine the members entitled to participate in the
2038 meeting, specify a record date or dates for determining
2039 members entitled to notice of and to vote at the meeting,
2040 prescribe the form and content of the meeting notice, fix the
2041 quorum required for specific matters to be considered at the
2042 meeting (or direct that the members represented at the meeting
2043 constitute a quorum for action on those matters), and enter
2044 other orders necessary to accomplish the purpose or purposes



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2045 of the meeting.

2046 §10A-3A-7.04. Action without meeting.

2047 (a) Unless otherwise provided in the certificate of
2048 incorporation, any action required or permitted by this
2049 chapter to be taken at any meeting of the members may be taken
2050 without a meeting, and without prior notice, if one or more
2051 consents in writing setting forth the action so taken are
2052 signed by the members having not less than the minimum number
2053 of votes that would be required to authorize or take the
2054 action at a meeting at which all members entitled to vote on
2055 the action were present and voted. The action must be
2056 evidenced by one or more written consents describing the
2057 action taken, signed by the members approving the action and
2058 delivered to the membership nonprofit corporation for filing
2059 by the membership nonprofit corporation with the minutes or
2060 corporate records.

2061 (b) If not otherwise fixed under Section 10A-3A-7.07
2062 and if prior action by the board of directors is not required
2063 respecting the action to be taken without a meeting, the
2064 record date for determining the members entitled to take
2065 action without a meeting shall be the first date on which a
2066 signed written consent is delivered to the membership
2067 nonprofit corporation. If not otherwise fixed under Section
2068 10A-3A-7.07 and if prior action by the board of directors is
2069 required respecting the action to be taken without a meeting,
2070 the record date shall be the close of business on the day the
2071 resolution of the board of directors taking the prior action
2072 is adopted. No written consent shall be effective to take the



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2073 corporate action referred to therein unless, within 60 days of
2074 the earliest date on which a consent is delivered to the
2075 membership nonprofit corporation as required by this section,
2076 written consents signed by sufficient members to take the
2077 action have been delivered to the membership nonprofit
2078 corporation. Any person executing a consent may provide,
2079 whether through instruction to an agent or otherwise, that the
2080 consent will be effective at a future time, including a time
2081 determined upon the happening of an event, occurring not later
2082 than 60 days after the instruction is given or the provision
2083 is made, if evidence of the instruction or provision is
2084 provided to the membership nonprofit corporation. A written
2085 consent may be revoked by a writing to that effect delivered
2086 to the membership nonprofit corporation before unrevoked
2087 written consents sufficient in number to take the corporate
2088 action have been delivered to the membership nonprofit
2089 corporation.

2090 (c) A consent signed pursuant to the provisions of this
2091 section has the effect of a vote taken at a meeting and may be
2092 described as such in any document. Unless the certificate of
2093 incorporation, bylaws, or a resolution of the board of
2094 directors provides for a reasonable delay to permit tabulation
2095 of written consents, the action taken by written consent shall
2096 be effective when written consents signed by sufficient
2097 members to take the action have been delivered to the
2098 membership nonprofit corporation.

2099 (d) If action is taken by less than unanimous written
2100 consent of the voting members, the membership nonprofit



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2101 corporation shall give its nonconsenting voting members
2102 written notice of the action not more than 10 days after (i)
2103 written consents sufficient to take the action have been
2104 delivered to the membership nonprofit corporation, or (ii) any
2105 later date that tabulation of consents is completed pursuant
2106 to an authorization under subsection (c). The notice must
2107 reasonably describe the action taken.

2108 (e) The notice requirements in subsection (d) shall not
2109 delay the effectiveness of actions taken by written consent,
2110 and a failure to comply with those notice requirements shall
2111 not invalidate actions taken by written consent, provided that
2112 this subsection shall not be deemed to limit judicial power to
2113 fashion any appropriate remedy in favor of a member adversely
2114 affected by a failure to give the notice within the required
2115 time period.

2116 §10A-3A-7.05. Notice of meetings.

2117 (a) A membership nonprofit corporation shall notify
2118 members of the place, if any, date, and time of each annual,
2119 regular, or special meeting of the members no fewer than 10
2120 nor more than 60 days before the meeting date. If the board of
2121 directors has authorized participation by means of remote
2122 communication pursuant to Section 10A-3A-7.09 for any class of
2123 members or voting group, the notice to that class of members
2124 or voting group must describe the means of remote
2125 communication to be used. The notice must include the record
2126 date for determining the members entitled to vote at the
2127 meeting, if that date is different from the record date for
2128 determining members entitled to notice of the meeting. Unless



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2129 the certificate of incorporation requires otherwise, the
2130 membership nonprofit corporation is required to give notice
2131 only to members entitled to vote at the meeting as of the
2132 record date for determining the members entitled to notice of
2133 the meeting.

2134 (b) Unless this chapter, the certificate of
2135 incorporation, or the bylaws require otherwise, notice of an
2136 annual or regular meeting of the members need not include a
2137 description of the purpose or purposes for which the meeting
2138 is called.

2139 (c) Notice of a special meeting of members must include
2140 a description of the purpose or purposes for which the meeting
2141 is called.

2142 (d) If not otherwise fixed under Section 10A-3A-7.03 or
2143 Section 10A-3A-7.07, the record date for determining members
2144 entitled to notice of and to vote at an annual, regular, or
2145 special meeting of the members is the day before the first
2146 notice is delivered to members.

2147 (e) Unless the certificate of incorporation or bylaws
2148 require otherwise, if an annual, regular, or special meeting
2149 of the members is adjourned to a different place, if any,
2150 date, or time, notice need not be given of the new place, if
2151 any, date, or time if the new place, if any, date, or time is
2152 announced at the meeting before adjournment. If a new record
2153 date for the adjourned meeting is or must be fixed under
2154 Section 10A-3A-7.07, however, notice of the adjourned meeting
2155 shall be given under this section to members entitled to vote
2156 at the adjourned meeting as of the record date fixed for



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2157 notice of the adjourned meeting.

2158 §10A-3A-7.06. Waiver of notice.

2159 (a) A member may waive any notice required by this
2160 chapter or the certificate of incorporation or bylaws, before
2161 or after the date and time stated in the notice. The waiver
2162 must be in writing, be signed by the member entitled to the
2163 notice, and be delivered to the membership nonprofit
2164 corporation for filing by the membership nonprofit corporation
2165 with the minutes or corporate records.

2166 (b) A member's attendance at a meeting:

2167 (1) waives objection to lack of notice or defective
2168 notice of the meeting, unless the member at the beginning of
2169 the meeting objects to holding the meeting or transacting
2170 business at the meeting; and

2171 (2) waives objection to consideration of a particular
2172 matter at the meeting that is not within the purpose or
2173 purposes described in the meeting notice, unless the member
2174 objects to considering the matter when it is presented.

2175 §10A-3A-7.07. Record date.

2176 (a) The certificate of incorporation or bylaws may fix
2177 or provide the manner of fixing the record date or dates for
2178 one or more voting groups of members to determine the members
2179 entitled to notice of a members' meeting, to demand a special
2180 meeting, to vote, or to take any other action. If the
2181 certificate of incorporation or bylaws do not fix or provide
2182 for fixing a record date, the board of directors may fix the
2183 record date.

2184 (b) A record date fixed under this section may not be



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2185 more than 70 days before the meeting or action requiring a
2186 determination of members and may not be retroactive.

2187 (c) A determination of members entitled to notice of or
2188 to vote at a members' meeting is effective for any adjournment
2189 of the meeting unless the board of directors fixes a new
2190 record date or dates, which it shall do if the meeting is
2191 adjourned to a date more than 120 days after the date fixed
2192 for the original meeting.

2193 (d) If a court orders a meeting adjourned to a date
2194 more than 120 days after the date fixed for the original
2195 meeting, it may provide that the original record date or dates
2196 continues in effect or it may fix a new record date or dates.

2197 §10A-3A-7.08. Conduct of member meetings.

2198 (a) At each meeting of members, an individual appointed
2199 in one of the following ways must preside as chair:

2200 (1) as provided in the certificate of incorporation or
2201 bylaws;

2202 (2) in the absence of a provision in the certificate of
2203 incorporation or bylaws, by the board of directors; or

2204 (3) in the absence of both a provision in the
2205 certificate of incorporation or bylaws and an appointment by
2206 the board of directors, by the members at the meeting.

2207 (b) At each meeting of members, the order of business
2208 and the rules for the conduct of the meeting must be:

2209 (1) as provided in the certificate of incorporation or
2210 bylaws;

2211 (2) in the absence of a provision in the certificate of
2212 incorporation or bylaws, established by the board of



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2213 directors; or

2214 (3) in the absence of both a provision in the
2215 certificate of incorporation or bylaws and the establishment
2216 by the board of directors, established by the members at the
2217 meeting.

2218 (c) Any rules established for, and the conduct of, the
2219 meeting must be fair to the members.

2220 (d) At the meeting the chair may announce when the
2221 polls close for each matter voted upon. If no announcement is
2222 made, the polls close upon the final adjournment of the
2223 meeting. After the polls close, no ballots, proxies, or votes,
2224 nor any revocations or changes to ballots, proxies, or votes
2225 may be accepted.

2226 §10A-3A-7.09. Remote participation in member meetings.

2227 (a) Members of any class or voting group may
2228 participate in any meeting of members by means of remote
2229 communication to the extent the board of directors authorizes
2230 that participation for that class or voting group.

2231 Participation as a member by means of remote communication is
2232 subject to any guidelines and procedures the board of
2233 directors adopts and shall be in conformity with subsection

2234 (b).

2235 (b) Members participating in a members' meeting by
2236 means of remote communication shall be deemed present and may
2237 vote at that meeting if the membership nonprofit corporation
2238 has implemented reasonable measures:

2239 (1) to verify that each person participating remotely
2240 as a member is a member; and



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2241 (2) to provide the members participating remotely a
2242 reasonable opportunity to participate in the meeting and to
2243 vote on matters submitted to the members, including an
2244 opportunity to communicate, and to read or hear the
2245 proceedings of the meeting, substantially concurrently with
2246 the proceedings.

2247 (c) Unless the certificate of incorporation or bylaws
2248 require the meeting of members to be held at a place, the
2249 board of directors may determine that any meeting of members
2250 shall not be held at any place and shall instead be held
2251 solely by means of remote communication, but only if the
2252 membership nonprofit corporation implements the measures
2253 specified in subsection (b).

2254 §10A-3A-7.10. Action by ballot.

2255 (a) Except as otherwise provided in the certificate of
2256 incorporation or bylaws, any action that may be taken at any
2257 meeting of members may be taken without a meeting if the
2258 membership nonprofit corporation delivers notice that includes
2259 a ballot to every member entitled to vote on the matter.

2260 (b) A ballot must:

2261 (1) be in writing;

2262 (2) set forth each proposed action;

2263 (3) provide an opportunity to vote for, or withhold a
2264 vote for, each candidate for election as a director, if any;
2265 and

2266 (4) provide an opportunity to vote for or against each
2267 other proposed action.

2268 (c) Approval by ballot pursuant to this section of



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2269 action other than election of directors is valid only when the
2270 number of votes cast by ballot equals or exceeds the quorum
2271 required to be present at a meeting authorizing the action,
2272 and the number of approvals equals or exceeds the number of
2273 votes that would be required to approve the matter at a
2274 meeting at which the total number of votes cast was the same
2275 as the number of votes cast by ballot.

2276 (d) All solicitations for votes by ballot must:

2277 (1) indicate the number of responses needed to meet the
2278 quorum requirements;

2279 (2) state the percentage of approvals necessary to
2280 approve each matter other than election of directors; and

2281 (3) specify the time by which a ballot must be received
2282 by the membership nonprofit corporation in order to be
2283 counted.

2284 (e) Except as otherwise provided in the certificate of
2285 incorporation or bylaws, a ballot may not be revoked.

2286 DIVISION B. VOTING.

2287 §10A-3A-7.20. Members list for meeting.

2288 (a) After fixing a record date for a meeting, a
2289 membership nonprofit corporation shall prepare an alphabetical
2290 list of the names of all its members who are entitled to
2291 notice of and to vote at the members' meeting. Each list must
2292 be arranged by voting group (and within each voting group by
2293 class) and contain the address of, and number and class of
2294 members and votes held by, each member, and if the notice or
2295 other communications regarding the meeting have been or will
2296 be sent by the membership nonprofit corporation to a member by



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2297 electronic mail or other electronic transmission, the
2298 electronic mail or other electronic transmission address of
2299 that member.

2300 (b) The list of members entitled to notice shall be
2301 available for inspection by any member no later than the tenth
2302 day before each meeting of members; provided, however, if the
2303 record date for determining the members entitled to vote is
2304 less than 10 days before the meeting date, the list shall
2305 reflect the members entitled to vote as of the tenth day
2306 before the meeting date. The list shall be available (i) at
2307 the membership nonprofit corporation's principal office or at
2308 a place identified in the meeting notice in the city where the
2309 meeting will be held or (ii) on a reasonably accessible
2310 electronic network, provided that the information required to
2311 gain access to the list is provided with the notice of the
2312 meeting. In the event that the membership nonprofit
2313 corporation determines to make a list of members available on
2314 an electronic network, the membership nonprofit corporation
2315 may take reasonable steps to ensure that such information is
2316 available only to members of the membership nonprofit
2317 corporation. A member, or the member's agent or attorney, is
2318 entitled on written demand to inspect and, subject to the
2319 requirements of Section 10A-3A-4.02(c), to copy a list of
2320 members, during regular business hours and at the member's
2321 expense, during the period it is available for inspection. A
2322 membership nonprofit corporation may satisfy the member's
2323 right to copy a list of members by furnishing a copy in the
2324 manner described in Section 10A-3A-4.03(b). A member and the



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2325 member's agent or attorney who inspects or is furnished a copy
2326 of a list of members under this subsection (b) or who copies
2327 the list under this subsection (b) may use the information on
2328 that list only for purposes related to the meeting and its
2329 subject matter and must keep the information on that list
2330 confidential.

2331 (c) If the membership nonprofit corporation refuses to
2332 allow a member, or the member's agent or attorney, to inspect
2333 a list of members before the meeting or any adjournment (or
2334 copy a list as permitted by subsection (b)), the designated
2335 court, and if none, the circuit court for the county in which
2336 the membership nonprofit corporation's principal office is
2337 located in this state, and if none in this state, the circuit
2338 court for the county in which the membership nonprofit
2339 corporation's most recent registered office is located, on
2340 application of the member, may summarily order the inspection
2341 or copying at the membership nonprofit corporation's expense
2342 and may postpone the meeting for which the list was prepared
2343 until the inspection or copying is complete.

2344 (d) Refusal or failure to prepare or make available a
2345 list of members does not affect the validity of action taken
2346 at the meeting.

2347 (e) Instead of making the list of members available as
2348 provided in subsection (b), a membership nonprofit corporation
2349 may state in a notice of meeting that the membership nonprofit
2350 corporation has elected to proceed under this subsection (e).
2351 If a membership nonprofit corporation has elected to proceed
2352 under this subsection (e), a member of that membership



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2353 nonprofit corporation must state in that member's demand for
2354 inspection a proper purpose for which inspection is demanded.
2355 Within three business days after receiving a demand under this
2356 subsection (e), the membership nonprofit corporation must
2357 deliver to the member making the demand an offer of a
2358 reasonable alternative method of achieving the purpose
2359 identified in the demand without providing access to or a copy
2360 of the list of members. An alternative method that reasonably
2361 and in a timely manner accomplishes the proper purpose set
2362 forth in the demand relieves the membership nonprofit
2363 corporation from making the list of members available under
2364 subsection (b), unless within a reasonable time after
2365 acceptance of the offer the membership nonprofit corporation
2366 fails to do the things it offered to do. Any rejection of the
2367 membership nonprofit corporation's offer must be in writing
2368 and must indicate the reasons the alternative proposed by the
2369 membership nonprofit corporation does not meet the proper
2370 purpose of the demand.

2371 (f) The record of members of the membership nonprofit
2372 corporation shall be prima facie evidence as to who are the
2373 members entitled to examine the members' list or record of
2374 members to vote at any meeting of members.

2375 §10A-3A-7.21. Voting entitlement of members.

2376 The right of the members, or any class or classes of
2377 members, to vote may be limited, enlarged, or denied as
2378 provided in the membership nonprofit corporation's certificate
2379 of incorporation or bylaws. Unless so limited, enlarged, or
2380 denied, each member, regardless of class, shall be entitled to



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2381 one vote on each matter submitted to a vote of members.

2382 §10A-3A-7.22. Proxies.

2383 (a) Except as otherwise provided in the certificate of
2384 incorporation or bylaws, a member may vote in person or by
2385 proxy.

2386 (b) A member or the member's agent or attorney-in-fact
2387 may appoint a proxy to vote or otherwise act for the member by
2388 signing an appointment form, or by an electronic transmission.
2389 An electronic transmission must contain or be accompanied by
2390 information from which the recipient can determine the date of
2391 the transmission and that the transmission was authorized by
2392 the sender or the sender's agent or attorney-in-fact.

2393 (c) An appointment of a proxy is effective when a
2394 signed appointment form or an electronic transmission of the
2395 appointment is received by the inspector of election or the
2396 officer or agent of the membership nonprofit corporation
2397 authorized to count votes. An appointment is valid for the
2398 term provided in the appointment form, and, if no term is
2399 provided, is valid for 11 months unless the appointment is
2400 irrevocable under subsection (d).

2401 (d) An appointment of a proxy is revocable unless the
2402 appointment form or electronic transmission states that it is
2403 irrevocable and the appointment is coupled with an interest.

2404 (e) The death or incapacity of the member appointing a
2405 proxy does not affect the right of the membership nonprofit
2406 corporation to accept the proxy's authority unless notice of
2407 the death or incapacity is received by the secretary or other
2408 officer or agent authorized to tabulate votes before the proxy



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2409 exercises authority under the appointment.

2410 (f) An appointment made irrevocable under subsection
2411 (d) is revoked when the interest with which it is coupled is
2412 extinguished.

2413 (g) Subject to Section 10A-3A-7.23 and to any express
2414 limitation on the proxy's authority stated in the appointment
2415 form or electronic transmission, a membership nonprofit
2416 corporation is entitled to accept the proxy's vote or other
2417 action as that of the member making the appointment.

2418 (h) Nothing in this section shall be construed as
2419 limiting, or extending, authority granted under a durable
2420 power of attorney under Section 26-1-2 or Chapter 1A of Title
2421 26, and any successor statute or statutes thereto.

2422 §10A-3A-7.23. Acceptance of votes and other
2423 instruments.

2424 (a) If the name signed on a vote, ballot, consent,
2425 waiver, member demand, or proxy appointment corresponds to the
2426 name of a member, the membership nonprofit corporation, if
2427 acting in good faith, is entitled to accept the vote, ballot,
2428 consent, waiver, member demand, or proxy appointment and give
2429 it effect as the act of the member.

2430 (b) If the name signed on a vote, ballot, consent,
2431 waiver, member demand, or proxy appointment does not
2432 correspond to the name of its member, the membership nonprofit
2433 corporation, if acting in good faith, is nevertheless entitled
2434 to accept the vote, ballot, consent, waiver, member demand, or
2435 proxy appointment and give it effect as the act of the member
2436 if:



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2437 (1) the member is an entity and the name signed
2438 purports to be that of an officer or agent of the entity;

2439 (2) the name signed purports to be that of an
2440 administrator, executor, guardian, or conservator representing
2441 the member and, if the membership nonprofit corporation
2442 requests, evidence of fiduciary status acceptable to the
2443 membership nonprofit corporation has been presented with
2444 respect to the vote, ballot, consent, waiver, member demand,
2445 or proxy appointment;

2446 (3) the name signed purports to be that of a receiver
2447 or trustee in bankruptcy of the member and, if the membership
2448 nonprofit corporation requests, evidence of this status
2449 acceptable to the membership nonprofit corporation has been
2450 presented with respect to the vote, ballot, consent, waiver,
2451 member demand, or proxy appointment;

2452 (4) the name signed purports to be that of a pledgee,
2453 beneficial owner, or attorney-in-fact of the member and, if
2454 the membership nonprofit corporation requests, evidence
2455 acceptable to the membership nonprofit corporation of the
2456 signatory's authority to sign for the member has been
2457 presented with respect to the vote, ballot, consent, waiver,
2458 member demand, or proxy appointment; or

2459 (5) two or more persons are the members as co-tenants
2460 or fiduciaries and the name signed purports to be the name of
2461 at least one of the co-owners and the person signing appears
2462 to be acting on behalf of all the co-owners.

2463 (c) The membership nonprofit corporation is entitled to
2464 reject a vote, ballot, consent, waiver, member demand, or



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2465 proxy appointment if the person authorized to accept or reject
2466 that instrument, acting in good faith, has reasonable basis
2467 for doubt about the validity of the signature on it or about
2468 the signatory's authority to sign for the member.

2469 (d) Neither the membership nonprofit corporation or any
2470 person authorized by it, nor an inspector of election
2471 appointed under Section 10A-3A-7.28, that accepts or rejects a
2472 vote, ballot, consent, waiver, member demand, or proxy
2473 appointment in good faith and in accordance with the standards
2474 of this Section 10A-3A-7.23 or Section 10A-3A-7.22(b) is
2475 liable in damages to the member for the consequences of the
2476 acceptance or rejection.

2477 (e) Corporate action based on the acceptance or
2478 rejection of a vote, ballot, consent, waiver, member demand,
2479 or proxy appointment under this section is valid unless the
2480 designated court, and if none, the circuit court for the
2481 county in which the membership nonprofit corporation's
2482 principal office is located in this state, and if none in this
2483 state, the circuit court for the county in which the
2484 membership nonprofit corporation's most recent registered
2485 office is located, determines otherwise.

2486 (f) If an inspector of election has been appointed
2487 under Section 10A-2A-7.28, the inspector of election also has
2488 the authority to request information and make determinations
2489 under subsections (a), (b), and (c). Unless otherwise provided
2490 in the certificate of incorporation or bylaws, any
2491 determination made by the inspector of election under those
2492 subsections is controlling.



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2493 §10A-3A-7.24. Quorum and voting requirements for voting
2494 groups.

2495 (a) Members entitled to vote as a separate voting group
2496 may take action on a matter at a meeting only if a quorum of
2497 those votes exists with respect to that matter. Except as
2498 provided in the certificate of incorporation or bylaws,
2499 members representing a majority of the votes entitled to be
2500 cast on the matter by the voting group constitutes a quorum of
2501 that voting group for action on that matter.

2502 (b) Except as otherwise provided in the certificate of
2503 incorporation or bylaws, once a member is present or
2504 represented for any purpose at a meeting, the member is deemed
2505 present for quorum purposes for the remainder of the meeting
2506 and for any adjournment of that meeting unless a new record
2507 date is or must be fixed for that adjourned meeting.

2508 (c) If a quorum exists, action on a matter (other than
2509 the election of directors) by a voting group is approved if
2510 the votes cast within the voting group favoring the action
2511 exceed the votes cast opposing the action, unless the
2512 certificate of incorporation or bylaws require a greater
2513 number of affirmative votes.

2514 (d) An amendment of the certificate of incorporation or
2515 bylaws adding, changing, or deleting a quorum or voting
2516 requirement for a voting group greater than specified in
2517 subsection (a) or subsection (c) is governed by Section
2518 10A-3A-7.26.

2519 (e) If a meeting cannot be organized because a quorum
2520 is not present, those members present may adjourn the meeting



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2521 to a time and place as they may determine. The certificate of
2522 incorporation or bylaws may provide that when a meeting that
2523 has been adjourned for lack of a quorum is reconvened, those
2524 members present, although less than a quorum as fixed in this
2525 section, the certificate of incorporation, or the bylaws,
2526 nonetheless constitute a quorum if the original notice of the
2527 meeting, or a notice of the adjourned meeting, states that
2528 those members who attend a meeting that has been adjourned for
2529 lack of a quorum will constitute a quorum even though they are
2530 less than a quorum.

2531 §10A-3A-7.25. Action by single and multiple voting
2532 groups.

2533 (a) If this chapter, the certificate of incorporation,
2534 or the bylaws provide for voting by a single voting group on a
2535 matter, action on that matter is taken when voted upon by that
2536 voting group as provided in Section 10A-3A-7.24.

2537 (b) If this chapter, the certificate of incorporation,
2538 or the bylaws provide for voting by two or more voting groups
2539 on a matter, action on that matter is taken only when voted
2540 upon by each of those voting groups counted separately as
2541 provided in Section 10A-3A-7.24. Action may be taken by
2542 different voting groups on a matter at different times.

2543 §10A-3A-7.26. Modification of quorum or voting
2544 requirements.

2545 (a) The certificate of incorporation or bylaws may
2546 provide for a higher or lower quorum or voting requirement for
2547 members (or voting groups of members) than is provided for by
2548 this chapter.



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2549 (b) An amendment to the certificate of incorporation or
2550 bylaws that adds, changes, or deletes a quorum or voting
2551 requirement must meet the same quorum requirement and be
2552 adopted by the same vote and voting groups required to take
2553 action under the quorum and voting requirements then in effect
2554 or proposed to be adopted, whichever is greater.

2555 §10A-3A-7.27. Voting for directors.

2556 (a) Except as otherwise provided in the certificate of
2557 incorporation or bylaws, directors of a membership nonprofit
2558 corporation are elected by a plurality of the votes cast by
2559 the members entitled to vote in the election at a meeting at
2560 which a quorum is present.

2561 (b) Members do not have a right to cumulate their votes
2562 for directors.

2563 §10A-3A-7.28. Inspectors of election.

2564 (a) A membership nonprofit corporation may appoint one
2565 or more inspectors to act at a meeting of members and make a
2566 written report thereof. The membership nonprofit corporation
2567 may designate one or more persons as alternate inspectors to
2568 replace any inspector who fails to act. If no inspector or
2569 alternate is able to act at a meeting of members, the person
2570 presiding at the meeting may appoint one or more inspectors to
2571 act at the meeting. Each inspector, before entering upon the
2572 discharge of the duties of inspector, shall take and sign an
2573 oath faithfully to execute the duties of inspector with strict
2574 impartiality and according to the best of the inspector's
2575 ability. The inspectors may appoint or retain other persons to
2576 assist the inspectors in the performance of the duties of



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2577 inspector under subsection (b), and may rely on information
2578 provided by those persons and other persons, including those
2579 appointed to count votes, unless the inspectors believe
2580 reliance is unwarranted.

2581 (b) The inspectors must:

2582 (1) ascertain the number of members and their voting
2583 power;

2584 (2) determine the number of votes represented at the
2585 meeting and the validity of proxies and ballots;

2586 (3) count all votes;

2587 (4) determine and retain for a reasonable period a
2588 record of the disposition of any challenges made to any
2589 determination by the inspectors; and

2590 (5) certify their determination of the number of votes
2591 represented at the meeting, and their count of all votes.

2592 (c) No ballot, proxies, or votes, nor any revocations
2593 thereof or changes thereto, shall be accepted by the
2594 inspectors after the closing of the polls unless the
2595 designated court, and if none, the circuit court for the
2596 county in which the membership nonprofits corporation's
2597 principal office is located in this state, and if none in this
2598 state, in the circuit court for the county in which the
2599 membership nonprofit corporation's most recent registered
2600 office is located, upon application by a member, shall
2601 determine otherwise.

2602 (d) In performing their duties, the inspectors may
2603 examine:

2604 (1) the proxy appointment forms and any other



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2605 information provided in accordance with Section 10A-3A-7.22;

2606 (2) any envelope or related writing submitted with
2607 those appointment forms;

2608 (3) any ballots;

2609 (4) any evidence or other information specified in
2610 Section 10A-3A-7.23; and

2611 (5) the relevant books and records of the membership
2612 nonprofit corporation relating to its members and their
2613 entitlement to vote.

2614 (e) The inspectors also may consider other information
2615 that they believe is relevant and reliable for the purpose of
2616 performing any of the duties assigned to them pursuant to
2617 subsection (b).

2618 (f) An inspector and any person appointed by an
2619 inspector to assist with the inspector's duties may, but need
2620 not, be a director, member, officer, or employee of the
2621 membership nonprofit corporation. A person who is a candidate
2622 for office to be filled at the meeting may not be an inspector
2623 or a person so appointed.

2624 DIVISION C. VOTING AGREEMENTS.

2625 §10A-3A-7.30. Voting agreements.

2626 (a) Except as provided in the certificate of
2627 incorporation or bylaws, two or more members may provide for
2628 the manner in which they will vote by signing a written
2629 agreement for that purpose. A voting agreement is valid for
2630 the period provided in the agreement.

2631 (b) A voting agreement created under this section is
2632 specifically enforceable, except that a voting agreement is



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2633 not enforceable to the extent that enforcement of the
2634 agreement would violate the purposes of the membership
2635 nonprofit corporation.

2636 ARTICLE 8. DIRECTORS AND OFFICERS.

2637 DIVISION A. BOARD OF DIRECTORS.

2638 §10A-3A-8.01. Requirement for and functions of board of
2639 directors.

2640 All corporate powers shall be exercised by or under
2641 authority of, and the activities and affairs of a nonprofit
2642 corporation shall be managed by or under the direction and
2643 subject to the oversight of, the board of directors except as
2644 may be otherwise provided in this chapter or the certificate
2645 of incorporation. If the certificate of incorporation provides
2646 that some of the corporate powers are to be exercised by or
2647 under the authority of, or some of the activities and affairs
2648 of the nonprofit corporation are to be managed by or under the
2649 authority of, a person or group of persons other than the
2650 board of directors, then the powers and duties conferred or
2651 imposed upon the board of directors by this chapter with
2652 respect to those corporate powers, activities and affairs
2653 shall be exercised and performed by that person or group of
2654 persons as provided in the certificate of incorporation.

2655 §10A-3A-8.02. Qualifications of directors.

2656 (a) The certificate of incorporation or bylaws may
2657 prescribe qualifications for directors or for nominees for
2658 directors. Qualifications must be reasonable as applied to the
2659 nonprofit corporation and be lawful. Qualifications may
2660 include not being or having been subject to specified



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2661 criminal, civil, or regulatory sanctions or not having been
2662 removed as a director by judicial action or for cause.

2663 (b) A director shall be a natural person of the age of
2664 at least 19 years but need not be a resident of this state or
2665 a member unless the certificate of incorporation or bylaws so
2666 prescribe.

2667 (c) A qualification for nomination, election, or
2668 appointment for director prescribed before the earlier of a
2669 person's nomination, election, or appointment shall apply to
2670 that person at the time of the earlier of that person's
2671 nomination, election, or appointment and shall apply to that
2672 director during that director's term. A qualification for
2673 nomination, election, or appointment for director prescribed
2674 after the earlier of a person's nomination, election, or
2675 appointment shall not apply to that person with respect to
2676 that person's nomination, election, or appointment and shall
2677 not apply to that director during that director's term.

2678 (d) A person who did not meet a qualification for
2679 nomination, election, or appointment, but who is elected or
2680 appointed as a director, may serve as a director until removed
2681 in accordance with Section 10A-3A-8.08 or 10A-3A-8.09.

2682 §10A-3A-8.03. Number of directors.

2683 (a) A board of directors shall consist of one or more
2684 individuals, with the number specified in or fixed in
2685 accordance with the certificate of incorporation or bylaws.

2686 (b) The number of directors may be increased or
2687 decreased from time to time by amendment to, or in the manner
2688 provided in, the certificate of incorporation or bylaws.



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2689 §10A-3A-8.04. Selection of directors.

2690 (a) Except as set forth in Section 10A-3A-2.04, the
2691 directors of a membership nonprofit corporation are elected,
2692 appointed, or designated as provided in the certificate of
2693 incorporation or bylaws. If no method of election,
2694 appointment, or designation is set forth in the certificate of
2695 incorporation or bylaws, the directors of a membership
2696 nonprofit corporation are elected by the members entitled to
2697 vote at the time at the first annual meeting of members, and
2698 at each annual meeting thereafter.

2699 (b) Except as set forth in Section 10A-3A-2.04, the
2700 directors of a nonmembership nonprofit corporation are
2701 elected, appointed, or designated as provided in the
2702 certificate of incorporation or bylaws. If no method of
2703 election, appointment, or designation is set forth in the
2704 certificate of incorporation or bylaws, the directors are
2705 elected by the board.

2706 (c) If the certificate of incorporation or bylaws
2707 divide, or authorize dividing, the members into classes, the
2708 certificate of incorporation or bylaws may also authorize the
2709 election of all or a specified number of directors by one or
2710 more authorized classes of members. A class or multiple
2711 classes of members entitled to elect one or more directors is
2712 a separate voting group for purposes of the election of
2713 directors.

2714 §10A-3A-8.05. Terms of directors generally.

2715 (a) The certificate of incorporation or bylaws may
2716 specify the terms of directors. If a term is not specified in



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2717 the certificate of incorporation or bylaws, the term of a
2718 director is one year.

2719 (b) A decrease in the number of directors or term of
2720 office does not shorten an incumbent director's term.

2721 (c) Except as provided in the certificate of
2722 incorporation or bylaws, the term of a director elected to
2723 fill a vacancy expires at the end of the unexpired term that
2724 the director is filling.

2725 (d) Despite the expiration of a director's term, the
2726 director continues to serve until the director's successor is
2727 elected, appointed, or designated and until the director's
2728 successor takes office unless otherwise provided in the
2729 certificate of incorporation or bylaws or there is a decrease
2730 in the number of directors.

2731 §10A-3A-8.06. Staggered terms for directors.

2732 The certificate of incorporation or bylaws may provide
2733 for staggering the terms of directors by dividing the total
2734 number of directors into groups of one or more directors. The
2735 terms of office and number of directors in each group do not
2736 need to be uniform.

2737 §10A-3A-8.07. Resignation of directors.

2738 (a) A director may resign at any time by delivering a
2739 written notice of resignation to the board of directors or its
2740 chair, to the secretary, or to the nonprofit corporation.

2741 (b) A resignation is effective as provided in Section
2742 10A-3A-1.03(i) unless the resignation provides for a delayed
2743 effectiveness, including effectiveness determined upon a
2744 future event or events.



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2745 §10A-3A-8.08. Removal of directors by members or other
2746 persons.

2747 (a) Except as provided in the certificate of
2748 incorporation or bylaws, a director of a membership nonprofit
2749 corporation may be removed with or without cause by the
2750 members who are eligible under Section 10A-3A-8.10 to vote to
2751 fill the vacancy created by the removal of that director.

2752 (b) The notice of a meeting of members of a membership
2753 nonprofit corporation at which removal of a director is to be
2754 considered must state that the purpose, or one of the
2755 purposes, of the meeting is removal of the director.

2756 (c) Except as provided in the certificate of
2757 incorporation or bylaws, the board of directors of a
2758 membership nonprofit corporation may not remove a director.

2759 (d) Except as provided in the certificate of
2760 incorporation or bylaws, the board of directors may remove a
2761 director of a nonmembership nonprofit corporation with or
2762 without cause.

2763 (e) In addition to the removal provisions of
2764 subsections (a) and (d), the board of directors of a
2765 membership nonprofit corporation or nonmembership nonprofit
2766 corporation may remove a director who:

2767 (1) did not satisfy the qualifications for directors as
2768 set forth in the certificate of incorporation or bylaws at the
2769 time that director was nominated, elected, appointed, or
2770 designated to that director's current term, if the decision
2771 that the director failed to satisfy a qualification is made by
2772 the vote of a majority of the directors who meet all of the



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2773 required qualifications; or

2774 (2) no longer satisfies the qualifications for
2775 directors as set forth in the certificate of incorporation or
2776 bylaws at the time that director was nominated, elected,
2777 appointed, or designated to that director's current term, if
2778 the decision that the director failed to satisfy a
2779 qualification is made by the vote of a majority of the
2780 directors who meet all of the required qualifications.

2781 §10A-3A-8.09. Removal of directors by judicial
2782 proceeding.

2783 The designated court, and if none, the circuit court
2784 for the county in which the nonprofit corporation's principal
2785 office is located in this state, and if none in this state,
2786 the circuit court for the county in which the nonprofit
2787 corporation's most recent registered office is located may
2788 remove a director from office or may order other relief,
2789 including barring the director from reelection, redesignation,
2790 or reappointment for a period prescribed by the court, in a
2791 proceeding commenced by or in the right of the nonprofit
2792 corporation if the court finds that: (i) the director engaged
2793 in fraudulent conduct with respect to the nonprofit
2794 corporation or its members, grossly abused the position of
2795 director, or intentionally inflicted harm on the nonprofit
2796 corporation; and (ii) considering the director's course of
2797 conduct and the inadequacy of other available remedies,
2798 removal or such other relief would be in the best interest of
2799 the nonprofit corporation.

2800 §10A-3A-8.10. Vacancy on board.



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2801 (a) Except as otherwise provided in subsection (b), the
2802 certificate of incorporation, or the bylaws, if a vacancy
2803 occurs on the board of directors, including a vacancy
2804 resulting from an increase in the number of directors:

2805 (1) the members may fill the vacancy;

2806 (2) the board of directors may fill the vacancy; or

2807 (3) if the directors remaining in office are less than
2808 a quorum, they may fill the vacancy by the affirmative vote of
2809 a majority of all the directors remaining in office.

2810 (b) Unless the certificate of incorporation or bylaws
2811 provides otherwise, if the vacant office was held by a
2812 director who is:

2813 (1) elected by a voting group of members, only the
2814 members of that voting group are entitled to vote to fill the
2815 vacancy if it is filled by the members, and only the remaining
2816 directors elected by that voting group, even if less than a
2817 quorum, are entitled to fill the vacancy if it is filled by
2818 the directors;

2819 (2) appointed by a person or group of persons specified
2820 in the certificate of incorporation, may be filled only by
2821 that person or that group of persons; or

2822 (3) designated in the certificate of incorporation or
2823 bylaws, may only be filled as specified in the certificate of
2824 incorporation or bylaws.

2825 (c) A vacancy that will occur at a specific later time
2826 (by reason of a resignation effective at a later time under
2827 Section 10A-3A-8.07(b) or otherwise) may be filled before the
2828 vacancy occurs but the new director may not take office until



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2829 the vacancy occurs.

2830 §10A-3A-8.11. Compensation of directors.

2831 Unless the certificate of incorporation or bylaws
2832 provide otherwise, the board of directors may fix the
2833 compensation of directors.

2834 DIVISION B. MEETINGS AND ACTIONS OF THE BOARD.

2835 §10A-3A-8.20. Meetings.

2836 (a) The board of directors may hold regular or special
2837 meetings in or out of the state.

2838 (b) Unless restricted by the certificate of
2839 incorporation or bylaws, any or all directors may participate
2840 in a meeting of the board through the use of any means of
2841 communication by which all directors participating may
2842 simultaneously hear each other during the meeting. A director
2843 participating in a meeting by this means is deemed to be
2844 present in person at the meeting.

2845 §10A-3A-8.21. Action without meeting.

2846 (a) Except to the extent that the certificate of
2847 incorporation or bylaws require that action by the board of
2848 directors be taken at a meeting, action required or permitted
2849 by this chapter to be taken by the board of directors may be
2850 taken without a meeting if each director signs a consent in a
2851 record describing the action to be taken and delivers it to
2852 the nonprofit corporation.

2853 (b) Action taken under this section is the act of the
2854 board of directors when one or more consents signed by all the
2855 directors are delivered to the nonprofit corporation. Any
2856 director executing a consent may provide, whether through



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2857 instruction to an agent or otherwise, that the consent will be
2858 effective at a future time, including a time determined upon
2859 the happening of an event, occurring not later than 60 days
2860 after the instruction is given or the provision is made, if
2861 evidence of the instruction or provision is provided to the
2862 nonprofit corporation. A director's consent may be withdrawn
2863 by a revocation signed by the director and delivered to the
2864 nonprofit corporation before delivery to the nonprofit
2865 corporation of unrevoked consents signed by all the directors.

2866 (c) A consent signed under this section has the effect
2867 of action taken at a meeting of the board of directors and may
2868 be described as such in any document.

2869 §10A-3A-8.22. Notice of meeting.

2870 (a) Unless the certificate of incorporation or bylaws
2871 provide otherwise, regular meetings of the board of directors
2872 may be held without notice of the place, if any, date, time,
2873 or purpose of the meeting.

2874 (b) Unless the certificate of incorporation or bylaws
2875 provide for a longer or shorter period, special meetings of
2876 the board of directors must be preceded by at least two days'
2877 notice of the place, if any, date, time, of the meeting. The
2878 notice need not describe the purpose of the special meeting
2879 unless required by the certificate of incorporation or bylaws.

2880 §10A-3A-8.23. Waiver of notice.

2881 (a) A director may waive any notice required by this
2882 chapter, the certificate of incorporation, or the bylaws
2883 before or after the date and time stated in the notice. Except
2884 as provided by subsection (b), the waiver must be in writing,



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2885 signed by the director entitled to the notice, and delivered
2886 to the nonprofit corporation for filing by the nonprofit
2887 corporation with the minutes or corporate records.

2888 (b) A director's attendance at or participation in a
2889 meeting waives any required notice to the director of the
2890 meeting, unless the director at the beginning of the meeting
2891 (or promptly upon arrival) objects to holding the meeting or
2892 transacting business at the meeting and does not, after
2893 objecting, vote for or assent to action taken at the meeting.

2894 §10A-3A-8.24. Quorum and voting.

2895 (a) Unless the certificate of incorporation or bylaws
2896 provide for a greater or lesser number or unless otherwise
2897 expressly provided in this chapter, a quorum of a board of
2898 directors consists of a majority of the number of directors
2899 specified in or fixed in accordance with the certificate of
2900 incorporation or bylaws.

2901 (b) The quorum of the board of directors specified in
2902 or fixed in accordance with the certificate of incorporation
2903 or bylaws may not consist of less than one-third of the
2904 specified or fixed number of directors.

2905 (c) If a quorum is present when a vote is taken, the
2906 affirmative vote of a majority of directors present is the act
2907 of the board of directors unless the certificate of
2908 incorporation or bylaws require the vote of a greater number
2909 of directors or unless otherwise expressly provided in this
2910 chapter.

2911 (d) A director who is present at a meeting of the board
2912 of directors or a committee when corporate action is taken is



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2913 deemed to have assented to the action taken unless: (i) the
2914 director objects at the beginning of the meeting (or promptly
2915 upon arrival) to holding it or transacting business at the
2916 meeting; (ii) the dissent or abstention from the action taken
2917 is entered in the minutes of the meeting; or (iii) the
2918 director delivers written notice of the director's dissent or
2919 abstention to the presiding officer of the meeting before its
2920 adjournment or to the nonprofit corporation immediately after
2921 adjournment of the meeting. The right of dissent or abstention
2922 is not available to a director who votes in favor of the
2923 action taken.

2924

2925 §10A-3A-8.25. Board and advisory committees.

2926 (a) A committee of the board of directors composed
2927 exclusively of one or more directors may be established to
2928 perform functions of the board:

2929 (1) by the certificate of incorporation or bylaws; or

2930 (2) except as restricted by the certificate of
2931 incorporation or bylaws, by the board of directors.

2932 (b) Unless this chapter, the certificate of
2933 incorporation, or the bylaws provide otherwise, the
2934 establishment of a committee and appointment of directors to
2935 it must be approved by the greater of:

2936 (1) a majority of all the directors in office when the
2937 action is taken; or

2938 (2) the number of directors required by the certificate
2939 of incorporation or bylaws to take action under Section
2940 10A-3A-8.24.



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2941 (c) Sections 10A-3A-8.20 through 10A-3A-8.24 apply to
2942 board committees and their members.

2943 (d) A board committee may exercise the powers of the
2944 board of directors under Section 10A-3A-8.01, to the extent
2945 specified by the board of directors or in the certificate of
2946 incorporation or bylaws, except that a board committee may
2947 not:

2948 (1) in the case of a membership nonprofit corporation,
2949 approve or propose to members action that this chapter
2950 requires be approved by members;

2951 (2) remove a director from office;

2952 (3) fill a vacancy on the board of directors; or,
2953 subject to subsection (e), on any committee of the board; or

2954 (4) adopt, amend, or repeal a provision of the
2955 certificate of incorporation or bylaws.

2956 (e) The board of directors may appoint one or more
2957 directors as alternate members of any board committee to
2958 replace any absent or disqualified member during the member's
2959 absence or disqualification. If the certificate of
2960 incorporation, bylaws, or the action creating a board
2961 committee so provides, the member or members present at any
2962 board committee meeting and not disqualified from voting may,
2963 by unanimous action, appoint another director to act in place
2964 of an absent or disqualified member during that member's
2965 absence or disqualification.

2966 (f) The certificate of incorporation, bylaws, or board
2967 of directors may create or authorize the creation of one or
2968 more advisory committees whose members need not be directors.



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2969 An advisory committee:

2970 (1) is not a committee of the board; and

2971 (2) may not exercise any of the powers of the board.

2972 DIVISION C. DIRECTORS.

2973 §10A-3A-8.30. Standards of conduct for directors.

2974 Division C of Article 3 of Chapter 1 shall not apply to
2975 this chapter. Instead:

2976 (a) Each member of the board of directors, when
2977 discharging the duties of a director, shall act: (i) in good
2978 faith, and (ii) in a manner the director reasonably believes
2979 to be in the best interests of the nonprofit corporation.

2980 (b) The members of the board of directors or a board
2981 committee, when becoming informed in connection with their
2982 decision-making function or devoting attention to their
2983 oversight function, shall discharge their duties with the care
2984 that a person in a like position would reasonably believe
2985 appropriate under similar circumstances.

2986 (c) In discharging board of directors or board
2987 committee duties, a director shall disclose, or cause to be
2988 disclosed, to the other board of directors or board committee
2989 members information not already known by them but known by the
2990 director to be material to the discharge of their
2991 decision-making or oversight functions, except that disclosure
2992 is not required to the extent that the director reasonably
2993 believes that doing so would violate a duty imposed under law,
2994 a legally enforceable obligation of confidentiality, or a
2995 professional ethics rule.

2996 (d) In discharging board of directors or board



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2997 committee duties, a director who does not have knowledge that
2998 makes reliance unwarranted is entitled to rely on the
2999 performance by any of the persons specified in subsection
3000 (f) (1) or subsection (f) (3) to whom the board of directors may
3001 have delegated, formally or informally by course of conduct,
3002 the authority or duty to perform one or more of the board of
3003 directors' functions that are delegable under applicable law.

3004 (e) In discharging board of directors or board
3005 committee duties, a director who does not have knowledge that
3006 makes reliance unwarranted is entitled to rely on information,
3007 opinions, reports, or statements, including financial
3008 statements and other financial data, prepared or presented by
3009 any of the persons specified in subsection (f).

3010 (f) A director is entitled to rely, in accordance with
3011 subsection (d) or (e), on:

3012 (1) one or more officers, employees, or volunteers of
3013 the nonprofit corporation or one or more persons associated
3014 with the nonprofit corporation, whom the director reasonably
3015 believes to be reliable and competent in the functions
3016 performed or the information, opinions, reports, or statements
3017 provided;

3018 (2) legal counsel, public accountants, or other persons
3019 retained by the nonprofit corporation as to matters involving
3020 skills or expertise the director reasonably believes are
3021 matters (i) within the particular person's professional or
3022 expert competence, or (ii) as to which the particular person
3023 merits confidence; or

3024 (3) a board committee of which the director is not a



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3025 member if the director reasonably believes the committee
3026 merits confidence.

3027 (g) Except as set forth in subsections (a) and (b), a
3028 director, when discharging the duties of a director, has no
3029 duty to any person other than the nonprofit corporation.

3030 §10A-3A-8.31. Standards of liability for directors.

3031 Division C of Article 3 of Chapter 1 shall not apply to
3032 this chapter. Instead:

3033 (a) A director shall not be liable to the nonprofit
3034 corporation or its members for any decision to take or not to
3035 take action, or any failure to take any action, as a director,
3036 unless the party asserting liability in a proceeding
3037 establishes that:

3038 (1) no defense interposed by the director based on: (i)
3039 any provision in the certificate of incorporation authorized
3040 by Section 10A-3A-2.02(b)(4) or by Section 10A-3A-2.02(b)(6),
3041 or (ii) the protection afforded by Section 10A-3A-8.60,
3042 precludes liability; and

3043 (2) the challenged conduct consisted or was the result
3044 of:

3045 (i) action not in good faith; or

3046 (ii) a decision:

3047 (A) which the director did not reasonably believe to be
3048 in the best interests of the nonprofit corporation, or

3049 (B) as to which the director was not informed to an
3050 extent the director reasonably believed appropriate in the
3051 circumstances; or

3052 (iii) a lack of objectivity due to the director's



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3053 familial, financial or business relationship with, or a lack
3054 of independence due to the director's domination or control
3055 by, another person having a material interest in the
3056 challenged conduct:

3057 (A) which relationship or which domination or control
3058 could reasonably be expected to have affected the director's
3059 judgment respecting the challenged conduct in a manner adverse
3060 to the nonprofit corporation, and

3061 (B) after a reasonable expectation to that effect has
3062 been established, the director shall not have established that
3063 the challenged conduct was reasonably believed by the director
3064 to be in the best interests of the nonprofit corporation; or

3065 (iv) a sustained failure of the director to devote
3066 attention to ongoing oversight of the activities and affairs
3067 of the nonprofit corporation, or a failure to devote timely
3068 attention, by making (or causing to be made) appropriate
3069 inquiry, when particular facts and circumstances of
3070 significant concern materialize that would alert a reasonably
3071 attentive director to the need for that inquiry; or

3072 (v) receipt of a financial benefit to which the
3073 director was not entitled or any other breach of the
3074 director's duties to deal fairly with the nonprofit
3075 corporation and its members that is actionable under
3076 applicable law.

3077 (b) The party seeking to hold the director liable:

3078 (1) for money damages, shall also have the burden of
3079 establishing that:

3080 (i) harm to the nonprofit corporation or its members



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3081 has been suffered, and

3082 (ii) the harm suffered was proximately caused by the
3083 director's challenged conduct; or

3084 (2) for other money payment under a legal remedy, such
3085 as compensation for the unauthorized use of corporate assets,
3086 shall also have whatever persuasion burden may be called for
3087 to establish that the payment sought is appropriate in the
3088 circumstances; or

3089 (3) for other money payment under an equitable remedy,
3090 such as profit recovery by or disgorgement to the nonprofit
3091 corporation, shall also have whatever persuasion burden may be
3092 called for to establish that the equitable remedy sought is
3093 appropriate in the circumstances.

3094 (c) Nothing contained in this section shall:

3095 (1) in any instance where fairness is at issue alter
3096 the burden of proving the fact or lack of fairness otherwise
3097 applicable;

3098 (2) alter the fact or lack of liability of a director
3099 under another section of this chapter, such as the provisions
3100 governing the consequences of an unlawful distribution under
3101 Section 10A-3A-8.32 or a transactional interest under Section
3102 10A-3A-8.60;

3103 (3) affect any rights to which a director may be
3104 entitled under another statute of this state or the United
3105 States; or

3106 (4) affect any rights to which the nonprofit
3107 corporation or a member may be entitled under another statute
3108 of this state or the United States.



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3109 §10A-3A-8.32. Directors' liability for unlawful
3110 distributions.

3111 (a) A director who votes for or assents to a
3112 distribution in excess of what may be authorized and made
3113 pursuant to Section 10A-3A-6.40 or Section 10A-3A-11.07 is
3114 personally liable to the nonprofit corporation for the amount
3115 of the distribution that exceeds what could have been
3116 distributed without violating Section 10A-3A-6.40 or Section
3117 10A-3A-11.07 if the party asserting liability establishes that
3118 when taking the action the director did not comply with
3119 Section 10A-3A-8.30.

3120 (b) A director held liable under subsection (a) for an
3121 unlawful distribution is entitled to:

3122 (1) contribution from every other director who could be
3123 held liable under subsection (a) for the unlawful
3124 distribution; and

3125 (2) recoupment from each person of the pro-rata portion
3126 of the amount of the unlawful distribution the person
3127 received, whether or not the person knew the distribution was
3128 made in violation of Section 10A-3A-6.40 or Section
3129 10A-3A-11.07.

3130 (c) A proceeding to enforce:

3131 (1) the liability of a director under subsection (a) is
3132 barred unless it is commenced within two years after the date
3133 on which the distribution was made; or

3134 (2) contribution or recoupment under subsection (b) is
3135 barred unless it is commenced within one year after the
3136 liability of the claimant has been finally adjudicated under



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3137 subsection (a).

3138 §10A-3A-8.33. Loans to or guarantees for directors and
3139 officers.

3140 (a) A nonprofit corporation may not lend money to or
3141 guarantee the obligation of a director or officer of the
3142 nonprofit corporation.

3143 (b) The fact that a loan or guarantee is made in
3144 violation of this section does not affect the borrower's
3145 liability on the loan.

3146 DIVISION D. OFFICERS.

3147 §10A-3A-8.40. Officers.

3148 (a) A nonprofit corporation has the officers described
3149 in its certificate of incorporation or bylaws or appointed by
3150 the board of directors in accordance with the certificate of
3151 incorporation or bylaws.

3152 (b) The board of directors may elect individuals to
3153 fill one or more offices of the nonprofit corporation.

3154 (c) The certificate of incorporation, bylaws, or the
3155 board of directors shall assign to an officer responsibility
3156 for maintaining and authenticating the records of the
3157 nonprofit corporation required to be kept under Section
3158 10A-3A-4.01.

3159 (d) Unless the certificate of incorporation or bylaws
3160 provide otherwise, the same individual may simultaneously hold
3161 more than one office in a nonprofit corporation.

3162 §10A-3A-8.41. Functions of officers.

3163 Each officer has the authority and shall perform the
3164 functions set forth in the certificate of incorporation or



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3165 bylaws or, to the extent consistent with the certificate of
3166 incorporation or bylaws, the functions prescribed by the board
3167 of directors or by direction of an officer authorized by the
3168 board of directors to prescribe the functions of other
3169 officers.

3170 §10A-3A-8.42. Standards of conduct for officers.

3171 Division C of Article 3 of Chapter 1 shall not apply to
3172 this chapter. Instead:

3173 (a) An officer, when performing in that capacity, has
3174 the duty to act:

3175 (1) in good faith;

3176 (2) with the care that a person in a like position
3177 would reasonably exercise under similar circumstances; and

3178 (3) in a manner the officer reasonably believes to be
3179 in the best interests of the nonprofit corporation.

3180 (b) The duty of an officer includes the obligation:

3181 (1) to inform the superior officer to whom, or the
3182 board of directors or the board committee to which, the
3183 officer reports of information about the affairs of the
3184 nonprofit corporation known to the officer, within the scope
3185 of the officer's functions, and known to the officer to be
3186 material to the superior officer, board of directors, or board
3187 committee; and

3188 (2) to inform the officer's superior officer, or
3189 another appropriate person within the nonprofit corporation,
3190 or the board of directors, or a board committee, of any actual
3191 or probable material violation of law involving the nonprofit
3192 corporation or material breach of duty to the nonprofit



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3193 corporation by an officer, employee, or agent of the nonprofit
3194 corporation, that the officer believes has occurred or is
3195 likely to occur.

3196 (c) In discharging the officer's duties, an officer who
3197 does not have knowledge that makes reliance unwarranted is
3198 entitled to rely on:

3199 (1) the performance of properly delegated
3200 responsibilities by one or more employees, one or more
3201 volunteers of the nonprofit corporation, or one or more other
3202 persons associated with the nonprofit corporation, to whom
3203 that officer has delegated responsibilities and whom the
3204 officer reasonably believes to be reliable and competent in
3205 performing the responsibilities delegated;

3206 (2) information, opinions, reports, or statements,
3207 including financial statements and other financial data,
3208 prepared or presented by one or more officers or employees,
3209 one or more volunteers of the nonprofit corporation, or one or
3210 more other persons associated with the nonprofit corporation,
3211 whom the officer reasonably believes to be reliable and
3212 competent in the matters presented, or legal counsel, public
3213 accountants, or other persons retained by the nonprofit
3214 corporation as to matters involving skills or expertise the
3215 officer reasonably believes are matters: (i) within the
3216 particular person's professional or expert competence, or (ii)
3217 as to which the particular person merits confidence; or

3218 (3) volunteers of the nonprofit corporation or one or
3219 more persons associated with the nonprofit corporation.

3220 (d) An officer is not liable to the nonprofit



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3221 corporation or its members for any decision to take or not to
3222 take action, or any failure to take any action, as an officer,
3223 if the duties of the office are performed in compliance with
3224 this section. Whether an officer who does not comply with this
3225 section shall have liability will depend in such instance on
3226 applicable law, including those principles of Section
3227 10A-3A-8.31 that have relevance.

3228 §10A-3A-8.43. Resignation and removal of officers.

3229 Division C of Article 3 of Chapter 1 shall not apply to
3230 this chapter. Instead:

3231 (a) An officer may resign at any time by delivering a
3232 written notice to the board of directors, its chair, the
3233 appointing officer, the secretary, or the nonprofit
3234 corporation. A resignation is effective as provided in Section
3235 10A-3A-1.03 unless the notice provides for a delayed
3236 effectiveness, including effectiveness determined upon a
3237 future event or events. If effectiveness of a resignation is
3238 stated to be delayed and the board of directors or the
3239 appointing officer accepts the delay, the board of directors
3240 or the appointing officer may fill the pending vacancy before
3241 the delayed effectiveness, but the new officer may not take
3242 office until the vacancy occurs.

3243 (b) An officer may be removed at any time with or
3244 without cause by (i) the board of directors; (ii) the
3245 appointing officer, unless the certificate of incorporation,
3246 bylaws, or the board of directors provide otherwise; or (iii)
3247 any other officer if authorized by the certificate of
3248 incorporation, bylaws, or the board of directors.



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3249 (c) In this section, "appointing officer" means the
3250 officer (including any successor to that officer) who
3251 appointed the officer resigning or being removed.

3252 §10A-3A-8.44. Contract rights of officers.

3253 (a) The election or appointment of an officer does not
3254 itself create contract rights.

3255 (b) An officer's removal does not affect the officer's
3256 contract rights, if any, with the nonprofit corporation. An
3257 officer's resignation does not affect the nonprofit
3258 corporation's contract rights, if any, with the officer.

3259 DIVISION E. INDEMNIFICATION AND ADVANCEMENT OF
3260 EXPENSES.

3261 §10A-3A-8.50. Division definitions.

3262 In this division:

3263 (1) "DIRECTOR" or "OFFICER" means an individual who is
3264 or was a director or officer, respectively, of a nonprofit
3265 corporation or who, while a director or officer of the
3266 nonprofit corporation, is or was serving at the nonprofit
3267 corporation's request as a director, officer, manager, member,
3268 partner, trustee, employee, or agent of another entity or
3269 employee benefit plan. A director or officer is considered to
3270 be serving an employee benefit plan at the nonprofit
3271 corporation's request if the individual's duties to the
3272 nonprofit corporation also impose duties on, or otherwise
3273 involve services by, the individual to the plan or to
3274 participants in or beneficiaries of the plan. "Director" or
3275 "officer" includes, unless the context requires otherwise (i)
3276 the estate or personal representative of a director or officer



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3277 and (ii) with respect to a director, an individual designated,
3278 elected, or appointed by that or any other name or title.

3279 (2) "LIABILITY" means the obligation to pay a judgment,
3280 settlement, penalty, fine (including an excise tax assessed
3281 with respect to an employee benefit plan), or expenses
3282 incurred with respect to a proceeding.

3283 (3) "NONPROFIT CORPORATION" includes any domestic or
3284 foreign predecessor entity of a nonprofit corporation.

3285 (4) "OFFICIAL CAPACITY" means: (i) when used with
3286 respect to a director, the office of director in a nonprofit
3287 corporation; and (ii) when used with respect to an officer, as
3288 contemplated in Section 10A-3A-8.56, the office in a nonprofit
3289 corporation held by the officer. "Official capacity" does not
3290 include service for any other corporation or foreign
3291 corporation or any joint venture, trust, employee benefit
3292 plan, or other entity.

3293 (5) "PARTY" means an individual who was, is, or is
3294 threatened to be made, a defendant or respondent in a
3295 proceeding.

3296 (6) "PROCEEDING" means any threatened, pending, or
3297 completed action, suit, or proceeding, whether civil,
3298 criminal, administrative, arbitrative, or investigative and
3299 whether formal or informal.

3300 §10A-3A-8.51. Permissible indemnification.

3301 (a) Except as otherwise provided in this section, a
3302 nonprofit corporation may indemnify an individual who is a
3303 party to a proceeding because the individual is a director
3304 against liability incurred in the proceeding if:



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3305 (1) (i) the director conducted himself or herself in
3306 good faith; and

3307 (ii) the director reasonably believed:

3308 (A) in the case of conduct in an official capacity,
3309 that his or her conduct was in the best interests of the
3310 nonprofit corporation; and

3311 (B) in all other cases, that the director's conduct was
3312 at least not opposed to the best interests of the nonprofit
3313 corporation; and

3314 (iii) in the case of any criminal proceeding, the
3315 director had no reasonable cause to believe his or her conduct
3316 was unlawful; or

3317 (2) the director engaged in conduct for which broader
3318 indemnification has been made permissible or obligatory under
3319 a provision of the certificate of incorporation (as authorized
3320 by Section 10A-3A-2.02).

3321 (b) A director's conduct with respect to an employee
3322 benefit plan for a purpose the director reasonably believed to
3323 be in the interests of the participants in, and the
3324 beneficiaries of, the plan is conduct that satisfies the
3325 requirement of subsection (a) (1) (ii) (B).

3326 (c) The termination of a proceeding by judgment, order,
3327 settlement, or conviction, or upon a plea of nolo contendere
3328 or its equivalent, is not, of itself, determinative that the
3329 director did not meet the relevant standard of conduct
3330 described in this section.

3331 (d) Unless ordered by a court under Section
3332 10A-3A-8.54(a) (3), a nonprofit corporation may not indemnify a



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3333 director:

3334 (1) in connection with a proceeding by the nonprofit
3335 corporation, except for expenses incurred in connection with
3336 the proceeding if it is determined that the director has met
3337 the relevant standard of conduct under subsection (a); or

3338 (2) in connection with any proceeding with respect to
3339 conduct for which the director was adjudged liable on the
3340 basis of receiving a financial benefit to which the director
3341 was not entitled, regardless of whether it involved action in
3342 the director's official capacity.

3343 §10A-3A-8.52. Permitted mandatory indemnification.

3344 A nonprofit corporation may provide in its certificate
3345 of incorporation or bylaws that the nonprofit corporation
3346 shall indemnify a director who was wholly successful, on the
3347 merits or otherwise, in the defense of any proceeding to which
3348 the director was a party because the director was a director
3349 of the nonprofit corporation against expenses incurred by the
3350 director in connection with the proceeding.

3351 §10A-3A-8.53. Advance for expenses.

3352 (a) A nonprofit corporation may, before final
3353 disposition of a proceeding, advance funds to pay for or
3354 reimburse expenses incurred in connection with the proceeding
3355 by an individual who is a party to the proceeding because that
3356 individual is a director if the director delivers to the
3357 nonprofit corporation a signed written undertaking of the
3358 director to repay any funds advanced if (i) the director is
3359 not entitled to mandatory indemnification under Section
3360 10A-3A-8.52 and (ii) it is ultimately determined under Section



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3361 10A-3A-8.54 or Section 10A-3A-8.55 that the director is not
3362 entitled to indemnification.

3363 (b) The undertaking required by subsection (a) must be
3364 an unlimited general obligation of the director but need not
3365 be secured and may be accepted without reference to the
3366 financial ability of the director to make repayment.

3367 (c) Authorizations under this section shall be made:

3368 (1) by the board of directors:

3369 (i) if there are two or more qualified directors, by a
3370 majority vote of all the qualified directors (a majority of
3371 whom shall for that purpose constitute a quorum) or by a
3372 majority of the members of a committee consisting solely of
3373 two or more qualified directors appointed by a majority vote
3374 of qualified directors; or

3375 (ii) if there are fewer than two qualified directors,
3376 by the vote necessary for action by the board of directors in
3377 accordance with Section 10A-3A-8.24(c), in which authorization
3378 directors who are not qualified directors may participate; or

3379 (2) by the members, but membership interests owned by
3380 or voted under the control of a director who at the time is
3381 not a qualified director may not be voted on the
3382 authorization.

3383 §10A-3A-8.54. Court-ordered indemnification and advance
3384 for expenses.

3385 (a) A director who is a party to a proceeding because
3386 he or she is a director may apply for indemnification or an
3387 advance for expenses to the court conducting the proceeding or
3388 to another court of competent jurisdiction. After receipt of



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3389 an application and after giving any notice it considers
3390 necessary, the court shall:

3391 (1) order indemnification if the court determines that
3392 the director is entitled to indemnification pursuant to a
3393 provision authorized by Section 10A-3A-8.52;

3394 (2) order indemnification or advance for expenses if
3395 the court determines that the director is entitled to
3396 indemnification or advance for expenses pursuant to a
3397 provision authorized by Section 10A-3A-8.58(a); or

3398 (3) order indemnification or advance for expenses if
3399 the court determines, in view of all the relevant
3400 circumstances, that it is fair and reasonable: (i) to
3401 indemnify the director, or (ii) to advance expenses to the
3402 director, even if, in the case of (i) or (ii), the director
3403 has not met the relevant standard of conduct set forth in
3404 Section 10A-3A-8.51(a), failed to comply with Section
3405 10A-3A-8.53, or was adjudged liable in a proceeding referred
3406 to in Section 10A-3A-8.51(d)(1) or Section 10A-3A-8.51(d)(2),
3407 but if the director was adjudged so liable indemnification
3408 shall be limited to expenses incurred in connection with the
3409 proceeding.

3410 (b) If the court determines that the director is
3411 entitled to indemnification under subsection (a)(1) or to
3412 indemnification or advance for expenses under subsection
3413 (a)(2), it shall also order the nonprofit corporation to pay
3414 the director's expenses incurred in connection with obtaining
3415 court-ordered indemnification or advance for expenses. If the
3416 court determines that the director is entitled to



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3417 indemnification or advance for expenses under subsection
3418 (a) (3), it may also order the nonprofit corporation to pay the
3419 director's expenses to obtain court-ordered indemnification or
3420 advance for expenses.

3421 §10A-3A-8.55. Determination and authorization of
3422 indemnification.

3423 (a) A nonprofit corporation may not indemnify a
3424 director under Section 10A-3A-8.51 unless authorized for a
3425 specific proceeding after a determination has been made that
3426 indemnification is permissible because the director has met
3427 the relevant standard of conduct set forth in Section
3428 10A-3A-8.51.

3429 (b) The determination shall be made:

3430 (1) if there are two or more qualified directors, by
3431 the board of directors by a majority vote of all the qualified
3432 directors (a majority of whom shall for that purpose
3433 constitute a quorum), or by a majority of the members of a
3434 committee of two or more qualified directors appointed by a
3435 majority vote of qualified directors;

3436 (2) by special legal counsel:

3437 (i) selected in the manner prescribed in subsection
3438 (b) (1); or

3439 (ii) if there are fewer than two qualified directors,
3440 selected by the board of directors (in which selection
3441 directors who are not qualified directors may participate); or

3442 (3) by the members, but membership interests owned by
3443 or voted under the control of a director who at the time is
3444 not a qualified director may not be voted on the



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3445 determination.

3446 (c) Authorization of indemnification shall be made in
3447 the same manner as the determination that indemnification is
3448 permissible except that if there are fewer than two qualified
3449 directors, or if the determination is made by special legal
3450 counsel, authorization of indemnification shall be made by
3451 those entitled to select special legal counsel under
3452 subsection (b) (2) (ii).

3453 §10A-3A-8.56. Indemnification of officers.

3454 (a) A nonprofit corporation may indemnify and advance
3455 expenses under this Division E of this Article 8 to an officer
3456 who is a party to a proceeding because he or she is an
3457 officer:

3458 (1) to the same extent as a director; and

3459 (2) if he or she is an officer but not a director, to
3460 such further extent as may be provided by the certificate of
3461 incorporation or the bylaws, or by a resolution adopted or a
3462 contract approved by the board of directors or members except
3463 for

3464 (i) liability in connection with a proceeding by the
3465 nonprofit corporation other than for expenses incurred in
3466 connection with the proceeding, or

3467 (ii) liability arising out of conduct that constitutes

3468 (A) receipt by the officer of a financial benefit to
3469 which the officer is not entitled,

3470 (B) an intentional infliction of harm on the nonprofit
3471 corporation or the members, or

3472 (C) an intentional violation of criminal law.



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3473 (b) Subsection (a)(2) shall apply to an officer who is
3474 also a director if the person is made a party to the
3475 proceeding based on an act or omission solely as an officer.

3476 (c) An officer who is not a director is entitled to
3477 indemnification under Section 10A-3A-8.52 if the certificate
3478 of incorporation or bylaws of the nonprofit corporation allows
3479 for such indemnification, and may apply to a court under
3480 Section 10A-3A-8.54 for indemnification or an advance for
3481 expenses, in each case to the same extent to which a director
3482 may be entitled to indemnification or advance for expenses
3483 under those sections, unless otherwise provided in the
3484 certificate of incorporation or bylaws.

3485 §10A-3A-8.57. Insurance.

3486 A nonprofit corporation may purchase and maintain
3487 insurance on behalf of an individual who is a director or
3488 officer of the nonprofit corporation, or who, while a director
3489 or officer of the nonprofit corporation, serves at the
3490 nonprofit corporation's request as a director, officer,
3491 partner, trustee, employee, or agent of another corporation or
3492 foreign corporation or a joint venture, trust, employee
3493 benefit plan, or other entity, against liability asserted
3494 against or incurred by the individual in that capacity or
3495 arising from the individual's status as a director or officer,
3496 regardless of whether the nonprofit corporation would have
3497 power to indemnify or advance expenses to the individual
3498 against the same liability under this Division E of this
3499 Article 8.

3500 §10A-3A-8.58. Variation by corporate action;



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3501 application of division.

3502 (a) A nonprofit corporation may, by a provision in its
3503 certificate of incorporation, bylaws, or in a resolution
3504 adopted or a contract approved by the board of directors or
3505 members, obligate itself in advance of the act or omission
3506 giving rise to a proceeding to provide indemnification in
3507 accordance with Section 10A-3A-8.51 or advance funds to pay
3508 for or reimburse expenses in accordance with Section
3509 10A-3A-8.53. Any obligatory provision shall be deemed to
3510 satisfy the requirements for authorization referred to in
3511 Section 10A-3A-8.53(c) and in Section 10A-3A-8.55(c). Any
3512 provision that obligates the nonprofit corporation to provide
3513 indemnification to the fullest extent permitted by law shall
3514 be deemed to obligate the nonprofit corporation to advance
3515 funds to pay for or reimburse expenses in accordance with
3516 Section 10A-3A-8.53 to the fullest extent permitted by law,
3517 unless the provision expressly provides otherwise.

3518 (b) A right of indemnification or to advances for
3519 expenses created by this Division E of this Article 8 or under
3520 subsection (a) and in effect at the time of an act or omission
3521 shall not be eliminated or impaired with respect to the act or
3522 omission by an amendment of the certificate of incorporation,
3523 bylaws, or a resolution of the board of directors or members,
3524 adopted after the occurrence of the act or omission, unless,
3525 in the case of a right created under subsection (a), the
3526 provision creating the right and in effect at the time of the
3527 act or omission explicitly authorizes elimination or
3528 impairment after the act or omission has occurred.



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3529 (c) Any provision pursuant to subsection (a) shall not
3530 obligate the nonprofit corporation to indemnify or advance
3531 expenses to a director of a predecessor of the nonprofit
3532 corporation, pertaining to conduct with respect to the
3533 predecessor, unless otherwise expressly provided. Any
3534 provision for indemnification or advance for expenses in the
3535 certificate of incorporation, bylaws, or a resolution of the
3536 board of directors or other similar governing authority of a
3537 predecessor of the nonprofit corporation in a merger or in a
3538 contract to which the predecessor is a party, existing at the
3539 time the merger takes effect, shall be governed by Section
3540 10A-3A-12.06(a) (4).

3541 (d) Subject to subsection (b), a nonprofit corporation
3542 may, by a provision in its certificate of incorporation, limit
3543 any of the rights to indemnification or advance for expenses
3544 created by or pursuant to this Division E of this Article 8.

3545 (e) This Division E of this Article 8 does not limit a
3546 nonprofit corporation's power to pay or reimburse expenses
3547 incurred by a director or an officer in connection with
3548 appearing as a witness in a proceeding at a time when the
3549 director or officer is not a party.

3550 (f) This Division E of this Article 8 does not limit a
3551 nonprofit corporation's power to indemnify, advance expenses
3552 to or provide or maintain insurance on behalf of an employee,
3553 agent, or volunteer.

3554 §10A-3A-8.59. Exclusivity of division.

3555 A nonprofit corporation may provide indemnification or
3556 advance expenses to a director or an officer only as permitted



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3557 by this Division E of this Article 8.

3558 DIVISION F. CONFLICTING INTEREST TRANSACTIONS.

3559 §10A-3A-8.60. Interested directors; quorum.

3560 (a) No contract or transaction between a nonprofit
3561 corporation and one or more of its directors or officers, or
3562 between a nonprofit corporation and any other corporation,
3563 partnership, association, or other entity in which one or more
3564 of its directors or officers, are directors or officers, or
3565 have a financial interest, shall be void or voidable solely
3566 for this reason, or solely because the director or officer is
3567 present at or participates in the meeting of the board of
3568 directors or committee which authorizes the contract or
3569 transaction, or solely because the director's or officer's
3570 votes are counted for that purpose, if:

3571 (1) The material facts as to the director's or
3572 officer's relationship or interest and as to the contract or
3573 transaction are disclosed or are known to the board of
3574 directors or the committee of a nonmembership nonprofit
3575 corporation, and the board or committee in good faith
3576 authorizes the contract or transaction by the affirmative
3577 votes of a majority of the qualified directors, even though
3578 the qualified directors be less than a quorum; or

3579 (2) The material facts as to the director's or
3580 officer's relationship or interest and as to the contract or
3581 transaction are disclosed or are known to (i) the members in a
3582 membership nonprofit corporation entitled to vote thereon or
3583 (ii) the qualified directors of the board of directors in a
3584 membership nonprofit corporation, and the contract or



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3585 transaction is specifically approved in good faith by vote of
3586 the members in a membership nonprofit corporation or the
3587 qualified directors of the board of directors in a membership
3588 nonprofit corporation; or

3589 (3) The contract or transaction is fair as to the
3590 nonprofit corporation as of the time it is authorized,
3591 approved or ratified, by the board of directors, a committee,
3592 or the members.

3593 (b) Common or interested directors may be counted in
3594 determining the presence of a quorum at a meeting of the board
3595 of directors or of a committee which authorizes the contract
3596 or transaction.

3597 ARTICLE 9. AMENDMENT OF CERTIFICATE OF INCORPORATION
3598 AND BYLAWS.

3599 DIVISION A. AMENDMENT OF CERTIFICATE OF INCORPORATION.

3600 §10A-3A-9.00. Applicability of Division B of Article 3
3601 of Chapter 1.

3602 Division B of Article 3 of Chapter 1 shall not apply to
3603 this chapter.

3604 §10A-3A-9.01. Authority to amend.

3605 (a) A nonprofit corporation may amend its certificate
3606 of incorporation at any time to add or change a provision that
3607 is required or permitted in the certificate of incorporation
3608 as of the effective date of the amendment or to delete a
3609 provision that is not required to be contained in the
3610 certificate of incorporation. Whether a provision is required
3611 or permitted in the certificate of incorporation is determined
3612 as of the effective date of the amendment.



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3613 (b) Neither (i) a member of a membership nonprofit
3614 corporation nor (ii) a person having rights under the
3615 certificate of incorporation, has a vested property right
3616 resulting from any provision in the certificate of
3617 incorporation, including provisions relating to management,
3618 control, purpose, or duration of the nonprofit corporation.

3619 §10A-3A-9.02. Amendment of certificate of incorporation
3620 of membership nonprofit corporation before admission of
3621 members.

3622 Subject to Section 10A-3A-9.30, if a membership
3623 nonprofit corporation has not yet admitted any members, the
3624 board of directors, or its incorporators if it has no board of
3625 directors, may adopt one or more amendments to the membership
3626 nonprofit corporation's certificate of incorporation.

3627 §10A-3A-9.03. Amendment of certificate of incorporation
3628 of membership nonprofit corporation after members have been
3629 admitted.

3630 If a membership nonprofit corporation has admitted any
3631 members, an amendment to the certificate of incorporation
3632 shall be adopted in the following manner:

3633 (a) The proposed amendment shall first be adopted by
3634 the board of directors.

3635 (b) Except as provided in subsection (g) and Sections
3636 10A-3A-9.07 and 10A-3A-9.08, the amendment shall then be
3637 approved by the members entitled to vote on the amendment. In
3638 submitting the proposed amendment to the members for approval,
3639 the board of directors shall recommend that the members
3640 approve the amendment, unless the board of directors makes a



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3641 determination that because of conflicts of interest or other
3642 special circumstances it should not make such a
3643 recommendation, in which case the board of directors must
3644 inform the members of the basis for that determination.

3645 (c) The board of directors may set conditions for the
3646 approval of the amendment by the members or the effectiveness
3647 of the amendment.

3648 (d) If the amendment is required to be approved by the
3649 members, and the approval is to be given at a meeting, the
3650 membership nonprofit corporation shall notify each member
3651 entitled to vote on the amendment of the meeting of members at
3652 which the amendment is to be submitted for approval. The
3653 notice must state that the purpose, or one of the purposes, of
3654 the meeting is to consider the amendment. The notice must
3655 contain or be accompanied by a copy of the amendment.

3656 (e) Unless the certificate of incorporation, or the
3657 board of directors acting pursuant to subsection (c), requires
3658 a greater vote or a greater quorum, approval of the amendment
3659 requires the approval of the members at a meeting at which a
3660 quorum consisting of a majority of the votes entitled to be
3661 cast on the amendment exists, and, if any class of members is
3662 entitled to vote as a separate group on the amendment, except
3663 as provided in Section 10A-3A-9.04(d), the approval of each
3664 separate voting group at a meeting at which a quorum of the
3665 voting group exists consisting of a majority of the votes
3666 entitled to be cast on the amendment by that voting group.

3667 (f) In addition to the adoption and approval of an
3668 amendment by the board of directors and members as required by



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3669 this section, an amendment must also be approved by a person
3670 or group of persons, if any, whose approval is required by the
3671 certificate of incorporation in accordance with Section
3672 10A-3A-9.30.

3673 (g) Unless the certificate of incorporation provides
3674 otherwise, the board of directors of a membership nonprofit
3675 corporation may adopt amendments to the membership nonprofit
3676 corporation's certificate of incorporation without approval of
3677 the members to:

3678 (1) extend the duration of the membership nonprofit
3679 corporation if it was incorporated at a time when limited
3680 duration was required by law;

3681 (2) delete the names and addresses of the incorporators
3682 or initial directors;

3683 (3) delete the name and address of the initial
3684 registered agent or registered office, if a statement of
3685 change is on file with the Secretary of State;

3686 (4) delete a class of members from the certificate of
3687 incorporation when there are no members in that class; or

3688 (5) change the membership nonprofit corporation name,
3689 provided that the name complies with Article 5 of Chapter 1.

3690 §10A-3A-9.04. Voting on amendments by voting groups.

3691 Except as provided in the certificate of incorporation
3692 or bylaws:

3693 (a) If a membership nonprofit corporation has more than
3694 one class of members, the members of each class are entitled
3695 to vote as a separate voting group (if member voting is
3696 otherwise required by this chapter) on a proposed amendment to



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3697 the certificate of incorporation if the amendment would:

3698 (1) effect an exchange or reclassification of all or
3699 part of the memberships of the class into memberships of
3700 another class;

3701 (2) effect an exchange or reclassification, or create
3702 the right of exchange, of all or part of the memberships of
3703 another class into memberships of the class;

3704 (3) change the rights, preferences, or limitations of
3705 all or part of the memberships of the class;

3706 (4) change the rights, preferences, or limitations of
3707 all or part of the memberships of the class by changing the
3708 rights, preferences, or limitations of another class;

3709 (5) create a new class of memberships having rights or
3710 preferences that are prior or superior to the other
3711 memberships;

3712 (6) increase or decrease the number of memberships
3713 authorized for the class;

3714 (7) increase or decrease the number of memberships
3715 authorized for another class; or

3716 (8) authorize a new class of memberships.

3717 (b) If a class of members will be divided into two or
3718 more classes by an amendment to the certificate of
3719 incorporation, the amendment must be approved by a majority of
3720 the members of each class that will be created.

3721 (c) If a proposed amendment would affect less than all
3722 of the members of a class in one or more of the ways described
3723 in subsection (a), the members so affected are entitled to
3724 vote as a separate voting group on the proposed amendment.



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3725 (d) If a proposed amendment that entitles the holders
3726 of two or more classes of memberships to vote as separate
3727 voting groups under this section would affect those two or
3728 more classes in the same or a substantially similar way, the
3729 holders of the memberships of all the classes so affected
3730 shall vote together as a single voting group on the proposed
3731 amendment, unless added as a condition by the board of
3732 directors pursuant to Section 10A-3A-9.03(c).

3733 §10A-3A-9.05. Amendment of certificate of incorporation
3734 of nonmembership nonprofit corporation.

3735 Except as otherwise provided in the certificate of
3736 incorporation:

3737 (1) the board of directors of a nonmembership nonprofit
3738 corporation may adopt amendments to the nonmembership
3739 nonprofit corporation's certificate of incorporation; and

3740 (2) an amendment adopted by the board of directors
3741 under this section must also be approved by that person or
3742 group of persons, if any, whose approval is required by the
3743 certificate of incorporation in accordance with Section
3744 10A-3A-9.30.

3745 §10A-3A-9.06. Certificate of amendment.

3746 (a) After an amendment to the certificate of
3747 incorporation has been adopted and approved in the manner
3748 required by this chapter, the certificate of incorporation,
3749 and bylaws, the nonprofit corporation must deliver to the
3750 Secretary of State, for filing, a certificate of amendment,
3751 which must set forth:

3752 (1) the name of the nonprofit corporation;



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3753 (2) the text of each amendment adopted or the
3754 information required by Section 10A-3A-1.04(c) (5);

3755 (3) if an amendment provides for an exchange,
3756 reclassification, or cancellation of memberships, provisions
3757 for implementing the amendment if not contained in the
3758 amendment itself (which may be made dependent upon facts
3759 objectively ascertainable outside the articles of amendment in
3760 accordance with Section 10A-3A-1.04(c) (5));

3761 (4) the date of each amendment's adoption;

3762 (5) a statement that the amendment was adopted:

3763 (i) in accordance with Sections 10A-3A-9.02, if the
3764 nonprofit corporation is a membership nonprofit corporation
3765 which has not yet admitted one or more members;

3766 (ii) in accordance with Sections 10A-3A-9.03 and
3767 10A-3A-9.04, if the nonprofit corporation is a membership
3768 nonprofit corporation which has admitted one of more members;

3769 (iii) in accordance with Section 10A-3A-9.05, if the
3770 nonprofit corporation is a nonmembership nonprofit
3771 corporation; or

3772 (iv) in accordance with Section 10A-3A-1.04(c) (5);

3773 (6) a statement that the amendment was adopted in
3774 accordance with Section 10A-9A-9.30, if applicable; and

3775 (7) the unique identifying number or other designation
3776 as assigned by the Secretary of State.

3777 (b) A certificate of amendment shall take effect at the
3778 effective date and time determined in accordance with Article
3779 4 of Chapter 1.

3780 §10A-3A-9.07. Restated certificate of incorporation.



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3781 (a) A membership nonprofit corporation's board of
3782 directors may restate its certificate of incorporation at any
3783 time, without member approval, to consolidate all amendments
3784 into a single document. A nonmembership nonprofit
3785 corporation's board of directors may restate its certificate
3786 of incorporation at any time to consolidate all amendments
3787 into a single document.

3788 (b) If the restated certificate of incorporation
3789 includes one or more new amendments, the amendments must be
3790 adopted and approved as provided in (i) Sections 10A-3A-9.03
3791 and 10A-3A-9.04 or (ii) Section 10A-3A-9.05.

3792 (c) A nonprofit corporation that restates its
3793 certificate of incorporation shall deliver to the Secretary of
3794 State for filing a certificate of restatement setting forth:

3795 (1) the name of the nonprofit corporation;

3796 (2) the text of the restated certificate of
3797 incorporation;

3798 (3) a statement that the restated certificate of
3799 incorporation consolidates all amendments into a single
3800 document;

3801 (4) if a new amendment is included in the restated
3802 certificate of incorporation, the statements required under
3803 Section 10A-3A-9.06 with respect to the new amendment; and

3804 (5) the unique identifying number or other designation
3805 as assigned by the Secretary of State.

3806 (d) The duly adopted restated certificate of
3807 incorporation supersedes the original certificate of
3808 incorporation and all amendments to the certificate of



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3809 incorporation.

3810 §10A-3A-9.08. Amendment pursuant to reorganization.

3811 (a) A nonprofit corporation's certificate of
3812 incorporation may be amended without action by the board of
3813 directors, the members, if any, or a person or group of
3814 persons, if any, whose approval is required by the certificate
3815 of incorporation in accordance with Section 10A-3A-9.30, to
3816 carry out a plan of reorganization ordered or decreed by a
3817 court of competent jurisdiction under the authority of a law
3818 of the United States if the certificate of incorporation after
3819 the amendment only contains provisions required or permitted
3820 by Section 10A-3A-2.02.

3821 (b) The individual or individuals designated by the
3822 court shall deliver to the Secretary of State for filing a
3823 certificate of amendment setting forth:

3824 (1) the name of the nonprofit corporation;

3825 (2) the text of each amendment approved by the court;

3826 (3) the date of the court's order or decree approving
3827 the certificate of amendment;

3828 (4) the title of the reorganization proceeding in which
3829 the order or decree was entered;

3830 (5) a statement that the court had jurisdiction of the
3831 proceeding under federal statute; and

3832 (6) the unique identifying number or other designation
3833 as assigned by the Secretary of State.

3834 (c) This section does not apply after entry of a final
3835 decree in the reorganization proceeding even though the court
3836 retains jurisdiction of the proceeding for limited purposes



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3837 unrelated to consummation of the reorganization plan.

3838 §10A-3A-9.09. Effect of amendment to certificate of
3839 incorporation.

3840 (a) An amendment to the certificate of incorporation
3841 does not affect:

3842 (1) a cause of action existing against or in favor of
3843 the nonprofit corporation;

3844 (2) a proceeding to which the nonprofit corporation is
3845 a party; or

3846 (3) the existing rights of persons other than (i)
3847 members of the nonprofit corporation, if any, or (ii) a person
3848 or group of persons, if any, specified in the certificate of
3849 incorporation as having approval rights under Section
3850 10A-3A-9.30.

3851 (b) An amendment changing a nonprofit corporation's
3852 name does not affect a proceeding brought by or against the
3853 nonprofit corporation in its former name.

3854 §10A-3A-9.10. Effect of restatement of certificate of
3855 incorporation.

3856 (a) A restated certificate of incorporation takes
3857 effect when the filing of the restated certificate of
3858 incorporation takes effect as provided by Article 4 of Chapter
3859 1.

3860 (b) On the date and time the restated certificate of
3861 incorporation takes effect, the original certificate of
3862 incorporation and each prior amendment or restatement of the
3863 certificate of incorporation is superseded and the restated
3864 certificate of incorporation is the effective certificate of



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3865 incorporation.

3866 (c) Section 10A-3A-9.09 applies to an amendment
3867 effected by a restated certificate of incorporation.

3868 DIVISION B. AMENDMENT OF BYLAWS.

3869 §10A-3A-9.20. Authority to amend.

3870 (a) The members of a membership nonprofit corporation
3871 may amend or repeal the membership nonprofit corporation's
3872 bylaws except as provided in the certificate of incorporation
3873 or bylaws.

3874 (b) The board of directors of a membership nonprofit
3875 corporation or nonmembership nonprofit corporation may amend
3876 or repeal the nonprofit corporation's bylaws, except as
3877 provided in the certificate of incorporation, bylaws, Section
3878 10A-3A-9.21, or Section 10A-3A-9.22.

3879 (c) Neither (i) a member of a membership nonprofit
3880 corporation nor (ii) a person or group of persons having
3881 rights under the certificate of incorporation, has a vested
3882 property right resulting from any provision in the bylaws,
3883 including provisions relating to management, control, or
3884 purpose of the nonprofit corporation.

3885 §10A-3A-9.21. Bylaw increasing quorum or voting
3886 requirement for directors or requiring a meeting place in a
3887 membership nonprofit corporation.

3888 In a membership nonprofit corporation:

3889 (a) A bylaw that increases a quorum or voting
3890 requirement for the board of directors or that requires a
3891 meeting of the members to be held at a place may be amended or
3892 repealed:



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3893 (1) if originally adopted by the members, only by the
3894 members, unless the bylaw otherwise provides;

3895 (2) if adopted by the board of directors, either by the
3896 members or the board of directors.

3897 (b) A bylaw adopted or amended by the members that
3898 increases a quorum or voting requirement for the board of
3899 directors may provide that it can be amended or repealed only
3900 by a specified vote of either the members or the board of
3901 directors.

3902 (c) Action by the board of directors under subsection
3903 (a) to amend or repeal a bylaw that changes a quorum or voting
3904 requirement for the board of directors shall meet the same
3905 quorum requirement and be adopted by the same vote required to
3906 take action under the quorum.

3907 §10A-3A-9.22. Bylaw amendments requiring member
3908 approval.

3909 In a membership nonprofit corporation, except as
3910 provided in the certificate of incorporation or bylaws:

3911 (a) The board of directors of a membership nonprofit
3912 corporation that has one or more members at the time may not
3913 adopt or amend a bylaw under:

3914 (1) Section 10A-3A-6.10 providing that some of the
3915 members shall have different rights or obligations than other
3916 members with respect to voting, dissolution, transfer of
3917 memberships, or other matters;

3918 (2) Section 10A-3A-6.13 levying dues, assessments, or
3919 fees on some or all of the members;

3920 (3) Section 10A-3A-6.21 relating to the termination or



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3921 suspension of members;

3922 (4) Section 10A-3A-8.08(a):

3923 (i) requiring cause to remove a director; or

3924 (ii) specifying what constitutes cause to remove a
3925 director; or

3926 (5) Section 10A-3A-8.08(e) relating to the removal of a
3927 director who is designated in a manner other than election or
3928 appointment.

3929 (b) The board of directors of a membership nonprofit
3930 corporation may not amend the certificate of incorporation or
3931 bylaws to vary the application of subsection (a) to the
3932 membership nonprofit corporation.

3933 (c) If a membership nonprofit corporation has more than
3934 one class of members, the members of a class are entitled to
3935 vote as a separate voting group on an amendment to the bylaws
3936 that:

3937 (1) is described in subsection (a) if the amendment
3938 would affect the members of that class differently than the
3939 members of another class; or

3940 (2) has any of the effects described in Section
3941 10A-3A-9.04.

3942 (d) If a class of members will be divided into two or
3943 more classes by an amendment to the bylaws, the amendment must
3944 be approved by a majority of the members of each class that
3945 will be created.

3946 DIVISION C. SPECIAL RIGHTS.

3947 §10A-3A-9.30. Approval by specified person or group of
3948 persons.



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3949 (a) The certificate of incorporation of a membership
3950 nonprofit corporation may require that an amendment to the
3951 certificate of incorporation, including amendments under
3952 Section 10A-3A-9.03(g), be approved in writing by a specified
3953 person or group of persons in addition to the board of
3954 directors and members. The certificate of incorporation of a
3955 nonmembership nonprofit corporation may require that an
3956 amendment to the certificate of incorporation be approved in
3957 writing by a specified person or group of persons in addition
3958 to the board of directors.

3959 (b) The certificate of incorporation or bylaws of a
3960 membership nonprofit corporation may require that an amendment
3961 to the bylaws be approved in writing by a specified person or
3962 group of persons in addition to the board of directors and
3963 members. The certificate of incorporation or bylaws of a
3964 nonmembership nonprofit corporation may require that an
3965 amendment to the bylaws be approved in writing by a specified
3966 person or group of persons in addition to the board of
3967 directors.

3968 (c) A requirement in the certificate of incorporation
3969 or bylaws described in Section 10A-3A-9.30(a) or (b) may only
3970 be amended with the approval in writing of the specified
3971 person or group of persons.

3972 ARTICLE 10. DISPOSITION OF ASSETS.

3973 §10A-3A-10.01. Disposition of assets not requiring
3974 member approval in membership nonprofit corporation.

3975 In a membership nonprofit corporation, no approval of
3976 the members is required, unless the certificate of



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3977 incorporation otherwise provides:

3978 (a) to sell, lease, exchange, or otherwise dispose of
3979 any or all of the membership nonprofit corporation's assets in
3980 the usual and regular course of the membership nonprofit
3981 corporation's activities;

3982 (b) to mortgage, pledge, dedicate to the repayment of
3983 indebtedness (whether with or without recourse), or otherwise
3984 encumber any or all of the membership nonprofit corporation's
3985 assets, regardless of whether in the usual and regular course
3986 of its activities; or

3987 (c) to transfer any or all of the membership nonprofit
3988 corporation's assets to one or more corporations or other
3989 entities all of the memberships or interests of which are
3990 owned by the membership nonprofit corporation.

3991 §10A-3A-10.02. Member approval of certain dispositions
3992 in membership nonprofit corporation.

3993 (a) A sale, lease, exchange, or other disposition of
3994 assets, other than a disposition described in Section
3995 10A-3A-10.01, requires approval of the membership nonprofit
3996 corporation's members if the disposition would leave the
3997 membership nonprofit corporation without a significant
3998 continuing activity. A membership nonprofit corporation will
3999 conclusively be deemed to have retained a significant
4000 continuing activity if it retains an activity that
4001 represented, for the membership nonprofit corporation and its
4002 subsidiaries on a consolidated basis, at least (i) 25 percent
4003 of total assets at the end of the most recently completed
4004 fiscal year, and (ii) either 25 percent of either income from



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4005 continuing operations before taxes or 25 percent of revenues
4006 from continuing operations, in each case for the most recently
4007 completed fiscal year.

4008 (b) To obtain the approval of the members under
4009 subsection (a) the board of directors shall first adopt a
4010 resolution authorizing the disposition. The disposition shall
4011 then be approved by the members. In submitting the disposition
4012 to the members for approval, the board of directors shall
4013 recommend that the members approve the disposition, unless the
4014 board of directors makes a determination that because of
4015 conflicts of interest or other special circumstances it should
4016 not make a recommendation, in which case the board of
4017 directors must inform the members of the basis for that
4018 determination.

4019 (c) The board of directors may set conditions for the
4020 approval by the members of a disposition or the effectiveness
4021 of the disposition.

4022 (d) If a disposition is required to be approved by the
4023 members under subsection (a), and if the approval is to be
4024 given at a meeting, the membership nonprofit corporation shall
4025 notify each member entitled to vote on the matter of the
4026 meeting of members at which the disposition is to be submitted
4027 for approval. The notice must state that the purpose, or one
4028 of the purposes, of the meeting is to consider the disposition
4029 and must contain a description of the disposition, including
4030 the terms and conditions of the disposition and the
4031 consideration to be received by the membership nonprofit
4032 corporation.



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4033 (e) Unless the certificate of incorporation, bylaws, or
4034 the board of directors acting pursuant to subsection (c)
4035 requires a greater vote or a greater quorum, the approval of a
4036 disposition by the members shall require the approval of the
4037 members at a meeting at which a quorum exists consisting of a
4038 majority of the votes entitled to be cast on the disposition.

4039 (f) After a disposition has been approved by the
4040 members under this Article 10, and at any time before the
4041 disposition has been consummated, it may be abandoned by the
4042 membership nonprofit corporation without action by the
4043 members, subject to any contractual rights of other parties to
4044 the disposition.

4045 (g) A disposition of assets in the course of
4046 dissolution under Article 11 is not governed by this section.

4047 (h) For purposes of this section only, the property and
4048 assets of the membership nonprofit corporation include the
4049 property and assets of any subsidiary of the membership
4050 nonprofit corporation. As used in this subsection,
4051 "subsidiary" means any entity wholly owned and controlled,
4052 directly or indirectly, by the membership nonprofit
4053 corporation and includes, without limitation, nonprofit
4054 corporations, business corporations, partnerships (including
4055 limited liability partnerships), limited partnerships
4056 (including limited liability limited partnerships), limited
4057 liability companies, and/or statutory trusts, whether domestic
4058 or foreign.

4059 (i) In addition to the approval of a disposition of
4060 assets by the board of directors and members as required by



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4061 this section, the disposition must also be approved in writing
4062 by a person or group of persons whose approval is required
4063 under the certificate of incorporation in accordance with
4064 Section 10A-3A-10.04.

4065 §10A-3A-10.03. Disposition of assets in a nonmembership
4066 nonprofit corporation.

4067 Except as otherwise provided in the certificate of
4068 incorporation:

4069 (1) a sale, lease, exchange, mortgage, pledge, or other
4070 disposition of all, or substantially all, the property and
4071 assets of the nonmembership nonprofit corporation may be
4072 approved by the board of directors; and

4073 (2) a sale, lease, exchange, mortgage, pledge, or other
4074 disposition of all, or substantially all, of the property and
4075 assets of the nonmembership nonprofit corporation approved by
4076 the board of directors under this section must also be
4077 approved by that person or group of persons whose approval is
4078 required by the certificate of incorporation in accordance
4079 with Section 10A-3A-10.04.

4080 §10A-3A-10.04. Approval by specified person or group of
4081 persons.

4082 (a) The certificate of incorporation of a membership
4083 nonprofit corporation may require that a disposition of assets
4084 under Section 10A-3A-10.02 be approved in writing by a
4085 specified person or group of persons in addition to the board
4086 of directors and members.

4087 (b) The certificate of incorporation of a nonmembership
4088 nonprofit corporation may require that a disposition of assets



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4089 under Section 10A-3A-10.03 be approved in writing by a
4090 specified person or group of persons in addition to the board
4091 of directors.

4092 (c) A requirement in the certificate of incorporation
4093 described in subsection (a) or (b) of this section may only be
4094 approved by the written approval of the specified person or
4095 group of persons.

4096 ARTICLE 11. DISSOLUTION.

4097 DIVISION A. VOLUNTARY DISSOLUTION.

4098 §10A-3A-11.01. Dissolution by incorporators or
4099 directors.

4100 A majority of the incorporators or initial directors of
4101 a nonprofit corporation that has not commenced activity may
4102 dissolve the nonprofit corporation by delivering to the
4103 Secretary of State for filing a certificate of dissolution
4104 that sets forth:

4105 (1) the name of the nonprofit corporation;

4106 (2) the date of its incorporation;

4107 (3) that the nonprofit corporation has not commenced
4108 activity;

4109 (4) that no debt of the nonprofit corporation remains
4110 unpaid;

4111 (5) that the net assets of the nonprofit corporation
4112 remaining after winding up have been distributed;

4113 (6) that a majority of the incorporators or directors
4114 authorized the dissolution; and

4115 (7) the unique identifying number or other designation
4116 as assigned by the Secretary of State.



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4117 §10A-3A-11.02. Approval of dissolution of membership
4118 nonprofit corporations.

4119 (a) The board of directors of a membership nonprofit
4120 corporation may propose dissolution for submission to the
4121 members by first adopting a resolution authorizing the
4122 dissolution.

4123 (b) For a proposal to dissolve to be adopted, it shall
4124 then be approved by the members entitled to vote thereon. In
4125 submitting the proposal to dissolve to the members for
4126 approval, the board of directors shall recommend that the
4127 members approve the dissolution, unless the board of directors
4128 determines that because of conflict of interest or other
4129 special circumstances it should make no recommendation in
4130 which case the board of directors must inform the members of
4131 the basis for that determination.

4132 (c) The board of directors may set conditions for the
4133 approval of the proposal for dissolution by the members or the
4134 effectiveness of the dissolution.

4135 (d) If the approval of the members is to be given at a
4136 meeting, the membership nonprofit corporation shall notify
4137 each member entitled to vote on the dissolution, of the
4138 meeting of members at which the dissolution is to be submitted
4139 for approval. The notice must state that the purpose, or one
4140 of the purposes, of the meeting is to consider dissolving the
4141 membership nonprofit corporation and how the assets of the
4142 membership nonprofit corporation will be distributed after all
4143 creditors have been paid, or how the distribution of assets
4144 will be determined.



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4145 (e) Unless the certificate of incorporation, the
4146 bylaws, or the board of directors acting pursuant to
4147 subsection (c), requires a greater vote, a greater quorum, or
4148 a vote by voting groups, adoption of the proposal to dissolve
4149 shall require the approval of the members at a meeting at
4150 which a quorum exists consisting of a majority of the votes
4151 entitled to be cast on the proposal to dissolve.

4152 (f) Dissolution of a membership nonprofit corporation
4153 may also be authorized without action of the directors if all
4154 the members entitled to vote thereon shall consent in writing
4155 and a certificate of dissolution shall be delivered to the
4156 Secretary of State for filing pursuant to Section
4157 10A-3A-11.05.

4158 (g) In addition to the approval of the dissolution of a
4159 membership nonprofit corporation as set forth in subsections
4160 (a) through (f), the dissolution must also be approved in
4161 writing by a person or group of persons whose approval is
4162 required under the certificate of incorporation in accordance
4163 with Section 10A-3A-11.04.

4164 §10A-3A-11.03. Approval of dissolution of nonmembership
4165 nonprofit corporations.

4166 Except as otherwise provided in the certificate of
4167 incorporation:

4168 (1) the dissolution of a nonmembership nonprofit
4169 corporation may be approved by the board of directors; and

4170 (2) the dissolution of the nonmembership nonprofit
4171 corporation approved by the board of directors under this
4172 section must also be approved by those persons whose approval



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4173 is required by the certificate of incorporation in accordance
4174 with Section 10A-3A-11.04.

4175 §10A-3A-11.04. Approval by specified person or group of
4176 persons.

4177 (a) The certificate of incorporation of a membership
4178 nonprofit corporation may require that a dissolution of a
4179 membership nonprofit corporation under Section 10A-3A-11.02 be
4180 approved in writing by a specified person or group of persons
4181 in addition to the board of directors and members.

4182 (b) The certificate of incorporation of a nonmembership
4183 nonprofit corporation may require that a dissolution of a
4184 nonmembership nonprofit corporation under Section 10A-3A-11.03
4185 be approved in writing by a specified person or group of
4186 persons in addition to the board of directors.

4187 (c) A requirement in the certificate of incorporation
4188 described in subsection (a) or (b) of this section may only be
4189 approved by the written approval of the specified person or
4190 group of persons.

4191 §10A-3A-11.05. Certificate of dissolution.

4192 (a) At any time after dissolution is authorized, the
4193 nonprofit corporation may dissolve by delivering to the
4194 Secretary of State for filing a certificate of dissolution
4195 setting forth:

4196 (1) the name of the nonprofit corporation;

4197 (2) the date that dissolution was authorized;

4198 (3) if dissolution of a membership nonprofit

4199 corporation was approved in accordance with Section

4200 10A-3A-11.02, a statement that the proposal to dissolve was



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4201 duly approved in the manner required by this chapter and by
4202 the certificate of incorporation;

4203 (4) if dissolution of a nonmembership nonprofit
4204 corporation was approved in accordance with Section
4205 10A-3A-11.03, a statement that the proposal to dissolve was
4206 duly approved in the manner required by this chapter and by
4207 the certificate of incorporation;

4208 (5) if dissolution of a nonprofit corporation was
4209 approved in accordance with Section 10A-3A-11.02 or Section
4210 10A-3A-11.03, and the certificate of incorporation required
4211 the dissolution to also be approved by a specified person or
4212 group of persons in accordance with Section 10A-3A-11.04, a
4213 statement that the proposal to dissolve was duly approved by
4214 the manner required by this chapter and by the certificate of
4215 incorporation; and

4216 (6) the unique identifying number or other designation
4217 as assigned by the Secretary of State.

4218 (b) The certificate of dissolution shall take effect at
4219 the effective date determined in accordance with Article 4 of
4220 Chapter 1. A nonprofit corporation is dissolved upon the
4221 effective date of its certificate of dissolution.

4222 (c) For purposes of this Division A of this Article 11,
4223 "dissolved nonprofit corporation" means a nonprofit
4224 corporation whose certificate of dissolution has become
4225 effective and includes a successor entity to which the
4226 remaining assets of the nonprofit corporation are transferred
4227 subject to its liabilities for purposes of liquidation.

4228 §10A-3A-11.06. Revocation of dissolution.



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4229 (a) A nonprofit corporation may revoke its dissolution
4230 within 120 days after its effective date and be reinstated.

4231 (b) Revocation of dissolution and reinstatement shall
4232 be authorized in the same manner as the dissolution was
4233 authorized unless that authorization permitted revocation and
4234 reinstatement by action of the board of directors alone, in
4235 which event the board of directors may revoke the dissolution
4236 and effect the reinstatement without member action and without
4237 the action of the specified person or group of persons set
4238 forth in the certificate of incorporation in accordance with
4239 Section 10A-3A-11.04.

4240 (c) After the revocation of dissolution and
4241 reinstatement is authorized, the nonprofit corporation may
4242 revoke the dissolution and effect the reinstatement by
4243 delivering to the Secretary of State for filing a certificate
4244 of revocation of dissolution and reinstatement, together with
4245 a copy of its certificate of dissolution, that sets forth:

4246 (1) the name of the nonprofit corporation;

4247 (2) the effective date of the dissolution that was
4248 revoked;

4249 (3) the date that the revocation of dissolution and
4250 reinstatement was authorized;

4251 (4) if the nonprofit corporation's board of directors
4252 (or incorporators) revoked the dissolution and effected the
4253 reinstatement, a statement to that effect;

4254 (5) if the nonprofit corporation's board of directors
4255 revoked a dissolution and effected the reinstatement as
4256 authorized by the members and any specified person or group of



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4257 persons set forth in the certificate of incorporation in
4258 accordance with Section 10A-3A-11.04, a statement that
4259 revocation and reinstatement was permitted by action by the
4260 board of directors alone pursuant to that authorization;

4261 (6) if member action was required to revoke the
4262 dissolution and effect the reinstatement, a statement that the
4263 revocation and reinstatement was duly approved by the members
4264 in the manner required by this chapter and by the certificate
4265 of incorporation;

4266 (7) if the action of a specified person or group of
4267 persons set forth in the certificate of incorporation in
4268 accordance with Section 10A-3A-11.04 was required to revoke
4269 the dissolution and effect the reinstatement, a statement that
4270 the revocation and reinstatement was duly approved by that
4271 specified person or group of persons in the manner required by
4272 this chapter and by the certificate of incorporation; and

4273 (8) the unique identifying number or other designation
4274 as assigned by the Secretary of State.

4275 (d) The certificate of revocation of dissolution and
4276 reinstatement shall take effect at the effective date
4277 determined in accordance with Article 4 of Chapter 1.
4278 Revocation of dissolution and reinstatement is effective upon
4279 the effective date of the certificate of revocation of
4280 dissolution and reinstatement.

4281 (e) (1) Subject to subsection (e) (2), upon revocation
4282 and reinstatement, the nonprofit corporation shall be deemed
4283 for all purposes to have continued its activities and affairs
4284 as if dissolution had never occurred; and each right inuring



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4285 to, and each debt, obligation, and liability incurred by, the
4286 nonprofit corporation after the dissolution shall be
4287 determined as if the dissolution had never occurred.

4288 (2) The rights of persons acting in reliance on the
4289 dissolution before those persons had notice of the revocation
4290 and reinstatement shall not be adversely affected by the
4291 revocation and reinstatement.

4292 (f) If the nonprofit corporation is listed in the
4293 Secretary of State's records as a nonprofit corporation that
4294 has been dissolved, then the name of the nonprofit corporation
4295 following revocation and reinstatement shall be that nonprofit
4296 corporation name at the time of revocation and reinstatement
4297 if that nonprofit corporation name complies with Article 5 of
4298 Chapter 1 at the time of revocation and reinstatement. If that
4299 nonprofit corporation name does not comply with Article 5 of
4300 Chapter 1, the name of the nonprofit corporation following
4301 revocation and reinstatement shall be that nonprofit
4302 corporation name followed by the word "reinstated."

4303 §10A-3A-11.07. Effect of dissolution.

4304 (a) A dissolved nonprofit corporation continues its
4305 existence as a nonprofit corporation but may not carry on any
4306 activity except as is appropriate to wind up and liquidate its
4307 activities and affairs, including:

4308 (1) collecting its assets;

4309 (2) disposing of its properties that will not be
4310 distributed in kind;

4311 (3) discharging or making provisions for discharging
4312 its liabilities;



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4313 (4) distributing its remaining property among as
4314 required by law, its certificate of incorporation, bylaws, and
4315 as approved when the dissolution was authorized; and

4316 (5) doing every other act necessary to wind up and
4317 liquidate its activities and affairs.

4318 (b) In winding up its activities and affairs, a
4319 dissolved nonprofit corporation may:

4320 (1) preserve the nonprofit corporation's activities and
4321 affairs and property as a going concern for a reasonable time;

4322 (2) prosecute, defend, or settle actions or proceedings
4323 whether civil, criminal, or administrative;

4324 (3) transfer the nonprofit corporation's assets;

4325 (4) resolve disputes by mediation or arbitration; and

4326 (5) merge or convert in accordance with Article 12 or
4327 13 of this chapter or Article 8 of Chapter 1.

4328 (c) Dissolution of a nonprofit corporation does not:

4329 (1) transfer title to the nonprofit corporation's
4330 property;

4331 (2) subject its directors or officers to standards of
4332 conduct different from those prescribed in Article 8;

4333 (3) change:

4334 (i) quorum or voting requirements for its board of
4335 directors or members;

4336 (ii) provisions for selection, resignation, or removal
4337 of its directors or officers or both; or

4338 (iii) provisions for amending its bylaws;

4339 (4) prevent commencement of a proceeding by or against
4340 the nonprofit corporation in its corporate name;



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4341 (5) abate or suspend a proceeding pending by or against
4342 the nonprofit corporation on the effective date of
4343 dissolution; or

4344 (6) terminate the authority of the registered agent of
4345 the nonprofit corporation.

4346 (d) A distribution in liquidation under this section
4347 may only be made by a dissolved nonprofit corporation.

4348 §10A-3A-11.08. Known claims against dissolved nonprofit
4349 corporation.

4350 (a) A dissolved nonprofit corporation may dispose of
4351 any known claims against it by following the procedures
4352 described in subsection (b) at any time after the effective
4353 date of the dissolution of the nonprofit corporation.

4354 (b) A dissolved nonprofit corporation may give written
4355 notice of the dissolution to the holder of any known claim.
4356 The notice must:

4357 (1) identify the dissolved nonprofit corporation;

4358 (2) describe the information required to be included in
4359 a claim;

4360 (3) provide a mailing address to which the claim is to
4361 be sent;

4362 (4) state the deadline, which may not be fewer than 120
4363 days from the effective date of the notice, by which the
4364 dissolved nonprofit corporation must receive the claim; and

4365 (5) state that if not sooner barred, the claim will be
4366 barred if not received by the deadline.

4367 (c) Unless sooner barred by any other statute limiting
4368 actions, a claim against a dissolved nonprofit corporation is



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4369 barred:

4370 (1) if a claimant who was given notice under subsection
4371 (b) does not deliver the claim to the dissolved nonprofit
4372 corporation by the deadline; or

4373 (2) if a claimant whose claim was rejected by the
4374 dissolved nonprofit corporation does not commence a proceeding
4375 to enforce the claim within 90 days from the effective date of
4376 the rejection notice.

4377 (d) For purposes of this section, "known claim" or
4378 "claim" includes unliquidated claims, but does not include a
4379 contingent liability that has not matured so that there is no
4380 immediate right to bring suit or a claim based on an event
4381 occurring after the effective date of dissolution.

4382 (e) Nothing in this section shall be deemed to extend
4383 any otherwise applicable statute of limitations.

4384 §10A-3A-11.09. Other claims against dissolved nonprofit
4385 corporation.

4386 (a) A dissolved nonprofit corporation may publish
4387 notice of its dissolution and request that persons with claims
4388 against the dissolved nonprofit corporation present them in
4389 accordance with the notice.

4390 (b) The notice authorized by subsection (a) must:

4391 (1) be published at least one time in a newspaper of
4392 general circulation in the county in which the dissolved
4393 nonprofit corporation's principal office is located or, if it
4394 has none in this state, in the county in which the nonprofit
4395 corporation's most recent registered office is located;

4396 (2) describe the information that must be included in a



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4397 claim and provide a mailing address to which the claim is to
4398 be sent; and

4399 (3) state that if not sooner barred, a claim against
4400 the dissolved nonprofit corporation will be barred unless a
4401 proceeding to enforce the claim is commenced within two years
4402 after the publication of the notice.

4403 (c) If a dissolved nonprofit corporation publishes a
4404 newspaper notice in accordance with subsection (b), unless
4405 sooner barred by any other statute limiting actions, the claim
4406 of each of the following claimants is barred unless the
4407 claimant commences a proceeding to enforce the claim against
4408 the dissolved nonprofit corporation within two years after the
4409 publication date of the newspaper notice:

4410 (1) a claimant who was not given notice under Section
4411 10A-3A-11.08;

4412 (2) a claimant whose claim was timely sent to the
4413 dissolved nonprofit corporation but not acted on by the
4414 dissolved nonprofit corporation; and

4415 (3) a claimant whose claim is contingent at the
4416 effective date of the dissolution of the nonprofit
4417 corporation, or is based on an event occurring after the
4418 effective date of the dissolution of the nonprofit
4419 corporation.

4420 (d) A claim that is not barred under this section, any
4421 other statute limiting actions, or Section 10A-3A-11.08 may be
4422 enforced:

4423 (1) against a dissolved nonprofit corporation, to the
4424 extent of its undistributed assets; and



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4425 (2) except as provided in subsection (h), if the assets
4426 of a dissolved nonprofit corporation have been distributed
4427 after dissolution, against any person, other than a creditor
4428 of the dissolved nonprofit corporation, to whom the nonprofit
4429 corporation distributed its property to the extent of the
4430 distributee's pro rata share of the claim or the corporate
4431 assets distributed to the distributee in liquidation,
4432 whichever is less, but a distributee's total liability for all
4433 claims under this section may not exceed the total amount of
4434 assets distributed to the distributee.

4435 (e) A dissolved nonprofit corporation that published a
4436 notice under this section may file an application with the
4437 circuit court for the county in which the dissolved nonprofit
4438 corporation's principal office is located in this state and if
4439 the dissolved nonprofit corporation does not have a principal
4440 office within this state, with the circuit court for the
4441 county in which the dissolved nonprofit corporation's most
4442 recent registered office is located, for a determination of
4443 the amount and form of security to be provided for payment of
4444 claims that are contingent or have not been made known to the
4445 dissolved nonprofit corporation or that are based on an event
4446 occurring after the effective date of the dissolution of the
4447 nonprofit corporation but that, based on the facts known to
4448 the dissolved nonprofit corporation, are reasonably estimated
4449 to arise after the effective date of the dissolution of the
4450 nonprofit corporation. Provision need not be made for any
4451 claim that is or is reasonably anticipated to be barred under
4452 subsection (c).



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4453 (f) Within 10 days after the filing of the application
4454 provided for in subsection (e), notice of the proceeding shall
4455 be given by the dissolved nonprofit corporation to each
4456 potential claimant as described in subsection (e).

4457 (g) The circuit court under subsection (e) may appoint
4458 a guardian ad litem to represent all claimants whose
4459 identities are unknown in any proceeding brought under this
4460 section. The reasonable fees and expenses of the guardian,
4461 including all reasonable expert witness fees, shall be paid by
4462 the dissolved nonprofit corporation.

4463 (h) Provision by the dissolved nonprofit corporation
4464 for security in the amount and the form ordered by the circuit
4465 court under subsection (e) shall satisfy the dissolved
4466 nonprofit corporation's obligation with respect to claims that
4467 are contingent, have not been made known to the dissolved
4468 nonprofit corporation, or are based on an event occurring
4469 after the effective date of the dissolution of the nonprofit
4470 corporation, and those claims may not be enforced against a
4471 distributee to whom assets have been distributed by the
4472 dissolved nonprofit corporation after the effective date of
4473 the dissolution of the nonprofit corporation.

4474 (i) Nothing in this section shall be deemed to extend
4475 any otherwise applicable statute of limitations.

4476 (j) If a claim has been satisfied, disposed of, or
4477 barred under Section 10A-3A-11.08, this section, or other law,
4478 the person or persons designated to wind up the affairs of a
4479 dissolved nonprofit corporation, and the distributees
4480 receiving assets from the dissolved nonprofit corporation,



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4481 shall not be liable for that claim.

4482 §10A-3A-11.10. Director duties.

4483 (a) Directors shall cause the dissolved nonprofit
4484 corporation to discharge or make reasonable provision for the
4485 payment of claims and make distributions in liquidation of
4486 assets to the persons designated to receive the assets of the
4487 dissolved nonprofit corporation after payment or provision for
4488 claims.

4489 (b) Directors of a dissolved nonprofit corporation
4490 which has disposed of claims under Section 10A-3A-11.08 or
4491 Section 10A-3A-11.09 shall not be liable for breach of Section
4492 10A-3A-11.10(a) with respect to claims against the dissolved
4493 nonprofit corporation that are barred or satisfied under
4494 Section 10A-3A-11.08 or Section 10A-3A-11.09.

4495 DIVISION B. JUDICIAL DISSOLUTION.

4496 §10A-3A-11.20. Grounds for judicial dissolution.

4497 The circuit court for the county in which the nonprofit
4498 corporation's principal office is located in this state, and
4499 if none in this state, the circuit court for the county in
4500 which the nonprofit corporation's most recent registered
4501 office is located may dissolve a nonprofit corporation:

4502 (1) in a proceeding by the Attorney General if it is
4503 established that:

4504 (i) the nonprofit corporation obtained its certificate
4505 of incorporation through fraud; or

4506 (ii) the nonprofit corporation has continued to exceed
4507 or abuse the authority conferred upon it by law;

4508 (2) in a proceeding by a director, or members holding



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4509 at least 25 percent of the aggregate voting power of all of
4510 the members entitled to vote on dissolution, unless the
4511 certificate of incorporation reduces or eliminates that
4512 percentage requirement, if it is established that:

4513 (i) the directors are deadlocked in the management of
4514 the corporate affairs, the members, if any, are unable to
4515 break the deadlock, and irreparable injury to the nonprofit
4516 corporation or its mission is threatened or being suffered,
4517 because of the deadlock;

4518 (ii) the directors or those in control of the nonprofit
4519 corporation have acted, are acting, or will act in a manner
4520 that is illegal, oppressive, or fraudulent;

4521 (iii) the members are deadlocked in voting power and
4522 have failed, for a period that includes at least two
4523 consecutive annual meeting dates, to elect successors to
4524 directors whose terms have expired;

4525 (iv) the corporate assets are being misapplied or
4526 wasted;

4527 (v) the nonprofit corporation has insufficient assets
4528 to continue its activities and affairs;

4529 (vi) the nonprofit corporation is not able to assemble
4530 a quorum of directors or members; or

4531 (vii) the nonprofit corporation has abandoned its
4532 activities and affairs and has failed within a reasonable time
4533 to liquidate and distribute its assets and dissolve; or

4534 (3) in a proceeding by a creditor if it is established
4535 that:

4536 (i) the creditor's claim has been reduced to judgment,



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4537 the execution on the judgment returned unsatisfied, and the
4538 nonprofit corporation is insolvent; or

4539 (ii) the nonprofit corporation has admitted in writing
4540 that the creditor's claim is due and owing and the nonprofit
4541 corporation is insolvent;

4542 (4) in a proceeding by the nonprofit corporation to
4543 have its voluntary dissolution continued under court
4544 supervision; or

4545 (5) in a proceeding by an interested person, as
4546 determined by the court, if it is established that:

4547 (i) there is not at least one member or director of the
4548 nonprofit corporation; and

4549 (ii) a member or director cannot be elected in
4550 accordance with the certificate of incorporation or bylaws of
4551 the nonprofit corporation.

4552 §10A-3A-11.21. Procedure for judicial dissolution.

4553 (a) Venue for a proceeding by the Attorney General to
4554 dissolve a nonprofit corporation lies in circuit court for the
4555 county in which the nonprofit corporation's principal office
4556 is located in this state, and if none in this state, in the
4557 circuit court for the county in which the nonprofit
4558 corporation's most recent registered office is located. Venue
4559 for a proceeding brought by any other party named in Section
4560 10A-3A-11.20 lies in circuit court for the county in which the
4561 nonprofit corporation's principal office is located in this
4562 state, and if none in this state, in the circuit court for the
4563 county in which the nonprofit corporation's most recent
4564 registered office is located.



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4565 (b) It is not necessary to make members or directors
4566 parties to a proceeding to dissolve a nonprofit corporation
4567 unless relief is sought against them individually.

4568 (c) A court in a proceeding brought to dissolve a
4569 nonprofit corporation may issue injunctions, appoint a
4570 receiver or custodian during the proceeding with all powers
4571 and duties the court directs, take other action required to
4572 preserve the corporate assets wherever located, and carry on
4573 the activities and affairs of the nonprofit corporation until
4574 a full hearing can be held.

4575 §10A-3A-11.22. Receivership; custodianship;
4576 continuation.

4577 (a) A court in a judicial proceeding brought to
4578 dissolve a nonprofit corporation may (i) appoint one or more
4579 receivers to wind up and liquidate, (ii) appoint one or more
4580 custodians to manage the activities and affairs of the
4581 nonprofit corporation, or (iii) appoint one or more custodians
4582 to determine whether the nonprofit corporation should be
4583 dissolved. The court shall hold a hearing, after notifying all
4584 parties to the proceeding and any interested persons
4585 designated by the court, before appointing a receiver or
4586 custodian. The court appointing a receiver or custodian has
4587 jurisdiction over the nonprofit corporation and all of its
4588 property wherever located.

4589 (b) The court may appoint an individual, nonprofit
4590 corporation, or other entity as a receiver or custodian,
4591 which, if a foreign entity, must be registered to do business
4592 in this state. The court may require the receiver or custodian



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4593 to post bond, with or without sureties, in an amount the court
4594 directs.

4595 (c) The court shall describe the powers and duties of
4596 the receiver or custodian in its appointing order, which may
4597 be amended from time to time. Among other powers:

4598 (1) the receiver: (i) may dispose of all or any part of
4599 the assets of the nonprofit corporation wherever located, at a
4600 public or private sale; and (ii) may sue and defend in the
4601 receiver's own name as receiver of the nonprofit corporation
4602 in all courts of this state.

4603 (2) the custodian may exercise all of the powers of the
4604 nonprofit corporation, through or in place of its board of
4605 directors, to the extent necessary to manage the affairs of
4606 the nonprofit corporation in the best interests of the mission
4607 of the nonprofit corporation and in the best interests of the
4608 nonprofit corporation, its members, if any, and creditors.

4609 (3) in lieu of dissolution, the court may authorize a
4610 custodian in a proceeding brought under Section 10A-3A-11.20,
4611 to determine whether the nonprofit corporation should be
4612 dissolved. If the custodian determines that the nonprofit
4613 corporation should not be dissolved, the custodian shall
4614 prepare and present to the court a plan of operation which
4615 shall set forth:

4616 (i) the reasons that it is in the best interest of the
4617 nonprofit corporation to continue its activities and affairs
4618 and not be dissolved;

4619 (ii) that the continuation of the activities and
4620 affairs of the nonprofit corporation will not be in



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4621 contravention of the certificate of incorporation or bylaws of
4622 the nonprofit corporation;

4623 (iii) any amendments to the certificate of
4624 incorporation or bylaws necessary for the nonprofit
4625 corporation to continue its activities and affairs in
4626 accordance with the plan of operation;

4627 (iv) for a membership nonprofit corporation that does
4628 not have any members, the name of at least one person proposed
4629 to be a member; and

4630 (v) for a nonmembership nonprofit corporation that does
4631 not have any directors, the name of at least one person
4632 proposed to be a director.

4633 (4) the receiver or custodian shall have any other
4634 powers and duties as the court may provide in the appointing
4635 order, which may be amended from time to time.

4636 (d) The court during a receivership may redesignate the
4637 receiver a custodian and during a custodianship may
4638 redesignate the custodian a receiver.

4639 (e) The court from time to time during the receivership
4640 or custodianship may order compensation paid and expenses paid
4641 or reimbursed to the receiver or custodian from the assets of
4642 the nonprofit corporation or proceeds from the sale of the
4643 assets.

4644 §10A-3A-11.23. Decree of dissolution or continuation.

4645 (a) If after a hearing the court determines that one or
4646 more grounds for judicial dissolution described in Section
4647 10A-3A-11.20 exist, the court may enter a decree dissolving
4648 the nonprofit corporation and specifying the effective date of



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4649 the dissolution. If the court enters a decree dissolving the
4650 nonprofit corporation, then the clerk of the court shall
4651 deliver a certified copy of the decree to the Secretary of
4652 State for filing.

4653 (b) After entering the decree of dissolution, the court
4654 shall direct the winding up and liquidation of the nonprofit
4655 corporation's activities and affairs in accordance with
4656 Section 10A-3A-11.07 and the notification of claimants in
4657 accordance with Sections 10A-3A-11.08 and 10A-3A-11.09.

4658 (c) If after a hearing the court determines pursuant to
4659 Section 10A-3A-11.22(c)(3) that a nonprofit corporation should
4660 not be dissolved, but should continue its activities and
4661 affairs, the court shall issue a decree naming at least one
4662 person as a member of the nonprofit corporation if it is a
4663 membership nonprofit corporation, naming at least one director
4664 if the nonprofit corporation is a nonmembership nonprofit
4665 corporation, and such other matters as the court may
4666 determine. If the court approves an amendment to the
4667 certificate of incorporation in accordance with Section
4668 10A-3A-11.22(c)(3), then the court's decree shall also set
4669 forth that amendment, specifying the effective date of that
4670 amendment, and the clerk of the court shall deliver a
4671 certified copy of the decree to the Secretary of State for
4672 filing.

4673 §10A-3A-11.24. Deposit with State Treasurer.

4674 Assets of a dissolved nonprofit corporation that should
4675 be transferred to a creditor, claimant, or a person designated
4676 to receive the assets of the nonprofit corporation who cannot



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4677 be found or who is not competent to receive them shall be
4678 reduced to cash and deposited with the State Treasurer or
4679 other appropriate state official for safekeeping. When the
4680 creditor, claimant, or person designated to receive the assets
4681 of the nonprofit corporation furnishes satisfactory proof of
4682 entitlement to the amount deposited, the State Treasurer or
4683 other appropriate state official shall pay that person or that
4684 person's representative that amount.

ARTICLE 12. MERGERS.

§10A-3A-12.01. Definitions.

4687 As used in this article, unless the context otherwise
4688 requires, the following terms mean:

4689 (1) CONSTITUENT CORPORATION means a constituent
4690 organization that is a nonprofit corporation.

4691 (2) CONSTITUENT ORGANIZATION means an organization that
4692 is party to a merger under this article.

4693 (3) GOVERNING STATUTE of an organization means the
4694 statute that governs the organization's internal affairs.

4695 (4) ORGANIZATION means a general partnership, including
4696 a limited liability partnership; limited partnership,
4697 including a limited liability limited partnership; limited
4698 liability company; business trust; business corporation;
4699 nonprofit corporation; professional corporation; or any other
4700 person having a governing statute. The term includes domestic
4701 and foreign organizations whether or not organized for profit.

4702 (5) ORGANIZATIONAL DOCUMENTS means:

4703 (A) for a general partnership or foreign general
4704 partnership, its partnership agreement and if applicable, its



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4705 registration as a limited liability partnership or a foreign
4706 limited liability partnership;

4707 (B) for a limited partnership or foreign limited
4708 partnership, its certificate of formation and partnership
4709 agreement, or comparable writings as provided in its governing
4710 statute;

4711 (C) for a limited liability company or foreign limited
4712 liability company, its certificate of formation and limited
4713 liability company agreement, or comparable writings as
4714 provided in its governing statute;

4715 (D) for a business or statutory trust or foreign
4716 business or statutory trust its agreement of trust and
4717 declaration of trust, or comparable writings as provided in
4718 its governing statute;

4719 (E) for a business corporation or foreign business
4720 corporation, its certificate of incorporation, bylaws, and
4721 other agreements among its stockholders that are authorized by
4722 its governing statute, or comparable writings as provided in
4723 its governing statute;

4724 (F) for a nonprofit corporation or foreign nonprofit
4725 corporation, its certificate of incorporation, bylaws, and
4726 other agreements that are authorized by its governing statute,
4727 or comparable writings as provided in its governing statute;

4728 (G) for a professional corporation or foreign
4729 professional corporation, its certificate of incorporation,
4730 bylaws, and other agreements among its stockholders that are
4731 authorized by its governing statute, or comparable writings as
4732 provided in its governing statute; and



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4733 (H) for any other organization, the basic writings that
4734 create the organization and determine its internal governance
4735 and the relations among the persons that own it, have an
4736 interest in it, or are members of it.

4737 (6) SURVIVING ORGANIZATION means an organization into
4738 which one or more other organizations are merged under this
4739 article, whether the organization pre-existed the merger or
4740 was created pursuant to the merger.

4741 §10A-3A-12.02. Merger.

4742 (a) A nonprofit corporation may merge with one or more
4743 other constituent organizations pursuant to this article, and
4744 a plan of merger, if:

4745 (1) the governing statute of each of the other
4746 organizations authorizes the merger;

4747 (2) the merger is not prohibited by the law of a
4748 jurisdiction that enacted any of those governing statutes; and

4749 (3) each of the other organizations complies with its
4750 governing statute in effecting the merger.

4751 (b) A plan of merger must be in writing and must
4752 include:

4753 (1) the name, type of organization, and mailing address
4754 of the principal office of each constituent organization, the
4755 jurisdiction of the governing statute of each constituent
4756 organization, and the respective unique identifying number or
4757 other designation as assigned by the Secretary of State, if
4758 any, of each constituent organization;

4759 (2) the name, type of organization, and mailing address
4760 of the principal office of the surviving organization, the



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4761 unique identifying number or other designation as assigned by
4762 the Secretary of State, if any, of the surviving organization,
4763 the jurisdiction of the governing statute of the surviving
4764 organization, and, if the surviving organization is created
4765 pursuant to the merger, a statement to that effect;

4766 (3) the terms and conditions of the merger, including
4767 the manner and basis for converting the interests in each
4768 constituent organization into any combination of money,
4769 securities, interests in the surviving organization, and other
4770 consideration as allowed by subsection (c);

4771 (4) if the surviving organization is to be created
4772 pursuant to the merger, the surviving organization's
4773 organizational documents; and

4774 (5) if the surviving organization is not to be created
4775 pursuant to the merger, any amendments to be made by the
4776 merger to the surviving organization's organizational
4777 documents.

4778 (c) In connection with a merger, rights, securities, or
4779 interests, if any, in a constituent organization may be
4780 exchanged for or converted into cash, property, rights,
4781 securities, or interests, if any, in the surviving
4782 organization, or, in addition to or in lieu thereof, may be
4783 exchanged for or converted into cash, property, rights,
4784 securities, or interests, if any, in another organization, or
4785 may be cancelled.

4786 (d) In addition to the requirements of subsection (b),
4787 a plan of merger may contain any other provision not
4788 prohibited by law.



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4789 (e) Terms of a plan of merger may be made dependent on
4790 facts objectively ascertainable outside the plan in accordance
4791 with Section 10A-3A-1.04(c)(5).

4792 (f) A plan of merger may be amended only with the
4793 consent of each constituent organization, except as provided
4794 in the plan. A domestic constituent organization may approve
4795 an amendment to a plan:

4796 (1) in the same manner as the plan was approved, if the
4797 plan does not provide for the manner in which it may be
4798 amended; or

4799 (2) in the manner provided in the plan, except that if
4800 the plan has been approved by the interest holders that were
4801 entitled to vote on, consent to, or approve of, the plan, then
4802 those interest holders are entitled to vote on, consent to, or
4803 approve of any amendment of the plan that will change:

4804 (i) the amount or kind of securities, interests,
4805 obligations, rights to acquire other interests or securities,
4806 cash, or other property to be received under the plan by the
4807 interest holders of a constituent organization;

4808 (ii) the certificate of incorporation of any nonprofit
4809 corporation, foreign nonprofit corporation, business
4810 corporation, foreign business corporation or the
4811 organizational documents of any other organization, that will
4812 be the surviving organization, except for changes permitted by
4813 Section 10A-3A-9.03(g) or by comparable provisions of the
4814 governing statute of the foreign nonprofit corporation,
4815 business corporation, foreign business corporation, or other
4816 organization; or



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4817 (iii) any of the other terms or conditions of the plan
4818 if the change would adversely affect the interest holders in
4819 any material respect.

4820 §10A-3A-12.03. Action on a plan of merger in a
4821 membership nonprofit corporation.

4822 In the case of a membership nonprofit corporation that
4823 is a constituent organization, the plan of merger shall be
4824 adopted in the following manner:

4825 (a) The plan of merger shall first be adopted by the
4826 board of directors.

4827 (b) Except as provided in subsection (h), the plan of
4828 merger shall then be approved by the members entitled to vote
4829 thereon. In submitting the plan of merger to the members for
4830 approval, the board of directors shall recommend that the
4831 members approve the plan of merger, unless the board of
4832 directors makes a determination that because of conflicts of
4833 interest or other special circumstances it should not make a
4834 recommendation, in which case the board of directors shall
4835 inform the members of the basis for its so proceeding.

4836 (c) The board of directors may set conditions for the
4837 approval of the plan of merger by the members or the
4838 effectiveness of the plan of merger.

4839 (d) If the plan of merger is required to be approved by
4840 the members, and if the approval is to be given at a meeting,
4841 the membership nonprofit corporation shall notify each member
4842 who is entitled to vote, of the meeting of the members at
4843 which the plan of merger is to be submitted for approval. The
4844 notice must state that the purpose, or one of the purposes, of



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4845 the meeting is to consider the plan of merger and must contain
4846 or be accompanied by a copy or summary of the plan of merger.
4847 If the membership nonprofit corporation is to be merged into
4848 an existing nonprofit corporation, foreign nonprofit
4849 corporation, or other organization, the notice must also
4850 include or be accompanied by a copy or summary of the
4851 certificate of incorporation and bylaws or the organizational
4852 documents of that nonprofit corporation, foreign nonprofit
4853 corporation, or other organization. If the membership
4854 nonprofit corporation is to be merged with a nonprofit
4855 corporation, foreign nonprofit corporation, or other
4856 organization and a new nonprofit corporation, foreign
4857 nonprofit corporation, or organization is to be created
4858 pursuant to the merger, the notice must include or be
4859 accompanied by a copy or a summary of the certificate of
4860 incorporation and bylaws or the organizational documents of
4861 the new nonprofit corporation, foreign nonprofit corporation,
4862 or other organization.

4863 (e) Unless the certificate of incorporation, or the
4864 board of directors acting pursuant to subsection (c), requires
4865 a greater vote or a greater quorum, approval of the plan of
4866 merger requires the approval of the members entitled to vote
4867 at a meeting at which a quorum exists consisting of a majority
4868 of the votes entitled to be cast on the plan of merger, and,
4869 if any class of membership interests entitled to vote as a
4870 separate group on the plan of merger, the approval of each
4871 separate voting group at a meeting at which a quorum of the
4872 voting group is present consisting of a majority of the votes



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4873 entitled to be cast on the merger by that voting group.

4874 (f) Subject to subsection (g), separate voting by
4875 voting groups is required:

4876 (1) on a plan of merger, by each class of membership
4877 interests that:

4878 (i) are to be converted under the plan of merger into
4879 securities, interests, obligations, rights to acquire other
4880 securities or interests, cash, other property, or any
4881 combination of the foregoing; or

4882 (ii) are entitled to vote as a separate group on a
4883 provision in the plan of merger that constitutes a proposed
4884 amendment to the certificate of incorporation of a surviving
4885 nonprofit corporation that requires action by separate voting
4886 groups under Section 10A-3A-9.04; and

4887 (2) on a plan of merger, if the voting group is
4888 entitled under the certificate of incorporation or bylaws to
4889 vote as a voting group to approve a plan of merger,
4890 respectively.

4891 (g) The certificate of incorporation may expressly
4892 limit or eliminate the separate voting rights provided in
4893 subsection (f)(1)(i) and subsection (f)(2) as to any class of
4894 membership, except when the plan of merger includes what is or
4895 would be in effect an amendment subject to subsection
4896 (f)(1)(ii).

4897 (h) Unless the certificate of incorporation otherwise
4898 provides, approval by the membership nonprofit corporation's
4899 members of a plan of merger is not required if:

4900 (1) the membership nonprofit corporation will survive



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4901 the merger;

4902 (2) except for amendments that do not require member
4903 approval under Section 10A-3A-9.03(g) or the approval of a
4904 person or group of persons under Section 10A-3A-9.30, its
4905 certificate of incorporation will not be changed;

4906 (3) except for amendments that do not require member
4907 approval under Section 10A-3A-9.22 or the approval of a person
4908 or group of persons under Section 10A-3A-9.30, its bylaws will
4909 not be changed; and

4910 (4) each member of the membership nonprofit corporation
4911 whose membership interest was outstanding immediately before
4912 the effective date of the merger will hold the same number of
4913 membership interests, with identical preferences, rights, and
4914 limitations, immediately after the effective date of the
4915 merger.

4916 (i) In addition to the adoption and approval of the
4917 plan of merger as required by this section, the plan must also
4918 be approved in writing by a person or group of persons, if
4919 any, whose approval is required under Section 10A-3A-12.08.

4920 §10A-3A-12.04. Action on a plan of merger in a
4921 nonmembership nonprofit corporation.

4922 In the case of a merger of a nonmembership nonprofit
4923 corporation the plan of merger shall be adopted in the
4924 following manner:

4925 (a) The plan of merger shall be adopted by the board of
4926 directors; and

4927 (b) A plan of merger adopted by the board of directors
4928 under this section must also be approved in writing by a



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4929 person or group of persons, if any, whose approval is required
4930 under Section 10A-3A-12.08.

4931 §10A-3A-12.05. Statement of merger.

4932 (a) After a plan of merger has been adopted and
4933 approved as required by this article, then a statement of
4934 merger shall be signed by each party to the merger. The
4935 statement of merger must set forth:

4936 (1) the name, type of organization, and mailing address
4937 of the principal office of each constituent organization, the
4938 jurisdiction of the governing statute of each constituent
4939 organization, and the respective unique identifying number or
4940 other designation as assigned by the Secretary of State, if
4941 any, of each constituent organization;

4942 (2) the name, type of organization, and mailing address
4943 of the principal office of the surviving organization, the
4944 unique identifying number or other designation as assigned by
4945 the Secretary of State, if any, of the surviving organization,
4946 the jurisdiction of the governing statute of the surviving
4947 organization, and, if the surviving organization is created
4948 pursuant to the merger, a statement to that effect;

4949 (3) the date the merger is effective under the
4950 governing statute of the surviving organization;

4951 (4) if the surviving organization is to be created
4952 pursuant to the merger:

4953 (A) if it will be a nonprofit corporation, the
4954 nonprofit corporation's certificate of incorporation; or

4955 (B) if it will be an organization other than a
4956 nonprofit corporation, any organizational document that



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4957 creates the organization that is required to be in a public
4958 writing or in the case of a limited liability partnership, its
4959 statement of limited liability partnership;

4960 (5) if the surviving organization exists before the
4961 merger, any amendments provided for in the plan of merger for
4962 the organizational document that created the organization that
4963 are in a public writing;

4964 (6) a statement as to each constituent organization
4965 that the merger was approved as required by the organization's
4966 governing statute;

4967 (7) if the surviving organization is a foreign
4968 organization not authorized to conduct activities and affairs
4969 in this state, the street and mailing address of an office for
4970 the purposes of Section 10A-3A-12.06(b);

4971 (8) any additional information required by the
4972 governing statute of any constituent organization;

4973 (9) if the plan of merger required approval by the
4974 members of a membership nonprofit corporation that is a
4975 constituent organization, a statement that the plan was duly
4976 approved by the members and, if voting by any separate voting
4977 group was required, by each separate voting group, in the
4978 manner required by this chapter, the certificate of
4979 incorporation or bylaws;

4980 (10) if the plan of merger required approval by a
4981 person or group of persons as specified in the certificate of
4982 incorporation pursuant to Section 10A-3A-12.08, a statement
4983 that the plan was duly approved by that person or group of
4984 persons;



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4985 (11) if the plan of merger did not require approval by
4986 the members of a membership nonprofit corporation that is a
4987 constituent organization, a statement to that effect; and

4988 (12) a statement that the plan of merger will be
4989 furnished by the surviving organization, on request and
4990 without cost, to any member or owner of any constituent
4991 organization which is a party to the merger.

4992 (b) In addition to the requirements of subsection (a),
4993 a statement of merger may contain any other provision not
4994 prohibited by law.

4995 (c) The statement of merger shall be delivered to the
4996 Secretary of State for filing and, subject to subsection (d),
4997 the merger shall take effect at the effective date and time
4998 determined in accordance with Article 4 of Chapter 1.

4999 (d) With respect to a merger in which one or more
5000 foreign organizations is a constituent organization or a
5001 foreign organization created by the merger is the surviving
5002 organization, the merger itself shall become effective at the
5003 later of:

5004 (1) when all documents required to be filed in foreign
5005 jurisdictions to effect the merger have become effective, or

5006 (2) when the statement of merger takes effect.

5007 (e) A statement of merger filed under this section may
5008 be combined with any filing required under the governing
5009 statute governing any domestic organization involved in the
5010 transaction if the combined filing satisfies the requirements
5011 of this section, the other governing statute, and Article 4 of
5012 Chapter 1.



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5013 (f) A certified copy of the statement of merger
5014 required to be filed under this section may be filed in the
5015 real estate records in the office of the judge of probate in
5016 any county in which any constituent organization owned real
5017 property, without payment and without collection by the judge
5018 of probate of any deed or other transfer tax or fee. The judge
5019 of probate, however, shall be entitled to collect the filing
5020 fee of five dollars (\$5). Any filing shall evidence chain of
5021 title, but lack of filing shall not affect the surviving
5022 organization's title to real property.

5023 (g) A statement of conversion is a filing instrument
5024 under Chapter 1.

5025 (h) The filing fees for a statement of conversion shall
5026 be as set forth in Chapter 1.

5027 §10A-3A-12.06. Effect of merger.

5028 (a) When a merger becomes effective:

5029 (1) the surviving organization continues or, in the
5030 case of a surviving organization created pursuant to the
5031 merger, comes into existence;

5032 (2) each constituent organization that merges into the
5033 surviving organization ceases to exist as a separate entity;

5034 (3) except as provided in the plan of merger, all
5035 property owned by, and every contract right possessed by, each
5036 constituent organization that ceases to exist vests in the
5037 surviving organization without transfer, reversion, or
5038 impairment and the title to any property and contract rights
5039 vested by deed or otherwise in the surviving organization
5040 shall not revert, be in any way impaired, or be deemed to be a



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5041 transfer by reason of the merger;

5042 (4) all debts, obligations, and other liabilities of
5043 each constituent organization, other than the surviving
5044 organization, are debts, obligations, and liabilities of the
5045 surviving organization, and neither the rights of creditors,
5046 nor any liens upon the property of any constituent
5047 organization, shall be impaired by the merger;

5048 (5) an action or proceeding pending by or against any
5049 constituent organization continues as if the merger had not
5050 occurred and the name of the surviving organization may, but
5051 need not be, substituted in any pending proceeding for the
5052 name of any constituent organization whose separate existence
5053 ceased in the merger;

5054 (6) except as prohibited by law other than this chapter
5055 or as provided in the plan of merger, all the rights,
5056 privileges, franchises, immunities, powers, and purposes of
5057 each constituent organization, other than the surviving
5058 organization, vest in the surviving organization;

5059 (7) except as otherwise provided in the plan of merger,
5060 the terms and conditions of the plan of merger take effect;

5061 (8) except as otherwise agreed, if a constituent
5062 organization that is a nonprofit corporation ceases to exist,
5063 the merger does not dissolve the nonprofit corporation;

5064 (9) if the surviving organization is created pursuant
5065 to the merger:

5066 (A) if it is a nonprofit corporation, the certificate
5067 of incorporation and bylaws become effective; or

5068 (B) if it is an organization other than a nonprofit



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5069 corporation, the organizational documents that create the
5070 organization becomes effective;

5071 (10) if the surviving organization existed before the
5072 merger, any amendments provided for in the statement of merger
5073 for the organizational documents of that organization become
5074 effective;

5075 (11) the membership interests, if any, of each
5076 nonprofit corporation or foreign nonprofit corporation that is
5077 a constituent organization to the merger, and the interests in
5078 an organization that is a constituent organization, that are
5079 to be converted in accordance with the terms of the merger
5080 into securities, interests, obligations, rights to acquire
5081 other securities or interests, cash, other property, or any
5082 combination of the foregoing, are converted, and the former
5083 holders of membership interests, if any, or interests are
5084 entitled only to the rights provided to them by those terms or
5085 to any rights they may have under the governing statute
5086 governing that constituent organization;

5087 (12) if the surviving organization exists before the
5088 merger:

5089 (A) except as provided in the plan of merger, all
5090 property and contract rights of the surviving organization
5091 remain its property and contract rights without transfer,
5092 reversion, or impairment;

5093 (B) the surviving organization remains subject to all
5094 its debts, obligations, and other liabilities; and

5095 (C) except as provided by law other than this chapter
5096 or the plan of merger, the surviving organization continues to



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5097 hold all of its rights, privileges, franchises, immunities,
5098 powers and purposes.

5099 (b) A surviving organization that is a foreign
5100 organization:

5101 (1) consents to the jurisdiction of this state to
5102 enforce any debt, obligation, or other liability owed by a
5103 constituent organization, if before the merger the constituent
5104 organization was subject to suit in this state on the debt,
5105 obligation, or other liability; and

5106 (2) consents that if it fails to designate or maintain
5107 a registered agent, or the designated registered agent cannot
5108 with reasonable diligence be served, then the service of
5109 process on that surviving organization for the purposes of
5110 enforcing a debt, obligation, or other liability under this
5111 subsection and for enforcing the rights, if any, of members of
5112 each nonprofit corporation that is a constituent organization
5113 may be made in the same manner and has the same consequences
5114 as provided in Section 10A-1-5.35.

5115 §10A-3A-12.07. Abandonment of a merger.

5116 (a) After a plan of merger has been adopted and
5117 approved as required by this Article 12, and before the
5118 statement of merger has become effective, the plan may be
5119 abandoned by a nonprofit corporation that is a party to the
5120 plan without action by its members, if any, or a person or
5121 group of persons under Section 10A-3A-12.08, if any, in
5122 accordance with any procedures set forth in the plan of merger
5123 or, if no procedures are set forth in the plan, in the manner
5124 determined by the board of directors.



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5125 (b) If a merger is abandoned under subsection (a) after
5126 the statement of merger has been delivered to the Secretary of
5127 State for filing but before the merger has become effective, a
5128 statement of abandonment signed by all the parties that signed
5129 the statement of merger shall be delivered to the Secretary of
5130 State for filing before the statement of merger becomes
5131 effective. The statement shall take effect on filing and the
5132 merger shall be deemed abandoned and shall not become
5133 effective. The statement of abandonment must contain:

5134 (1) the name of each party to the merger;

5135 (2) the date on which the statement of merger was filed
5136 by the Secretary of State; and

5137 (3) a statement that the merger has been abandoned in
5138 accordance with this section.

5139 §10A-3A-12.08. Approval by specified person or group of
5140 persons.

5141 (a) The certificate of incorporation of a membership
5142 nonprofit corporation may require that a merger under this
5143 article or under Article 8 of Chapter 1 be approved in writing
5144 by a specified person or group of persons in addition to the
5145 board of directors and members.

5146 (b) The certificate of incorporation of a nonmembership
5147 nonprofit corporation may require that a merger under this
5148 article or under Article 8 of Chapter 1 be approved in writing
5149 by a specified person or group of persons in addition to the
5150 board of directors.

5151 (c) A requirement in the certificate of incorporation
5152 described in subsections (a) or (b) of this section may only



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5153 be approved by the written approval of the specified person or
5154 group of persons.

5155 §10A-3A-12.09. Nonexclusive.

5156 This article is not exclusive. This article does not
5157 preclude a nonprofit corporation from merging under law other
5158 than this chapter.

5159 ARTICLE 13. CONVERSIONS.

5160 §10A-3A-13.01. Definitions.

5161 As used in this article, unless the context otherwise
5162 requires, the following terms mean:

5163 (1) CONVERTED ORGANIZATION means the organization into
5164 which a converting organization converts pursuant to this
5165 article.

5166 (2) CONVERTING NONPROFIT CORPORATION means a converting
5167 organization that is a nonprofit corporation.

5168 (3) CONVERTING ORGANIZATION means an organization that
5169 converts into another organization pursuant to this article.

5170 (4) GOVERNING STATUTE of an organization means the
5171 statute that governs the organization's internal affairs.

5172 (5) ORGANIZATION means a general partnership, including
5173 a limited liability partnership; limited partnership,
5174 including a limited liability limited partnership; limited
5175 liability company; business trust; business corporation;
5176 nonprofit corporation; professional corporation; or any other
5177 person having a governing statute. The term includes domestic
5178 and foreign organizations whether or not organized for profit.

5179 (6) ORGANIZATIONAL DOCUMENTS means:

5180 (A) for a general partnership or foreign general



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5181 partnership, its partnership agreement and if applicable, its
5182 registration as a limited liability partnership or a foreign
5183 limited liability partnership;

5184 (B) for a limited partnership or foreign limited
5185 partnership, its certificate of formation and partnership
5186 agreement, or comparable writings as provided in its governing
5187 statute;

5188 (C) for a limited liability company or foreign limited
5189 liability company, its certificate of formation and limited
5190 liability company agreement, or comparable writings as
5191 provided in its governing statute;

5192 (D) for a business or statutory trust or foreign
5193 business or statutory trust, its agreement of trust and
5194 declaration of trust, or comparable writings as provided in
5195 its governing statute;

5196 (E) for a business corporation or foreign business
5197 corporation, its certificate of incorporation, bylaws, and
5198 other agreements among its stockholders that are authorized by
5199 its governing statute or comparable writings as provided in
5200 its governing statute;

5201 (F) for a nonprofit corporation or foreign nonprofit
5202 corporation, its certificate of incorporation, bylaws, and
5203 other agreements that are authorized by its governing statute,
5204 or comparable writings as provided in its governing statute;

5205 (G) for a professional corporation or foreign
5206 professional corporation, its certificate of incorporation,
5207 bylaws, and other agreements among its stockholders that are
5208 authorized by its governing statute or comparable writings as



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5209 provided in its governing statute; and

5210 (H) for any other organization, the basic writings that
5211 create the organization and determine its internal governance
5212 and the relations among the persons that own it, have an
5213 interest in it, or are members of it.

5214 §10A-3A-13.02. Conversion.

5215 (a) An organization other than a nonprofit corporation
5216 may convert to a nonprofit corporation, and a nonprofit
5217 corporation may convert to an organization other than a
5218 nonprofit corporation pursuant to this article, and a plan of
5219 conversion, if:

5220 (1) the governing statute of the organization that is
5221 not a nonprofit corporation authorizes the conversion;

5222 (2) the law of the jurisdiction governing the
5223 converting organization and the converted organization does
5224 not prohibit the conversion; and

5225 (3) the converting organization and the converted
5226 organization each comply with the governing statute and
5227 organizational documents applicable to that organization in
5228 effecting the conversion.

5229 (b) A plan of conversion must be in writing and must
5230 include:

5231 (1) the name, type of organization, and mailing address
5232 of the principal office of the converting organization and its
5233 unique identifying number or other designation as assigned by
5234 the Secretary of State, if any, before conversion;

5235 (2) the name, type of organization, and mailing address
5236 of the principal office of the converted organization after



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5237 conversion;

5238 (3) the terms and conditions of the conversion,
5239 including the manner and basis for converting interests, if
5240 any, in the converting organization into any combination of
5241 money, interests in the converted organization, and other
5242 consideration allowed in subsection (c); and

5243 (4) the organizational documents of the converted
5244 organization.

5245 (c) In connection with a conversion, rights or
5246 securities of or interests, if any, in the converting
5247 organization may be exchanged for or converted into cash,
5248 property, or rights or securities of or interests, if any, in
5249 the converted organization, or, in addition to or in lieu
5250 thereof, may be exchanged for or converted into cash,
5251 property, rights, securities, or interests, if any, in another
5252 organization, or may be cancelled.

5253 (d) In addition to the requirements of subsection (b),
5254 a plan of conversion may contain any other provision not
5255 prohibited by law.

5256 (e) Terms of a plan of conversion may be made dependent
5257 on facts objectively ascertainable outside the plan in
5258 accordance with Section 10A-3A-1.04(c).

5259 §10A-3A-13.03. Action on a plan of conversion in a
5260 membership nonprofit corporation.

5261 In the case of a conversion of a membership nonprofit
5262 corporation the plan of conversion shall be adopted in the
5263 following manner:

5264 (a) The plan of conversion shall first be adopted by



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5265 the board of directors.

5266 (b) The plan of conversion shall then be approved by
5267 the members entitled to vote thereon. In submitting the plan
5268 of conversion to the members for their approval, the board of
5269 directors must recommend that the members approve the plan of
5270 conversion, unless the board of directors makes a
5271 determination that because of conflicts of interest or other
5272 special circumstances it should not make a recommendation, in
5273 which case the board of directors shall inform the members of
5274 the basis for its so proceeding.

5275 (c) The board of directors may set conditions for the
5276 approval of the plan of conversion by the members or the
5277 effectiveness of the plan of conversion.

5278 (d) If the approval of the members is to be given at a
5279 meeting, the nonprofit corporation shall notify each member
5280 entitled to vote of the meeting of members at which the plan
5281 of conversion is to be submitted for approval. The notice must
5282 state that the purpose, or one of the purposes, of the meeting
5283 is to consider the plan of conversion and must contain or be
5284 accompanied by a copy or summary of the plan of conversion.
5285 The notice must include or be accompanied by a copy of the
5286 organizational documents of the converted organization which
5287 are to be in writing as they will be in effect immediately
5288 after the conversion.

5289 (e) Unless the certificate of incorporation or the
5290 board of directors acting pursuant to subsection (c), requires
5291 a greater vote or a greater quorum, approval of the plan of
5292 conversion requires (i) the approval of the members entitled



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5293 to vote at a meeting at which a quorum exists consisting of a
5294 majority of the votes entitled to be cast on the plan of
5295 conversion, and (ii) the approval of each class of members
5296 voting as a separate voting group at a meeting at which a
5297 quorum of the voting group exists consisting of a majority of
5298 the votes entitled to be cast on the plan of conversion by
5299 that voting group.

5300 (f) In addition to the adoption and approval of the
5301 plan of conversion as required by this section, the plan of
5302 conversion must also be approved in writing by a person or
5303 group of persons, if any, whose approval is required under
5304 Section 10A-3A-13.08.

5305 §10A-3A-13.04. Action on a plan of conversion in a
5306 nonmembership nonprofit corporation.

5307 In the case of a conversion of a nonmembership
5308 nonprofit corporation the plan of conversion shall be adopted
5309 in the following manner:

5310 (a) The plan of conversion shall be adopted by the
5311 board of directors; and

5312 (b) A plan of conversion adopted by the board of
5313 directors under this section must also be approved in writing
5314 by a person or group of persons, if any, whose approval is
5315 required under Section 10A-3A-13.08.

5316 §10A-3A-13.05. Statement of conversion; effectiveness.

5317 (a) After a plan of conversion is approved:

5318 (1) if the converting organization is an organization
5319 formed under, or its internal affairs are governed by, the
5320 laws of this state, the converting organization shall file a



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5321 statement of conversion in accordance with subsection (c),
5322 which statement of conversion must be signed in accordance
5323 with Section 10A-1-4.01 and which must include:

5324 (A) the name, type of organization, and mailing address
5325 of the principal office of the converting organization, and
5326 its unique identifying number or other designation as assigned
5327 by the Secretary of State, if any;

5328 (B) a statement that the converting organization has
5329 been converted into the converted organization;

5330 (C) the name and type of organization of the converted
5331 organization and the jurisdiction of its governing statute;

5332 (D) the street and mailing address of the principal
5333 office of the converted organization;

5334 (E) the date the conversion is effective under the
5335 governing statute of the converted organization;

5336 (F) a statement that the conversion was approved as
5337 required by this chapter;

5338 (G) a statement that the conversion was approved as
5339 required by the governing statute of the converted
5340 organization;

5341 (H) a statement that a copy of the plan of conversion
5342 will be furnished by the converted organization, on request
5343 and without cost, to any owner of the converting organization;
5344 and

5345 (I) if the converted organization is a foreign
5346 organization not authorized to conduct activities and affairs
5347 in this state, the street and mailing address of an office for
5348 the purposes of Section 10A-3A-13.07(b); and



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5349 (2) if the converted organization is a nonprofit
5350 corporation, the converting organization shall deliver for
5351 filing a certificate of incorporation in accordance with
5352 subsection (d), which certificate of incorporation must
5353 include, in addition to the information required by Section
5354 10A-3A-2.02:

5355 (A) a statement that the nonprofit corporation was
5356 converted from the converting organization;

5357 (B) the name and type of organization of the converting
5358 organization, the jurisdiction of the converting
5359 organization's governing statute, and the converting
5360 organization's unique identifying number or other designation
5361 as assigned by the Secretary of State, if any; and

5362 (C) a statement that the conversion was approved in a
5363 manner that complied with the converting organization's
5364 governing statute.

5365 (b) A conversion becomes effective:

5366 (1) if the converted organization is a nonprofit
5367 corporation, when the certificate of incorporation takes
5368 effect; and

5369 (2) if the converted organization is not a nonprofit
5370 corporation, as provided by the governing statute of the
5371 converted organization.

5372 (c) If the converting organization is an organization
5373 formed under, or its internal affairs are governed by, the
5374 laws of this state, then the converting organization shall
5375 deliver for filing the statement of conversion required under
5376 subsection (a) (1) to the Secretary of State.



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5377 (d) If the converted organization is a nonprofit
5378 corporation, then, the converting organization shall deliver
5379 for filing the certificate of incorporation required under
5380 subsection (a) (2) to the Secretary of State.

5381 (e) If the converting organization is required to
5382 deliver for filing a statement of conversion and a certificate
5383 of formation or a certificate of incorporation to the
5384 Secretary of State, then the converting organization shall
5385 deliver for filing the statement of conversion and the
5386 certificate of formation or certificate of incorporation to
5387 the Secretary of State simultaneously.

5388 (f) If:

5389 (1) the converting organization is a filing entity or a
5390 foreign filing entity registered to conduct activities and
5391 affairs in this state;

5392 (2) the converted organization will be a filing entity
5393 or a foreign filing entity registered to conduct activities
5394 and affairs in this state;

5395 (3) the name of the converting organization and the
5396 converted organization are to be the same, other than words,
5397 phrases, or abbreviations indicating the type of entity; and

5398 (4) the name of the converted organization complies
5399 with Division A of Article 5 of Chapter 1 or Section
5400 10A-1-7.07, as the case may be; then notwithstanding Division
5401 B of Article 5 of Chapter 1, no name reservation shall be
5402 required and the converted organization shall for all purposes
5403 of this title be entitled to utilize the name of the
5404 converting organization without any further action by the



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5405 converting organization or the converted organization.

5406 (g) A certified copy of any document required to be
5407 filed under this section may be filed in the real estate
5408 records in the office of the judge of probate in any county in
5409 which the converting organization owned real property, without
5410 payment and without collection by the judge of probate of any
5411 deed or other transfer tax or fee. The judge of probate shall,
5412 however, be entitled to collect a filing fee of five dollars
5413 (\$5). Any such filing with the judge of probate shall evidence
5414 chain of title, but lack of filing shall not affect the
5415 converted organization's title to such real property.

5416 (h) A statement of conversion is a filing instrument
5417 under Chapter 1.

5418 (i) The filing fees for a statement of conversion shall
5419 be as set forth in Chapter 1.

5420 §10A-3A-13.06. Amendment of plan of conversion;
5421 abandonment.

5422 (a) A plan of conversion of a converting organization
5423 that is a nonprofit corporation may be amended:

5424 (1) in the same manner as the plan was approved, if the
5425 plan does not provide for the manner in which it may be
5426 amended; or

5427 (2) in the manner provided in the plan, except that if
5428 the plan has been approved by the members that were entitled
5429 to vote on, consent to, or approve of the plan, then those
5430 members are entitled to vote on, consent to, or approve of any
5431 amendment of the plan that will change:

5432 (i) the amount or kind of interests, if any, or other



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5433 securities, obligations, rights to acquire interests, if any,
5434 or other securities, cash, other property, or any combination
5435 of the foregoing, to be received by the members, if any, of
5436 the converting nonprofit corporation under the plan;

5437 (ii) the organizational documents of the converted
5438 organization that will be in effect immediately after the
5439 conversion becomes effective, except for changes that do not
5440 require approval of the interest holders of the converted
5441 organization under its governing statute or organizational
5442 documents; or

5443 (iii) any other terms or conditions of the plan, if the
5444 change would adversely affect the members in any material
5445 respect.

5446 (b) After a plan of conversion has been approved by a
5447 converting organization that is a nonprofit corporation in the
5448 manner required by this article and before the statement of
5449 conversion becomes effective, the plan may be abandoned by the
5450 nonprofit corporation without action by its members, if any,
5451 or a person or group of persons under Section 10A-3A-13.08, in
5452 accordance with any procedures set forth in the plan or, if no
5453 procedures are set forth in the plan, in the manner determined
5454 by the board of directors.

5455 (c) If a conversion is abandoned after the statement of
5456 conversion has been delivered to the Secretary of State for
5457 filing and before the statement of conversion becomes
5458 effective, a statement of abandonment, signed by the
5459 converting organization, must be delivered to the Secretary of
5460 State for filing before the statement of conversion becomes



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5461 effective. The statement of abandonment takes effect on
5462 filing, and the conversion is abandoned and does not become
5463 effective. The statement of abandonment must contain:

5464 (1) the name of the converting organization;

5465 (2) the date on which the statement of conversion was
5466 filed by the Secretary of State; and

5467 (3) a statement that the conversion has been abandoned
5468 in accordance with this section.

5469 §10A-3A-13.07. Effect of conversion.

5470 (a) When a conversion takes effect:

5471 (1) all property and contract rights owned by the
5472 converting organization remain vested in the converted
5473 organization without transfer, reversion, or impairment, and
5474 the title to any property vested by deed or otherwise in the
5475 converting organization shall not revert or be in any way
5476 impaired by reason of the conversion;

5477 (2) all debts, obligations, or other liabilities of the
5478 converting organization continue as debts, obligations, or
5479 other liabilities of the converted organization and neither
5480 the rights of creditors, nor the liens upon the property of
5481 the converting organization shall be impaired by the
5482 conversion;

5483 (3) an action or proceeding pending by or against the
5484 converting organization continues as if the conversion had not
5485 occurred and the name of the converted organization may, but
5486 need not, be substituted for the name of the converting
5487 organization in any pending action or proceeding;

5488 (4) except as prohibited by law other than this



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5489 chapter, all of the rights, privileges, immunities, powers,
5490 and purposes of the converting organization remain vested in
5491 the converted organization;

5492 (5) except as otherwise provided in the plan of
5493 conversion, the terms and conditions of the plan of conversion
5494 take effect;

5495 (6) except as otherwise agreed, for all purposes of the
5496 laws of this state, the converting organization shall not be
5497 required to wind up its affairs or pay its liabilities and
5498 distribute its assets, and the conversion shall not be deemed
5499 to constitute a dissolution of the converting organization;

5500 (7) for all purposes of the laws of this state, the
5501 rights, privileges, powers, interests in property, debts,
5502 liabilities, and duties of the converting organization, shall
5503 be the rights, privileges, powers, interests in property,
5504 debts, liabilities, and duties of the converted organization,
5505 and shall not be deemed as a consequence of the conversion, to
5506 have been transferred to the converted organization;

5507 (8) if the converted organization is a nonprofit
5508 corporation, for all purposes of the laws of this state, the
5509 nonprofit corporation shall be deemed to be the same
5510 organization as the converting organization, and the
5511 conversion shall constitute a continuation of the existence of
5512 the converting organization in the form of a nonprofit
5513 corporation;

5514 (9) if the converted organization is a nonprofit
5515 corporation, the existence of the nonprofit corporation shall
5516 be deemed to have commenced on the date the converting



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5517 organization commenced its existence in the jurisdiction in
5518 which the converting organization was first created, formed,
5519 organized, incorporated, or otherwise came into being;

5520 (10) the conversion shall not affect the choice of law
5521 applicable to matters arising prior to conversion;

5522 (11) if the Secretary of State has assigned a unique
5523 identifying number or other designation to the converting
5524 organization and (i) the converted organization is formed
5525 pursuant to, or its internal affairs are governed by, the laws
5526 of this state, or (ii) the converted organization is, within
5527 30 days after the effective date of the conversion, registered
5528 to transact business in this state, then that unique
5529 identifying number or other designation shall continue to be
5530 assigned to the converted organization; and

5531 (12) the interests, if any, of the converting
5532 organization are reclassified into interests or other
5533 securities, obligations, rights to acquire interests or other
5534 securities, cash, or other property in accordance with the
5535 terms of the conversion, and the interest holders, if any, of
5536 the converting organization are entitled only to the rights
5537 provided to them by those terms and to any rights they may
5538 have under the governing statute of the converting
5539 organization.

5540 (b) A converted organization that is a foreign entity
5541 consents to the jurisdiction of the courts of this state to
5542 enforce any debt, obligation, or other liability for which the
5543 converting nonprofit corporation, is liable if, before the
5544 conversion, the converting nonprofit corporation was subject



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5545 to suit in this state on the debt, obligation, or other
5546 liability. If a converted organization is a foreign entity and
5547 fails to designate or maintain a registered agent, or the
5548 designated registered agent cannot with reasonable diligence
5549 be served, then service of process on that converted
5550 organization for the purposes of enforcing a debt, obligation,
5551 or other liability under this subsection may be made in the
5552 same manner and has the same consequences as provided in
5553 Section 10A-1-5.35.

5554 §10A-3A-13.08. Approval by specified person or group of
5555 persons.

5556 (a) The certificate of incorporation of a membership
5557 nonprofit corporation may require that a conversion under this
5558 article or under Article 8 of Chapter 1 be approved in writing
5559 by a specified person or group of persons in addition to the
5560 board of directors and members.

5561 (b) The certificate of incorporation of a nonmembership
5562 nonprofit corporation may require that a conversion under this
5563 article or under Article 8 of Chapter 1 be approved in writing
5564 by a specified person or group of persons in addition to the
5565 board of directors.

5566 (c) A requirement in the certificate of incorporation
5567 described in subsections (a) or (b) of this section may only
5568 be approved by the written approval of the specified person or
5569 group of persons.

5570 §10A-3A-13.09. Nonexclusive.

5571 This article is not exclusive. This article does not
5572 preclude a nonprofit corporation from converting under law



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5573 other than this chapter.

5574 ARTICLE 14. TRANSITIONAL PROVISIONS.

5575 §10A-3A-14.01. Application to existing nonprofit
5576 corporations.

5577 (a) Before January 1, 2025, this chapter governs only:

5578 (1) a nonprofit corporation incorporated on or after
5579 January 1, 2024; and

5580 (2) a nonprofit corporation incorporated before January
5581 1, 2024, which elects, by amending or restating that nonprofit
5582 corporation's certificate of incorporation, to be governed by
5583 this chapter.

5584 (b) On and after January 1, 2025, this chapter governs
5585 all existing nonprofit corporations incorporated under:

5586 (1) any general or special law of this state providing
5587 for the incorporation of nonprofit corporations for a purpose
5588 or purposes for which a nonprofit corporation might be
5589 incorporated under this chapter, where the power has been
5590 reserved to amend, repeal, or modify the law under which the
5591 nonprofit corporation was incorporated; and

5592 (2) any predecessor statute hereto.

5593 (c) For purposes of applying this chapter to a
5594 nonprofit corporation incorporated before January 1, 2024:

5595 (1) the nonprofit corporation is not required to amend
5596 its certificate of incorporation to comply with Section
5597 10A-3A-2.02(a)(5); but once amended or restated, the
5598 certificate of incorporation must comply with Section
5599 10A-3A-2.02(a)(5);

5600 (2) if on December 31, 2023, the certificate of



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5601 incorporation or bylaws of a nonprofit corporation in
5602 existence on that date provides members with the right to
5603 cumulate their votes for the election of directors, that right
5604 to cumulate their votes shall continue unless the certificate
5605 of incorporation or bylaws of the nonprofit corporation are
5606 amended to deny that right. Notwithstanding the foregoing, no
5607 such members may cumulate their votes for the election of
5608 directors by utilizing an action by written consent.

5609 (3) the nonprofit corporation's incorporation document,
5610 whether a certificate of incorporation, certificate of
5611 formation, charter, or articles of incorporation is deemed to
5612 be the nonprofit corporation's certificate of incorporation;

5613 (4) the nonprofit corporation's bylaws are deemed to be
5614 the nonprofit corporation's bylaws;

5615 (5) any amendment or restatement of a nonprofit
5616 corporation's certificate of incorporation or bylaws on or
5617 after January 1, 2024, shall conform with this chapter; and

5618 (d) No nonprofit corporation may be incorporated after
5619 December 31, 2023, pursuant to Sections 10A-3-1.01 to
5620 10A-3-8.02, inclusive.

5621 §10-3A-14.02. Application to existing foreign nonprofit
5622 corporations.

5623 A foreign nonprofit corporation registered or
5624 authorized to transact business in this state on January 1,
5625 2024, is subject to this chapter and is deemed to be
5626 registered to transact business in this state, and is not
5627 required to renew its registration to transact business under
5628 Article 7 of Chapter 1, except as required by Article 7 of



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5629 Chapter 1.

5630 §10A-3A-14.03. Saving Provisions.

5631 (a) Except as provided in subsection (b), the repeal of
5632 a statute by this chapter does not affect:

5633 (1) the operation of the statute or any action taken
5634 under it before its repeal;

5635 (2) any ratification, right, remedy, privilege,
5636 obligation, or liability acquired, accrued, or incurred under
5637 the statute before its repeal;

5638 (3) any violation of the statute, or any penalty,
5639 forfeiture, or punishment incurred because of the violation
5640 before its repeal; or

5641 (4) any proceeding, reorganization, or dissolution
5642 commenced under the statute before its repeal, and the
5643 proceeding, reorganization, or dissolution may be completed in
5644 accordance with the statute as if it had not been repealed.

5645 (5) the application of Article 16 of Chapter 20 of this
5646 Title to any "officer" and "qualified entity" as such terms
5647 are defined in Article 16 of Chapter 20 of this Title.

5648 (b) If a penalty or punishment imposed for violation of
5649 a statute repealed by this chapter is reduced by this chapter,
5650 the penalty or punishment, if not already imposed, shall be
5651 imposed in accordance with this chapter.

5652 §10A-3A-14.04. Severability.

5653 If any provision of this chapter or its application to
5654 any person or circumstance is held invalid by a court of
5655 competent jurisdiction, the invalidity does not affect other
5656 provisions or applications of this chapter that can be given
5657 effect without the invalid provision or application, and to



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5658 this end the provisions of this chapter are severable.

5659 §10A-3A-14.05. Relation to electronic signatures in
5660 global and national commerce act.

5661 This chapter modifies, limits, and supersedes the
5662 Federal Electronic Signatures in Global and National Commerce
5663 Act, 15 U.S.C. § 7001 et seq., but does not modify, limit, or
5664 supersede Section 101(c) of that act, 15 U.S.C. § 7001(c), or
5665 authorize electronic delivery of any of the notices described
5666 in Section 103(b) of that act, 15 U.S.C. § 7003(b).

5667 §10A-3A-14.06. Interstate application.

5668 A nonprofit corporation formed and existing under this
5669 chapter may conduct its activities and affairs, carry on its
5670 operations, and have and exercise the powers granted by this
5671 chapter in any state, foreign country, or other jurisdiction.

5672 Section 2. Sections 10A-1-1.03, 10A-1-1.08, 10A-1-3.32,
5673 10A-1-8.01, 10A-1-8.02, and 10A-1-9.01 of the Code of Alabama
5674 1975, are amended to read as follows:

5675 "§10A-1-1.03

5676 (a) If a term, including a term that is defined in
5677 subsection (b) of this section, is defined in a chapter of
5678 this title, then, when used in that chapter, the term shall
5679 have the meaning set forth in that chapter.

5680 (b) As used in this title, except as provided in
5681 subsection (a) of this section or where the context otherwise
5682 requires, the following terms mean:

5683 (1) AFFILIATE. A person who controls, is controlled by,
5684 or is under common control with another person. An affiliate
5685 of an individual includes the spouse, or a parent or sibling



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5686 thereof, of the individual, or a child, grandchild, sibling,
5687 parent, or spouse of any thereof, of the individual, or an
5688 individual having the same home as the individual, or a trust
5689 or estate of which an individual specified in this sentence is
5690 a substantial beneficiary; a trust, estate, incompetent,
5691 conservatee, protected person, or minor of which the
5692 individual is a fiduciary; or an entity of which the
5693 individual is director, general partner, agent, employee or
5694 the governing authority or member of the governing authority.

5695 (2) ASSOCIATE. When used to indicate a relationship
5696 with:

5697 (A) a domestic or foreign entity for which the person
5698 is:

5699 (i) an officer or governing person; or

5700 (ii) a beneficial owner of 10 percent or more of a
5701 class of voting ownership interests or similar securities of
5702 the entity;

5703 (B) a trust or estate in which the person has a
5704 substantial beneficial interest or for which the person serves
5705 as trustee or in a similar fiduciary capacity;

5706 (C) the person's spouse or a relative of the person
5707 related by consanguinity or affinity within the fifth degree
5708 who resides with the person; or

5709 (D) a governing person or an affiliate or officer of
5710 the person.

5711 (3) ASSOCIATION. Includes, but is not limited to, an
5712 unincorporated nonprofit association as defined in Chapter 17
5713 and an unincorporated professional association as defined in



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5714 Article 1 of Chapter 30.

5715 (4) BENEFIT CORPORATION. A benefit corporation as
5716 defined in Chapter 2A.

5717 (5) BUSINESS CORPORATION. A corporation or foreign
5718 corporation as defined in Chapter 2A. The term includes a
5719 benefit corporation as defined in Chapter 2A.

5720 (6) BUSINESS TRUST. A business trust as defined in
5721 Chapter 16.

5722 (7) CERTIFICATE OF DISSOLUTION. Any document such as a
5723 certificate of dissolution, statement of dissolution, or
5724 articles of dissolution, required or permitted to be filed
5725 publicly with respect to an entity's dissolution and winding
5726 up of its business, activity, activities, not for profit
5727 activity, or affairs.

5728 (8) CERTIFICATE OF FORMATION.

5729 (A) The document required to be filed publicly under
5730 this title to form a filing entity; and

5731 (B) if appropriate, a restated certificate of formation
5732 and all amendments of an original or restated certificate of
5733 formation; provided that a restated certificate of formation
5734 and an amendment of an original or restated certificate of
5735 formation shall not be deemed to be a certificate of formation
5736 for purposes of Section 10A-1-4.31.

5737 (9) CERTIFICATE OF OWNERSHIP. An instrument evidencing
5738 an ownership interest or membership interest in an entity.

5739 (10) CERTIFICATED OWNERSHIP INTEREST. An ownership
5740 interest of a domestic entity represented by a certificate.

5741 (11) CERTIFICATION or CERTIFIED. Duly authenticated by



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5742 the proper officer or filing officer of the jurisdiction the
5743 laws of which govern the internal affairs of an entity.

5744 (12) CONTRIBUTION. A tangible or intangible benefit
5745 that a person transfers to an entity in consideration for an
5746 ownership interest in the entity or otherwise in the person's
5747 capacity as an owner or a member. A benefit that may
5748 constitute a contribution transferred in exchange for an
5749 ownership interest or transferred in the transferor's capacity
5750 as an owner or member may include cash, property, services
5751 rendered, a contract for services to be performed, a
5752 promissory note or other obligation of a person to pay cash or
5753 transfer property to the entity, or securities or other
5754 interests in or obligations of an entity. In either case, the
5755 benefit does not include cash or property received by the
5756 entity:

5757 (A) with respect to a promissory note or other
5758 obligation to the extent that the agreed value of the note or
5759 obligation has previously been included as a contribution; or

5760 (B) that the person intends to be a loan to the entity.

5761 (13) CONVERSION. A conversion, whether referred to as a
5762 conversion, domestication, or otherwise, means:

5763 (A) the continuance of a domestic entity as a foreign
5764 entity of any type;

5765 (B) the continuance of a foreign entity as a domestic
5766 entity of any type; or

5767 (C) the continuance of a domestic entity of one type as
5768 a domestic entity of another type.

5769 (14) CONVERTED ENTITY. An entity resulting from a



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5770 conversion.

5771 (15) CONVERTING ENTITY. An entity as the entity existed
5772 before the entity's conversion.

5773 (16) COOPERATIVE. Includes an employee cooperative as
5774 defined in Chapter 11.

5775 (17) CORPORATION. Includes a domestic or foreign
5776 business corporation, including a benefit corporation, as
5777 defined in Chapter 2A, a domestic or foreign nonprofit
5778 corporation as defined in Chapter 3 or Chapter 3A, a domestic
5779 or foreign professional corporation as defined in Chapter 4,
5780 and those entities specified in Chapter 20 as corporate.

5781 (18) COURT. The designated court, and if none, the
5782 circuit court specifically set forth in this title, and if
5783 none, any other court having jurisdiction in a case.

5784 (19) DAY. When used in the computation of time,
5785 excludes the first day and includes the last day of the period
5786 so computed, unless the last day is a Saturday, Sunday, or
5787 legal holiday, in which event the period runs until the end of
5788 the next day that is not a Saturday, a Sunday, or a legal
5789 holiday. When the period of time to be computed is less than 7
5790 days, intermediate Saturdays, Sundays, and legal holidays
5791 shall be excluded.

5792 (20) DEBTOR IN BANKRUPTCY. A person who is the subject
5793 of:

5794 (A) an order for relief under the United States
5795 bankruptcy laws, Title 11, United States Code, or comparable
5796 order under a successor statute of general application; or

5797 (B) a comparable order under federal, state, or foreign



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5798 law governing insolvency.

5799 (21) DESIGNATED COURT. The court or courts that are
5800 designated in the (i) certificate of incorporation or bylaws
5801 of a corporation as authorized by Chapter 2A, (ii) certificate
5802 of incorporation or bylaws of a nonprofit corporation as
5803 authorized by Chapter 3A, (iii) limited liability company
5804 agreement of a limited liability company formed pursuant to or
5805 governed by Chapter 5A, ~~(iii)~~(iv) partnership agreement of a
5806 partnership formed pursuant to or governed by Chapter 8A, or
5807 ~~(iv)~~(v) limited partnership agreement of a limited partnership
5808 formed pursuant to or governed by Chapter 9A.

5809 (22) DIRECTOR. An individual who serves on the board of
5810 directors, by whatever name known, of a foreign or domestic
5811 corporation.

5812 (23) DISTRIBUTION. A transfer of property, including
5813 cash, from an entity to an owner or member of the entity in
5814 the owner's or member's capacity as an owner or member. The
5815 term includes a dividend, a redemption or purchase of an
5816 ownership interest, or a liquidating distribution.

5817 (24) DOMESTIC. With respect to an entity, means
5818 governed as to its internal affairs by this title.

5819 (25) DOMESTIC ENTITY. An entity governed as to its
5820 internal affairs by this title.

5821 (26) EFFECTIVE DATE OF THIS TITLE. January 1, 2011.

5822 (27) ELECTRONIC. Relating to technology having
5823 electrical, digital, magnetic, wireless, optical,
5824 electromagnetic, or similar capabilities.

5825 (28) ELECTRONIC SIGNATURE. An electronic signature as



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5826 that term is defined in the Alabama Electronic Transactions
5827 Act, Chapter 1A of Title 8, or any successor statute.

5828 (29) ELECTRONIC TRANSMISSION or ELECTRONICALLY
5829 TRANSMITTED. Any form or process of communication not directly
5830 involving the physical transfer of paper or another tangible
5831 medium, which (i) is suitable for the retention, retrieval,
5832 and reproduction of information by the recipient, and (ii) is
5833 retrievable in paper form by the recipient through an
5834 automated process used in conventional commercial practice.

5835 (30) ELECTRONIC WRITING. Information that is stored in
5836 an electronic or other nontangible medium and is retrievable
5837 in paper form through an automated process used in
5838 conventional commercial practice.

5839 (31) ENTITY. A domestic or foreign organization.

5840 (32) FILING ENTITY. A domestic entity that is a
5841 corporation, limited partnership, limited liability limited
5842 partnership, limited liability company, professional
5843 association, employee cooperative corporation, or real estate
5844 investment trust.

5845 (33) FILING INSTRUMENT. An instrument, document, or
5846 statement that is required or permitted by this title to be
5847 delivered for filing by or for an entity to a filing officer.

5848 (34) FILING OFFICER. An officer of this state with whom
5849 a filing instrument is required or permitted to be delivered
5850 for filing pursuant to this title.

5851 (35) FOREIGN. With respect to an entity, means governed
5852 as to its internal affairs by the laws of a jurisdiction other
5853 than this state.



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5854 (36) FOREIGN ENTITY. An entity governed as to its
5855 internal affairs by the laws of a jurisdiction other than this
5856 state.

5857 (37) FOREIGN FILING ENTITY. A foreign entity that
5858 registers or is required to register as a foreign entity under
5859 Article 7.

5860 (38) FOREIGN GOVERNMENTAL AUTHORITY. A governmental
5861 official, agency, or instrumentality of a jurisdiction other
5862 than this state.

5863 (39) FOREIGN NONFILING ENTITY. A foreign entity that is
5864 not a foreign filing entity.

5865 (40) GENERAL PARTNER.

5866 (A) Each partner in a general partnership; or

5867 (B) a person who is admitted to a limited partnership
5868 as a general partner in accordance with the governing
5869 documents of the limited partnership.

5870 (41) GENERAL PARTNERSHIP. A partnership as defined in
5871 Chapter 8A. The term includes a limited liability partnership
5872 as defined in Chapter 8A.

5873 (42) GOVERNING AUTHORITY. A person or group of persons
5874 who are entitled to manage and direct the affairs of an entity
5875 pursuant to this title and the governing documents of the
5876 entity, except that if the governing documents of the entity
5877 or this title divide the authority to manage and direct the
5878 affairs of the entity among different persons or groups of
5879 persons according to different matters, governing authority
5880 means the person or group of persons entitled to manage and
5881 direct the affairs of the entity with respect to a matter



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5882 under the governing documents of the entity or this title. The
5883 term includes the board of directors of a corporation, by
5884 whatever name known, or other persons authorized to perform
5885 the functions of the board of directors of a corporation, the
5886 general partners of a general partnership or limited
5887 partnership, the persons who have direction and oversight of a
5888 limited liability company, and the trust managers of a real
5889 estate investment trust. The term does not include an officer
5890 who is acting in the capacity of an officer.

5891 (43) GOVERNING DOCUMENTS.

5892 (A) In the case of a domestic entity:

5893 (i) the certificate of formation for a filing entity or
5894 the document or agreement under which a nonfiling entity is
5895 formed; and

5896 (ii) the other documents or agreements, including
5897 bylaws, partnership agreements of partnerships, limited
5898 liability company agreements of limited liability companies,
5899 or similar documents, adopted by the entity pursuant to this
5900 title to govern the formation or the internal affairs of the
5901 entity; or

5902 (B) in the case of a foreign entity, the instruments,
5903 documents, or agreements adopted under the law of its
5904 jurisdiction of formation to govern the formation or the
5905 internal affairs of the entity.

5906 (44) GOVERNING PERSON. A person serving as part of the
5907 governing authority of an entity.

5908 (45) INDIVIDUAL. A natural person and the estate of an
5909 incompetent or deceased natural person.



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5910 (46) INSOLVENCY. The inability of a person to pay the
5911 person's debts as they become due in the usual course of
5912 business or affairs.

5913 (47) INSOLVENT. A person who is unable to pay the
5914 person's debts as they become due in the usual course of
5915 business or affairs.

5916 (48) JUDGE OF PROBATE. The judge of probate of the
5917 county in which an entity is required or permitted to deliver
5918 a filing instrument for filing pursuant to this title.

5919 (49) JURISDICTION OF FORMATION.

5920 (A) In the case of a filing entity, this state;

5921 (B) in the case of a foreign entity, the jurisdiction
5922 in which the entity's certificate of formation or similar
5923 organizational instrument is filed, or if no certificate of
5924 formation or similar organizational instrument is filed, then
5925 the laws of the jurisdiction which govern the internal affairs
5926 of the foreign entity;

5927 (C) in the case of a general partnership which has
5928 filed a statement of partnership, a statement of not for
5929 profit partnership, or a statement of limited liability
5930 partnership in accordance with Chapter 8A, in this state;

5931 (D) in the case of a foreign limited liability
5932 partnership, the laws of the jurisdiction which govern the
5933 filing of the foreign limited liability partnership's
5934 statement of limited liability partnership or such filing in
5935 that jurisdiction; and

5936 (E) in the case of a foreign or domestic nonfiling
5937 entity other than those entities described in subsection (C)



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5938 or (D):

5939 (i) the jurisdiction the laws of which are chosen in
5940 the entity's governing documents to govern its internal
5941 affairs if that jurisdiction bears a reasonable relation to
5942 the owners or members or to the domestic or foreign nonfiling
5943 entity's business, activities, and affairs under the
5944 principles of this state that otherwise would apply to a
5945 contract among the owners or members; or

5946 (ii) if subparagraph (i) does not apply, the
5947 jurisdiction in which the entity has its principal office.

5948 (50) LAW. Unless the context requires otherwise, both
5949 statutory and common law.

5950 (51) LICENSE. A license, certificate of registration,
5951 or other legal authorization.

5952 (52) LICENSING AUTHORITY. The state court, state
5953 regulatory licensing board, or other like agency which has the
5954 power to issue a license or other legal authorization to
5955 render professional services.

5956 (53) LIMITED LIABILITY COMPANY. A limited liability
5957 company as defined in Chapter 5A.

5958 (54) LIMITED LIABILITY LIMITED PARTNERSHIP. A limited
5959 liability limited partnership as defined in Chapter 9A.

5960 (55) LIMITED LIABILITY PARTNERSHIP. A limited liability
5961 partnership as defined in Chapter 8A.

5962 (56) LIMITED PARTNER. A person who has been admitted to
5963 a limited partnership as a limited partner as provided by:

5964 (A) in the case of a domestic limited partnership,
5965 Chapter 9A; or



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5966 (B) in the case of a foreign limited partnership, the
5967 laws of its jurisdiction of formation.

5968 (57) LIMITED PARTNERSHIP. A limited partnership as
5969 defined in Chapter 9A. The term includes a limited liability
5970 limited partnership as defined in Chapter 9A.

5971 (58) MANAGERIAL OFFICIAL. An officer or a governing
5972 person.

5973 (59) MEMBER.

5974 (A) A person defined as a member under Chapter 5A;

5975 (B) in the case of a nonprofit corporation formed
5976 pursuant to or governed by Chapter 3, a person having
5977 membership rights in the nonprofit corporation in accordance
5978 with its governing documents as provided in Chapter 3, and in
5979 the case of a nonprofit corporation formed pursuant to or
5980 governed by Chapter 3A, a person defined as a member under
5981 Chapter 3A;

5982 (C) in the case of an employee cooperative corporation
5983 formed pursuant to or governed by Chapter 11, a natural person
5984 who, as provided in Chapter 11, has been accepted for
5985 membership in and owns a membership share in an employee
5986 cooperative;

5987 (D) in the case of a nonprofit association, a person
5988 who, as provided in Chapter 17, may participate in the
5989 selection of persons authorized to manage the affairs of the
5990 nonprofit association or in the development of its policy.

5991 (60) MERGER. The combination of one or more domestic
5992 entities with one or more domestic entities or foreign
5993 entities resulting in:



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5994 (A) one or more surviving domestic entities or foreign
5995 entities;

5996 (B) the creation of one or more new domestic entities
5997 or foreign entities, or one or more surviving domestic
5998 entities or foreign entities; or

5999 (C) one or more surviving domestic entities or foreign
6000 entities and the creation of one or more new domestic entities
6001 or foreign entities.

6002 (61) NONFILING ENTITY. A domestic entity that is not a
6003 filing entity. The term includes a domestic general
6004 partnership, a limited liability partnership, and a nonprofit
6005 association.

6006 (62) NONPROFIT ASSOCIATION. An unincorporated nonprofit
6007 association as defined in Chapter 17. The term does not
6008 include a general partnership which has filed a statement of
6009 not for profit partnership in accordance with Chapter 8A, a
6010 limited partnership which is carrying on a not for profit
6011 purpose, or a limited liability company which is carrying on a
6012 not for profit purpose.

6013 (63) NONPROFIT CORPORATION. A domestic or foreign
6014 nonprofit corporation as defined in Chapter 3 or Chapter 3A.

6015 (64) NONPROFIT ENTITY. An entity that is a nonprofit
6016 corporation, nonprofit association, or other entity that is
6017 organized solely for one or more nonprofit purposes.

6018 (65) OFFICER. An individual elected, appointed, or
6019 designated as an officer of an entity by the entity's
6020 governing authority or under the entity's governing documents.

6021 (66) ORGANIZATION. A corporation, limited partnership,



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6022 general partnership, limited liability company, business
6023 trust, real estate investment trust, joint venture, joint
6024 stock company, cooperative, association, or other
6025 organization, including, regardless of its organizational
6026 form, a bank, insurance company, credit union, and savings and
6027 loan association, whether for profit, not for profit,
6028 nonprofit, domestic, or foreign.

6029 (67) ORGANIZER. A person, who need not be an owner or
6030 member of the entity, who, having the capacity to contract, is
6031 authorized to execute documents in connection with the
6032 formation of the entity. The term includes an incorporator.

6033 (68) OWNER.

6034 (A) With respect to a foreign or domestic business
6035 corporation or real estate investment trust, a stockholder or
6036 a shareholder;

6037 (B) with respect to a foreign or domestic partnership,
6038 a partner;

6039 (C) with respect to a foreign or domestic limited
6040 liability company or association, a member; and

6041 (D) with respect to another foreign or domestic entity,
6042 an owner of an equity interest in that entity.

6043 (69) OWNERSHIP INTEREST. An owner's interest in an
6044 entity. The term includes the owner's share of profits and
6045 losses or similar items and the right to receive
6046 distributions. The term does not include an owner's right to
6047 participate in management or participate in the direction or
6048 oversight of the entity. An ownership interest is personal
6049 property.



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6050 (70) PARENT or PARENT ENTITY. An entity that:

6051 (A) owns at least 50 percent of the ownership or
6052 membership interest of a subsidiary; or

6053 (B) possesses at least 50 percent of the voting power
6054 of the owners or members of a subsidiary.

6055 (71) PARTNER. A limited partner or general partner.

6056 (72) PARTNERSHIP. Includes a general partnership, a
6057 limited liability partnership, a foreign limited liability
6058 partnership, a limited partnership, a foreign limited
6059 partnership, a limited liability limited partnership, and a
6060 foreign limited liability limited partnership.

6061 (73) PARTNERSHIP AGREEMENT. Any agreement (whether
6062 referred to as a partnership agreement or otherwise), written,
6063 oral or implied, of the partners as to the activities and
6064 affairs of a general partnership or a limited partnership. The
6065 partnership agreement includes any amendments to the
6066 partnership agreement. In the case of limited partnerships
6067 formed prior to October 1, 1998, partnership agreement
6068 includes the certificate of partnership.

6069 (74) PARTY TO THE MERGER. A domestic entity or foreign
6070 entity that under a plan of merger is combined by a merger.
6071 The term does not include a domestic entity or foreign entity
6072 that is not to be combined into or with one or more domestic
6073 entities or foreign entities, regardless of whether ownership
6074 interests of the entity are to be issued under the plan of
6075 merger.

6076 (75) PERSON. An individual, including the estate of an
6077 incompetent or deceased individual, or an entity, whether



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6078 created by the laws of this state or another state or foreign
6079 country, including, without limitation, a general partnership,
6080 limited liability partnership, limited partnership, limited
6081 liability limited partnership, limited liability company,
6082 corporation, professional corporation, nonprofit corporation,
6083 professional association, trustee, personal representative,
6084 fiduciary, as defined in Section 19-3-150 or person performing
6085 in any similar capacity, business trust, estate, trust,
6086 association, joint venture, government, governmental
6087 subdivision, agency, or instrumentality, or any other legal or
6088 commercial entity.

6089 (76) PRESIDENT.

6090 (A) The individual designated as president of an entity
6091 under the entity's governing documents; or

6092 (B) the officer or committee of persons authorized to
6093 perform the functions of the principal executive officer of an
6094 entity without regard to the designated name of the officer or
6095 committee.

6096 (77) PRINCIPAL OFFICE. The office, in or out of this
6097 state, where the principal executive office, whether referred
6098 to as the principal executive office, chief executive office,
6099 or otherwise, of an entity is located.

6100 (78) PROFESSIONAL ASSOCIATION. A professional
6101 association as defined in Chapter 30.

6102 (79) PROFESSIONAL CORPORATION. A domestic or foreign
6103 professional corporation as defined in Chapter 4.

6104 (80) PROFESSIONAL ENTITY. A professional association
6105 and a professional corporation.



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6106 (81) PROFESSIONAL SERVICE. Any type of service that may
6107 lawfully be performed only pursuant to a license issued by a
6108 state court, state regulatory licensing board, or other like
6109 agency pursuant to state laws.

6110 (82) PROPERTY. Includes all property, whether real,
6111 personal, or mixed, or tangible or intangible, or any right or
6112 interest therein.

6113 (83) REAL ESTATE INVESTMENT TRUST. An unincorporated
6114 trust, association, or other entity as defined in Chapter 10.

6115 (84) SECRETARY.

6116 (A) The individual designated as secretary of an entity
6117 under the entity's governing documents; or

6118 (B) the officer or committee of persons authorized to
6119 perform the functions of secretary of an entity without regard
6120 to the designated name of the officer or committee.

6121 (85) SECRETARY OF STATE. The Secretary of State of the
6122 State of Alabama.

6123 (86) SIGN or SIGNATURE. With the present intent to
6124 authenticate or adopt a writing:

6125 (A) to execute or adopt a tangible symbol to a writing,
6126 and includes any manual, facsimile, or conformed signature; or

6127 (B) to attach to or logically associate with an
6128 electronic transmission an electronic sound, symbol, or
6129 process, and includes an electronic signature in an electronic
6130 transmission.

6131 (87) STATE. Includes, when referring to a part of the
6132 United States, a state or commonwealth, and its agencies and
6133 governmental subdivisions, and a territory or possession, and



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6134 its agencies and governmental subdivisions, of the United
6135 States.

6136 (88) SUBSCRIBER. A person who agrees with or makes an
6137 offer to an entity to purchase by subscription an ownership
6138 interest in the entity.

6139 (89) SUBSCRIPTION. An agreement between a subscriber
6140 and an entity, or a written offer made by a subscriber to an
6141 entity before or after the entity's formation, in which the
6142 subscriber agrees or offers to purchase a specified ownership
6143 interest in the entity.

6144 (90) SUBSIDIARY. An entity at least 50 percent of:

6145 (A) the ownership or membership interest of which is
6146 owned by a parent entity; or

6147 (B) the voting power of which is possessed by a parent
6148 entity.

6149 (91) TREASURER.

6150 (A) The individual designated as treasurer of an entity
6151 under the entity's governing documents; or

6152 (B) the officer or committee of persons authorized to
6153 perform the functions of treasurer of an entity without regard
6154 to the designated name of the officer or committee.

6155 (92) TRUSTEE. A person who serves as a trustee of a
6156 trust, including a real estate investment trust.

6157 (93) UNCERTIFICATED OWNERSHIP INTEREST. An ownership
6158 interest in a domestic entity that is not represented by a
6159 certificate.

6160 (94) VICE PRESIDENT.

6161 (A) The individual designated as vice president of an



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6162 entity under the governing documents of the entity; or

6163 (B) the officer or committee of persons authorized to
6164 perform the functions of the president of the entity on the
6165 death, absence, or resignation of the president or on the
6166 inability of the president to perform the functions of office
6167 without regard to the designated name of the officer or
6168 committee.

6169 (95) WRITING or WRITTEN. Information that is inscribed
6170 on a tangible medium or that is stored in an electronic or
6171 other medium and is retrievable in perceivable form."

6172 "§10A-1-1.08

6173 (a) The provisions of this title as described by this
6174 section may be cited as provided by this section.

6175 (b) Chapter 2A and the provisions of Chapter 1 to the
6176 extent applicable to business corporations may be cited as the
6177 Alabama Business Corporation Law.

6178 (c) Chapter 3 or Chapter 3A and the provisions of
6179 Chapter 1 to the extent applicable to nonprofit corporations
6180 may be cited as the Alabama Nonprofit Corporation Law.

6181 (d) Chapter 4 and the provisions of Chapter 1 to the
6182 extent applicable to professional corporations may be cited as
6183 the Alabama Professional Corporation Law.

6184 (e) Chapter 5A and the provisions of Chapter 1 to the
6185 extent applicable to limited liability companies may be cited
6186 as the Alabama Limited Liability Company Law.

6187 (f) Chapter 8A and the provisions of Chapter 1 to the
6188 extent applicable to general partnerships may be cited as the
6189 Alabama Partnership Law.



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6190 (g) Chapter 9A and the provisions of Chapter 1 to the
6191 extent applicable to limited partnerships may be cited as the
6192 Alabama Limited Partnership Law.

6193 (h) Chapter 10 and the provisions of Chapter 1 to the
6194 extent applicable to real estate investment trusts may be
6195 cited as the Alabama Real Estate Investment Trust Law.

6196 (i) Chapter 11 and the provisions of Chapter 1 and
6197 Chapter 2A to the extent applicable to employee cooperative
6198 corporations may be cited as the Alabama Employee Cooperative
6199 Corporations Law.

6200 (j) Chapter 17 and the provisions of Chapter 1 to the
6201 extent applicable to unincorporated nonprofit associations may
6202 be cited as the Alabama Unincorporated Nonprofit Association
6203 Law."

6204 "§10A-1-3.32

6205 (a) This section applies to domestic entities other
6206 than (i) corporations formed pursuant to or governed by
6207 Chapter 2A or Chapter 4, and real estate investment trusts
6208 formed pursuant to or governed by Chapter 10, each of which is
6209 governed by the separate recordkeeping requirements and record
6210 inspections provisions of Chapter 2A and (ii) nonprofit
6211 corporations formed pursuant to or governed by Chapter 3 or
6212 Chapter 3A, limited liability companies formed pursuant to or
6213 governed by Chapter 5A, general partnerships formed pursuant
6214 to or governed by Chapter 8A, and limited partnerships formed
6215 pursuant to or governed by Chapter 9A, each of which are
6216 governed by the separate recordkeeping requirements and record
6217 inspection provisions set forth in each entity's respective



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6218 chapter governing that entity.

6219 (b) With respect to a domestic entity covered by this
6220 section, the books and records maintained under the chapter of
6221 this title applicable to that entity and any other books and
6222 records of that entity, wherever situated, are subject to
6223 inspection and copying at the reasonable request, and at the
6224 expense of, any owner or member or the owner's or member's
6225 agent or attorney during regular business hours. The right of
6226 access extends to the legal representative of a deceased owner
6227 or member or owner or member under legal disability. The
6228 entity shall also provide former owners and members with
6229 access to its books and records pertaining to the period
6230 during which they were owners or members.

6231 (c) The governing documents of a domestic entity may
6232 not unreasonably restrict an owner's or member's right to
6233 information or access to books and records.

6234 (d) Any agent or governing person of a domestic entity
6235 who, without reasonable cause, refuses to allow any owner or
6236 member or the owner's or member's agent or legal counsel to
6237 inspect any books or records of that entity shall be
6238 personally liable to the agent or member for a penalty in an
6239 amount not to exceed 10 percent of the fair market value of
6240 the ownership interest of the owner or member, in addition to
6241 any other damages or remedy."

6242 "§10A-1-8.01

6243 ~~(a)~~ A conversion of an entity may be accomplished as
6244 provided in this section:

6245 (a) The plan of conversion must be in writing, and:



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6246 (1) must include the following:

6247 (A) the name, type of entity, and mailing address of
6248 the principal office of the converting entity, and its unique
6249 identifying number or other designation as assigned by the
6250 Secretary of State, if any, before conversion;

6251 (B) the name, type of entity, and mailing address of
6252 the principal office of the converted entity after conversion;

6253 (C) the terms and conditions of the conversion,
6254 including the manner and basis for converting interests in the
6255 converting entity into any combination of money, interests in
6256 the converted entity, and other consideration allowed in
6257 subsection (b); and

6258 (D) the organizational documents of the converted
6259 entity; and

6260 (2) may include other provisions relating to the
6261 conversion not prohibited by law.

6262 (b) In connection with a conversion, rights or
6263 securities of or interests in a converting entity may be
6264 exchanged for or converted into cash, property, or rights or
6265 securities of or interests in the converted entity, or, in
6266 addition to or in lieu thereof, may be exchanged for or
6267 converted into cash, property, or rights or securities of or
6268 interests in another entity, or may be cancelled.

6269 (c) The plan of conversion of an entity must be
6270 approved as follows:

6271 (1) CORPORATIONS.

6272 ~~(A) a. The terms and conditions of a plan of conversion~~
6273 ~~of a corporation, other than a nonprofit corporation, If a~~



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6274 corporation is governed by Chapter 2A and that corporation is
6275 a converting entity, the plan of conversion under subsection
6276 (a) must be approved in accordance with~~the procedures and by~~
6277 ~~the stockholder vote required by~~ Article 9 of Chapter 2A.~~If~~
6278 ~~the governing documents provide for approval of a conversion~~
6279 ~~by less than all of a corporation's stockholders, approval of~~
6280 ~~the conversion shall constitute corporate action subject to~~
6281 ~~appraisal rights pursuant to Article 13 of Chapter 2A. No~~
6282 ~~conversion of a corporation to a general or limited~~
6283 ~~partnership may be effected without the consent in writing of~~
6284 ~~each stockholder who will have personal liability with respect~~
6285 ~~to the converted entity, notwithstanding any provision in the~~
6286 ~~governing documents of the converting corporation providing~~
6287 ~~for less than unanimous stockholder approval for the~~
6288 ~~conversion.~~ If the conversion is a corporate action as
6289 described in Section 10A-2A-13.02, then the rights,
6290 obligations, and procedures under Article 13 of Chapter 2A
6291 shall be applicable to that conversion.

6292 (B)b. ~~The terms and conditions of a plan of conversion~~
6293 ~~of a nonprofit corporation must be approved by all the~~
6294 ~~nonprofit corporation's members entitled to vote thereon, if~~
6295 ~~it is a nonprofit corporation with members with voting rights,~~
6296 ~~or as otherwise provided in the nonprofit corporation's~~
6297 ~~governing documents; but in no case may the governing~~
6298 ~~documents provide for approval by less than a majority of the~~
6299 ~~members entitled to vote thereon. If the converting nonprofit~~
6300 ~~corporation has no members, or no members entitled to vote~~
6301 ~~thereon, the terms and conditions of the plan of conversion~~



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6302 ~~must be approved by a unanimous vote of the board of directors~~
6303 ~~of the converting nonprofit corporation, or as otherwise~~
6304 ~~provided in the governing documents; but in no case may the~~
6305 ~~governing documents provide for approval by less than a~~
6306 ~~majority of the board of directors.~~ If a corporation is
6307 governed by Chapter 3A and that corporation is a converting
6308 entity, the plan of conversion under subsection (a) must be
6309 approved in accordance with Article 13 of Chapter 3A.

6310 (C) If a corporation is not governed by Chapter 2A or
6311 Chapter 3A and that corporation is a converting entity, the
6312 plan of conversion under subsection (a) must be approved in
6313 accordance with the law of the jurisdiction of formation of
6314 that corporation.

6315 (2) LIMITED PARTNERSHIPS, INCLUDING LIMITED LIABILITY
6316 LIMITED PARTNERSHIPS. ~~The terms and conditions of a plan of~~
6317 ~~conversion of a limited partnership must be approved by all of~~
6318 ~~the partners or as otherwise provided in the partnership~~
6319 ~~agreement. No conversion of a limited partnership to a general~~
6320 ~~partnership may be effected without the consent in writing of~~
6321 ~~each limited partner who will have personal liability with~~
6322 ~~respect to the converted entity, notwithstanding any provision~~
6323 ~~in the limited partnership agreement of the converting limited~~
6324 ~~partnership providing for approval of the conversion by less~~
6325 ~~than all partners.~~ If a limited partnership is a converting
6326 entity, the plan of conversion under subsection (a) must be
6327 approved in accordance with Article 10 of Chapter 9A.

6328 (3) LIMITED LIABILITY COMPANIES. ~~The terms and~~
6329 ~~conditions of a plan of conversion of a limited liability~~



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6330 ~~company must be approved by all of the limited liability~~
6331 ~~company's members or as otherwise provided in the limited~~
6332 ~~liability company's governing documents. No conversion of a~~
6333 ~~limited liability company to a general or limited partnership~~
6334 ~~may be effected without the consent in writing of each member~~
6335 ~~who will have personal liability with respect to the converted~~
6336 ~~entity, notwithstanding any provision in the governing~~
6337 ~~documents of the converting limited liability company~~
6338 ~~providing for less than unanimous member approval for the~~
6339 ~~conversion.~~ If a limited liability company is a converting
6340 entity, the plan of conversion under subsection (a) must be
6341 approved in accordance with Article 10 of Chapter 5A.

6342 (4) GENERAL PARTNERSHIPS, INCLUDING LIMITED LIABILITY
6343 PARTNERSHIPS. ~~The terms and conditions of a plan of conversion~~
6344 ~~of a general partnership must be approved by all of the~~
6345 ~~partners or as otherwise provided in the partnership~~
6346 ~~agreement. No conversion of a limited liability partnership to~~
6347 ~~a general or limited partnership may be effected without the~~
6348 ~~consent in writing of each partner who will have personal~~
6349 ~~liability with respect to the converted entity,~~
6350 ~~notwithstanding any provision in the partnership agreement of~~
6351 ~~the converting limited liability partnership providing for~~
6352 ~~less than unanimous partner approval for the conversion.~~ If a
6353 general partnership is a converting entity, the plan of
6354 conversion under subsection (a) must be approved in accordance
6355 with Article 9 of Chapter 8A. If a general partnership is the
6356 converting entity and that general partnership does not have
6357 an effective statement of partnership, statement of not for



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6358 profit partnership, or statement of limited liability
6359 partnership on file with the Secretary of State, then that
6360 general partnership must, before proceeding with a conversion
6361 deliver to the Secretary of State for filing, a statement of
6362 partnership, statement of not for profit partnership, or
6363 statement of limited liability partnership simultaneously with
6364 the delivery to the Secretary of State for filing, of a
6365 statement of conversion.

6366 (5) REAL ESTATE INVESTMENT TRUST. The terms and
6367 conditions of ~~a~~ the plan of conversion under subsection (a) of
6368 a real estate investment trust must be approved by all of the
6369 trust's shareholders or as otherwise provided in the trust's
6370 declaration of trust; but in no case may the vote required for
6371 shareholder approval be set at less than a majority of all the
6372 votes entitled to be cast. No conversion of a real estate
6373 investment trust to a general or limited partnership may be
6374 effected without the consent in writing of each shareholder
6375 who will have personal liability with respect to the converted
6376 entity, notwithstanding any provision in the declaration of
6377 trust of the converting real estate investment trust providing
6378 for less than unanimous shareholder approval for the
6379 conversion.

6380 (6) OTHER ENTITY. ~~The terms and conditions of a plan of~~
6381 ~~conversion of any entity not specified above must be approved~~
6382 ~~by all owners of the converting entity. No conversion of any~~
6383 ~~entity shall be effected without the consent in writing of any~~
6384 ~~owner of the converting entity who has limited liability and~~
6385 ~~who shall become an owner without limited liability protection~~



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6386 ~~of the converted entity.~~ In the case of an entity not
6387 specified in paragraphs (1) through (5) above, a plan of
6388 conversion under subsection (a) must be approved in writing by
6389 all owners of that entity or, if the entity has no owners,
6390 then by all members of the governing authority of that entity.

6391 ~~(7) ENTITY WITHOUT OWNERS. If the converting entity~~
6392 ~~does not have owners, the terms and conditions of the plan of~~
6393 ~~conversion must be unanimously approved by the governing~~
6394 ~~authority of the converting entity.~~

6395 ~~(b) The plan of conversion must be in writing, and:~~

6396 ~~(1) must include the following:~~

6397 ~~a. the name, type of entity, and mailing address of the~~
6398 ~~principal office of the converting entity, and its unique~~
6399 ~~identifying number or other designation as assigned by the~~
6400 ~~Secretary of State, if any, before conversion;~~

6401 ~~b. the name, type of entity, and mailing address of the~~
6402 ~~principal office of the converted entity after conversion;~~

6403 ~~c. the terms and conditions of the conversion,~~
6404 ~~including the manner and basis for converting interests in the~~
6405 ~~converting entity into any combination of money, interests in~~
6406 ~~the converted entity, and other consideration allowed in~~
6407 ~~subsection (c); and~~

6408 ~~d. the organizational documents of the converted~~
6409 ~~entity; and~~

6410 ~~(2) may include other provisions relating to the~~
6411 ~~conversion not prohibited by law.~~

6412 ~~(c) In connection with a conversion, rights or~~
6413 ~~securities of or interests in a converting entity may be~~



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6414 ~~exchanged for or converted into cash, property, or rights or~~
6415 ~~securities of or interests in the converted entity, or, in~~
6416 ~~addition to or in lieu thereof, may be exchanged for or~~
6417 ~~converted into cash, property, or rights or securities of or~~
6418 ~~interests in another entity or may be cancelled.~~

6419 ~~(d) After a plan of conversion is approved and before~~
6420 ~~the conversion takes effect, the plan may be amended or~~
6421 ~~abandoned as provided in the plan, or if the plan does not~~
6422 ~~provide for amendment or abandonment, in the same manner as~~
6423 ~~required for the approval of the plan of conversion~~
6424 ~~originally.~~

6425 ~~(e)~~ (d) After the plan of conversion is approved
6426 pursuant to subsection ~~(a)~~ (c):

6427 (1) if the converting entity is a ~~domestic~~ filing
6428 entity, the converting entity shall deliver to the Secretary
6429 of State for filing, a statement of conversion, which must
6430 include:

6431 ~~a.~~ (A) the name, type of entity, and mailing address of
6432 the principal office of the converting entity, and its unique
6433 identifying number or other designation as assigned by the
6434 Secretary of State, if any, before conversion;

6435 ~~b. the date of the filing of the certificate of~~
6436 ~~formation of the converting entity, if any, and all prior~~
6437 ~~amendments and the filing office or offices, if any, where~~
6438 ~~such is filed;~~

6439 ~~e.~~ (B) a statement that the converting entity has been
6440 converted into the converted entity;

6441 ~~d.~~ (C) the name and type of entity of the converted



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6442 entity and the jurisdiction of its governing statute;

6443 ~~e.~~ (D) the street and mailing address of the principal

6444 office of the converted entity;

6445 ~~f.~~ (E) the date the conversion is effective under the

6446 governing statute of the converted entity;

6447 ~~g.~~ (F) a statement that the conversion was approved as

6448 required by this chapter;

6449 ~~h.~~ (G) a statement that the conversion was approved as

6450 required by the governing statute of the converted entity;

6451 ~~i.~~ (H) a statement that a copy of the plan of conversion

6452 will be furnished by the converted entity, on request and

6453 without cost, to any owner of the converted or converting

6454 entity; and

6455 ~~j.~~ (I) if the converted entity is a foreign entity not

6456 authorized to conduct activities and affairs in this state,

6457 the street and mailing address of an office for the purposes

6458 of Section 10A-1-8.04(b); and

6459 (2) if the converted entity is (I) a filing entity, the

6460 converting entity shall deliver to the Secretary of State for

6461 filing a certificate of formation or (II) a general

6462 partnership, the converting entity shall deliver to the

6463 Secretary of State for filing a statement of partnership, a

6464 statement of not for profit partnership, or a statement of

6465 limited liability partnership, as applicable, which

6466 certificate of formation or statement of partnership,

6467 statement of not for profit partnership, or statement of

6468 limited liability partnership, as applicable, must include, in

6469 addition to the information required in the chapter governing



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6470 the certificate of formation of the converted entity, the
6471 following:

6472 ~~a.~~ (A) The name, mailing address of the principal office
6473 of, type of entity, and the jurisdiction of the governing
6474 statute of the converting entity and its unique identifying
6475 number or other designation as assigned by the Secretary of
6476 State, if any, before conversion;

6477 ~~b.~~ (B) A statement that the converting entity has been
6478 converted into the converted entity;

6479 ~~c.~~ (C) The filing office where the certificate of
6480 formation, if any, of the converting entity is filed and the
6481 date of the filing thereof;

6482 ~~d.~~ (D) If the converted entity is one in which one or
6483 more owners lack limited liability protection, a statement
6484 that each owner of the converting entity who is to become an
6485 owner without limited liability protection of the converted
6486 entity has consented in writing to the conversion as required
6487 by this section; and

6488 ~~e.~~ (E) A statement that the conversion was approved
6489 pursuant to this section and, if the converting entity is a
6490 foreign entity, that the conversion was approved as required
6491 by the governing statute of such foreign entity;

6492 (3) if the converting entity is required pursuant to
6493 subsections (e) (2) and (3) to deliver to the Secretary of
6494 State for filing both (I) a statement of conversion and
6495 (II) (A) a certificate of formation, or (B) a statement of
6496 partnership, statement of not for profit partnership, or
6497 statement of limited liability partnership, as applicable,



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6498 then the converting entity shall deliver the statement of
6499 conversion and the certificate of formation or the statement
6500 of partnership, statement of not for profit partnership, or
6501 statement of limited liability partnership, as applicable, to
6502 the Secretary of State simultaneously; and

6503 (4) if the converting entity is a general partnership
6504 and that partnership does not have an effective statement of
6505 partnership, statement of not for profit partnership, or
6506 statement of limited liability partnership on file with the
6507 Secretary of State, then the converting entity must deliver to
6508 the Secretary of State for filing, a statement of partnership,
6509 statement of not for profit partnership, or statement of
6510 limited liability partnership simultaneously with the delivery
6511 to the Secretary of State for filing, of a statement of
6512 conversion.

6513 (e) After a plan of conversion is approved and before
6514 the conversion takes effect, the plan may be amended or
6515 abandoned as provided in the plan, or if the plan does not
6516 provide for amendment or abandonment, in the same manner as
6517 required for the approval of the plan of conversion
6518 originally.

6519 (f) A conversion becomes effective:

6520 (1) if the converted entity is a ~~domestic~~ filing
6521 entity, the effective date determined in accordance with
6522 Article 4 of this chapter; and

6523 (2) if the converted entity is not a domestic filing
6524 entity, as provided by the governing statute of the converted
6525 entity.



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6526 (g) When a conversion becomes effective:

6527 (1) all property and contract rights owned by the
6528 converting entity remain vested in the converted entity
6529 without transfer, reversion, or impairment, and the title to
6530 any property vested by deed or otherwise in the converting
6531 entity shall not revert or be in any way impaired by reason of
6532 the conversion;

6533 (2) all debts, obligations, or other liabilities of the
6534 converting entity continue as debts, obligations, or other
6535 liabilities of the converted entity and neither the rights of
6536 creditors nor the liens upon the property of the converting
6537 entity shall be impaired by the conversion;

6538 (3) an action or proceeding pending by or against the
6539 converting entity continues as if the conversion had not
6540 occurred and the name of the converted entity may, but need
6541 not, be substituted for the name of the converting entity in
6542 any pending action or proceeding;

6543 (4) except as prohibited by law other than this
6544 chapter, all of the rights, privileges, immunities, powers,
6545 and purposes of the converting entity remain vested in the
6546 converted entity;

6547 (5) except as otherwise provided in the statement of
6548 conversion, the terms and conditions of the statement of
6549 conversion take effect;

6550 (6) except as otherwise agreed, for all purposes of the
6551 laws of this state, the converting entity shall not be
6552 required to wind up its affairs or pay its liabilities and
6553 distribute its assets, and the conversion shall not be deemed



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6554 to constitute a dissolution of the converting entity;

6555 (7) for all purposes of the laws of this state, the
6556 rights, privileges, powers, interests in property, debts,
6557 liabilities, and duties of the converting entity, shall be the
6558 rights, privileges, powers, interests in property, debts,
6559 liabilities, and duties of the converted entity, and shall not
6560 be deemed as a consequence of the conversion, to have been
6561 transferred to the converted entity;

6562 (8) if the converted entity is a domestic entity, for
6563 all purposes of the laws of this state, the converted entity
6564 shall be deemed to be the same entity as the converting
6565 entity, and the conversion shall constitute a continuation of
6566 the existence of the converting entity in the form of the
6567 converted entity;

6568 (9) if the converting entity is a domestic entity, the
6569 existence of the converted entity shall be deemed to have
6570 commenced on the date the converting entity commenced its
6571 existence in the jurisdiction in which the converting entity
6572 was first created, formed, organized, incorporated, or
6573 otherwise came into being;

6574 (10) the conversion shall not affect the choice of law
6575 applicable to matters arising prior to conversion;

6576 (11) if the Secretary of State has assigned a unique
6577 identifying number or other designation to the converting
6578 entity and (i) the converted entity is formed pursuant to the
6579 laws of this state, or (ii) the converted entity is, within 30
6580 days after the effective date of the conversion, registered to
6581 transact business in this state, then that unique identifying



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6582 number or other designation shall continue to be assigned to
6583 the converted entity; and

6584 (12) ~~a.~~ (A) An owner with limited liability protection
6585 remains liable, if at all, for an obligation incurred by the
6586 converting entity before the conversion takes effect only to
6587 the extent, if any, the owner would have been liable if the
6588 conversion had not occurred.

6589 ~~b.~~ (B) An owner with limited liability protection who
6590 becomes an owner without limited liability protection is
6591 liable for an obligation of the converted entity incurred
6592 after conversion to the extent provided for by the laws
6593 applicable to the converted entity.

6594 (13) An owner without limited liability protection who
6595 as a result of a conversion becomes an owner of a converted
6596 entity with limited liability protection remains liable for an
6597 obligation incurred by the converting entity before the
6598 conversion takes effect only to the extent, if any, the owner
6599 would have been liable if the conversion had not occurred.

6600 (h) If:

6601 (1) the converting entity is a filing entity, a general
6602 partnership with an effective statement of partnership,
6603 statement of not for profit partnership, or statement of
6604 limited liability partnership on file with the Secretary of
6605 State, a foreign filing entity registered to transact business
6606 or not for profit activity in this state, or a qualified
6607 foreign limited liability partnership;

6608 (2) the converted entity will be a filing entity, a
6609 general partnership with an effective statement of



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6610 partnership, statement of not for profit partnership, or
6611 statement of limited liability partnership on file with the
6612 Secretary of State, a foreign filing entity registered to
6613 transact business or not for profit activity in this state, or
6614 a qualified foreign limited liability partnership;

6615 (3) the name of the converting entity and the converted
6616 entity are to be the same, other than words, phrases, or
6617 abbreviations indicating the type of entity; and

6618 (4) the name of the converted entity complies with
6619 Division A of Article 5 or Section 10A-1-7.07, as the case may
6620 be;

6621 then, notwithstanding Division B of Article 5, no name
6622 reservation shall be required and the converted entity shall
6623 for all purposes of this title be entitled to utilize the name
6624 of the converting entity without any further action by the
6625 converting entity or the converted entity.

6626 (i) A certified copy of the statement of conversion may
6627 be delivered to the office of the judge of probate in any
6628 county in which the converting entity owned real property, to
6629 be recorded without payment and without collection by the
6630 judge of probate of any deed or other transfer tax or fee. The
6631 judge of probate shall, however, be entitled to collect a
6632 filing fee of five dollars (\$5). Any filing shall evidence
6633 chain of title, but lack of filing shall not affect the
6634 converted entity's title to the real property."

6635 "§10A-1-8.02

6636 ~~(a)~~ A merger of two or more entities, whether the other
6637 entity or entities are the same or another form of entity, may



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6638 be accomplished as provided in this section.

6639 (a) The plan of merger must be in writing, and:

6640 (1) must include the following:

6641 (A) the name, type of entity, and mailing address of
6642 the principal office of each entity that is a party to the
6643 merger, the jurisdiction of the governing statute of each
6644 entity that is a party to the merger, and the respective
6645 unique identifying number or other designation as assigned by
6646 the Secretary of State, if any, of each entity that is a party
6647 to the merger;

6648 (B) the name, type of entity, and mailing address of
6649 the principal office of the surviving entity and, if the
6650 surviving entity is to be created pursuant to the merger, the
6651 surviving entity's organizational documents;

6652 (C) the terms and conditions of the merger, including
6653 the manner and basis for converting the interests in each
6654 entity that is a party to the merger into any combination of
6655 money, interests in the surviving entity, and other
6656 consideration as allowed by subsection (b); and

6657 (D) if the surviving entity is not to be created
6658 pursuant to the merger, any amendments to be made by the
6659 merger to the surviving entity's organizational documents; and

6660 (2) may include other provisions relating to the merger
6661 not prohibited by law.

6662 (b) In connection with a merger, rights or securities
6663 of or interests in a merged entity may be exchanged for or
6664 converted into cash, property, or rights or securities of or
6665 interests in the surviving entity, or, in addition to or in



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6666 lieu thereof, may be exchanged for or converted into cash,
6667 property, or rights or securities of or interests in another
6668 entity, or may be cancelled.

6669 (c) The plan of merger of an entity must be approved as
6670 follows:

6671 (1) CORPORATIONS.

6672 ~~(A) a. In the case of a corporation, other than a~~
6673 ~~nonprofit corporation, that~~ If a corporation is governed by
6674 Chapter 2A and that corporation is a party to a merger, a plan
6675 of merger under subsection (a) must be approved in accordance
6676 with ~~the procedures and by the stockholder vote required by~~
6677 Article 11 of Chapter 2A. ~~If the governing documents of the~~
6678 ~~corporation provide for approval of a merger by less than all~~
6679 ~~of the corporation's stockholders, approval of the merger~~
6680 ~~shall constitute corporate action subject to appraisal rights~~
6681 ~~pursuant to Article 13 of Chapter 2A, as applicable. No merger~~
6682 ~~of a corporation into a general or limited partnership may be~~
6683 ~~effected without the consent in writing of each stockholder~~
6684 ~~who will have personal liability with respect to the surviving~~
6685 ~~entity, notwithstanding any provision in the governing~~
6686 ~~documents of the corporation that is a party to the merger~~
6687 ~~providing for less than unanimous stockholder approval for the~~
6688 ~~conversion.~~ If the merger is a corporate action as described
6689 in Section 10A-2A-13.02, then the rights, obligations, and
6690 procedures under Article 13 of Chapter 2A shall be applicable
6691 to that merger.

6692 ~~(B) b. In the case of a nonprofit corporation that is a~~
6693 ~~party to the merger, a plan of merger must be approved by all~~



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6694 ~~the nonprofit corporation's members entitled to vote thereon,~~
6695 ~~if it is a nonprofit corporation with members with voting~~
6696 ~~rights, or as otherwise provided in the nonprofit~~
6697 ~~corporation's governing documents; but in no case may the~~
6698 ~~governing documents provide for approval by less than a~~
6699 ~~majority of the members entitled to vote thereon. If the~~
6700 ~~nonprofit corporation has no members, or no members entitled~~
6701 ~~to vote thereon, the plan of merger must be approved by a~~
6702 ~~unanimous vote of the board of directors of the nonprofit~~
6703 ~~corporation, except as otherwise provided in the governing~~
6704 ~~documents; but in no case may the governing documents provide~~
6705 ~~for approval by less than a majority of the board of~~
6706 ~~directors.~~ If a nonprofit corporation is governed by Chapter
6707 3A and that corporation is a party to a merger, a plan of
6708 merger under subsection (a) must be approved in accordance
6709 with Article 12 of Chapter 3A.

6710 (C) If a corporation is not governed by Chapter 2A or
6711 Chapter 3A and that corporation is a party to a merger, the
6712 plan of merger under subsection (a) must be approved in
6713 accordance with the law of the jurisdiction of formation of
6714 that corporation.

6715 (2) LIMITED PARTNERSHIPS. In the case of a limited
6716 partnership that is a party to the merger, a plan of merger
6717 under subsection (a) must be approved in ~~writing by all of the~~
6718 ~~partners or as otherwise provided in the partnership~~
6719 ~~agreement. No merger of a limited partnership with a general~~
6720 ~~partnership in which the general partnership is the surviving~~
6721 ~~entity may be effected without the consent in writing of each~~



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6722 ~~limited partner who will have personal liability with respect~~
6723 ~~to the surviving entity, notwithstanding any provision in the~~
6724 ~~limited partnership agreement of the merging limited~~
6725 ~~partnership providing for approval of the merger by less than~~
6726 ~~all partners~~ accordance with Article 10 of Chapter 9A.

6727 (3) LIMITED LIABILITY COMPANIES. In the case of a
6728 limited liability company that is a party to the merger, a
6729 plan of merger under subsection (a) must be approved in
6730 ~~writing by all of the limited liability company's members or~~
6731 ~~as otherwise provided in the limited liability company's~~
6732 ~~governing documents. No merger of a limited liability company~~
6733 ~~with a general or limited partnership that is the surviving~~
6734 ~~entity may be effected without the consent in writing of each~~
6735 ~~member who will have personal liability with respect to the~~
6736 ~~surviving entity, notwithstanding any provision in the~~
6737 ~~governing documents of the merging limited liability company~~
6738 ~~providing for less than unanimous member approval for a merger~~
6739 accordance with Article 10 of Chapter 5A.

6740 (4) GENERAL PARTNERSHIPS, INCLUDING LIMITED LIABILITY
6741 PARTNERSHIPS. In the case of a general partnership that is a
6742 party to the merger, a plan of merger under subsection (a)
6743 must be approved in ~~writing by all of the partners or as~~
6744 ~~otherwise provided in the partnership agreement. No merger of~~
6745 ~~a limited liability partnership into a general or limited~~
6746 ~~partnership may be effected without the consent in writing of~~
6747 ~~each partner who will have personal liability with respect to~~
6748 ~~the surviving entity, notwithstanding any provision in the~~
6749 ~~partnership agreement of the limited liability partnership~~



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6750 ~~providing for less than unanimous partner approval for a~~
6751 ~~merger~~ accordance with Article 9 of Chapter 8A. All general
6752 partnerships, other than a general partnership that is created
6753 pursuant to the merger, that are parties to a merger must have
6754 on file with the Secretary of State a statement of
6755 partnership, statement of not for profit partnership, or
6756 statement of limited liability partnership prior to delivering
6757 the statement of merger to the Secretary of State for filing.

6758 (5) REAL ESTATE INVESTMENT TRUST. In the case of a real
6759 estate investment trust that is a party to the merger, a plan
6760 of merger under subsection (a) must be approved in writing by
6761 all of the trust's shareholders or as otherwise provided in
6762 the trust's declaration of trust, but in no case may the vote
6763 required for shareholder approval be set at less than a
6764 majority of all the votes entitled to be cast. No merger of a
6765 real estate investment trust with a general or limited
6766 partnership that is to be the surviving entity may be effected
6767 without the consent in writing of each shareholder who will
6768 have personal liability with respect to the surviving entity,
6769 notwithstanding any provision in the declaration of trust of
6770 the converting real estate investment trust providing for less
6771 than unanimous shareholder approval for the merger.

6772 (6) OTHER ENTITY. ~~In the case of an entity other than a~~
6773 ~~corporation, limited partnership, limited liability company,~~
6774 ~~general partnership, or real estate investment trust that is a~~
6775 ~~party to the merger, a plan of merger must be approved in~~
6776 ~~writing by all owners of the entity. No merger of any entity~~
6777 ~~shall be effected without the consent in writing of any owner~~



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6778 ~~who has limited liability as an owner of an entity party to~~
6779 ~~the merger, and who will have personal liability with respect~~
6780 ~~to the surviving entity.~~ In the case of an entity not
6781 specified in paragraphs (1) through (5) above, a plan of
6782 merger under subsection (a) must be approved in writing by all
6783 owners of that entity or, if the entity has no owners, then by
6784 all members of the governing authority of that entity.

6785 ~~(b) The plan of merger must be in writing, and:~~

6786 ~~(1) must include the following:~~

6787 ~~a. the name, type of entity, and mailing address of the~~
6788 ~~principal office of each entity that is a party to the merger,~~
6789 ~~the jurisdiction of the governing statute of each entity that~~
6790 ~~is a party to the merger, and the respective unique~~
6791 ~~identifying number or other designation as assigned by the~~
6792 ~~Secretary of State, if any, of each entity that is a party to~~
6793 ~~the merger;~~

6794 ~~b. the name, type of entity, and mailing address of the~~
6795 ~~principal office of the surviving entity and, if the surviving~~
6796 ~~entity is to be created pursuant to the merger, the surviving~~
6797 ~~entity's organizational documents;~~

6798 ~~c. the terms and conditions of the merger, including~~
6799 ~~the manner and basis for converting the interests in each~~
6800 ~~entity that is a party to the merger into any combination of~~
6801 ~~money, interests in the surviving entity, and other~~
6802 ~~consideration as allowed by subsection (c); and~~

6803 ~~d. if the surviving entity is not to be created~~
6804 ~~pursuant to the merger, any amendments to be made by the~~
6805 ~~merger to the surviving entity's organizational documents; and~~



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6806 ~~(2) may include other provisions relating to the merger~~
6807 ~~not prohibited by law.~~

6808 ~~(c) In connection with a merger, rights or securities~~
6809 ~~of or interests in a merged entity may be exchanged for or~~
6810 ~~converted into cash, property, or rights or securities of or~~
6811 ~~interests in the surviving entity, or, in addition to or in~~
6812 ~~lieu thereof, may be exchanged for or converted into cash,~~
6813 ~~property, or rights or securities of or interests in another~~
6814 ~~entity or may be cancelled.~~

6815 ~~(d) After a plan of merger is approved and before the~~
6816 ~~merger takes effect, the plan may be amended or abandoned as~~
6817 ~~provided in the plan, or if the plan does not provide for~~
6818 ~~amendment or abandonment, in the same manner as required for~~
6819 ~~the approval of the plan of merger originally.~~

6820 ~~(e)~~ (d) After each entity has approved the plan of
6821 merger pursuant to subsection (c), the entities must deliver
6822 to the Secretary of State for filing a statement of merger
6823 signed on behalf of each entity as provided by its governing
6824 statute which must include:

6825 (1) the name, type of entity, and mailing address of
6826 the principal office of each entity that is a party to the
6827 merger, the jurisdiction of the governing statute of each
6828 entity that is a party to the merger, and the respective
6829 unique identifying number or other designation as assigned by
6830 the Secretary of State, if any, of each entity that is a party
6831 to the merger;

6832 (2) the name, type of entity, and mailing address of
6833 the principal office of the surviving entity, the unique



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6834 identifying number or other designation as assigned by the
6835 Secretary of State, if any, of the surviving entity, the
6836 jurisdiction of the governing statute of the surviving entity,
6837 and, if the surviving entity is created pursuant to the
6838 merger, a statement to that effect;

6839 ~~(3) for each entity other than a general partnership,~~
6840 ~~the date of the filing of the certificate of formation, if~~
6841 ~~any, and all prior amendments and the filing office or~~
6842 ~~offices, if any, where such is filed;~~

6843 ~~(4)~~ (3) for each general partnership, the date of the
6844 filing of the statement of partnership, statement of not for
6845 profit partnership, or statement of limited liability
6846 partnership, if any, and all prior amendments and the filing
6847 office or offices, if any, where such is filed;

6848 ~~(5)~~ (4) the date the merger is effective under the
6849 governing statute of the surviving entity;

6850 ~~(6)~~ (5) if the surviving entity is to be created
6851 pursuant to the merger, (i) if it will be a filing entity, its
6852 certificate of formation; or (ii) if it will be a non-filing
6853 entity, any document that creates the entity that is required
6854 to be in a public writing or in the case of a general
6855 partnership, its statement of partnership, statement of not
6856 for profit partnership, or statement of limited liability
6857 partnership, as applicable;

6858 ~~(7)~~ (6) if the surviving entity is a domestic entity
6859 that exists before the merger, any amendments provided for in
6860 the plan of merger for the organizational documents that
6861 created the domestic entity that are required to be in a



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6862 public writing, or in the case of a general partnership, its
6863 statement of partnership, statement of not for profit
6864 partnership, or statement of limited liability partnership, as
6865 applicable;

6866 ~~(8)~~ (7) a statement as to each entity that the merger
6867 was approved as required by the entity's governing statute;

6868 ~~(9)~~ (8) a statement that a copy of the plan of merger
6869 will be furnished by the surviving entity, on request and
6870 without cost, to any owner of any entity which is a party to
6871 the merger;

6872 ~~(10)~~ (9) if the surviving entity is a foreign entity not
6873 authorized to conduct activities and affairs in this state,
6874 the street and mailing address of an office for the purposes
6875 of Section 10A-1-8.04; and

6876 ~~(11)~~ (10) any additional information required by the
6877 governing statute of any entity that is a party to the merger.

6878 ~~(f)~~ (e) Prior to the statement of merger being delivered
6879 for filing to the Secretary of State in accordance with
6880 subsection ~~(e)~~ (d), all parties to the merger that are general
6881 partnerships, other than a general partnership that is created
6882 pursuant to the merger, must have on file with the Secretary
6883 of State a statement of partnership, statement of not for
6884 profit partnership, or statement of limited liability
6885 partnership.

6886 (f) After a plan of merger is approved and before the
6887 merger takes effect, the plan may be amended or abandoned as
6888 provided in the plan, or if the plan does not provide for
6889 amendment or abandonment, in the same manner as required for



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6890 the approval of the plan of merger originally.

6891 (g) If all of the entities that are parties to the
6892 merger are domestic entities, the merger becomes effective on
6893 the effective date determined in accordance with Article 4. If
6894 one or more parties to the merger is a foreign entity, or a
6895 foreign entity created by the merger is the surviving entity,
6896 the merger shall become effective at the later of:

6897 (1) when all documents required to be filed in foreign
6898 jurisdictions to effect the merger have become effective, or

6899 (2) the effective date determined in accordance with
6900 Article 4.

6901 (h) When a merger becomes effective:

6902 (1) the surviving entity continues or, in the case of a
6903 surviving entity created pursuant to the merger, comes into
6904 existence;

6905 (2) each entity that merges into the surviving entity
6906 ceases to exist as a separate entity;

6907 (3) except as provided in the plan of merger, all
6908 property owned by, and every contract right possessed by, each
6909 merging entity that ceases to exist vests in the surviving
6910 entity without transfer, reversion, or impairment and the
6911 title to any property and contract rights vested by deed or
6912 otherwise in the surviving entity shall not revert, be in any
6913 way impaired, or be deemed to be a transfer by reason of the
6914 merger;

6915 (4) all debts, obligations, and other liabilities of
6916 each merging entity, other than the surviving entity, are
6917 debts, obligations, and liabilities of the surviving entity,



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6918 and neither the rights of creditors, nor any liens upon the
6919 property of any entity that is a party to the merger, shall be
6920 impaired by the merger;

6921 (5) an action or proceeding, pending by or against any
6922 merging entity that ceases to exist continues as if the merger
6923 had not occurred and the name of the surviving entity may, but
6924 need not be substituted in any pending proceeding for the name
6925 of any merging entity whose separate existence ceased in the
6926 merger;

6927 (6) except as prohibited by law other than this chapter
6928 or as provided in the plan of merger, all the rights,
6929 privileges, franchises, immunities, powers, and purposes of
6930 each merging entity, other than the surviving entity, vest in
6931 the surviving entity;

6932 (7) except as otherwise provided in the plan of merger,
6933 the terms and conditions of the plan of merger take effect;

6934 (8) except as otherwise agreed, if a merged entity
6935 ceases to exist, the merger does not dissolve the merged
6936 entity;

6937 (9) if the surviving entity is created pursuant to the
6938 merger:

6939 ~~(i)~~ (A) if it is a general partnership, the statement of
6940 partnership, statement of not for profit partnership, or
6941 statement of limited liability partnership becomes effective;
6942 or

6943 ~~(i)~~ (B) if it is an entity other than a partnership,
6944 the organizational documents that create the entity become
6945 effective;



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6946 (10) the interests in a merging entity that are to be
6947 converted in accordance with the terms of the merger into
6948 interests, obligations, rights to acquire interests, cash,
6949 other property, or any combination of the foregoing, are
6950 converted as provided in the plan of merger, and the former
6951 holders of interests are entitled only to the rights provided
6952 to them by those terms or to any appraisal or dissenters'
6953 rights they may have under the governing statute governing the
6954 merging entity;

6955 (11) if the surviving entity exists before the merger:

6956 ~~(i)~~ (A) except as provided in the plan of merger, all
6957 the property and contract rights of the surviving entity
6958 remain its property and contract rights without transfer,
6959 reversion, or impairment;

6960 ~~(ii)~~ (B) the surviving entity remains subject to all its
6961 debts, obligations, and other liabilities; and

6962 ~~(iii)~~ (C) except as provided by law other than this
6963 chapter or the plan of merger, the surviving entity continues
6964 to hold all of its rights, privileges, franchises, immunities,
6965 powers, and purposes.

6966 (12) Service of process in an action or proceeding
6967 against a surviving foreign entity to enforce an obligation of
6968 a domestic entity that is a party to a merger may be made by
6969 registered mail addressed to the surviving entity at the
6970 address set forth in the statement of merger or by any method
6971 provided by the Alabama Rules of Civil Procedure. Any notice
6972 or demand required or permitted by law to be served on a
6973 domestic entity may be served on the surviving foreign entity



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6974 by registered mail addressed to the surviving entity at the
6975 address set forth in the statement of merger or in any other
6976 manner similar to the procedure provided by the Alabama Rules
6977 of Civil Procedure for the service of process.

6978 (13) ~~a-~~ (A) An owner of an entity with limited liability
6979 protection remains liable, if at all, for an obligation
6980 incurred prior to the merger by an entity that ceases to exist
6981 as a result of the merger only to the extent, if any, that the
6982 owner would have been liable under the laws applicable to
6983 owners of the form of entity that ceased to exist if the
6984 merger had not occurred.

6985 ~~b-~~ (B) An owner with limited liability protection who,
6986 as a result of the merger, becomes an owner without limited
6987 liability protection of the surviving entity is liable for an
6988 obligation of the surviving entity incurred after merger to
6989 the extent provided for by the laws applicable to the
6990 surviving entity.

6991 (14) An owner without limited liability protection of
6992 an entity that ceases to exist as a result of a merger and who
6993 as a result of the merger becomes an owner of a surviving
6994 entity with limited liability protection remains liable for an
6995 obligation of the entity that ceases to exist incurred before
6996 the merger takes effect only to the extent, if any, that the
6997 owner would have been liable if the merger had not occurred.

6998 (i) A certified copy of the statement of merger
6999 required to be filed under this section may be filed in the
7000 real estate records in the office of the judge of probate in
7001 any county in which any merged entity owned real property,



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7002 without payment and without collection by the judge of probate
7003 of any deed or other transfer tax or fee. The judge of
7004 probate, however, shall be entitled to collect a filing fee of
7005 five dollars (\$5). Any such filing shall evidence chain of
7006 title, but lack of filing shall not affect the surviving
7007 entity's title to such real property."

7008 "§10A-1-9.01

7009 This article does not apply to business corporations,
7010 nonprofit corporations, limited liability companies, general
7011 partnerships, and limited partnerships."

7012 Section 3. Sections 10A-2A-1.40, 10A-2A-1.43,
7013 10A-2A-1.51, 10A-2A-2.02, 10A-2A-2.06, 10A-2A-7.04,
7014 10A-2A-7.32, 10A-2A-7.20, 10A-2A-8.10, 10A-2A-8.21,
7015 10A-2A-8.22, 10A-2A-8.24, 10A-2A-8.59, 10A-2A-10.06,
7016 10A-2A-10.07, 10A-2A-10.08, 10A-2A-11.02, 10A-2A-11.06,
7017 10A-2A-12.02, and 10A-2A-14.13 of the Code of Alabama 1975,
7018 are amended to read as follows:

7019 "§10A-2A-1.40

7020 As used in this chapter, unless otherwise specified or
7021 unless the context otherwise requires, the following terms
7022 have the following meanings:

7023 (1) AUTHORIZED STOCK means the stock of all classes and
7024 series a corporation or foreign corporation is authorized to
7025 issue.

7026 (2) BENEFICIAL STOCKHOLDER means a person who owns the
7027 beneficial interest in stock, which is either a record
7028 stockholder or a person on whose behalf shares of stock are
7029 registered in the name of an intermediary or nominee.



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7030 (3) CERTIFICATE OF INCORPORATION means the certificate
7031 of incorporation described in Section 10A-2A-2.02, all
7032 amendments to the certificate of incorporation, and any other
7033 documents permitted or required to be delivered for filing by
7034 a corporation with the Secretary of State under this chapter
7035 or Chapter 1 that modify, amend, supplement, restate, or
7036 replace the certificate of incorporation. After an amendment
7037 of the certificate of incorporation or any other document
7038 filed under this chapter or Chapter 1 that restates the
7039 certificate of incorporation in its entirety, the certificate
7040 of incorporation shall not include any prior documents. When
7041 used with respect to a corporation incorporated and existing
7042 on December 31, 2019, under a predecessor law of this state,
7043 the term "certificate of incorporation" means articles of
7044 incorporation, charter, or similar incorporating document, and
7045 all amendments and restatements to the certificate of
7046 incorporation, charter, or similar incorporating document.
7047 When used with respect to a foreign corporation, a nonprofit
7048 corporation, or a foreign nonprofit corporation, the
7049 "certificate of incorporation" of such an entity means the
7050 document of such entity that is equivalent to the certificate
7051 of incorporation of a corporation. The term "certificate of
7052 incorporation" as used in this chapter is synonymous to the
7053 term "certificate of formation" used in Chapter 1.

7054 (4) CORPORATION, except in the phrase foreign
7055 corporation, means an entity incorporated or existing under
7056 this chapter.

7057 (5) DELIVER or DELIVERY means any method of delivery



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7058 used in conventional commercial practice, including delivery
7059 by hand, mail, commercial delivery, and, if authorized in
7060 accordance with Section 10A-2A-1.41, by electronic
7061 transmission.

7062 (6) DISTRIBUTION means a direct or indirect transfer of
7063 cash or other property (except a corporation's own stock) or
7064 incurrence of indebtedness by a corporation to or for the
7065 benefit of its stockholders in respect of any of its stock. A
7066 distribution may be in the form of a payment of a dividend; a
7067 purchase, redemption, or other acquisition of stock; a
7068 distribution of indebtedness; a distribution in liquidation;
7069 or otherwise.

7070 (7) DOCUMENT means a writing as defined in Chapter 1.

7071 (8) EFFECTIVE DATE, when referring to a document
7072 accepted for filing by the Secretary of State, means the time
7073 and date determined in accordance with Article 4 of Chapter 1.

7074 (9) ELECTRONIC MAIL means an electronic transmission
7075 directed to a unique electronic mail address.

7076 (10) ELECTRONIC MAIL ADDRESS means a destination,
7077 commonly expressed as a string of characters, consisting of a
7078 unique user name or mailbox (commonly referred to as the
7079 "local part" of the address) and a reference to an internet
7080 domain (commonly referred to as the "domain part" of the
7081 address), whether or not displayed, to which electronic mail
7082 can be sent or delivered.

7083 (11) ELIGIBLE ENTITY means an unincorporated entity,
7084 foreign unincorporated entity, nonprofit corporation, or
7085 foreign nonprofit corporation.



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7086 (12) ELIGIBLE INTERESTS means interests or memberships.

7087 (13) EMPLOYEE includes an officer, but not a director.

7088 A director may accept duties that make the director also an
7089 employee.

7090 (14) ENTITY includes corporation; foreign corporation;
7091 nonprofit corporation; foreign nonprofit corporation; estate;
7092 trust; unincorporated entity; foreign unincorporated entity;
7093 and state, United States, and foreign government.

7094 (15) EXPENSES means reasonable expenses of any kind
7095 that are incurred in connection with a matter.

7096 (16) FILING ENTITY means an unincorporated entity,
7097 other than a limited liability partnership, that is of a type
7098 that is created by filing a public organic record or is
7099 required to file a public organic record that evidences its
7100 creation.

7101 (17) FOREIGN CORPORATION means a corporation
7102 incorporated under a law other than the law of this state
7103 which would be a corporation if incorporated under the law of
7104 this state.

7105 (18) FOREIGN NONPROFIT CORPORATION means a corporation
7106 incorporated under a law other than the law of this state
7107 which would be a nonprofit corporation if incorporated under
7108 the law of this state.

7109 (19) GOVERNING STATUTE means the statute governing the
7110 internal affairs of a corporation, foreign corporation,
7111 nonprofit corporation, foreign nonprofit corporation,
7112 unincorporated entity, or foreign unincorporated entity.

7113 (20) GOVERNMENTAL SUBDIVISION includes authority,



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7114 county, district, and municipality.

7115 (21) INCLUDES and INCLUDING denote a partial definition
7116 or a nonexclusive list.

7117 (22) INTEREST means either or both of the following
7118 rights under the governing statute governing an unincorporated
7119 entity:

7120 (i) the right to receive distributions from the entity
7121 either in the ordinary course or upon liquidation; or

7122 (ii) the right to receive notice or vote on issues
7123 involving its internal affairs, other than as an agent,
7124 assignee, proxy, or person responsible for managing its
7125 business and affairs.

7126 (23) INTEREST HOLDER means a person who holds of record
7127 an interest.

7128 (24) KNOWLEDGE is determined as follows:

7129 (a) A person knows a fact when the person:

7130 (1) has actual knowledge of it; or

7131 (2) is deemed to know it under law other than this
7132 chapter.

7133 (b) A person has notice of a fact when the person:

7134 (1) knows of it;

7135 (2) receives notification of it in accordance with
7136 Section 10A-2A-1.41;

7137 (3) has reason to know the fact from all of the facts
7138 known to the person at the time in question; or

7139 (4) is deemed to have notice of the fact under
7140 subsection (d).

7141 (c) A person notifies another of a fact by taking steps



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7142 reasonably required to inform the other person in ordinary
7143 course in accordance with Section 10A-2A-1.41, whether or not
7144 the other person knows the fact.

7145 (d) A person is deemed to have notice of a
7146 corporation's:

7147 (1) matters included in the certificate of
7148 incorporation upon filing;

7149 (2) dissolution, 90 days after a certificate of
7150 dissolution under Section 10A-2A-14.03 becomes effective;

7151 (3) conversion, merger, or interest exchange under
7152 Article 9 or Article 11, 90 days after a statement of
7153 conversion, or statement of merger or interest exchange
7154 becomes effective;

7155 (4) conversion or merger under Article 8 of Chapter 1,
7156 90 days after a statement of conversion or statement of merger
7157 becomes effective; and

7158 (5) revocation of dissolution and reinstatement, 90
7159 days after certificate of revocation of dissolution and
7160 reinstatement under Section 10A-2A-14.04 becomes effective.

7161 (e) A stockholder's knowledge, notice, or receipt of a
7162 notification of a fact relating to the corporation is not
7163 knowledge, notice, or receipt of a notification of a fact by
7164 the corporation solely by reason of the stockholder's capacity
7165 as a stockholder.

7166 (f) The date and time of the effectiveness of a notice
7167 delivered in accordance with Section 10A-2A-1.41, is
7168 determined by Section 10A-2A-1.41.

7169 (25) MEANS denotes an exhaustive definition.



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7170 (26) MEMBERSHIP means the rights of a member in a
7171 nonprofit corporation or foreign nonprofit corporation.

7172 ~~(27) MERGER means a transaction pursuant to Section~~
7173 ~~10A-2A-11.02.~~

7174 ~~(28)~~ (27) ORGANIZATIONAL DOCUMENTS means the public
7175 organic record and private organizational documents of a
7176 corporation, foreign corporation, or eligible entity.

7177 ~~(29)~~ (28) PRINCIPAL OFFICE means the office (in or out
7178 of this state) so designated in the annual report where the
7179 principal executive offices of a corporation or foreign
7180 corporation are located.

7181 ~~(30)~~ (29) PRIVATE ORGANIZATIONAL DOCUMENTS means (i) the
7182 bylaws of a corporation, foreign corporation, nonprofit
7183 corporation, or foreign nonprofit corporation, or (ii) the
7184 rules, regardless of whether in writing, that govern the
7185 internal affairs of an unincorporated entity or foreign
7186 unincorporated entity, are binding on all its interest
7187 holders, and are not part of its public organic record, if
7188 any. Where private organizational documents have been amended
7189 or restated, the term means the private organizational
7190 documents as last amended or restated.

7191 ~~(31)~~ (30) PROCEEDING includes any civil suit and
7192 criminal, administrative, and investigatory action.

7193 ~~(32)~~ (31) PUBLIC ORGANIC RECORD means (i) the
7194 certificate of incorporation of a corporation, foreign
7195 corporation, nonprofit corporation, or foreign nonprofit
7196 corporation, or (ii) the document, if any, the filing of which
7197 is required to create an unincorporated entity or foreign



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7198 unincorporated entity, or which creates the unincorporated
7199 entity or foreign unincorporated entity and is required to be
7200 filed. Where a public organic record has been amended or
7201 restated, the term means the public organic record as last
7202 amended or restated.

7203 ~~(33)~~ (32) RECORD DATE means the date fixed for
7204 determining the identity of the corporation's stockholders and
7205 their stockholdings for purposes of this chapter. Unless
7206 another time is specified when the record date is fixed, the
7207 determination shall be made as of the close of business at the
7208 principal office of the corporation on the date so fixed.

7209 ~~(34)~~ (33) RECORD STOCKHOLDER means (i) the person in
7210 whose name shares of stock are registered in the records of
7211 the corporation, or (ii) the person identified as the
7212 beneficial owner of stock in a beneficial ownership
7213 certificate pursuant to Section 10A-2A-7.23 on file with the
7214 corporation to the extent of the rights granted by such
7215 certificate.

7216 ~~(35)~~ (34) SECRETARY means the corporate officer to whom
7217 the board of directors has delegated responsibility under
7218 Section 10A-2A-8.40(c) to maintain the minutes of the meetings
7219 of the board of directors and of the stockholders and for
7220 authenticating records of the corporation.

7221 ~~(36)~~ (35) STOCK EXCHANGE means a transaction pursuant to
7222 Section 10A-2A-11.03.

7223 ~~(37)~~ (36) STOCKHOLDER means a record stockholder.

7224 ~~(38)~~ (37) STOCK means the units into which the
7225 proprietary interests in a corporation or foreign corporation



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7226 are divided.

7227 ~~(39)~~ (38) TYPE OF ENTITY means a generic form of entity:

7228 (i) recognized at common law; or (ii) formed under a governing
7229 statute, regardless of whether some entities formed under that
7230 law are subject to provisions of that law that create
7231 different categories of the form of entity.

7232 ~~(40)~~ (39) UNINCORPORATED ENTITY means an organization or
7233 artificial legal person that either has a separate legal
7234 existence or has the power to acquire an estate in real
7235 property in its own name and that is not any of the following:
7236 a corporation, foreign corporation, nonprofit corporation,
7237 foreign nonprofit corporation, a series of a limited liability
7238 company or of another type of entity, an estate, a trust, a
7239 state, United States, or foreign government. The term includes
7240 a general partnership, limited liability company, limited
7241 partnership, business trust, joint stock association, and
7242 unincorporated nonprofit association.

7243 ~~(41)~~ (40) UNITED STATES includes any district,
7244 authority, bureau, commission, department, and any other
7245 agency of the United States.

7246 ~~(42)~~ (41) UNRESTRICTED VOTING TRUST BENEFICIAL OWNER
7247 means, with respect to any stockholder rights, a voting trust
7248 beneficial owner whose entitlement to exercise the stockholder
7249 right in question is not inconsistent with the voting trust
7250 agreement.

7251 ~~(43)~~ (42) VOTING GROUP means all stock of one or more
7252 classes or series that under the certificate of incorporation
7253 or this chapter are entitled to vote and be counted together



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7254 collectively on a matter at a meeting of stockholders. All
7255 stock entitled by the certificate of incorporation or this
7256 chapter to vote generally on the matter is for that purpose a
7257 single voting group.

7258 ~~(44)~~ (43) VOTING POWER means the current power to vote
7259 in the election of directors.

7260 ~~(45)~~ (44) VOTING TRUST BENEFICIAL OWNER means an owner
7261 of a beneficial interest in stock of the corporation held in a
7262 voting trust established pursuant to Section 10A-2A-7.30(a)."

7263 "§10A-2A-1.43

7264 (a) A "qualified director" is a director who, at the
7265 time action is to be taken under:

7266 (1) Section 10A-2A-2.02(b)(6), is not a director (i) to
7267 whom the limitation or elimination of the duty of an officer
7268 to offer potential business opportunities to the corporation
7269 would apply, or (ii) who has a material relationship with any
7270 other person to whom the limitation or elimination would
7271 apply;

7272 ~~(2) Section 10A-2A-7.44, does not have (i) a material~~
7273 ~~interest in the outcome of the proceeding, or (ii) a material~~
7274 ~~relationship with a person who has such an interest;~~

7275 ~~(3)~~ (2) Section 10A-2A-8.53 or Section 10A-2A-8.55, (i)
7276 is not a party to the proceeding, (ii) is not a director as to
7277 whom a transaction is a director's conflicting interest
7278 transaction or who sought a disclaimer of the corporation's
7279 interest in a business opportunity under Section 10A-2A-8.60,
7280 which transaction or disclaimer is challenged, and (iii) does
7281 not have a material relationship with a director described in



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7282 either clause (i) or clause (ii) of this subsection ~~(a)(3)~~
7283 (a)(2); or

7284 ~~(4)~~ (3) Section 10A-2A-8.60, is not a director (i) as to
7285 whom the contract or transaction is a director's conflicting
7286 interest transaction, (ii) who has a material relationship
7287 with another director as to whom the transaction is a
7288 director's conflicting interest transaction, (iii) pursues or
7289 takes advantage of the business opportunity, directly, or
7290 indirectly through or on behalf of another person, or (iv) has
7291 a material relationship with a director or officer who pursues
7292 or takes advantage of the business opportunity, directly, or
7293 indirectly through or on behalf of another person.

7294 (b) For purposes of this section:

7295 (1) "material relationship" means a familial,
7296 financial, professional, employment, or other relationship
7297 that would reasonably be expected to impair the objectivity of
7298 the director's judgment when participating in the action to be
7299 taken; and

7300 (2) "material interest" means an actual or potential
7301 benefit or detriment (other than one which would devolve on
7302 the corporation or the stockholders generally) that would
7303 reasonably be expected to impair the objectivity of the
7304 director's judgment when participating in the action to be
7305 taken.

7306 (c) The presence of one or more of the following
7307 circumstances shall not automatically prevent a director from
7308 being a qualified director:

7309 (1) nomination or election of the director to the



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7310 current board of directors by any director who is not a
7311 qualified director with respect to the matter (or by any
7312 person that has a material relationship with that director),
7313 acting alone or participating with others; or

7314 (2) service as a director of another corporation of
7315 which a director who is not a qualified director with respect
7316 to the matter (or any individual who has a material
7317 relationship with that director), is or was also a director;
7318 ~~or.~~

7319 ~~(3) with respect to action to be taken under Section~~
7320 ~~10A-2A-7.44, status as a named defendant, as a director~~
7321 ~~against whom action is demanded, or as a director who approved~~
7322 ~~the conduct being challenged."~~

7323 "§10A-2A-1.51

7324 (a) If the defective corporate action ratified under
7325 this Division D of Article 1 would have required under any
7326 other section of this chapter a filing in accordance with this
7327 chapter, then, regardless of whether a filing was previously
7328 made in respect of such defective corporate action and in lieu
7329 of a filing otherwise required by this chapter, the
7330 corporation shall file a certificate of validation in
7331 accordance with this section, and that certificate of
7332 validation shall serve to amend or substitute for any other
7333 filing with respect to such defective corporate action
7334 required by this chapter.

7335 (b) The certificate of validation must set forth:

7336 (1) the name of the corporation;

7337 (2) the unique identifying number or other designation



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7338 as assigned by the Secretary of State;

7339 ~~(1)~~ (3) the defective corporate action that is the
7340 subject of the certificate of validation (including, in the
7341 case of any defective corporate action involving the issuance
7342 of putative stock, the number and type of shares of putative
7343 stock issued and the date or dates upon which that putative
7344 stock was purported to have been issued);

7345 ~~(2)~~ (4) the date of the defective corporate action;

7346 ~~(3)~~ (5) the nature of the failure of authorization in
7347 respect of the defective corporate action;

7348 ~~(4)~~ (6) a statement that the defective corporate action
7349 was ratified in accordance with Section 10A-2A-1.47, including
7350 the date on which the board of directors ratified that
7351 defective corporate action and the date, if any, on which the
7352 stockholders approved the ratification of that defective
7353 corporate action; and

7354 ~~(5)~~ (7) the information required by subsection (c).

7355 (c) The certificate of validation must also contain the
7356 following information:

7357 (1) if a filing was previously made in respect of the
7358 defective corporate action and no changes to that filing are
7359 required to give effect to the ratification of that defective
7360 corporate action in accordance with Section 10A-2A-1.47, the
7361 certificate of validation must set forth (i) the name, title,
7362 and filing date of the filing previously made and any
7363 certificate of correction to that filing, and (ii) a statement
7364 that a copy of the filing previously made, together with any
7365 certificate of correction to that filing, is attached as an



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7366 exhibit to the certificate of validation;

7367 (2) if a filing was previously made in respect of the
7368 defective corporate action and that filing requires any change
7369 to give effect to the ratification of that defective corporate
7370 action in accordance with Section 10A-2A-1.47, the certificate
7371 of validation must set forth (i) the name, title, and filing
7372 date of the filing previously made and any certificate of
7373 correction to that filing, and (ii) a statement that a filing
7374 containing all of the information required to be included
7375 under the applicable section or sections of this chapter to
7376 give effect to that defective corporate action is attached as
7377 an exhibit to the certificate of validation, and (iii) the
7378 date and time that filing is deemed to have become effective;
7379 or

7380 (3) if a filing was not previously made in respect of
7381 the defective corporate action and the defective corporate
7382 action ratified under Section 10A-2A-1.47 would have required
7383 a filing under any other section of this chapter, the
7384 certificate of validation must set forth (i) a statement that
7385 a filing containing all of the information required to be
7386 included under the applicable section or sections of this
7387 chapter to give effect to that defective corporate action is
7388 attached as an exhibit to the certificate of validation, and
7389 (ii) the date and time that filing is deemed to have become
7390 effective."

7391 "§10A-2A-2.02

7392 Section 10A-1-3.05 shall not apply to this chapter.

7393 Instead:



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7394 (a) The certificate of incorporation must set forth:

7395 (1) a corporate name for the corporation that satisfies
7396 the requirements of Article 5 of Chapter 1;

7397 (2) the number of shares of stock the corporation is
7398 authorized to issue;

7399 (3) the street and mailing addresses of the
7400 corporation's initial registered office, the county within
7401 this state in which the street and mailing address is located,
7402 and the name of the corporation's initial registered agent at
7403 that office as required by Article 5 of Chapter 1; and

7404 (4) the name and address of each incorporator.

7405 (b) The certificate of incorporation may set forth:

7406 (1) the names and addresses of the individuals who are
7407 to serve as the initial directors;

7408 (2) provisions not inconsistent with law regarding:

7409 (i) the purpose or purposes for which the corporation
7410 is organized;

7411 (ii) managing the business and regulating the affairs
7412 of the corporation;

7413 (iii) defining, limiting, and regulating the powers of
7414 the corporation, its board of directors, and stockholders;

7415 (iv) a par value for authorized stock or classes of
7416 stock; or

7417 (v) subject to subsection (f), a provision imposing
7418 personal liability for the debts of the corporation on its
7419 stockholders to a specified extent and upon specified
7420 conditions; otherwise, the stockholders of a corporation shall
7421 not be personally liable for the payment of the corporation's



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7422 debts, except as they may be liable by reason of their own
7423 conduct or acts;

7424 (3) any provision that under this chapter is permitted
7425 to be set forth in the certificate of incorporation or
7426 required or permitted to be set forth in the bylaws;

7427 (4) a provision eliminating or limiting the liability
7428 of a director to the corporation or its stockholders for money
7429 damages for any action taken, or any failure to take any
7430 action, as a director, except liability for (i) the amount of
7431 a financial benefit received by a director to which the
7432 director is not entitled; (ii) an intentional infliction of
7433 harm on the corporation or the stockholders; (iii) a violation
7434 of Section 10A-2A-8.32; or (iv) an intentional violation of
7435 criminal law;

7436 (5) a provision permitting or making obligatory
7437 indemnification of a director for liability as defined in
7438 Section 10A-2A-8.50 to any person for any action taken, or any
7439 failure to take any action, as a director, except liability
7440 for (i) receipt of a financial benefit to which the director
7441 is not entitled, (ii) an intentional infliction of harm on the
7442 corporation or its stockholders, (iii) a violation of Section
7443 10A-2A-8.32, or (iv) an intentional violation of criminal law;
7444 and

7445 (6) a provision limiting or eliminating any duty of a
7446 director or any other person to offer the corporation the
7447 right to have or participate in any, or one or more classes or
7448 categories of, business opportunities, before the pursuit or
7449 taking of the opportunity by the director or other person;



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7450 provided that any application of that provision to an officer
7451 or a related person of that officer (i) also requires approval
7452 of that application by the board of directors, subsequent to
7453 the effective date of the provision, by action of qualified
7454 directors taken in compliance with the same procedures as are
7455 set forth in Section 10A-2A-8.60, and (ii) may be limited by
7456 the authorizing action of the board of directors.

7457 (c) The certificate of incorporation need not set forth
7458 any of the corporate powers enumerated in Sections 10A-1-2.11,
7459 10A-1-2.12, and 10A-1-2.13.

7460 (d) Provisions of the certificate of incorporation may
7461 be made dependent upon facts objectively ascertainable outside
7462 the certificate of incorporation in accordance with Section
7463 10A-2A-1.20(c).

7464 (e) As used in this section, "related person" ~~has the~~
7465 ~~meaning specified in Section 10A-2A-8.60~~ means:

7466 (i) the individual's spouse;

7467 (ii) a child, stepchild, grandchild, parent,
7468 stepparent, grandparent, sibling, stepsibling, half sibling,
7469 aunt, uncle, niece, or nephew (or spouse of any such person)
7470 of the individual or of the individual's spouse;

7471 (iii) a natural person living in the same home as the
7472 individual;

7473 (iv) an entity (other than the corporation or an entity
7474 controlled by the corporation) controlled by the individual or
7475 any person specified above in this definition;

7476 (v) a domestic or foreign:

7477 (A) business or nonprofit corporation (other than the



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7478 corporation or an entity controlled by the corporation) of
7479 which the individual is a director;

7480 (B) unincorporated entity of which the individual is a
7481 general partner or a member of the governing authority; or

7482 (C) individual, trust or estate for whom or of which
7483 the individual is a trustee, guardian, personal
7484 representative, or like fiduciary; or

7485 (vi) a person that is, or an entity that is, controlled
7486 by an employer of the individual.

7487 (f) The certificate of incorporation may not contain
7488 any provision that would impose liability on a stockholder for
7489 the attorney's fees or expenses of the corporation or any
7490 other party in connection with an internal corporate claim, as
7491 defined in Section 10A-2A-2.07(d).

7492 (g) The certificate of incorporation is part of a
7493 binding contract between the corporation and the stockholders,
7494 subject to the provisions of this chapter."

7495 "§10A-2A-2.06

7496 (a) Unless the certificate of incorporation provides
7497 otherwise, ~~the board of directors may adopt~~ bylaws may be
7498 adopted to be effective only in an emergency defined in
7499 subsection (d). The emergency bylaws, which are subject to
7500 amendment or repeal by the stockholders, may make all
7501 provisions necessary for managing the corporation during the
7502 emergency, including:

7503 (1) procedures for calling a meeting of the board of
7504 directors;

7505 (2) quorum requirements for the meeting; and



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7506 (3) designation of additional or substitute directors.

7507 (b) All provisions of the regular bylaws not
7508 inconsistent with the emergency bylaws remain effective during
7509 the emergency. The emergency bylaws are not effective after
7510 the emergency ends.

7511 (c) Corporate action taken in good faith in accordance
7512 with the emergency bylaws:

7513 (1) binds the corporation; and

7514 (2) may not be used to impose liability on a director,
7515 officer, employee, or agent of the corporation.

7516 (d) An emergency exists for purposes of this section if
7517 a quorum of the board of directors cannot readily be assembled
7518 because of some catastrophic event."

7519 "§10A-2A-7.04

7520 (a) Unless otherwise provided in the certificate of
7521 incorporation, any action required or permitted by this
7522 chapter to be taken at any meeting of the stockholders may be
7523 taken without a meeting, and without prior notice, if one or
7524 more consents in writing setting forth the action so taken are
7525 signed by the holders of outstanding stock having not less
7526 than the minimum number of votes that would be required to
7527 authorize or take the action at a meeting at which all shares
7528 of stock entitled to vote on the action were present and
7529 voted; provided, however, that if a corporation's certificate
7530 of incorporation authorizes stockholders to cumulate their
7531 votes when electing directors pursuant to Section 10A-2A-7.28,
7532 directors may not be elected by less than unanimous written
7533 consent. The action must be evidenced by one or more written



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7534 consents describing the action taken, signed by the
7535 stockholders approving the action and delivered to the
7536 corporation for filing by the corporation with the minutes or
7537 corporate records.

7538 (b) If not otherwise fixed under Section 10A-2A-7.07
7539 and if prior action by the board of directors is not required
7540 respecting the action to be taken without a meeting, the
7541 record date for determining the stockholders entitled to take
7542 action without a meeting shall be the first date on which a
7543 signed written consent is delivered to the corporation. If not
7544 otherwise fixed under Section 10A-2A-7.07 and if prior action
7545 by the board of directors is required respecting the action to
7546 be taken without a meeting, the record date shall be the close
7547 of business on the day the resolution of the board of
7548 directors taking the prior action is adopted. No written
7549 consent shall be effective to take the corporate action
7550 referred to therein unless, within 60 days of the earliest
7551 date on which a consent is delivered to the corporation as
7552 required by this section, written consents signed by
7553 sufficient stockholders to take the action have been delivered
7554 to the corporation. Any person executing a consent may
7555 provide, whether through instruction to an agent or otherwise,
7556 that such consent will be effective at a future time,
7557 including a time determined upon the happening of an event,
7558 occurring not later than 60 days after such instruction is
7559 given or such provision is made, if evidence of the
7560 instruction or provision is provided to the corporation. A
7561 written consent may be revoked by a writing to that effect



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7562 delivered to the corporation before unrevoked written consents
7563 sufficient in number to take the corporate action have been
7564 delivered to the corporation.

7565 (c) A consent signed pursuant to the provisions of this
7566 section has the effect of a vote taken at a meeting and may be
7567 described as such in any document. Unless the certificate of
7568 incorporation, bylaws or a resolution of the board of
7569 directors provides for a reasonable delay to permit tabulation
7570 of written consents, the action taken by written consent shall
7571 be effective when written consents signed by sufficient
7572 stockholders to take the action have been delivered to the
7573 corporation.

7574 (d) If this chapter requires that notice of a proposed
7575 action be given to nonvoting stockholders and the action is to
7576 be taken by written consent of the voting stockholders, the
7577 corporation shall give its nonvoting stockholders written
7578 notice of the action not more than 10 days after (i) written
7579 consents sufficient to take the action have been delivered to
7580 the corporation, or (ii) any later date that tabulation of
7581 consents is completed pursuant to an authorization under
7582 subsection (c). The notice must reasonably describe the action
7583 taken and contain or be accompanied by the same material that,
7584 under any provision of this chapter, would have been required
7585 to be sent to nonvoting stockholders in a notice of a meeting
7586 at which the proposed action would have been submitted to the
7587 stockholders for action.

7588 (e) If action is taken by less than unanimous written
7589 consent of the voting stockholders, the corporation shall give



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7590 its nonconsenting voting stockholders written notice of the
7591 action not more than 10 days after (i) written consents
7592 sufficient to take the action have been delivered to the
7593 corporation, or (ii) any later date that tabulation of
7594 consents is completed pursuant to an authorization under
7595 subsection (c). The notice must reasonably describe the action
7596 taken and contain or be accompanied by the same material that,
7597 under any provision of this chapter, would have been required
7598 to be sent to voting stockholders in a notice of a meeting at
7599 which the action would have been submitted to the stockholders
7600 for action.

7601 (f) The notice requirements in subsections (d) and (e)
7602 shall not delay the effectiveness of actions taken by written
7603 consent, and a failure to comply with those notice
7604 requirements shall not invalidate actions taken by written
7605 consent, provided that this subsection shall not be deemed to
7606 limit judicial power to fashion any appropriate remedy in
7607 favor of a stockholder adversely affected by a failure to give
7608 the notice within the required time period."

7609 "§10A-2A-7.20

7610 (a) After fixing a record date for a meeting, a
7611 corporation shall prepare an alphabetical list of the names of
7612 all its stockholders who are entitled to notice of the
7613 stockholders' meeting. If the board of directors fixes a
7614 different record date under Section 10A-2A-7.07(e) to
7615 determine the stockholders entitled to vote at the meeting, a
7616 corporation also shall prepare an alphabetical list of the
7617 names of all its stockholders who are entitled to vote at the



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7618 meeting. Each list must be arranged by voting group (and
7619 within each voting group by class or series of stock) and
7620 contain the address of, and number and class or series of
7621 shares of stock held by, each stockholder, and if the notice
7622 or other communications regarding the meeting have been or
7623 will be sent by the corporation to a stockholder by electronic
7624 mail or other electronic transmission, the electronic mail or
7625 other electronic transmission address of that stockholder.

7626 (b) The list of stockholders entitled to notice and to
7627 vote shall be available for inspection by any stockholder ~~7~~
7628 ~~beginning two business days after notice of~~ no later than the
7629 tenth day before each meeting of stockholders; provided,
7630 however, if the record date for determining the stockholders
7631 entitled to vote is less than 10 days before the meeting ~~is~~
7632 ~~given for which the list was prepared and continuing through~~
7633 ~~the meeting,~~ date, the list shall reflect the stockholders
7634 entitled to vote as of the tenth day before the meeting date.
7635 The list shall be available (i) at the corporation's principal
7636 office or at a place identified in the meeting notice in the
7637 city where the meeting will be held or (ii) on a reasonably
7638 accessible electronic network, provided that the information
7639 required to gain access to such list is provided with the
7640 notice of the meeting. ~~The list of stockholders entitled to~~
7641 ~~vote shall be similarly available for inspection promptly~~
7642 ~~after the record date for voting.~~ In the event that the
7643 corporation determines to make a list of stockholders
7644 available on an electronic network, the corporation may take
7645 reasonable steps to ensure that such information is available



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7646 only to stockholders of the corporation. A stockholder, or the
7647 stockholder's agent or attorney, is entitled on written demand
7648 to inspect and, subject to the requirements of Section
7649 10A-2A-16.02(c), to copy a list of stockholders, during
7650 regular business hours and at the stockholder's expense,
7651 during the period it is available for inspection. A
7652 corporation may satisfy the stockholder's right to copy a list
7653 of stockholders by furnishing a copy in the manner described
7654 in Section 10A-2A-16.03(b). A stockholder and the
7655 stockholder's agent or attorney who inspects or is furnished a
7656 copy of a list of stockholders under this subsection (b) ~~or~~
7657 ~~under subsection (c)~~ or who copies the list under this
7658 subsection (b) may use the information on that list only for
7659 purposes related to the meeting and its subject matter and
7660 must keep the information on that list confidential.

7661 ~~(c) If the meeting is to be held at a place, the~~
7662 ~~corporation shall make the list of stockholders entitled to~~
7663 ~~vote available at the meeting and any adjournment, and any~~
7664 ~~stockholder, or the stockholder's agent or attorney, is~~
7665 ~~entitled to inspect the list at any time during the meeting~~
7666 ~~and any adjournment. If the meeting is to be held solely by~~
7667 ~~means of remote communication, then such list shall also be~~
7668 ~~available for such inspection during the meeting and any~~
7669 ~~adjournment on a reasonably accessible electronic network, and~~
7670 ~~the information required to access such list shall be provided~~
7671 ~~with the notice of the meeting. The corporation may satisfy~~
7672 ~~its obligation to make such list available for inspection~~
7673 ~~during a meeting by furnishing a copy of the list in the~~



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7674 ~~manner described in Section 10A-2A-16.03(b) to the~~
7675 ~~stockholders prior to the meeting.~~

7676 ~~(d)~~ (c) If the corporation refuses to allow a
7677 stockholder, or the stockholder's agent or attorney, to
7678 inspect a list of stockholders before ~~or at~~ the meeting or any
7679 adjournment (or copy a list as permitted by subsection (b)),
7680 the designated court, and if none, the circuit court for the
7681 county in which the corporation's principal office is located
7682 in this state, and if none in this state, the circuit court
7683 for the county in which the corporation's most recent
7684 registered office is located, on application of the
7685 stockholder, may summarily order the inspection or copying at
7686 the corporation's expense and may postpone the meeting for
7687 which the list was prepared until the inspection or copying is
7688 complete.

7689 ~~(e)~~ (d) Refusal or failure to prepare or make available
7690 a list of stockholders does not affect the validity of action
7691 taken at the meeting.

7692 ~~(f)~~ (e) The stock transfer records of the corporation
7693 shall be prima facie evidence as to who are the stockholders
7694 entitled to examine the stockholders' list or transfer records
7695 or to vote at any meeting of stockholders."

7696 "§10A-2A-7.32

7697 (a) An agreement among the stockholders of a
7698 corporation that complies with this section is effective among
7699 the stockholders and the corporation even though it is
7700 inconsistent with one or more other provisions of this chapter
7701 in that it:



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7702 (1) eliminates the board of directors or restricts the
7703 discretion or powers of the board of directors;

7704 (2) governs the authorization or making of
7705 distributions, regardless of whether they are in proportion to
7706 ownership of stock, subject to the limitations in Section
7707 10A-2A-6.40;

7708 (3) establishes who shall be directors or officers of
7709 the corporation, or their terms of office or manner of
7710 selection or removal;

7711 (4) governs, in general or in regard to specific
7712 matters, the exercise or division of voting power by or
7713 between the stockholders and directors or by or among any of
7714 them, including use of weighted voting rights ~~or director~~
7715 ~~proxies~~;

7716 (5) establishes the terms and conditions of any
7717 agreement for the transfer or use of property or the provision
7718 of services between the corporation and any stockholder,
7719 director, officer, or employee of the corporation or among any
7720 of them;

7721 (6) transfers to one or more stockholders or other
7722 persons all or part of the authority to exercise the corporate
7723 powers or to manage the business and affairs of the
7724 corporation, including the resolution of any issue about which
7725 there exists a deadlock among directors or stockholders;

7726 (7) requires dissolution of the corporation at the
7727 request of one or more of the stockholders or upon the
7728 occurrence of a specified event or contingency; or

7729 (8) otherwise governs the exercise of the corporate



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7730 powers or the management of the business and affairs of the
7731 corporation or the relationship among the stockholders, the
7732 directors and the corporation, or among any of them, and is
7733 not contrary to public policy.

7734 (b) An agreement authorized by this section shall be:

7735 (1) as set forth (i) in the certificate of
7736 incorporation or bylaws and approved by all persons who are
7737 stockholders at the time of the agreement, or (ii) in a
7738 written agreement that is signed by all persons who are
7739 stockholders at the time of the agreement and is made known to
7740 the corporation; and

7741 (2) subject to amendment only by all persons who are
7742 stockholders at the time of the amendment, unless the
7743 agreement provides otherwise.

7744 (c) The existence of an agreement authorized by this
7745 section shall be noted conspicuously on the front or back of
7746 each certificate for outstanding stock or in the information
7747 required by Section 10A-1-3.45. If at the time of the
7748 agreement the corporation has stock outstanding represented by
7749 certificates, the corporation shall recall the outstanding
7750 certificates and issue substitute certificates that comply
7751 with this subsection. The failure to note the existence of the
7752 agreement as required by this subsection shall not affect the
7753 validity of the agreement or any action taken pursuant to it.
7754 Any purchaser of stock who, at the time of purchase, did not
7755 have knowledge of the existence of the agreement shall be
7756 entitled to rescission of the purchase. A purchaser shall be
7757 deemed to have knowledge of the existence of the agreement if



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7758 its existence is noted on the certificate or if the stock is
7759 not represented by a certificate, the information required by
7760 Section 10A-1-3.45 is delivered to the purchaser at or before
7761 the time of purchase of the stock. An action to enforce the
7762 right of rescission authorized by this subsection shall be
7763 commenced within the earlier of 90 days after discovery of the
7764 existence of the agreement or two years after the time of
7765 purchase of the stock.

7766 (d) If the agreement ceases to be effective for any
7767 reason, the board of directors may, if the agreement is
7768 contained or referred to in the corporation's certificate of
7769 incorporation or bylaws, adopt an amendment to the certificate
7770 of incorporation or bylaws, without stockholder action, to
7771 delete the agreement and any references to it.

7772 (e) An agreement authorized by this section that limits
7773 the discretion or powers of the board of directors shall
7774 relieve the directors of, and impose upon the person or
7775 persons in whom the discretion or powers are vested, liability
7776 for acts or omissions imposed by law on directors to the
7777 extent that the discretion or powers of the directors are
7778 limited by the agreement. An agreement authorized by this
7779 section that eliminates the board of directors shall impose on
7780 the person or persons in whom the discretion or powers of the
7781 directors are vested the liability for acts or omissions as
7782 are imposed by law on directors.

7783 (f) The existence or performance of an agreement
7784 authorized by this section shall not be a ground for imposing
7785 personal liability on any stockholder for the acts or debts of



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7786 the corporation even if the agreement or its performance
7787 treats the corporation as if it were a partnership or results
7788 in failure to observe the corporate formalities otherwise
7789 applicable to the matters governed by the agreement.

7790 (g) Incorporators or subscribers for stock may act as
7791 stockholders with respect to an agreement authorized by this
7792 section if no stock has been issued when the agreement is
7793 made.

7794 (h) Limits, if any, on the duration of an agreement
7795 authorized by this section must be set forth in the
7796 agreement."

7797 "§10A-2A-8.10

7798 (a) ~~Unless the certificate of incorporation provides~~
7799 ~~otherwise~~ Except as otherwise provided in Section
7800 10A-2A-8.10(b) or the certificate of incorporation, if a
7801 vacancy occurs on ~~a~~ the board of directors, including a
7802 vacancy resulting from an increase in the number of directors:

7803 (1) the stockholders may fill the vacancy;

7804 (2) the board of directors may fill the vacancy; or

7805 (3) if the directors remaining in office are less than
7806 a quorum, they may fill the vacancy by the affirmative vote of
7807 a majority of all the directors remaining in office.

7808 (b) ~~If~~ Unless the certificate of incorporation provides
7809 otherwise, if the vacant office was held by a director elected
7810 by a voting group of stockholders, only the holders of stock
7811 of that voting group are entitled to vote to fill the vacancy
7812 if it is filled by the stockholders, and only the remaining
7813 directors elected by that voting group, even if less than a



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7814 quorum, are entitled to fill the vacancy if it is filled by
7815 the directors.

7816 (c) A vacancy that will occur at a specific later date
7817 (by reason of a resignation effective at a later date under
7818 Section 10A-2A-8.07(b) or otherwise) may be filled before the
7819 vacancy occurs but the new director may not take office until
7820 the vacancy occurs."

7821 "§10A-2A-8.21

7822 (a) Except to the extent that the certificate of
7823 incorporation or bylaws require that action by the board of
7824 directors be taken at a meeting, action required or permitted
7825 by this chapter to be taken by the board of directors may be
7826 taken without a meeting if each director signs a consent
7827 describing the action to be taken and delivers it to the
7828 corporation.

7829 (b) Action taken under this section is the act of the
7830 board of directors when one or more consents signed by all the
7831 directors are delivered to the corporation. ~~The consent may~~
7832 ~~specify a later time as the time at which the action taken is~~
7833 ~~to be effective.~~ Any director executing a consent may provide,
7834 whether through instruction to an agent or otherwise, that
7835 such consent will be effective at a future time, including a
7836 time determined upon the happening of an event, occurring not
7837 later than 60 days after such instruction is given or such
7838 provision is made, if evidence of the instruction or provision
7839 is provided to the corporation. A director's consent may be
7840 withdrawn by a revocation signed by the director and delivered
7841 to the corporation before delivery to the corporation of



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7842 unrevoked written consents signed by all the directors.

7843 (c) A consent signed under this section has the effect
7844 of action taken at a meeting of the board of directors and may
7845 be described as such in any document."

7846 "§10A-2A-8.22

7847 (a) Unless the certificate of incorporation or bylaws
7848 provide otherwise, regular meetings of the board of directors
7849 may be held without notice of the place, if any, date, time,
7850 ~~place,~~ or purpose of the meeting.

7851 (b) Unless the certificate of incorporation or bylaws
7852 provide for a longer or shorter period, special meetings of
7853 the board of directors shall be preceded by at least two days'
7854 notice of the place, if any, date, and time, ~~and place~~ of the
7855 meeting. The notice need not describe the purpose of the
7856 special meeting unless required by the certificate of
7857 incorporation or bylaws."

7858 "§10A-2A-8.24

7859 (a) Unless the certificate of incorporation or bylaws
7860 provide for a greater or lesser number or unless otherwise
7861 expressly provided in this chapter, a quorum of a board of
7862 directors consists of a majority of the number of directors
7863 specified in or fixed in accordance with the certificate of
7864 incorporation or bylaws.

7865 (b) The quorum of the board of directors specified in
7866 or fixed in accordance with the certificate of incorporation
7867 or bylaws may not consist of less than one-third of the
7868 specified or fixed number of directors.

7869 (c) If a quorum is present when a vote is taken, the



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7870 affirmative vote of a majority of directors present is the act
7871 of the board of directors unless the certificate of
7872 incorporation or bylaws require the vote of a greater number
7873 of directors or unless otherwise expressly provided in this
7874 chapter.

7875 (d) A director who is present at a meeting of the board
7876 of directors or a committee when corporate action is taken is
7877 deemed to have assented to the action taken unless: (i) the
7878 director objects at the beginning of the meeting (or promptly
7879 upon arrival) to holding it or transacting business at the
7880 meeting; (ii) the dissent or abstention from the action taken
7881 is entered in the minutes of the meeting; or (iii) the
7882 director delivers written notice of the director's dissent or
7883 abstention to the presiding officer of the meeting before its
7884 adjournment or to the corporation immediately after
7885 adjournment of the meeting. The right of dissent or abstention
7886 is not available to a director who votes in favor of the
7887 action taken."

7888 ~~(e) A director, in that person's capacity as a~~
7889 ~~director, may not appoint an agent or proxy to vote, consent,~~
7890 ~~approve, attend, act, or otherwise carry out the duties of~~
7891 ~~that director for any purpose."~~

7892 "§10A-2A-8.59

7893 ~~Division A of Article 6 of Chapter 1 shall not apply to~~
7894 ~~this chapter. Instead, a A corporation may provide~~
7895 indemnification or advance expenses to a director or an
7896 officer only as permitted by this Division E of this Article
7897 8."



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7898 "§10A-2A-10.06

7899 ~~Division B of Article 3 of Chapter 1 shall not apply to~~
7900 ~~this chapter. Instead:~~

7901 (a) After an amendment to the certificate of
7902 incorporation has been adopted and approved in the manner
7903 required by this chapter and by the certificate of
7904 incorporation, the corporation shall deliver to the Secretary
7905 of State for filing a certificate of amendment, which must set
7906 forth:

7907 (1) the name of the corporation;

7908 (2) the text of each amendment adopted, or the
7909 information required by Section 10A-2A-1.20(c)(5);

7910 (3) if an amendment provides for an exchange,
7911 reclassification, or cancellation of issued stock, provisions
7912 for implementing the amendment if not contained in the
7913 amendment itself, (which may be made dependent upon facts
7914 objectively ascertainable outside the certificate of amendment
7915 in accordance with Section 10A-2A-1.20(c)(5));

7916 (4) the date of each amendment's adoption;

7917 (5) if an amendment:

7918 (i) was adopted by the incorporators or board of
7919 directors without stockholder approval, a statement that the
7920 amendment was duly adopted by the incorporators or by the
7921 board of directors, as the case may be, and that stockholder
7922 approval was not required;

7923 (ii) required approval by the stockholders, a statement
7924 that the amendment was duly approved by the stockholders in
7925 the manner required by this chapter and by the certificate of



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7926 incorporation; or

7927 (iii) is being filed pursuant to Section
7928 10A-2A-1.20(c)(5), a statement to that effect; and

7929 (6) the unique identifying number or other designation
7930 as assigned by the Secretary of State.

7931 (b) A certificate of amendment shall take effect at the
7932 effective date determined in accordance with Article 4 of
7933 Chapter 1."

7934 "§10A-2A-10.07

7935 ~~Division B of Article 3 of Chapter 1 shall not apply to~~
7936 ~~this chapter. Instead:~~

7937 (a) A corporation's board of directors may restate its
7938 certificate of incorporation at any time, without stockholder
7939 approval, to consolidate all amendments into a single
7940 document.

7941 (b) If the restated certificate of incorporation
7942 includes one or more new amendments that require stockholder
7943 approval, the amendments shall be adopted and approved as
7944 provided in Section 10A-2A-10.03.

7945 (c) A corporation that restates its certificate of
7946 incorporation shall deliver to the Secretary of State for
7947 filing a certificate of restatement setting forth:

7948 (1) the name of the corporation;

7949 (2) the text of the restated certificate of
7950 incorporation;

7951 (3) a statement that the restated certificate of
7952 incorporation consolidates all amendments into a single
7953 document;



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7954 (4) if a new amendment is included in the restated
7955 certificate of incorporation, the statements required under
7956 Section 10A-2A-10.06 with respect to the new amendment; and

7957 (5) the unique identifying number or other designation
7958 as assigned by the Secretary of State.

7959 (d) The duly adopted restated certificate of
7960 incorporation supersedes the original certificate of
7961 incorporation and all amendments to the certificate of
7962 incorporation.

7963 ~~(e) The Secretary of State may certify the restated~~
7964 ~~certificate of incorporation as the certificate of~~
7965 ~~incorporation currently in effect, without including the~~
7966 ~~statements required by subsection (c)(4)."~~

7967 "§10A-2A-10.08

7968 ~~Division B of Article 3 of Chapter 1 shall not apply to~~
7969 ~~this chapter. Instead:~~

7970 (a) A corporation's certificate of incorporation may be
7971 amended without action by the board of directors or
7972 stockholders to carry out a plan of reorganization ordered or
7973 decreed by a court of competent jurisdiction under the
7974 authority of a law of the United States if the certificate of
7975 incorporation after the amendment only contains provisions
7976 required or permitted by Section 10A-2A-2.02.

7977 (b) The individual or individuals designated by the
7978 court shall deliver to the Secretary of State for filing a
7979 certificate of amendment setting forth:

7980 (1) the name of the corporation;

7981 (2) the text of each amendment approved by the court;



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7982 (3) the date of the court's order or decree approving
7983 the certificate of amendment;

7984 (4) the title of the reorganization proceeding in which
7985 the order or decree was entered;

7986 (5) a statement that the court had jurisdiction of the
7987 proceeding under federal statute; and

7988 (6) the unique identifying number or other designation
7989 as assigned by the Secretary of State.

7990 (c) Stockholders of a corporation undergoing
7991 reorganization do not have dissenters' rights except as and to
7992 the extent provided in the reorganization plan.

7993 (d) This section does not apply after entry of a final
7994 decree in the reorganization proceeding even though the court
7995 retains jurisdiction of the proceeding for limited purposes
7996 unrelated to consummation of the reorganization plan."

7997 "§10A-2A-11.02

7998 (a) A corporation may merge with one or more other
7999 constituent organizations pursuant to this article, and a plan
8000 of merger, if:

8001 (1) the governing statute of each of the other
8002 organizations authorizes the merger;

8003 (2) the merger is not prohibited by the law of a
8004 jurisdiction that enacted any of those governing statutes; and

8005 (3) each of the other organizations complies with its
8006 governing statute in effecting the merger.

8007 (b) A plan of merger must be in writing and must
8008 include:

8009 (1) the name, type of organization, and mailing address



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8010 of the principal office of each constituent organization, the
8011 jurisdiction of the governing statute of each constituent
8012 organization, and the respective unique identifying number or
8013 other designation as assigned by the Secretary of State, if
8014 any, of each constituent organization;

8015 (2) the name, type of organization, and mailing address
8016 of the principal office of the surviving organization, the
8017 unique identifying number or other designation as assigned by
8018 the Secretary of State, if any, of the surviving organization,
8019 the jurisdiction of the governing statute of the surviving
8020 organization, and, if the surviving organization is created
8021 pursuant to the merger, a statement to that effect;

8022 (3) the terms and conditions of the merger, including
8023 the manner and basis for converting the stock or eligible
8024 interests in each constituent organization into any
8025 combination of money, stock, eligible interests in the
8026 surviving organization, and other consideration as allowed by
8027 subsection (c);

8028 (4) if the surviving organization is to be created
8029 pursuant to the merger, the surviving organization's
8030 organizational documents; and

8031 (5) if the surviving organization is not to be created
8032 pursuant to the merger, any amendments to be made by the
8033 merger to the surviving organization's organizational
8034 documents.

8035 (c) In connection with a merger, rights, securities,
8036 stock, or eligible interests, if any, in a constituent
8037 organization may be exchanged for or converted into cash,



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8038 property, rights, securities, stock, or eligible interests, if
8039 any, in the surviving organization, or, in addition to or in
8040 lieu thereof, may be exchanged for or converted into cash,
8041 property, rights, securities, stock, or eligible interests, if
8042 any, in another organization, or may be cancelled.

8043 (d) In addition to the requirements of subsection (b),
8044 a plan of merger may contain any other provision not
8045 prohibited by law.

8046 (e) Terms of a plan of merger may be made dependent on
8047 facts objectively ascertainable outside the plan in accordance
8048 with Section 10A-2A-1.20(c).

8049 (f) A plan of merger may be amended only with the
8050 consent of each constituent organization, except as provided
8051 in the plan. A domestic constituent organization may approve
8052 an amendment to a plan:

8053 (1) in the same manner as the plan was approved, if the
8054 plan does not provide for the manner in which it may be
8055 amended; or

8056 (2) in the manner provided in the plan, except that if
8057 the plan has been approved by the stockholders, members, or
8058 interest holders that were entitled to vote on, consent to, or
8059 approve of, the plan, then those stockholders, members, or
8060 interest holders are entitled to vote on, consent to, or
8061 approve of any amendment of the plan that will change:

8062 (i) the amount or kind of stock or other securities,
8063 eligible interests, obligations, rights to acquire stock,
8064 other securities or eligible interests, cash, or other
8065 property to be received under the plan by the stockholders,



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8066 members, or interest holders of a constituent organization;

8067 (ii) the certificate of incorporation of any
8068 corporation, foreign corporation, nonprofit corporation,
8069 foreign nonprofit corporation or the organizational documents
8070 of any unincorporated entity or foreign unincorporated entity,
8071 that will be the surviving organization, except for changes
8072 permitted by Section 10A-2A-10.05 or by comparable provisions
8073 of the governing statute of the foreign corporation, nonprofit
8074 corporation, foreign nonprofit corporation, unincorporated
8075 entity, or foreign unincorporated entity; or

8076 (iii) any of the other terms or conditions of the plan
8077 if the change would adversely affect the stockholders,
8078 members, or interest holders in any material respect."

8079 "§10A-2A-11.06

8080 (a) After a plan of merger has been adopted and
8081 approved as required by this article, then a statement of
8082 merger shall be signed by each party to the merger except as
8083 provided in Section 10A-2A-11.05(a). The statement of merger
8084 must set forth:

8085 (1) the name, type of organization, and mailing address
8086 of the principal office of each constituent organization, the
8087 jurisdiction of the governing statute of each constituent
8088 organization, and the respective unique identifying number or
8089 other designation as assigned by the Secretary of State, if
8090 any, of each constituent organization;

8091 (2) the name, type of organization, and mailing address
8092 of the principal office of the surviving organization, the
8093 unique identifying number or other designation as assigned by



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8094 the Secretary of State, if any, of the surviving organization,
8095 the jurisdiction of the governing statute of the surviving
8096 organization, and, if the surviving organization is created
8097 pursuant to the merger, a statement to that effect;

8098 ~~(3) the date of the filing of the certificate of~~
8099 ~~formation, if any, and all prior amendments and the filing~~
8100 ~~office or offices, if any, and where the certificate of~~
8101 ~~formation is filed of each constituent organization which was~~
8102 ~~formed under the laws of this state;~~

8103 ~~(4)~~ (3) the date the merger is effective under the
8104 governing statute of the surviving organization;

8105 ~~(5)~~ (4) if the surviving organization is to be created
8106 pursuant to the merger:

8107 (A) if it will be a corporation, the corporation's
8108 certificate of incorporation; or

8109 (B) if it will be an organization other than a
8110 corporation, any organizational document that creates the
8111 organization that is required to be in a public writing or in
8112 the case of a limited liability partnership, its statement of
8113 limited liability partnership;

8114 ~~(6)~~ (5) if the surviving organization exists before the
8115 merger, any amendments provided for in the plan of merger for
8116 the organizational document that created the organization that
8117 are in a public writing;

8118 ~~(7)~~ (6) a statement as to each constituent organization
8119 that the merger was approved as required by the organization's
8120 governing statute;

8121 ~~(8)~~ (7) if the surviving organization is a foreign



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8122 organization not authorized to conduct activities and affairs
8123 in this state, the street and mailing address of an office for
8124 the purposes of Section 10A-2A-11.07(c);

8125 ~~(9)~~ (8) any additional information required by the
8126 governing statute of any constituent organization;

8127 ~~(10)~~ (9) if the plan of merger required approval by the
8128 stockholders of a corporation that is a constituent
8129 organization, a statement that the plan was duly approved by
8130 the stockholders and, if voting by any separate voting group
8131 was required, by each separate voting group, in the manner
8132 required by this chapter and the certificate of incorporation;

8133 ~~(11)~~ (10) if the plan of merger did not require approval
8134 by the stockholders of a corporation that is a constituent
8135 organization, a statement to that effect; and

8136 ~~(12)~~ (11) a statement that the plan of merger will be
8137 furnished by the surviving organization, on request and
8138 without cost, to any owner of any constituent organization
8139 which is a party to the merger.

8140 (b) After a plan of stock exchange in which the
8141 acquired entity is a corporation has been adopted and approved
8142 as required by this chapter, a statement of stock exchange
8143 shall be signed by the acquired entity and the acquiring
8144 entity. The statement of stock exchange shall set forth:

8145 (1) the name and mailing address of the principal
8146 office of the acquired entity, and the jurisdiction of its
8147 governing statute, and its unique identifying number or other
8148 designation as assigned by the Secretary of State, if any;

8149 (2) the name, jurisdiction of formation, and type of



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8150 entity of the corporation or foreign corporation that is the
8151 acquiring entity;

8152 (3) a statement that the plan of stock exchange was
8153 duly approved by the acquired entity by:

8154 (i) the required vote or consent of each class or
8155 series of stock included in the exchange; and

8156 (ii) the required vote or consent of each other class
8157 or series of stock entitled to vote on approval of the
8158 exchange by the certificate of incorporation of the acquired
8159 entity; and

8160 (4) if the stock exchange did not require the approval
8161 by the stockholders of a corporation that is a party to the
8162 stock exchange, a statement to that effect.

8163 (c) In addition to the requirements of subsection (a)
8164 or subsection (b), a statement of merger or stock exchange may
8165 contain any other provision not prohibited by law.

8166 (d) The statement of merger or stock exchange shall be
8167 delivered to the Secretary of State for filing and, subject to
8168 subsection (e), the merger or stock exchange shall take effect
8169 at the effective date determined in accordance with Article 4
8170 of Chapter 1.

8171 (e) With respect to a merger in which one or more
8172 foreign organizations is a constituent organization or a
8173 foreign organization created by the merger is the surviving
8174 organization, the merger itself shall become effective at the
8175 later of:

8176 (1) when all documents required to be filed in foreign
8177 jurisdictions to effect the merger have become effective, or



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8178 (2) when the statement of merger takes effect.

8179 (f) A statement of merger filed under this section may
8180 be combined with any filing required under the governing
8181 statute governing any domestic organization involved in the
8182 transaction if the combined filing satisfies the requirements
8183 of this section, the other governing statute, and Article 4 of
8184 Chapter 1.

8185 ~~(g) After a merger becomes effective, if the surviving~~
8186 ~~organization is a corporation, then, except for certified~~
8187 ~~copies of the statement of merger permitted to be delivered to~~
8188 ~~the judge of probate for filing pursuant to subsection (h),~~
8189 ~~all filing instruments required to be filed under this title~~
8190 ~~regarding that surviving organization shall be delivered for~~
8191 ~~filing to the Secretary of State.~~

8192 ~~(h)~~ (g) A certified copy of the statement of merger
8193 required to be filed under this section may be filed in the
8194 real estate records in the office of the judge of probate in
8195 any county in which any constituent organization owned real
8196 property, without payment and without collection by the judge
8197 of probate of any deed or other transfer tax or fee. The judge
8198 of probate, however, shall be entitled to collect the filing
8199 fee of five dollars (\$5). Any filing shall evidence chain of
8200 title, but lack of filing shall not affect the surviving
8201 organization's title to real property."

8202 "§10A-2A-12.02

8203 (a) A sale, lease, exchange, or other disposition of
8204 assets, other than a disposition described in Section
8205 10A-2A-12.01, requires approval of the corporation's



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8206 stockholders if the disposition would leave the corporation
8207 without a significant continuing business activity. A
8208 corporation will conclusively be deemed to have retained a
8209 significant continuing business activity if it retains a
8210 business activity that represented, for the corporation and
8211 its subsidiaries on a consolidated basis, at least (i) 25
8212 percent of total assets at the end of the most recently
8213 completed fiscal year, and (ii) either 25 percent of either
8214 income from continuing operations before taxes or 25 percent
8215 of revenues from continuing operations, in each case for the
8216 most recently completed fiscal year.

8217 (b) To obtain the approval of the stockholders under
8218 subsection (a) the board of directors shall first adopt a
8219 resolution authorizing the disposition. The disposition shall
8220 then be approved by the stockholders. In submitting the
8221 disposition to the stockholders for approval, the board of
8222 directors shall recommend that the stockholders approve the
8223 disposition, unless (i) the board of directors makes a
8224 determination that because of conflicts of interest or other
8225 special circumstances it should not make a recommendation, or
8226 (ii) Section 10A-2A-8.26 applies. If either (i) or (ii)
8227 applies, the board of directors shall inform the stockholders
8228 of the basis for its so proceeding.

8229 (c) The board of directors may set conditions for the
8230 approval by the stockholders of a disposition or the
8231 effectiveness of the disposition.

8232 (d) If a disposition is required to be approved by the
8233 stockholders under subsection (a), and if the approval is to



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8234 be given at a meeting, the corporation shall notify each
8235 stockholder, regardless of whether entitled to vote, of the
8236 meeting of stockholders at which the disposition is to be
8237 submitted for approval. The notice must state that the
8238 purpose, or one of the purposes, of the meeting is to consider
8239 the disposition and must contain a description of the
8240 disposition, including the terms and conditions of the
8241 disposition and the consideration to be received by the
8242 corporation.

8243 (e) Unless the certificate of incorporation or the
8244 board of directors acting pursuant to subsection (c) requires
8245 a greater vote or a greater quorum, the approval of a
8246 disposition by the stockholders shall require the approval of
8247 the stockholders at a meeting at which a quorum exists
8248 consisting of a majority of the votes entitled to be cast on
8249 the disposition.

8250 (f) After a disposition has been approved by the
8251 stockholders under this Article 12, and at any time before the
8252 disposition has been consummated, it may be abandoned by the
8253 corporation without action by the stockholders, subject to any
8254 contractual rights of other parties to the disposition.

8255 (g) A disposition of assets in the course of
8256 dissolution under Article 14 is not governed by this section.

8257 (h) For purposes of this section only, the property and
8258 assets of the corporation include the property and assets of
8259 any subsidiary of the corporation. As used in this subsection,
8260 "subsidiary" means any entity wholly owned and controlled,
8261 directly or indirectly, by the corporation and includes,



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8262 without limitation, corporations, partnerships, limited
8263 partnerships, limited liability partnerships, limited
8264 liability companies, and/or statutory trusts. ~~Notwithstanding~~
8265 ~~subsection (a) of this section, except to the extent the~~
8266 ~~certificate of incorporation otherwise provides, no vote by~~
8267 ~~stockholders shall be required for a sale, lease, or exchange~~
8268 ~~of property and assets of the corporation to a subsidiary."~~

8269 "§10A-2A-14.13

8270 (a) If after a hearing the court determines that one or
8271 more grounds for judicial dissolution described in Section
8272 10A-2A-14.10 exist, ~~it~~ the court may enter a decree dissolving
8273 the corporation and specifying the effective date of the
8274 dissolution, ~~and~~. If the court enters a decree dissolving the
8275 corporation, then the clerk of the court shall deliver a
8276 certified copy of the decree to the Secretary of State for
8277 filing.

8278 (b) After entering the decree of dissolution, the court
8279 shall direct the winding-up and liquidation of the
8280 corporation's business and affairs in accordance with Section
8281 10A-2A-14.05 and the notification of claimants in accordance
8282 with Sections 10A-2A-14.06 and 10A-2A-14.07."

8283 Section 4. Sections 10A-2A-10.00 and 10A-2A-10.10 are
8284 added to the Code of Alabama 1975, to read as follows:

8285 §10A-2A-10.00. Applicability of Chapter 1.

8286 Division B of Article 3 of Chapter 1 shall not apply to
8287 this chapter.

8288 §10A-2A-10.10. Effect of filing of restated certificate
8289 of incorporation.



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8290 (a) A restated certificate of incorporation takes
8291 effect when the filing of the restated certificate of
8292 incorporation takes effect as provided by Article 4 of Chapter
8293 1.

8294 (b) On the date and time the restated certificate of
8295 incorporation takes effect, the original certificate of
8296 incorporation and each prior amendment or restatement of the
8297 certificate of incorporation is superseded and the restated
8298 certificate of incorporation is the effective certificate of
8299 incorporation.

8300 (c) Section 10A-2A-10.09 applies to an amendment
8301 effected by a restated certificate of incorporation.

8302 Section 5. Sections 10A-5A-2.03 and 10A-5A-10.07 of the
8303 Code of Alabama 1975, are amended to read as follows:

8304 "§10A-5A-2.03

8305 ~~(a) The filing of a certificate of amendment to the~~
8306 ~~certificate of formation shall have the effect, and shall take~~
8307 ~~effect, as provided in Section 10A-1-3.14.~~

8308 ~~(b) The filing of a restated certificate of formation~~
8309 ~~shall have the effect, and shall take effect, as provided in~~
8310 ~~Section 10A-1-3.18.~~

8311 (a) (1) An amendment to a certificate of formation takes
8312 effect when the filing of the certificate of amendment takes
8313 effect as provided by Article 4 of Chapter 1.

8314 (2) An amendment to a certificate of formation does not
8315 affect:

8316 (i) an existing cause of action in favor of or against
8317 the limited liability company for which the certificate of



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8318 amendment is sought;

8319 (ii) a pending suit to which the limited liability
8320 company is a party; or

8321 (iii) an existing right of a person other than an
8322 existing member.

8323 (3) If the name of a limited liability company is
8324 changed by amendment, an action brought by or against the
8325 limited liability company in the former name of that limited
8326 liability company does not abate because of the name change.

8327 (b) (1) A restated certificate of formation takes effect
8328 when the filing of the restated certificate of formation takes
8329 effect as provided by Article 4 of Chapter 1.

8330 (2) On the date and time the restated certificate of
8331 formation takes effect, the original certificate of formation
8332 and each prior amendment or restatement of the certificate of
8333 formation is superseded and the restated certificate of
8334 formation is the effective certificate of formation.

8335 (3) Subsections (b) (1) and (2) apply to an amendment
8336 effected by a restated certificate of formation."

8337 "§10A-5A-10.07

8338 (a) After each constituent organization has approved
8339 the plan of merger, a statement of merger must be signed on
8340 behalf of:

8341 (1) each constituent limited liability company, as
8342 provided in Section 10A-5A-2.04(a); and

8343 (2) each other constituent organization, as provided by
8344 its governing statute.

8345 (b) A statement of merger under this section must



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8346 include:

8347 (1) the name, type of organization, and mailing address
8348 of the principal office of each constituent organization, the
8349 jurisdiction of the governing statute of each constituent
8350 organization, and the respective unique identifying number or
8351 other designation as assigned by the Secretary of State, if
8352 any, of each constituent organization;

8353 (2) the name, type of organization, and mailing address
8354 of the principal office of the surviving organization, the
8355 unique identifying number or other designation as assigned by
8356 the Secretary of State, if any, of the surviving organization,
8357 the jurisdiction of the governing statute of the surviving
8358 organization, and, if the surviving organization is created
8359 pursuant to the merger, a statement to that effect;

8360 ~~(3) the date of the filing of the certificate of~~
8361 ~~formation, if any, and all prior amendments and the filing~~
8362 ~~office or offices, if any, and where such is filed of each~~
8363 ~~constituent organization which was formed under the laws of~~
8364 ~~this state;~~

8365 ~~(4)~~ (3) the date the merger is effective under the
8366 governing statute of the surviving organization;

8367 ~~(5)~~ (4) if the surviving organization is to be created
8368 pursuant to the merger:

8369 (A) if it will be a limited liability company, the
8370 limited liability company's certificate of formation; or

8371 (B) if it will be an organization other than a limited
8372 liability company, any organizational document that creates
8373 the organization that is required to be in a public writing;



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8374 ~~(6)~~ (5) if the surviving organization exists before the
8375 merger, any amendments provided for in the plan of merger for
8376 the organizational document that created the organization that
8377 are required to be in a public writing;

8378 ~~(7)~~ (6) a statement as to each constituent organization
8379 that the merger was approved as required by the organization's
8380 governing statute;

8381 ~~(8)~~ (7) a statement that a copy of the plan of merger
8382 will be furnished by the surviving organization, on request
8383 and without cost, to any owner of any constituent organization
8384 which is a party to the merger;

8385 ~~(9)~~ (8) if the surviving organization is a foreign
8386 organization not authorized to conduct activities and affairs
8387 in this state, the street and mailing address of an office for
8388 the purposes of Section 10A-5A-10.08(b); and

8389 ~~(10)~~ (9) any additional information required by the
8390 governing statute of any constituent organization.

8391 (c) The statement of merger shall be delivered for
8392 filing to the Secretary of State.

8393 (d) A merger becomes effective under this article:

8394 (1) if the surviving organization is a limited
8395 liability company, upon the later of:

8396 (A) the filing of the statement of merger with the
8397 Secretary of State; or

8398 (B) as specified in the statement of merger; or

8399 (2) if the surviving organization is not a limited
8400 liability company, as provided by the governing statute of the
8401 surviving organization.



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8402 ~~(e) After a merger becomes effective, if the surviving~~
8403 ~~organization is a limited liability company, then, except for~~
8404 ~~certified copies of the statement of merger permitted to be~~
8405 ~~delivered to the judge of probate for filing pursuant to~~
8406 ~~subsection (f), all filing instruments required to be filed~~
8407 ~~under this title regarding that surviving organization shall~~
8408 ~~be delivered for filing to the Secretary of State.~~

8409 ~~(f)~~ (e) A certified copy of the statement of merger
8410 required to be filed under this section may be filed in the
8411 real estate records in the office of the judge of probate in
8412 any county in which any constituent organization owned real
8413 property, without payment and without collection by the judge
8414 of probate of any deed or other transfer tax or fee. The judge
8415 of probate, however, shall be entitled to collect the filing
8416 fee of five dollars (\$5). Any such filing shall evidence chain
8417 of title, but lack of filing shall not affect the surviving
8418 organization's title to such real property.

8419 ~~(g)~~ (f) A statement of merger is a filing instrument
8420 under Chapter 1.

8421 ~~(h)~~ (g) The filing fees for a statement of merger shall
8422 be as set forth in Chapter 1."

8423 Section 6. Section 10A-8A-9.08 of the Code of Alabama
8424 1975, is amended to read as follows:

8425 "§10A-8A-9.08

8426 (a) After each constituent organization has approved
8427 the plan of merger, a statement of merger must be signed on
8428 behalf of:

8429 (1) each constituent partnership, as provided in



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8430 Section 10A-8A-2.03(a); and

8431 (2) each other constituent organization, as provided by
8432 its governing statute.

8433 (b) A statement of merger under this section must
8434 include:

8435 (1) the name, type of organization, and mailing address
8436 of the principal office of each constituent organization, the
8437 jurisdiction of the governing statute of each constituent
8438 organization, and the respective unique identifying numbers or
8439 other designations as assigned by the Secretary of State, if
8440 any, of each constituent organization;

8441 (2) the name, type of organization, and mailing address
8442 of the principal office of the surviving organization, the
8443 unique identifying number or other designation as assigned by
8444 the Secretary of State, if any, of the surviving organization,
8445 the jurisdiction of the governing statute of the surviving
8446 organization, and, if the surviving organization is created
8447 pursuant to the merger, a statement to that effect;

8448 ~~(3) the date of the filing of the certificate of~~
8449 ~~formation, if any, and all prior amendments and the filing~~
8450 ~~office or offices, if any, and where such is filed of each~~
8451 ~~constituent organization which was formed under the laws of~~
8452 ~~this state;~~

8453 ~~(4)~~ (3) the date of the filing of the statement of
8454 partnership, statement of not for profit partnership, or
8455 statement of limited liability partnership, if any, and all
8456 prior amendments and the filing office or offices, if any, and
8457 where such is filed of each constituent organization which is



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8458 a partnership;

8459 ~~(5)~~ (4) the date the merger is effective under the
8460 governing statute of the surviving organization;

8461 ~~(6)~~ (5) if the surviving organization is to be created
8462 pursuant to the merger:

8463 (A) if it will be a partnership, the partnership's
8464 statement of partnership, statement of not for profit
8465 partnership, or statement of limited liability partnership; or

8466 (B) if it will be an organization other than a
8467 partnership, any organizational document that creates the
8468 organization that is required to be in a public writing;

8469 ~~(7)~~ (6) if the surviving organization exists before the
8470 merger, any amendments provided for in the plan of merger for
8471 the organizational document that are required to be in a
8472 public writing;

8473 ~~(8)~~ (7) a statement as to each constituent organization
8474 that the merger was approved as required by the organization's
8475 governing statute;

8476 ~~(9)~~ (8) a statement that a copy of the plan of merger
8477 will be furnished by the surviving organization, on request
8478 and without cost, to any owner of any constituent organization
8479 which is a party to the merger;

8480 ~~(10)~~ (9) if the surviving organization is a foreign
8481 organization not authorized to conduct business or not for
8482 profit activity in this state, the street and mailing address
8483 of an office for the purposes of Section 10A-8A-9.09(b); and

8484 ~~(11)~~ (10) any additional information required by the
8485 governing statute of any constituent organization.



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8486 (c) Prior to the statement of merger being delivered
8487 for filing to the Secretary of State in accordance with
8488 subsection (d), all constituent organizations that are
8489 partnerships, other than a partnership that is created
8490 pursuant to the merger, must have on file with the Secretary
8491 of State a statement of partnership, statement of not for
8492 profit partnership, or statement of limited liability
8493 partnership.

8494 (d) The statement of merger shall be delivered for
8495 filing to the Secretary of State.

8496 (e) A merger becomes effective under this article:

8497 (1) if the surviving organization is a partnership,
8498 upon the later of:

8499 (A) the filing of the statement of merger with the
8500 Secretary of State; or

8501 (B) as specified in the statement of merger; or

8502 (2) if the surviving organization is not a partnership,
8503 as provided by the governing statute of the surviving
8504 organization.

8505 ~~(f) After a merger becomes effective, if the surviving~~
8506 ~~organization is a partnership, then, except (I) the statement~~
8507 ~~of merger permitted to be delivered to the judge of probate~~
8508 ~~for filing pursuant to subsection (g) and (II) certified~~
8509 ~~copies of statements of authority, denial, and cancellations~~
8510 ~~thereof permitted to be delivered to the judge of probate for~~
8511 ~~filing pursuant to Sections 10A-8A-3.03 and 10A-8A-3.04 for~~
8512 ~~certified copies of, all filing instruments required to be~~
8513 ~~filed under this title regarding that surviving organization~~



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8514 ~~shall be delivered for filing to the Secretary of State.~~

8515 ~~(g)~~ (f) A certified copy of the statement of merger
8516 required to be filed under this section may be filed in the
8517 real estate records in the office of the judge of probate in
8518 any county in which any constituent organization owned real
8519 property, without payment and without collection by the judge
8520 of probate of any deed or other transfer tax or fee. The judge
8521 of probate, however, shall be entitled to collect the filing
8522 fee of five dollars (\$5). Any such filing shall evidence chain
8523 of title, but lack of filing shall not affect the surviving
8524 organization's title to such real property.

8525 ~~(h)~~ (g) A statement of merger is a filing instrument
8526 under Chapter 1.

8527 ~~(i)~~ (h) The filing fees for a statement of merger shall
8528 be as set forth in Chapter 1."

8529 Section 7. Sections 10A-9A-2.02 and 10A-9A-10.08 of the
8530 Code of Alabama 1975, are amended to read as follows:

8531 "§10A-9A-2.02

8532 Division B of Article 3 of Chapter 1 shall not apply to
8533 this chapter. Instead:

8534 (a) A certificate of formation may be amended at any
8535 time.

8536 (b) A certificate of formation may be restated with or
8537 without amendment at any time.

8538 (c) To amend its certificate of formation, a limited
8539 partnership must deliver a certificate of amendment for filing
8540 to the Secretary of State which certificate of amendment shall
8541 state:



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8542 (1) the name of the limited partnership;

8543 (2) the unique identifying number or other designation
8544 as assigned by the Secretary of State; and

8545 (3) the changes the amendment makes to the certificate
8546 of formation as most recently amended or restated.

8547 (d) Prior to a statement of dissolution being delivered
8548 to the Secretary of State for filing, a limited partnership
8549 shall promptly deliver a certificate of amendment for filing
8550 with the Secretary of State to reflect:

8551 (1) the admission of a new general partner; or

8552 (2) the dissociation of a person as a general partner.

8553 (e) Prior to a statement of dissolution being delivered
8554 to the Secretary of State for filing, if a general partner
8555 knows that any information in a filed certificate of formation
8556 was inaccurate when the certificate of formation was filed or
8557 has become inaccurate due to changed circumstances and if such
8558 information is required to be set forth in a newly filed
8559 certificate of formation under this chapter, the general
8560 partner shall promptly:

8561 (1) cause the certificate of formation to be amended;

8562 or

8563 (2) if appropriate, deliver for filing with the
8564 Secretary of State a certificate of correction in accordance
8565 with Chapter 1.

8566 (f) A certificate of formation may be amended at any
8567 time pursuant to this section for any other proper purpose as
8568 determined by the limited partnership. A certificate of
8569 formation may also be amended in a statement of merger



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8570 pursuant to Article 8 of Chapter 1 or Article 10 of this
8571 chapter.

8572 (g) In order to restate its certificate of formation, a
8573 limited partnership must deliver a restated certificate of
8574 formation for filing with the Secretary of State. A restated
8575 certificate of formation must:

8576 (1) be designated as such in the heading;

8577 (2) state the name of the limited partnership;

8578 (3) state the unique identifying number or other
8579 designation as assigned by the Secretary of State;

8580 (4) set forth any amendment or change effected in
8581 connection with the restatement of the certificate of
8582 formation. Any such restatement that effects an amendment
8583 shall be subject to any other provision of this chapter not
8584 inconsistent with this section, which would apply if a
8585 separate certificate of amendment were filed to effect the
8586 amendment or change;

8587 (5) set forth the text of the restated certificate of
8588 formation; and

8589 (6) state that the restated certificate of formation
8590 consolidates all amendments into a single document.

8591 (h) The original certificate of formation, as
8592 theretofore amended, shall be superseded by the restated
8593 certificate of formation and thenceforth, the restated
8594 certificate of formation, including any further amendment or
8595 changes made thereby, shall be the certificate of formation of
8596 the limited partnership, but the original effective date of
8597 formation shall remain unchanged.



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8598 (i) An amended or restated certificate of formation may
8599 contain only the provisions that would be permitted at the
8600 time of the amendment if the amended or restated certificate
8601 of formation were a newly filed original certificate of
8602 formation.

8603 ~~(j) The filing of a certificate of amendment to the~~
8604 ~~certificate of formation shall have the effect, and shall take~~
8605 ~~effect, as provided in Section 10A-1-3.14.~~

8606 ~~(k) The filing of a restated certificate of formation~~
8607 ~~shall have the effect, and shall take effect, as provided in~~
8608 ~~Section 10A-1-3.18.~~

8609 (j) (1) An amendment to a certificate of formation takes
8610 effect when the filing of the certificate of amendment takes
8611 effect as provided by Article 4 of Chapter 1.

8612 (2) An amendment to a certificate of formation does not
8613 affect:

8614 (i) an existing cause of action in favor of or against
8615 the limited partnership for which the certificate of amendment
8616 is sought;

8617 (ii) a pending suit to which the limited partnership is
8618 a party; or

8619 (iii) an existing right of a person other than an
8620 existing partner.

8621 (3) If the name of a limited partnership is changed by
8622 amendment, an action brought by or against the limited
8623 partnership in the former name of that limited partnership
8624 does not abate because of the name change.

8625 (k) (1) A restated certificate of formation takes effect



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8626 when the filing of the restated certificate of formation takes
8627 effect as provided by Article 4 of Chapter 1.

8628 (2) On the date and time the restated certificate of
8629 formation takes effect, the original certificate of formation
8630 and each prior amendment or restatement of the certificate of
8631 formation is superseded and the restated certificate of
8632 formation is the effective certificate of formation.

8633 (3) Subsections (j) (2) and (3) apply to an amendment
8634 effected by a restated certificate of formation."

8635 "§10A-9A-10.08

8636 (a) After each constituent organization has approved
8637 the plan of merger, a statement of merger must be signed on
8638 behalf of:

8639 (1) each constituent limited partnership, as provided
8640 in Section 10A-9A-2.03(a); and

8641 (2) each other constituent organization, as provided by
8642 its governing statute.

8643 (b) A statement of merger under this section must
8644 include:

8645 (1) the name, type of organization, and mailing address
8646 of the principal office of each constituent organization, the
8647 jurisdiction of the governing statute of each constituent
8648 organization, and the respective unique identifying numbers or
8649 other designations as assigned by the Secretary of State, if
8650 any, of each constituent organization;

8651 (2) the name, type of organization, and mailing address
8652 of the principal office of the surviving organization, the
8653 unique identifying number or other designation as assigned by



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8654 the Secretary of State, if any, of the surviving organization,
8655 the jurisdiction of the governing statute of the surviving
8656 organization, and, if the surviving organization is created
8657 pursuant to the merger, a statement to that effect;

8658 ~~(3) the date of the filing of the certificate of~~
8659 ~~formation, if any, and all prior amendments and the filing~~
8660 ~~office or offices, if any, and where such is filed of each~~
8661 ~~constituent organization which was formed under the laws of~~
8662 ~~this state;~~

8663 ~~(4)~~ (3) the date the merger is effective under the
8664 governing statute of the surviving organization;

8665 ~~(5)~~ (4) if the surviving organization is to be created
8666 pursuant to the merger:

8667 (A) if it will be a limited partnership, the limited
8668 partnership's certificate of formation; or

8669 (B) if it will be an organization other than a limited
8670 partnership, any organizational document that creates the
8671 organization that is required to be in a public writing;

8672 ~~(6)~~ (5) if the surviving organization exists before the
8673 merger, any amendments provided for in the plan of merger for
8674 the organizational document that created the organization that
8675 are required to be in a public writing;

8676 ~~(7)~~ (6) a statement as to each constituent organization
8677 that the merger was approved as required by the organization's
8678 governing statute;

8679 ~~(8)~~ (7) a statement that a copy of the plan of merger
8680 will be furnished by the surviving organization, on request
8681 and without cost, to any owner of any constituent organization



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8682 which is a party to the merger;

8683 ~~(9)~~ (8) if the surviving organization is a foreign
8684 organization not authorized to conduct activities and affairs
8685 in this state, the street and mailing address of an office for
8686 the purposes of Section 10A-9A-10.09(b); and

8687 ~~(10)~~ (9) any additional information required by the
8688 governing statute of any constituent organization.

8689 (c) The statement of merger shall be delivered for
8690 filing to the Secretary of State.

8691 (d) A merger becomes effective under this article:

8692 (1) if the surviving organization is a limited
8693 partnership, upon the later of:

8694 (A) the filing of the statement of merger with the
8695 Secretary of State; or

8696 (B) as specified in the statement of merger; or

8697 (2) if the surviving organization is not a limited
8698 partnership, as provided by the governing statute of the
8699 surviving organization.

8700 ~~(e) After a merger becomes effective, if the surviving~~
8701 ~~organization is a limited partnership, then, except for~~
8702 ~~certified copies of the statement of merger permitted to be~~
8703 ~~delivered to the judge of probate for filing pursuant to~~
8704 ~~subsection (f), all filing instruments required to be filed~~
8705 ~~under this title regarding that surviving organization shall~~
8706 ~~be delivered for filing to the Secretary of State.~~

8707 ~~(f)~~ (e) A certified copy of the statement of merger
8708 required to be filed under this section may be filed in the
8709 real estate records in the office of the judge of probate in



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8710 any county in which any constituent organization owned real
8711 property, without payment and without collection by the judge
8712 of probate of any deed or other transfer tax or fee. The judge
8713 of probate, however, shall be entitled to collect the filing
8714 fee of five dollars (\$5). Any such filing shall evidence chain
8715 of title, but lack of filing shall not affect the surviving
8716 organization's title to such real property.

8717 ~~(g)~~ (f) A statement of merger is a filing instrument
8718 under Chapter 1.

8719 ~~(h)~~ (g) The filing fees for a statement of merger shall
8720 be as set forth in Chapter 1."

8721 Section 8. This act shall become effective January 1,
8722 2024, following its passage and approval by the Governor, or
8723 its otherwise becoming law.



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Speaker of the House of Representatives

President and Presiding Officer of the Senate

House of Representatives

I hereby certify that the within Act originated in and was passed by the House 24-MAY-23.

John Treadwell
Clerk

Senate

01-Jun-23

Passed