

**SB245 ENGROSSED**



1 AY49Q7-2  
2 By Senator Givhan  
3 RFD: Judiciary  
4 First Read: 25-Apr-23  
5 2023 Regular Session



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A BILL  
TO BE ENTITLED  
AN ACT

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



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29 1975.

30 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

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

33 CHAPTER 3A. ALABAMA NONPROFIT CORPORATION LAW.

34 ARTICLE 1. GENERAL PROVISIONS.

35 DIVISION A. SHORT TITLE AND SAVINGS PROVISIONS.

36 §10A-3A-1.01. Short title and application of chapter.

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

40 (b) The provisions of this chapter relating to  
41 nonprofit corporations shall apply to:

42 (1) All nonprofit corporations organized hereunder; and

43 (2) All nonprofit corporations heretofore organized  
44 under any act hereby or heretofore repealed, for a purpose or  
45 purposes for which a nonprofit corporation might be organized  
46 under this chapter.

47 (c) The provisions of this chapter relating to foreign  
48 nonprofit corporations shall apply to all foreign nonprofit  
49 corporations conducting affairs in Alabama for a purpose or  
50 purposes for which a nonprofit corporation might be organized  
51 under this chapter.

52 (d) Beginning May 1, 2004, the Young Men's Christian  
53 Association (YMCA) of Mobile which was incorporated by Act 405  
54 approved on February 18, 1895, shall be subject to this  
55 chapter. Prospectively from May 1, 2004, the YMCA of Mobile  
56 shall be entitled to all of the rights and privileges of a



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57 nonprofit corporation including, but not limited to, the right  
58 to amend its charter and bylaws as provided by this chapter.

59 §10A-3A-1.02. Chapter definitions.

60 As used in this chapter, unless otherwise specified or  
61 unless the context otherwise requires, the following terms  
62 have the following meanings:

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



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85 of a corporation. The term "certificate of incorporation" as  
86 used in this chapter is synonymous to the term certificate of  
87 formation used in Chapter 1.

88 (2) BOARD or BOARD OF DIRECTORS means the group of  
89 individuals responsible for the management or direction, and  
90 oversight, of the activities and affairs of the nonprofit  
91 corporation, regardless of the name used to refer to the group  
92 or other persons authorized to perform the functions of the  
93 board of directors.

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

97 (4) BYLAWS means the code or codes of rules (other than  
98 the certificate of incorporation) adopted for the regulation  
99 or management of the affairs of the nonprofit corporation,  
100 regardless of the name or names by which the rules are  
101 designated.

102 (5) DELIVER or DELIVERY means any method of delivery  
103 used in conventional commercial practice, including delivery  
104 by hand, mail, commercial delivery, and, if authorized in  
105 accordance with Section 10A-3A-1.03, by electronic  
106 transmission.

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

111 (7) DISTRIBUTION means a direct or indirect transfer of  
112 cash or other property from a nonprofit corporation to a



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113 member, director, or officer of that nonprofit corporation in  
114 that person's capacity as a member, director, or officer, but  
115 does not mean payments or benefits made in accordance with  
116 Section 10A-3A-6.41.

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

118 (9) EFFECTIVE DATE when referring to a document  
119 accepted for filing by the Secretary of State, means the time  
120 and date determined in accordance with Article 4 of Chapter 1.

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

123 (11) ELECTRONIC MAIL ADDRESS means a destination,  
124 commonly expressed as a string of characters, consisting of a  
125 unique user name or mailbox (commonly referred to as the  
126 "local part" of the address) and a reference to an internet  
127 domain (commonly referred to as the "domain part" of the  
128 address), whether or not displayed, to which electronic mail  
129 can be sent or delivered.

130 (12) EMPLOYEE does not include an individual serving as  
131 an officer or director who is not otherwise employed by the  
132 nonprofit corporation.

133 (13) ENTITLED TO VOTE means entitled to vote on the  
134 matter under consideration pursuant to the certificate of  
135 incorporation or bylaws of the nonprofit corporation, or  
136 applicable provisions of this chapter or Chapter 1.

137 (14) ENTITY includes nonprofit corporation; foreign  
138 nonprofit corporation; business corporation; foreign business  
139 corporation; estate; trust; unincorporated entity; foreign  
140 unincorporated entity; and state, United States, and foreign



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141 government.

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

144 (16) FOREIGN BUSINESS CORPORATION means a business  
145 corporation incorporated under a law other than the law of  
146 this state which would be a business corporation if  
147 incorporated under the law of this state.

148 (17) FOREIGN NONPROFIT CORPORATION means a nonprofit  
149 corporation incorporated under a law other than the law of  
150 this state which would be a nonprofit corporation if  
151 incorporated under the law of this state.

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

155 (19) FUNDAMENTAL TRANSACTION means an amendment of the  
156 certificate of incorporation, an amendment to the bylaws, a  
157 merger, a conversion, a sale of all or substantially all of  
158 the assets, or the dissolution of a nonprofit corporation.

159 (20) GOVERNING STATUTE means the statute governing the  
160 internal affairs of a nonprofit corporation, foreign nonprofit  
161 corporation, business corporation, foreign business  
162 corporation, unincorporated entity, or foreign unincorporated  
163 entity.

164 (21) INCLUDES and INCLUDING denote a partial definition  
165 or a nonexclusive list.

166 (22) INTEREST means:

167 (a) a share;

168 (b) a membership or membership interests; or



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169 (c) either or both of the following rights under the  
170 governing statute governing an organization other than a  
171 nonprofit corporation, foreign nonprofit corporation, business  
172 corporation, foreign business corporation:

173 (i) the right to receive distributions from that  
174 organization either in the ordinary course or upon  
175 liquidation; or

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

180 (23) INTEREST HOLDER means a person who holds of record  
181 an interest.

182 (24) KNOWLEDGE is determined as follows:

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

184 (1) has actual knowledge of it; or

185 (2) is deemed to know it under law other than this  
186 chapter.

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

188 (1) knows of it;

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

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

193 (4) is deemed to have notice of the fact under  
194 subsection (d).

195 (c) A person notifies another of a fact by taking steps  
196 reasonably required to inform the other person in ordinary



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197 course in accordance with Section 10A-3A-1.03, whether or not  
198 the other person knows the fact.

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

201 (1) matters included in the certificate of  
202 incorporation upon filing;

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

205 (3) conversion or merger under Article 13 or Article  
206 12, 90 days after a statement of conversion or statement of  
207 merger becomes effective;

208 (4) conversion or merger under Article 8 of Chapter 1,  
209 90 days after a statement of conversion or statement of merger  
210 becomes effective; and

211 (5) revocation of dissolution and reinstatement, 90  
212 days after certificate of revocation of dissolution and  
213 reinstatement under Section 10A-3A-11.06 becomes effective.

214 (e) A member's knowledge, notice, or receipt of a  
215 notification of a fact relating to the nonprofit corporation  
216 is not knowledge, notice, or receipt of a notification of a  
217 fact by that nonprofit corporation solely by reason of the  
218 member's capacity as a member.

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

222 (25) MEANS denotes an exhaustive definition.

223 (26) MEMBER means a person in whose name a membership  
224 is registered on the records of the membership nonprofit



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225 corporation and who has the right to (i) select or vote for  
226 the election of directors or (ii) vote on any type of  
227 fundamental transaction.

228 (27) MEMBERSHIP or MEMBERSHIP INTERESTS means the  
229 rights and any obligations of a member in a membership  
230 nonprofit corporation or a foreign membership nonprofit  
231 corporation.

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

236 (29) NONMEMBERSHIP NONPROFIT CORPORATION means a  
237 nonprofit corporation whose certificate of incorporation  
238 provides that it will not have members.

239 (30) NONPROFIT CORPORATION, except in the phrase  
240 foreign nonprofit corporation, means a nonprofit corporation  
241 incorporated under or existing under this chapter.

242 (31) ORGANIZATIONAL DOCUMENTS means the public organic  
243 record and private organizational documents of a nonprofit  
244 corporation, foreign nonprofit corporation, business  
245 corporation, foreign business corporation, or other  
246 organization.

247 (32) PRINCIPAL OFFICE means the office (in or out of  
248 this state) where the principal executive offices of a  
249 nonprofit corporation or foreign nonprofit corporation are  
250 located.

251 (33) PRIVATE ORGANIZATIONAL DOCUMENTS means (i) the  
252 bylaws of a nonprofit corporation, foreign nonprofit



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253 corporation, business corporation, or foreign business  
254 corporation or (ii) the rules, regardless of whether in  
255 writing, that govern the internal affairs of an unincorporated  
256 entity or foreign unincorporated entity, are binding on all  
257 its interest holders, and are not part of its public organic  
258 record, if any. Where private organizational documents have  
259 been amended or restated, the term means the private  
260 organizational documents as last amended or restated.

261 (34) PROCEEDING includes any civil suit and criminal,  
262 administrative, and investigatory action.

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

273 (36) RECORD DATE means the date fixed for determining  
274 the identity of the nonprofit corporation's members and their  
275 interests for purposes of this chapter. Unless another time is  
276 specified when the record date is fixed, the determination  
277 shall be made as of the close of business at the principal  
278 office of the nonprofit corporation on the date so fixed.

279 (37) SECRETARY means the corporate officer to whom the  
280 certificate of incorporation, bylaws, or board of directors



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281 has delegated responsibility under Section 10A-3A-8.40(c) to  
282 maintain the minutes of the meetings of the board of  
283 directors, committees, and the members, and for authenticating  
284 records of the nonprofit corporation.

285 (38) SHARES means the units into which the proprietary  
286 interests in a domestic or foreign business corporation are  
287 divided.

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

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

304 (41) UNITED STATES includes a district, authority,  
305 bureau, commission, department, and any other agency of the  
306 United States.

307 (42) VOTE, VOTING, or CASTING A VOTE includes the  
308 giving of consent in writing without a meeting. The term does



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309 not include either recording the fact of abstention or failing  
310 to vote for a candidate or for approval or disapproval of a  
311 matter, whether or not the person entitled to vote  
312 characterizes that conduct as voting or casting a vote.

313 (43) VOTING GROUP means one or more classes of members  
314 that under the certificate of incorporation, bylaws, or this  
315 chapter are entitled to vote and be counted together  
316 collectively on a matter at a meeting of members. All members  
317 entitled by the certificate of incorporation, bylaws, or this  
318 chapter to vote generally on the matter are for that purpose a  
319 single voting group.

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

323 §10A-3A-1.03. Notice.

324 (a) A notice under this chapter must be in writing  
325 unless oral notice is reasonable in the circumstances. Unless  
326 otherwise agreed between the sender and the recipient, words  
327 in a notice or other communication under this chapter must be  
328 in English.

329 (b) A notice or other communication may be given by any  
330 method of delivery, except that notice or other communication  
331 by electronic transmission must be in accordance with this  
332 section. If the methods of delivery are impracticable, a  
333 notice or other communication from the nonprofit corporation  
334 may be given by means of a broad non-exclusionary distribution  
335 to the public (which may include a newspaper of general  
336 circulation in the area where published; radio, television, or



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337 other form of public broadcast communication; or other methods  
338 of distribution that the nonprofit corporation has previously  
339 identified to its recipients).

340 (c) A notice or other communication to a nonprofit  
341 corporation or to a foreign nonprofit corporation registered  
342 to transact business in this state may be delivered to the  
343 registered agent of the nonprofit corporation or the foreign  
344 nonprofit corporation at that registered agent's registered  
345 office or to the secretary at the principal office of the  
346 nonprofit corporation or the foreign nonprofit corporation.

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

364 (e) A notice or other communication may no longer be



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365 delivered to an electronic mail address or other electronic  
366 transmission address pursuant to subsection (d) if (i) the  
367 nonprofit corporation receives notice from the information  
368 processing system into which the notice or other communication  
369 was entered that two consecutive notices or other  
370 communications given by electronic transmission have not been  
371 delivered to the electronic mail address or other electronic  
372 transmission address to which the notice or other  
373 communication was directed, and (ii) the notice of  
374 non-delivery becomes known to the secretary or an assistant  
375 secretary, or another person responsible for the giving of  
376 notices or other communications for the nonprofit corporation;  
377 provided, however, that the inadvertent failure to recognize  
378 the notice of non-delivery as a cessation of authority to  
379 provide a member with notice by electronic mail or other  
380 electronic transmission shall not invalidate any meeting or  
381 other action.

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

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



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393 communication by electronic transmission; and

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

396 (g) Receipt of an electronic acknowledgment from an  
397 information processing system described in subsection (f)(1)  
398 establishes that an electronic transmission was received but,  
399 by itself, does not establish that the content sent  
400 corresponds to the content received.

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

403 (i) A notice or other communication, if in a  
404 comprehensible form or manner, is effective at the earliest of  
405 the following:

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

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

410 (ii) a director's residence or usual place of business;  
411 or

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

413 (2) if mailed by United States mail postage prepaid and  
414 addressed to a member at the member's address included in the  
415 record of members maintained pursuant to Section  
416 10A-3A-4.01(d), upon deposit in the United States mail;

417 (3) if mailed by United States mail postage prepaid and  
418 addressed to a recipient other than a member, at the address  
419 of the recipient reflected in the books and records of the  
420 nonprofit corporation, the earliest of when it is actually



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421 received, or:

422 (i) if sent by registered or certified mail, return  
423 receipt requested, the date shown on the return receipt signed  
424 by or on behalf of the addressee; or

425 (ii) five days after it is deposited in the United  
426 States mail;

427 (4) if sent by a nationally recognized commercial  
428 carrier that issues a receipt or other confirmation of  
429 delivery, the earliest of when it is actually received or the  
430 date shown on the receipt or other confirmation of delivery  
431 issued by the commercial carrier;

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

434 (6) if oral, when communicated.

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

443 (k) If this chapter prescribes requirements for notices  
444 or other communications in particular circumstances, those  
445 requirements govern. If the certificate of incorporation or  
446 bylaws prescribe requirements for notices or other  
447 communications, not inconsistent with this section or other  
448 provisions of this chapter, those requirements govern. The



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449 certificate of incorporation or bylaws may authorize or  
450 require delivery of notices of meetings of directors by  
451 electronic transmission.

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

458 (m) Whenever a notice or communication would otherwise  
459 be required to be given under any provision of this chapter to  
460 a member, the notice or communication need not be given if the  
461 nonprofit corporation is not permitted to deliver the notice  
462 or communication by electronic transmission pursuant to  
463 subsections (d) and (e) and:

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

471 (2) no address has been provided to the nonprofit  
472 corporation by or on behalf of a member and the nonprofit  
473 corporation has not otherwise obtained an address for that  
474 member it believes to be reliable.

475 In addition if any member to which this subsection (m)  
476 applies delivers to the nonprofit corporation a written notice



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477 or communication setting forth that member's then-current  
478 address, the requirement that notice and communication be  
479 given to that member shall be reinstated.

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

501 §10A-3A-1.04. Requirements for filing instruments;  
502 extrinsic facts.

503 (a) Whenever any filing instrument is to be delivered  
504 to the Secretary of State for filing in accordance with this



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505 chapter, the instrument shall be executed as follows:

506 (1) Except as provided in subsection (a)(3), the  
507 certificate of incorporation, and any other instrument to be  
508 filed before the election of the initial board of directors if  
509 the initial directors were not named in the certificate of  
510 incorporation, shall be signed by the incorporator or  
511 incorporators or the successors and assigns of the  
512 incorporator or incorporators. If any incorporator is not  
513 available then any other instrument may be signed, with the  
514 same effect as if the incorporator had signed it, by any  
515 person for whom or on whose behalf the incorporator, in  
516 executing the certificate of incorporation, was acting  
517 directly or indirectly as employee or agent, provided that the  
518 other instrument shall state that the incorporator is not  
519 available and the reason therefor, that the incorporator in  
520 executing the certificate of incorporation was acting directly  
521 or indirectly as employee or agent for or on behalf of the  
522 person, and that the person's signature on the instrument is  
523 otherwise authorized and not wrongful.

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

526 (i) by any authorized officer of the nonprofit  
527 corporation; or

528 (ii) if it shall appear from the filing instrument that  
529 there are no authorized officers, then by a majority of the  
530 directors or by the directors as may be designated by a  
531 majority of the board of directors; or

532 (iii) if it shall appear from the filing instrument



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533 that there are no authorized officers or directors, then by a  
534 majority of the members or by the members as may be designated  
535 by a majority of the members.

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

539 (b) The person executing the filing instrument shall  
540 sign it and state beneath or opposite the person's signature  
541 the person's name and the capacity in which the filing  
542 instrument is signed. The filing instrument may, but need not,  
543 contain a corporate seal, attestation, acknowledgment, or  
544 verification.

545 (c) Whenever a provision of this chapter permits any of  
546 the terms of a plan or a filing instrument to be dependent on  
547 facts objectively ascertainable outside the plan or filing  
548 instrument, the following provisions apply:

549 (1) The manner in which the facts will operate upon the  
550 terms of the plan or filing instrument must be set forth in  
551 the plan or filing instrument.

552 (2) The facts may include:

553 (i) any of the following that are available in a  
554 nationally recognized news or information medium either in  
555 print or electronically: statistical or market indices, market  
556 prices of any security or group of securities, interest rates,  
557 currency exchange rates, or similar economic or financial  
558 data;

559 (ii) a determination or action by any person or body,  
560 including the nonprofit corporation or any other party to a



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561 plan or filing instrument; or

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

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

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

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

572 (ii) the registered office of any entity required in a  
573 filing instrument;

574 (iii) the registered agent of any entity required in a  
575 filing instrument;

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

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

581 (5) If a provision of a filing instrument is made  
582 dependent on a fact ascertainable outside of the filing  
583 instrument, and that fact is neither ascertainable by  
584 reference to a source described in subsection (c)(2)(i) or a  
585 document that is a matter of public record, nor have the  
586 affected members, if any, and if none, the affected directors,  
587 received notice of the fact from the nonprofit corporation,  
588 then the nonprofit corporation shall deliver to the Secretary



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589 of State for filing a certificate of amendment to the filing  
590 instrument setting forth the fact promptly after the time when  
591 the fact referred to is first ascertainable or thereafter  
592 changes. A certificate of amendment under this subsection is  
593 deemed to be authorized by the authorization of the original  
594 filing instrument to which it relates and may be filed by the  
595 nonprofit corporation without further action by the board of  
596 directors or the members.

597 §10A-3A-1.05. Certificate of existence or registration.

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

606 (1) the nonprofit corporation's name;

607 (2) that the nonprofit corporation was incorporated  
608 under the laws of this state, the date of incorporation, and  
609 the filing office in which the certificate of incorporation  
610 was filed;

611 (3) whether the nonprofit corporation has delivered to  
612 the Secretary of State for filing a certificate of  
613 dissolution;

614 (4) whether the nonprofit corporation has delivered to  
615 the Secretary of State for filing a certificate of  
616 reinstatement; and



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617 (5) other facts of record in the office of the  
618 Secretary of State that are specified by the person requesting  
619 the certificate.

620 (b) The Secretary of State, upon request and payment of  
621 the requisite fee, shall furnish to any person a certificate  
622 of registration for a foreign nonprofit corporation if the  
623 writings filed in the office of the Secretary of State show  
624 that the Secretary of State has filed an application for  
625 registration for authority to transact business in this state  
626 and the registration has not been revoked, withdrawn, or  
627 terminated. A certificate of registration must state:

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

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

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

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

637 (5) other facts of record in the office of the  
638 Secretary of State that are specified by the person requesting  
639 the certificate.

640 (c) Subject to any qualification stated in the  
641 certificate, a certificate of existence or certificate of  
642 registration issued by the Secretary of State is conclusive  
643 evidence that the nonprofit corporation is in existence or the  
644 foreign nonprofit corporation is authorized to transact



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645 business in this state.

646 DIVISION B. RATIFICATION OF DEFECTIVE CORPORATE ACTIONS

647 §10A-3A-1.20. Division definitions.

648 In this Division:

649 (1) "CORPORATE ACTION" means any action taken by or on  
650 behalf of the nonprofit corporation, including any action  
651 taken by the incorporator, the board of directors, a committee  
652 of the board of directors, an officer or agent of the  
653 nonprofit corporation, or the members, if any.

654 (2) "DATE OF THE DEFECTIVE CORPORATE ACTION" means the  
655 date (or the approximate date, if the exact date is unknown)  
656 the defective corporate action was purported to have been  
657 taken.

658 (3) "DEFECTIVE CORPORATE ACTION" means (i) any  
659 corporate action purportedly taken that is, and at the time  
660 that corporate action was purportedly taken would have been,  
661 within the power of the nonprofit corporation, but is void or  
662 voidable due to a failure of authorization, and (ii) an  
663 overissue.

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

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

672 (i) membership interests of a class in excess of the



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673 number, if any, of membership interests of a class the  
674 nonprofit corporation has the power to issue under its  
675 certificate of incorporation or bylaws at the time of  
676 issuance; or

677 (ii) membership interests of any class that is not then  
678 authorized for issuance by the certificate of incorporation or  
679 bylaws.

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

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

694 (8) "VALIDATION EFFECTIVE TIME" with respect to any  
695 defective corporate action ratified under this article means  
696 the later of:

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

700 (ii) the time at which any certificate of validation



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701 filed in accordance with Section 10A-3A-1.26 becomes  
702 effective.

703           The validation effective time shall not be affected by  
704 the filing or pendency of a judicial proceeding under Section  
705 10A-3A-1.27 or otherwise, unless otherwise ordered by the  
706 court.

707           §10A-3A-1.21. Defective corporate actions.

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

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

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

723           (1) the effectiveness under this article and under  
724 Article 9 of an amendment to the certificate of incorporation  
725 or bylaws authorizing, designating, or creating that  
726 membership interest; or

727           (2) the effectiveness of any other corporate action  
728 under this article ratifying the authorization, designation,



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729 or creation of a membership interest.

730 §10A-3A-1.22. Ratification of defective corporate  
731 actions.

732 (a) To ratify a defective corporate action under this  
733 section (other than the ratification of an election of the  
734 initial board of directors under subsection (b)), the board of  
735 directors shall take action ratifying the action in accordance  
736 with Section 10A-3A-1.23, stating:

737 (1) the defective corporate action to be ratified and,  
738 if the defective corporate action involved the issuance of a  
739 putative membership interest, the number and types of putative  
740 membership interests purportedly issued;

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

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

744 (4) that the board of directors approves the  
745 ratification of the defective corporate action.

746 (b) In the event that a defective corporate action to  
747 be ratified relates to the election of the initial board of  
748 directors of the nonprofit corporation under Section  
749 10A-3A-2.04(a)(2), a majority of the persons who, at the time  
750 of the ratification, are exercising the powers of directors  
751 may take an action stating:

752 (1) the name of the person or persons who first took  
753 action in the name of the nonprofit corporation as the initial  
754 board of directors of the nonprofit corporation;

755 (2) the earlier of the date on which those persons  
756 first took the action or were purported to have been elected



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757 as the initial board of directors; and

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

760 (c) If any provision of this chapter, the certificate  
761 of incorporation or bylaws, any corporate resolution, or any  
762 plan or agreement to which a membership nonprofit corporation  
763 is a party in effect at the time action under subsection (a)  
764 is taken requires member approval or would have required  
765 member approval at the date of the occurrence of the defective  
766 corporate action, the ratification of the defective corporate  
767 action approved in the action taken by the directors under  
768 subsection (a) shall be submitted to the members for approval  
769 in accordance with Section 10A-3A-1.23.

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

780 (e) Unless otherwise provided in the action taken by  
781 the board of directors under subsection (a), after the action  
782 by the board of directors has been taken and, if required,  
783 approved in accordance with subsection (c) or subsection (d),  
784 the board of directors may abandon the ratification at any



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785 time before the validation effective time without further  
786 action of the members, if any, or the person or group of  
787 persons, if any, specified in the certificate of  
788 incorporation.

789 §10A-3A-1.23. Action on ratification.

790 (a) The quorum and voting requirements applicable to a  
791 ratifying action by the board of directors under Section  
792 10A-3A-1.22(a) shall be the quorum and voting requirements  
793 applicable to the corporate action proposed to be ratified at  
794 the time the ratifying action is taken.

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



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813 ratification of the defective corporate action and any  
814 putative membership interest issued as a result of the  
815 defective corporate action should not be effective, or should  
816 be effective only on certain conditions, shall be brought  
817 within 120 days from the applicable validation effective time.

818 (c) Except as provided in subsection (d) with respect  
819 to the voting requirements to ratify the election of a  
820 director, the quorum and voting requirements applicable to the  
821 approval by the members, if any, and if none, by the directors  
822 shall be the quorum and voting requirements applicable to the  
823 corporate action proposed to be ratified at the time of the  
824 member or director approval.

825 (d) The approval by members to ratify the election of a  
826 director requires that the votes cast within the voting group  
827 favoring the ratification exceed the votes cast opposing the  
828 ratification of the election at a meeting at which a quorum is  
829 present.

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

838 (f) If the approval under this section of putative  
839 membership interests would result in an overissue, in addition  
840 to the approval required by Section 10A-3A-1.22, approval of



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841 an amendment to the certificate of incorporation under Article  
842 9 to increase the number of membership interests of an  
843 authorized class or to authorize the creation of a class of  
844 membership interests so there would be no overissue shall also  
845 be required.

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

859 §10A-3A-1.24. Notice requirements.

860 (a) In a membership nonprofit corporation, unless  
861 member approval is required under Section 10A-3A-1.22(c),  
862 prompt notice of an action taken under Section 10A-3A-1.22  
863 shall be given to each holder of a valid and putative  
864 membership interest in the membership nonprofit corporation,  
865 regardless of whether entitled to vote, as of: (i) the date of  
866 the action by the board of directors; and (ii) the date of the  
867 defective corporate action ratified, provided that notice  
868 shall not be required to be given to holders of a valid and



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869 putative membership interest whose identities or addresses for  
870 notice cannot be determined from the records of the nonprofit  
871 corporation.

872 (b) The notice set forth in subsection (a) must  
873 contain: (i) either a copy of the action taken by the board of  
874 directors in accordance with Section 10A-3A-1.22(a) or (b) or  
875 the information required by Section 10A-3A-1.22(a)(1) through  
876 (a)(4) or Section 10A-3A-1.22(b)(1) through (b)(3), as  
877 applicable; and (ii) a statement that any claim that the  
878 ratification of the defective corporate action and any  
879 putative membership interest issued as a result of the  
880 defective corporate action should not be effective, or should  
881 be effective only on certain conditions, shall be brought  
882 within 120 days from the applicable validation effective time.

883 (c) In a membership nonprofit corporation, no notice  
884 under this section is required with respect to any action  
885 required to be submitted to members for approval under Section  
886 10A-3A-1.22(c) if notice is given in accordance with Section  
887 10A-3A-1.24(b).

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

890 §10A-3A-1.25. Effect of ratification.

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

894 (a) Each defective corporate action ratified in  
895 accordance with Section 10A-3A-1.22 shall not be void or  
896 voidable as a result of the failure of authorization



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897 identified in the action taken under Section 10A-3A-1.22(a) or  
898 (b) and shall be deemed a valid corporate action effective as  
899 of the date of the defective corporate action;

900 (b) The issuance of each putative membership interest  
901 purportedly issued pursuant to a defective corporate action  
902 identified in the action taken under Section 10A-3A-1.22 shall  
903 not be void or voidable, and each putative membership interest  
904 shall be deemed to be an identical membership interest as of  
905 the time it was purportedly issued; and

906 (c) Any corporate action taken subsequent to the  
907 defective corporate action ratified in accordance with this  
908 Division B of Article 1 in reliance on the defective corporate  
909 action having been validly effected and any subsequent  
910 defective corporate action resulting directly or indirectly  
911 from the original defective corporate action shall be valid as  
912 of the time taken.

913 §10A-3A-1.26. Filings.

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



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

926 (1) the name of the nonprofit corporation;

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

929 (3) the defective corporate action that is the subject  
930 of the certificate of validation (including, in the case of  
931 any defective corporate action involving the issuance of  
932 putative membership interests, the number and type of shares  
933 of putative membership interests issued and the date or dates  
934 upon which that putative membership interest was purported to  
935 have been issued);

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

937 (5) the nature of the failure of authorization in  
938 respect of the defective corporate action;

939 (6) a statement that the defective corporate action was  
940 ratified in accordance with Section 10A-3A-1.22, including the  
941 date on which the board of directors ratified that defective  
942 corporate action, and if applicable, the date on which the  
943 members approved the ratification of that defective corporate  
944 action, and the date on which the person or group of persons  
945 specified in the certificate of incorporation approved the  
946 ratification of that defective corporate action; and

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

948 (c) The certificate of validation must also contain the  
949 following information:

950 (1) if a filing was previously made in respect of the  
951 defective corporate action and no changes to that filing are  
952 required to give effect to the ratification of that defective



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953 corporate action in accordance with Section 10A-3A-1.22, the  
954 certificate of validation must set forth (i) the name, title,  
955 and filing date of the filing previously made and any  
956 certificate of correction to that filing, and (ii) a statement  
957 that a copy of the filing previously made, together with any  
958 certificate of correction to that filing, is attached as an  
959 exhibit to the certificate of validation;

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

973 (3) if a filing was not previously made in respect of  
974 the defective corporate action and the defective corporate  
975 action ratified under Section 10A-3A-1.22 would have required  
976 a filing under any other section of this chapter, the  
977 certificate of validation must set forth (i) a statement that  
978 a filing containing all of the information required to be  
979 included under the applicable section or sections of this  
980 chapter to give effect to that defective corporate action is



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981 attached as an exhibit to the certificate of validation, and  
982 (ii) the date and time that filing is deemed to have become  
983 effective.

984 §10A-3A-1.27. Judicial proceedings regarding validity  
985 of corporate actions.

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

1000 (1) determine the validity and effectiveness of any  
1001 corporate action or defective corporate action;

1002 (2) determine the validity and effectiveness of any  
1003 ratification under Section 10A-3A-1.22;

1004 (3) determine the validity of any putative membership  
1005 interest; and

1006 (4) modify or waive any of the procedures specified in  
1007 Section 10A-3A-1.22 or Section 10A-3A-1.23 to ratify a  
1008 defective corporate action.



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1009 (b) In connection with an action under this section,  
1010 the court may make findings or orders, and take into account  
1011 any factors or considerations, regarding any matters as it  
1012 deems proper under the circumstances.

1013 (c) Service of process of the application under  
1014 subsection (a) on the nonprofit corporation may be made in any  
1015 manner provided by statute of this state or by rule of the  
1016 applicable court for service on the nonprofit corporation, and  
1017 no other party need be joined in order for the court to  
1018 adjudicate the matter. In an action filed by the nonprofit  
1019 corporation, the court may require notice of the action be  
1020 provided to other persons specified by the court and permit  
1021 those other persons to intervene in the action.

1022 (d) Notwithstanding any other provision of this section  
1023 or otherwise under applicable law, any action asserting that  
1024 the ratification of any defective corporate action and any  
1025 putative membership interest issued as a result of a defective  
1026 corporate action should not be effective, or should be  
1027 effective only on certain conditions, shall be brought within  
1028 120 days of the validation effective time.

1029 DIVISION C. MISCELLANEOUS.

1030 §10A-3A-1.60. Qualified director.

1031 (a) A "qualified director" is a director who, at the  
1032 time action is to be taken under:

1033 (1) Section 10A-3A-2.02(b)(6), is not a director (i) to  
1034 whom the limitation or elimination of the duty of an officer  
1035 to offer potential business opportunities to the nonprofit  
1036 corporation would apply, or (ii) who has a material



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1037 relationship with any other person to whom the limitation or  
1038 elimination would apply;

1039 (2) Section 10A-3A-8.53 or Section 10A-3A-8.55 (i) is  
1040 not a party to the proceeding, (ii) is not a director as to  
1041 whom a transaction is a director's conflicting interest  
1042 transaction or who sought a disclaimer of the nonprofit  
1043 corporation's interest in a business opportunity under Section  
1044 10A-2A-8.60, which transaction or disclaimer is challenged,  
1045 and (iii) does not have a material relationship with a  
1046 director described in either clause (i) or clause (ii) of this  
1047 subsection (a) (2); or

1048 (3) Section 10A-2A-8.60, is not a director (i) as to  
1049 whom the contract or transaction is a director's conflicting  
1050 interest transaction, (ii) who has a material relationship  
1051 with another director as to whom the transaction is a  
1052 director's conflicting interest transaction, (iii) who pursues  
1053 or takes advantage of the business opportunity, directly, or  
1054 indirectly through or on behalf of another person, or (iv) has  
1055 a material relationship with a director or officer who pursues  
1056 or takes advantage of the business opportunity, directly, or  
1057 indirectly through or on behalf of another person.

1058 (b) For purposes of this section:

1059 (1) "MATERIAL RELATIONSHIP" means a familial,  
1060 financial, professional, employment, or other relationship  
1061 that would reasonably be expected to impair the objectivity of  
1062 the director's judgment when participating in the action to be  
1063 taken; and

1064 (2) "MATERIAL INTEREST" means an actual or potential



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1065 benefit or detriment (other than one which would devolve on  
1066 the nonprofit corporation or the members generally) that would  
1067 reasonably be expected to impair the objectivity of the  
1068 director's judgment when participating in the action to be  
1069 taken.

1070 (c) The presence of one or more of the following  
1071 circumstances shall not automatically prevent a director from  
1072 being a qualified director:

1073 (1) nomination or election of the director to the  
1074 current board of directors by any director who is not a  
1075 qualified director with respect to the matter (or by any  
1076 person that has a material relationship with that director),  
1077 acting alone or participating with others; or

1078 (2) service as a director of another nonprofit  
1079 corporation of which a director who is not a qualified  
1080 director with respect to the matter (or any individual who has  
1081 a material relationship with that director), is or was also a  
1082 director.

1083 §10A-3A-1.61. Householding.

1084 (a) A membership nonprofit corporation has delivered  
1085 written notice or any other report or statement under this  
1086 chapter, the certificate of incorporation, or the bylaws to  
1087 all members who share a common address if:

1088 (1) the membership nonprofit corporation delivers one  
1089 copy of the notice, report, or statement to the common  
1090 address;

1091 (2) the membership nonprofit corporation addresses the  
1092 notice, report, or statement to those members either as a



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1093 group or to each of those members individually or to the  
1094 members in a form to which each of those members has  
1095 consented; and

1096 (3) each of those members consents to delivery of a  
1097 single copy of the notice, report, or statement to the  
1098 members' common address.

1099 (b) A consent described in subsection (a) (2) or (a) (3)  
1100 shall be revocable by any members who deliver written notice  
1101 of revocation to the membership nonprofit corporation. If a  
1102 written notice of revocation is delivered, the membership  
1103 nonprofit corporation shall begin providing individual  
1104 notices, reports, or other statements to the revoking member  
1105 no later than 30 days after delivery of the written notice of  
1106 revocation.

1107 (c) Any member who fails to object by written notice to  
1108 the membership nonprofit corporation, within 60 days of  
1109 written notice by the membership nonprofit corporation of its  
1110 intention to deliver single copies of notices, reports, or  
1111 statements to members who share a common address as permitted  
1112 by subsection (a), shall be deemed to have consented to  
1113 receiving a single copy at the common address; provided that  
1114 the notice of intention explains that consent may be revoked  
1115 and the method for revoking.

1116 §10A-3A-1.62. Governing law of foreign nonprofit  
1117 corporations.

1118 (a) The law of the jurisdiction of formation of a  
1119 foreign nonprofit corporation governs:

1120 (1) the incorporation and internal affairs of the



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1121 foreign nonprofit corporation;

1122 (2) the liability of its members as members for the  
1123 debts, obligations, or other liabilities of the foreign  
1124 nonprofit corporation; and

1125 (3) the authority of the directors and officers of the  
1126 foreign nonprofit corporation.

1127 (b) A foreign nonprofit corporation is not precluded  
1128 from registering to do business in this state because of any  
1129 difference between the law of the foreign nonprofit  
1130 corporation's jurisdiction of formation and the law of this  
1131 state.

1132 ARTICLE 2. INCORPORATION.

1133 §10A-3A-2.01. Incorporators.

1134 Section 10A-1-3.04 shall not apply to this chapter. In  
1135 order to incorporate a nonprofit corporation, one or more  
1136 incorporators must execute a certificate of incorporation and  
1137 deliver it for filing to the Secretary of State.

1138 §10A-3A-2.02. Certificate of incorporation.

1139 Section 10A-1-3.05 shall not apply to this chapter.

1140 Instead:

1141 (a) The certificate of incorporation must set forth:

1142 (1) a name for the nonprofit corporation that satisfies  
1143 the requirements of Article 5 of Chapter 1;

1144 (2) the street and mailing address of the nonprofit  
1145 corporation's initial registered office, the county within  
1146 this state in which the street and mailing address is located,  
1147 and the name of the nonprofit corporation's initial registered  
1148 agent at that office as required by Article 5 of Chapter 1;



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1149 (3) that the nonprofit corporation is incorporated  
1150 under this chapter;

1151 (4) the name and address of each incorporator; and

1152 (5) (i) if the nonprofit corporation will have members,  
1153 a statement to that effect; or

1154 (ii) if the nonprofit corporation will not have  
1155 members, a statement to that effect.

1156 (b) The certificate of incorporation may set forth:

1157 (1) the names and addresses of the individuals who are  
1158 to serve as the initial directors;

1159 (2) provisions not inconsistent with law regarding:

1160 (i) the purpose or purposes for which the nonprofit  
1161 corporation is organized;

1162 (ii) managing the activities and regulating the affairs  
1163 of the nonprofit corporation;

1164 (iii) defining, limiting, and regulating the powers of  
1165 the nonprofit corporation, its board of directors, and the  
1166 members;

1167 (iv) the characteristics, qualifications, rights,  
1168 limitations, and obligations attaching to each or any class of  
1169 members;

1170 (v) subject to Section 10A-3A-4.20, limiting a member's  
1171 right to inspect and copy the records of the nonprofit  
1172 corporation under Section 10A-3A-4.02 (b);

1173 (vi) the distribution of assets on dissolution;

1174 (vii) provisions for the election, appointment, or  
1175 designation of directors;

1176 (viii) provisions granting inspection rights to a



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1177 person or group of persons under Section 10A-3A-4.07; and

1178 (ix) provisions specifying a person or group of persons  
1179 whose approval is required under Sections 10A-3A-9.30,  
1180 10A-3A-10.04, 10A-3A-11.04, 10A-3A-12.08, or 10A-3A-13.08;

1181 (3) any provision that under this chapter is permitted  
1182 to be set forth in the certificate of incorporation or  
1183 required or permitted to be set forth in the bylaws;

1184 (4) a provision eliminating or limiting the liability  
1185 of a director to a nonprofit corporation or its members for  
1186 money damages for any action taken, or any failure to take any  
1187 action, as a director, except liability for (i) the amount of  
1188 a financial benefit received by a director to which the  
1189 director is not entitled (ii) an intentional infliction of  
1190 harm on the nonprofit corporation or its members, (iii) a  
1191 violation of Section 10A-3A-8.32, or (iv) an intentional  
1192 violation of criminal law;

1193 (5) a provision permitting or making obligatory  
1194 indemnification of a director for liability as defined in  
1195 Section 10A-3A-8.50 to any person for any action taken, or any  
1196 failure to take any action, as a director, except liability  
1197 for (i) receipt of a financial benefit to which the director  
1198 is not entitled, (ii) an intentional infliction of harm on the  
1199 nonprofit corporation or its members, (iii) a violation of  
1200 Section 10A-3A-8.32, or (iv) an intentional violation of  
1201 criminal law;

1202 (6) a provision limiting or eliminating any duty of a  
1203 director or any other person to offer the nonprofit  
1204 corporation the right to have or participate in any, or one or



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1205 more classes or categories of, corporate opportunities, before  
1206 the pursuit or taking of the opportunity by the director or  
1207 other person; provided that the application of that provision  
1208 to an officer or a related person of that officer (i) also  
1209 requires approval of that application by the board of  
1210 directors, subsequent to the effective date of the provision,  
1211 by action of the disinterested or qualified directors taken in  
1212 compliance with the same procedures as are set forth in  
1213 Section 10A-3A-8.60, and (ii) may be limited by the  
1214 authorizing action of the board of directors; and

1215 (7) provisions required if the nonprofit corporation is  
1216 to be exempt from taxation under federal, state, or local law.

1217 (c) The certificate of incorporation need not set forth  
1218 any of the corporate powers enumerated in Sections 10A-1-2.11,  
1219 10A-1-2.12, and 10A-1-2.13.

1220 (d) Provisions of the certificate of incorporation may  
1221 be made dependent upon facts objectively ascertainable outside  
1222 the certificate of incorporation in accordance with Section  
1223 10A-3A-1.04.

1224 (e) As used in this section, "related person" means:

1225 (i) the individual's spouse; (ii) a child, stepchild,  
1226 grandchild, parent, stepparent, grandparent, sibling,  
1227 stepsibling, half sibling, aunt, uncle, niece, or nephew (or  
1228 spouse of any such person) of the individual or of the  
1229 individual's spouse; (iii) a natural person living in the same  
1230 home as the individual; (iv) an entity (other than the  
1231 nonprofit corporation or an entity controlled by the nonprofit  
1232 corporation) controlled by the individual or any person



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1233 specified above in this definition; (v) a domestic or foreign  
1234 (A) business or nonprofit corporation (other than the  
1235 nonprofit corporation or an entity controlled by the nonprofit  
1236 corporation) of which the individual is a director, (B)  
1237 unincorporated entity of which the individual is a general  
1238 partner or a member of the governing authority, or (C)  
1239 individual, trust or estate for whom or of which the  
1240 individual is a trustee, guardian, personal representative, or  
1241 like fiduciary; or (vi) a person that is, or an entity that  
1242 is, controlled by, an employer of the individual.

1243 (f) The certificate of incorporation may not contain  
1244 any provision that would impose liability on a member or a  
1245 director for the attorney's fees or expenses of the nonprofit  
1246 corporation or any other party in connection with an internal  
1247 corporate claim, as defined in Section 10A-3A-2.07(d).

1248 (g) The certificate of incorporation is a part of a  
1249 binding contract between the nonprofit corporation and (i) the  
1250 members in a membership nonprofit corporation and (ii) the  
1251 directors in a nonmembership nonprofit corporation, subject to  
1252 the provisions of this chapter.

1253 §10A-3A-2.03. Liability for preincorporation  
1254 transactions.

1255 All persons purporting to act as or on behalf of a  
1256 nonprofit corporation, knowing there was no incorporation  
1257 under this chapter, are jointly and severally liable for all  
1258 liabilities created while so acting.

1259 §10A-3A-2.04. Organization of nonprofit corporation.

1260 (a) After incorporation:



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1261 (1) if initial directors are named in the certificate  
1262 of incorporation, the initial directors shall hold an  
1263 organizational meeting, at the call of a majority of the  
1264 directors, to complete the organization of the nonprofit  
1265 corporation by appointing officers, adopting bylaws, and  
1266 carrying on any other business brought before the meeting; or

1267 (2) if initial directors are not named in the  
1268 certificate of incorporation, the incorporator or  
1269 incorporators shall hold an organizational meeting at the call  
1270 of a majority of the incorporators:

1271 (i) to elect initial directors and complete the  
1272 organization of the nonprofit corporation; or

1273 (ii) to elect a board of directors who shall complete  
1274 the organization of the nonprofit corporation.

1275 (b) Action required or permitted by this chapter to be  
1276 taken by incorporators at an organizational meeting may be  
1277 taken without a meeting if the action taken is evidenced by  
1278 one or more written consents describing the action taken and  
1279 signed by each incorporator.

1280 §10A-3A-2.05. Bylaws.

1281 (a) The incorporators or board of directors of a  
1282 nonprofit corporation shall adopt initial bylaws for the  
1283 nonprofit corporation.

1284 (b) The bylaws of a nonprofit corporation may contain  
1285 any provision that is not inconsistent with law or the  
1286 certificate of incorporation.

1287 (c) The bylaws are a part of a binding contract between  
1288 the nonprofit corporation and (i) the members in a membership



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1289 nonprofit corporation and (ii) the directors in a  
1290 nonmembership nonprofit corporation, subject to the provisions  
1291 of this chapter.

1292 §10A-3A-2.06. Emergency bylaws.

1293 (a) Unless the certificate of incorporation provides  
1294 otherwise, bylaws may be adopted to be effective only in an  
1295 emergency defined in subsection (d). The emergency bylaws,  
1296 which are subject to amendment or repeal in accordance with  
1297 Section 10A-3A-9.20, may make all provisions necessary for  
1298 managing the nonprofit corporation during the emergency,  
1299 including:

1300 (1) procedures for calling a meeting of the board of  
1301 directors;

1302 (2) quorum requirements for the meeting; and

1303 (3) designation of additional or substitute directors.

1304 (b) All provisions of the regular bylaws not  
1305 inconsistent with the emergency bylaws remain effective during  
1306 the emergency. The emergency bylaws are not effective after  
1307 the emergency ends.

1308 (c) Corporate action taken in good faith in accordance  
1309 with the emergency bylaws:

1310 (1) binds the nonprofit corporation; and

1311 (2) may not be used to impose liability on a member,  
1312 director, officer, employee, or agent of the nonprofit  
1313 corporation.

1314 (d) An emergency exists for purposes of this section if  
1315 a quorum of the board of directors cannot readily be assembled  
1316 because of some catastrophic event.



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1317 §10A-3A-2.07. Forum selection provisions.

1318 (a) The certificate of incorporation or the bylaws may  
1319 require that any or all internal corporate claims shall be  
1320 brought exclusively in any specified court or courts of this  
1321 state and, if so specified, in any additional courts in this  
1322 state or in any other jurisdictions with which the nonprofit  
1323 corporation has a reasonable relationship.

1324 (b) A provision of the certificate of incorporation or  
1325 bylaws adopted under subsection (a) shall not have the effect  
1326 of conferring jurisdiction on any court or over any person or  
1327 claim, and shall not apply if none of the courts specified by  
1328 that provision has the requisite personal and subject matter  
1329 jurisdiction. If the court or courts of this state specified  
1330 in a provision adopted under subsection (a) do not have the  
1331 requisite personal and subject matter jurisdiction and another  
1332 court of this state does have jurisdiction, then the internal  
1333 corporate claim may be brought in the other court of this  
1334 state, notwithstanding that the other court of this state is  
1335 not specified in that provision, and in any other court  
1336 specified in that provision that has the requisite  
1337 jurisdiction.

1338 (c) No provision of the certificate of incorporation or  
1339 the bylaws may prohibit bringing an internal corporate claim  
1340 in the courts of this state or require those claims to be  
1341 determined by arbitration.

1342 (d) "Internal corporate claim" means, for the purposes  
1343 of this section, (i) any claim that is based upon a violation  
1344 of a duty under the laws of this state by a current or former



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1345 director, officer, or member in their capacities as such, (ii)  
1346 any action asserting a claim arising pursuant to any provision  
1347 of this chapter or the certificate of incorporation or bylaws,  
1348 or (iii) any action asserting a claim governed by the internal  
1349 affairs doctrine that is not included in (i) through (ii)  
1350 above.

1351 ARTICLE 3. PURPOSES AND POWERS.

1352 §10A-3A-3.01. Purposes.

1353 (a) Every nonprofit corporation has the purpose of  
1354 engaging in any lawful activity unless a more limited purpose  
1355 is set forth in the certificate of incorporation.

1356 (b) If a nonprofit corporation will engage in an  
1357 activity that is subject to regulation under another statute  
1358 of the state, the nonprofit corporation may incorporate under  
1359 this chapter only if not prohibited by, and subject to all  
1360 limitations of, the other statute.

1361 (c) Labor unions, cooperative organizations, and  
1362 organizations subject to any of the provisions of the  
1363 insurance laws of Alabama may not be organized under this  
1364 chapter.

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

1371 (e) Whenever 10 or more wholesale merchants wish to  
1372 form a nonprofit association, cooperative society, or



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1373 corporation in the sense of paying interest or dividends on  
1374 stock, but for mutual benefit through the application of  
1375 cooperation or other economic principles, they may become a  
1376 body corporate in the manner provided in this chapter.

1377 §10A-3A-3.02. General powers.

1378 Unless its certificate of incorporation provides  
1379 otherwise, every nonprofit corporation has perpetual duration  
1380 and succession in its corporate name and has the same powers  
1381 as an individual to do all things necessary or convenient to  
1382 carry out its activities and affairs, including all entity  
1383 powers provided in Section 10A-1-2.11, Section 10A-1-2.12, and  
1384 Section 10A-1-2.13.

1385 §10A-3A-3.03. Emergency powers.

1386 (a) In anticipation of or during an emergency defined  
1387 in subsection (d), the board of directors of a nonprofit  
1388 corporation may:

1389 (1) modify lines of succession to accommodate the  
1390 incapacity of any director, officer, employee, or agent; and

1391 (2) relocate the principal office, designate  
1392 alternative principal offices or regional offices, or  
1393 authorize the officers to do so.

1394 (b) During an emergency defined in subsection (d),  
1395 unless emergency bylaws provide otherwise:

1396 (1) notice of a meeting of the board of directors need  
1397 be given only to those directors whom it is practicable to  
1398 reach and may be given in any practicable manner; and

1399 (2) one or more officers of the nonprofit corporation  
1400 present at a meeting of the board of directors may be deemed



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1401 to be directors for the meeting, in order of rank and within  
1402 the same rank in order of seniority, as necessary to achieve a  
1403 quorum.

1404 (c) Corporate action taken in good faith during an  
1405 emergency under this section to further the ordinary business  
1406 affairs of the nonprofit corporation:

1407 (1) binds the nonprofit corporation; and

1408 (2) may not be used to impose liability on a member,  
1409 director, officer, employee, or agent.

1410 (d) An emergency exists for purposes of this section if  
1411 a quorum of the board of directors cannot readily be assembled  
1412 because of some catastrophic event.

1413 §10A-3A-3.04. Lack of power.

1414 (a) Except as provided in subsection (b), the validity  
1415 of corporate action may not be challenged on the ground that  
1416 the nonprofit corporation lacks or lacked power to act.

1417 (b) The power of a nonprofit corporation to act may be  
1418 challenged:

1419 (1) in a proceeding by a member or director against the  
1420 nonprofit corporation to enjoin the act;

1421 (2) in a proceeding by the nonprofit corporation,  
1422 directly, or through a receiver, trustee, or other legal  
1423 representative, against an incumbent or former director,  
1424 officer, employee, or agent of the nonprofit corporation; or

1425 (3) in a proceeding by the Attorney General.

1426 (c) In a proceeding by a member or a director under  
1427 subsection (b)(1) to enjoin an unauthorized corporate act, the  
1428 court may enjoin or set aside the act, if equitable and if all



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1429 affected persons are parties to the proceeding, and may award  
1430 damages for loss (other than anticipated profits) suffered by  
1431 the nonprofit corporation or another party because of  
1432 enjoining the unauthorized corporate act.

1433 ARTICLE 4. RECORDS AND REPORTS.

1434 DIVISION A. RECORDS.

1435 §10A-3A-4.01. Corporate records.

1436 (a) A nonprofit corporation must maintain the following  
1437 records:

1438 (1) its certificate of incorporation as currently in  
1439 effect;

1440 (2) any notices to members referred to in Section  
1441 10A-3A-1.04(c) (5) specifying facts on which a filed document  
1442 is dependent if those facts are not included in the  
1443 certificate of incorporation or otherwise available as  
1444 specified in Section 10A-3A-1.04(c) (5);

1445 (3) its bylaws as currently in effect;

1446 (4) all written communications within the past three  
1447 years to members generally;

1448 (5) minutes of all meetings of, and records of all  
1449 actions taken without a meeting by, its members, its board of  
1450 directors, and board committees established under Section  
1451 10A-3A-8.25; and

1452 (6) a list of the names and business addresses of its  
1453 current directors and officers.

1454 (b) A nonprofit corporation shall maintain all annual  
1455 financial statements prepared for the nonprofit corporation  
1456 for its last three fiscal years (or such shorter period of



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1457 existence) and any audit or other reports with respect to  
1458 those financial statements.

1459 (c) A nonprofit corporation shall maintain accounting  
1460 records in a form that permits preparation of the financial  
1461 statements.

1462 (d) A membership nonprofit corporation must maintain a  
1463 record of its current members in alphabetical order by class  
1464 of membership showing the address for each member to which  
1465 notices and other communications from the membership nonprofit  
1466 corporation are to be sent. In addition if a member has  
1467 provided an electronic mail address to the membership  
1468 nonprofit corporation or has consented to receive notices or  
1469 other communications by electronic mail or other electronic  
1470 transmission, the record of members shall include the  
1471 electronic mail or other electronic transmission address of  
1472 the member if notices or other communications are being  
1473 delivered by the membership nonprofit corporation to the  
1474 member at that electronic mail or other electronic  
1475 transmission address pursuant to Section 10A-3A-1.03(d). An  
1476 electronic mail address of a member shall be deemed to be  
1477 provided by a member if it is contained in a communication to  
1478 the membership nonprofit corporation by or on behalf of the  
1479 member, unless the communication expressly indicates that the  
1480 electronic mail address may not be used to deliver notices or  
1481 other communications.

1482 (e) A nonprofit corporation must maintain the records  
1483 specified in this section in a manner so that they may be made  
1484 available for inspection within a reasonable time.



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1485 §10A-3A-4.02. Inspection rights of members.

1486 (a) A member of a membership nonprofit corporation is  
1487 entitled to inspect and copy, during regular business hours at  
1488 the membership nonprofit corporation's principal office, any  
1489 of the records of the membership nonprofit corporation  
1490 described in Section 10A-3A-4.01(a), excluding minutes of  
1491 meetings of, and records of actions taken without a meeting  
1492 by, the membership nonprofit corporation's board of directors  
1493 and board committees established under Section 10A-3A-8.25, if  
1494 the member gives the membership nonprofit corporation a signed  
1495 written notice of the member's demand at least five business  
1496 days before the date on which the member wishes to inspect and  
1497 copy.

1498 (b) A member of a membership nonprofit corporation is  
1499 entitled to inspect and copy, during regular business hours at  
1500 a reasonable location specified by the membership nonprofit  
1501 corporation, any of the following records of the membership  
1502 nonprofit corporation if the member meets the requirements of  
1503 subsection (c) and gives the membership nonprofit corporation  
1504 a signed written notice of the member's demand at least five  
1505 business days before the date on which the member wishes to  
1506 inspect and copy:

1507 (1) the financial statements of the membership  
1508 nonprofit corporation maintained in accordance with Section  
1509 10A-3A-4.01(b);

1510 (2) accounting records of the membership nonprofit  
1511 corporation; and

1512 (3) excerpts from minutes of any meeting of, or records



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1513 of any actions taken without a meeting by, the board of  
1514 directors and board committees maintained in accordance with  
1515 Section 10A-3A-4.01(a); and

1516 (4) subject to Section 10A-3A-4.06, the record of  
1517 members maintained in accordance with Section 10A-3A-4.01(d).

1518 (c) A member may inspect and copy the records described  
1519 in subsection (b) only if:

1520 (1) the member's demand is made in good faith and for a  
1521 proper purpose;

1522 (2) the member's demand describes with reasonable  
1523 particularity the member's purpose and the records the member  
1524 desires to inspect; and

1525 (3) the records are directly connected with the  
1526 member's purpose.

1527 (d) The membership nonprofit corporation may impose  
1528 reasonable restrictions and conditions on access to and use of  
1529 the records to be inspected and copied under subsections (a)  
1530 and (b), including designating information confidential and  
1531 imposing nondisclosure and safeguarding, and may further keep  
1532 confidential from its members and other persons, for a period  
1533 of time as the membership nonprofit corporation deems  
1534 reasonable any information that the membership nonprofit  
1535 corporation reasonably believes to be in the nature of a trade  
1536 secret or other information the disclosure of which the  
1537 membership nonprofit corporation in good faith believes is not  
1538 in the best interest of the membership nonprofit corporation  
1539 or could damage the membership nonprofit corporation or its  
1540 activities or affairs, or that the membership nonprofit



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1541 corporation is required by law or by agreement with a third  
1542 party to keep confidential. In any dispute concerning the  
1543 reasonableness of a restriction under this subsection, the  
1544 membership nonprofit corporation has the burden of proving  
1545 reasonableness.

1546 (e) For any meeting of members for which the record  
1547 date for determining members entitled to vote at the meeting  
1548 is different than the record date for notice of the meeting,  
1549 any person who becomes a member subsequent to the record date  
1550 for notice of the meeting and is entitled to vote at the  
1551 meeting is entitled to obtain from the membership nonprofit  
1552 corporation upon request the notice and any other information  
1553 provided by the membership nonprofit corporation to members in  
1554 connection with the meeting, unless the membership nonprofit  
1555 corporation has made that information generally available to  
1556 members by posting it on its website or by other generally  
1557 recognized means. Failure of a membership nonprofit  
1558 corporation to provide that information does not affect the  
1559 validity of action taken at the meeting.

1560 (f) Subject to Section 10A-3A-4.20, the right of  
1561 inspection granted by Section 10A-3A-4.02(b) may be limited by  
1562 a membership nonprofit corporation's certificate of  
1563 incorporation.

1564 (g) This section does not affect:

1565 (1) the right of a member to inspect records under  
1566 Section 10A-3A-7.20 or, if the member is in litigation with  
1567 the membership nonprofit corporation, to the same extent as  
1568 any other litigant; or



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1569 (2) the power of a court, independently of this  
1570 chapter, to compel the production of corporate records for  
1571 examination and to impose reasonable restrictions as provided  
1572 in Section 10A-3A-4.04(c), provided that, in the case of  
1573 production of records described in subsection (b) of this  
1574 section at the request of the member, the member has met the  
1575 requirements of subsection (c) of this section.

1576 §10A-3A-4.03. Scope of inspection right of members.

1577 (a) A member may appoint an agent or attorney to  
1578 exercise the member's inspection and copying rights under  
1579 Section 10A-3A-4.02.

1580 (b) The membership nonprofit corporation may, if  
1581 reasonable, satisfy the right of a member to copy records  
1582 under Section 10A-3A-4.02 by furnishing to the member copies  
1583 by photocopy or other means as are chosen by the membership  
1584 nonprofit corporation, including furnishing copies through  
1585 electronic transmission.

1586 (c) The membership nonprofit corporation may comply at  
1587 its expense with a member's demand to inspect the record of  
1588 members under Section 10A-3A-4.02(b)(4) by providing the  
1589 member with a list of members that was compiled no earlier  
1590 than the date of the member's demand.

1591 (d) The membership nonprofit corporation may impose a  
1592 reasonable charge to cover the costs of providing copies of  
1593 documents to the member, which may be based on an estimate of  
1594 those costs.

1595 §10A-3A-4.04. Court-ordered inspection of membership  
1596 nonprofit corporation.



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1597 (a) If a membership nonprofit corporation does not  
1598 allow a member who complies with Section 10A-3A-4.02(a) to  
1599 inspect and copy any records required by that section to be  
1600 available for inspection, the designated court, and if none,  
1601 the circuit court for the county in which the membership  
1602 nonprofit corporation's principal office is located in this  
1603 state, and if none in this state, the circuit court for the  
1604 county in which the membership nonprofit corporation's most  
1605 recent registered office is located may summarily order  
1606 inspection and copying of the records demanded at the  
1607 membership nonprofit corporation's expense upon application of  
1608 the member.

1609 (b) If a membership nonprofit corporation does not  
1610 within a reasonable time allow a member who complies with  
1611 Section 10A-3A-4.02(b) to inspect and copy the records as  
1612 required by that section, the member who complies with Section  
1613 10A-3A-4.02(c) may apply to the designated court, and if none,  
1614 the circuit court for the county in which the membership  
1615 nonprofit corporation's principal office is located in this  
1616 state, and if none in this state, the circuit court for the  
1617 county in which the membership nonprofit corporation's most  
1618 recent registered office is located for an order to permit  
1619 inspection and copying of the records demanded. The court  
1620 shall dispose of an application under this subsection on an  
1621 expedited basis.

1622 (c) If the court orders inspection and copying of the  
1623 records demanded under Section 10A-3A-4.02(b), it may impose  
1624 reasonable restrictions on their confidentiality, use or



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1625 distribution by the demanding member and it shall also order  
1626 the membership nonprofit corporation to pay the member's  
1627 expenses incurred to obtain the order unless the membership  
1628 nonprofit corporation establishes that it refused inspection  
1629 in good faith because the membership nonprofit corporation  
1630 had:

1631 (1) a reasonable basis for doubt about the right of the  
1632 member to inspect the records demanded; or

1633 (2) required reasonable restrictions on the  
1634 confidentiality, use, or distribution of the records demanded  
1635 to which the demanding member had been unwilling to agree.

1636 §10A-3A-4.05. Inspection rights of directors.

1637 (a) A director of a nonprofit corporation is entitled  
1638 to inspect and copy the books, records, and documents of the  
1639 nonprofit corporation at any reasonable time to the extent  
1640 reasonably related to the performance of the director's duties  
1641 as a director, including duties as a member of a board  
1642 committee, but not for any other purpose or in any manner that  
1643 would violate any duty to the nonprofit corporation.

1644 (b) The designated court, and if none, the circuit  
1645 court for the county in which the nonprofit corporation's  
1646 principal office is located in this state, and if none in this  
1647 state, the circuit court for the county in which the nonprofit  
1648 corporation's most recent registered office is located may  
1649 order inspection and copying of the books, records, and  
1650 documents at the nonprofit corporation's expense, upon  
1651 application of a director who has been refused inspection  
1652 rights, unless the nonprofit corporation establishes that the



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1653 director is not entitled to inspection rights. The court shall  
1654 dispose of an application under this subsection on an  
1655 expedited basis.

1656 (c) If an order is issued, the court may include  
1657 provisions protecting the nonprofit corporation from undue  
1658 burden or expense, and prohibiting the director from using  
1659 information obtained upon exercise of the inspection rights in  
1660 a manner that would violate a duty to the nonprofit  
1661 corporation, and may also order the nonprofit corporation to  
1662 reimburse the director for the director's expenses incurred in  
1663 connection with the application.

1664 §10A-3A-4.06. Limitations on use of membership list.

1665 (a) Unless otherwise permitted by the certificate of  
1666 incorporation or bylaws of a membership nonprofit corporation,  
1667 a membership list or any part thereof may not be obtained or  
1668 used by any person for any purpose unrelated to a member's  
1669 interest as a member without the consent of the board of  
1670 directors, including without limitation:

1671 (1) to solicit money or property unless the money or  
1672 property will be used solely to solicit the votes of the  
1673 members in an election to be held by the membership nonprofit  
1674 corporation;

1675 (2) for any commercial purpose; or

1676 (3) to be sold or purchased by any person.

1677 (b) Instead of making a membership list available for  
1678 inspection and copying under this Division, a membership  
1679 nonprofit corporation may elect to proceed under the  
1680 procedures set forth in Section 10A-3A-7.20(e).



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1681 §10A-3A-4.07. Grant of inspection rights to designated  
1682 persons.

1683 If the certificate of incorporation provides approval  
1684 rights to a person or group of persons as authorized in  
1685 Section 10A-3A-2.02(b)(ix), then the certificate of  
1686 incorporation may grant inspection rights to that person or  
1687 group of persons. Any grant of inspection rights under this  
1688 section may set forth the scope, rights, limits, restrictions,  
1689 conditions, confidentiality, and any other matter related to  
1690 that grant of the inspection rights.

1691 DIVISION B. FINANCIAL STATEMENTS FOR MEMBERS.

1692 §10A-3A-4.20. Financial statements for members.

1693 (a) Upon the written request of a member, a membership  
1694 nonprofit corporation shall deliver or make available to the  
1695 requesting member by posting on its website or by other  
1696 generally recognized means annual financial statements for the  
1697 most recent fiscal year of the membership nonprofit  
1698 corporation for which annual financial statements have been  
1699 prepared for the membership nonprofit corporation. If  
1700 financial statements have been prepared for the membership  
1701 nonprofit corporation on the basis of generally accepted  
1702 accounting principles for that specified period, the  
1703 membership nonprofit corporation shall deliver or make  
1704 available those financial statements to the requesting member.  
1705 If the annual financial statements to be delivered or made  
1706 available to the requesting member are audited or otherwise  
1707 reported upon by a public accountant, the report shall also be  
1708 delivered or made available to the requesting member.



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1709 (b) A membership nonprofit corporation shall deliver,  
1710 or make available and provide written notice of availability  
1711 of, the financial statements required under subsection (a) to  
1712 the requesting member within five business days of delivery of  
1713 the written request to the membership nonprofit corporation.

1714 (c) Notwithstanding the provisions of subsections (a)  
1715 and (b) of this section:

1716 (1) as a condition to delivering or making available  
1717 financial statements to a requesting member, the membership  
1718 nonprofit corporation may require the requesting member to  
1719 agree to reasonable restrictions on the confidentiality, use,  
1720 and distribution of the financial statements; and

1721 (2) the membership nonprofit corporation may, if it  
1722 reasonably determines that the member's request is not made in  
1723 good faith or for a proper purpose, decline to deliver or make  
1724 available the financial statements to that member.

1725 (d) If a membership nonprofit corporation does not  
1726 respond to a member's request for annual financial statements  
1727 pursuant to this section in accordance with subsection (b)  
1728 within five business days of delivery of the request to the  
1729 membership nonprofit corporation:

1730 (1) The requesting member may apply to the designated  
1731 court, and if none, the circuit court for the county in which  
1732 the membership nonprofit corporation's principal office is  
1733 located in this state, and if none in this state, the circuit  
1734 court for the county in which the membership nonprofit  
1735 corporation's most recent registered office is located for an  
1736 order requiring delivery of or access to the requested



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1737 financial statements. The court shall dispose of an  
1738 application under this subsection on an expedited basis.

1739 (2) If the court orders delivery or access to the  
1740 requested financial statements, it may impose reasonable  
1741 restrictions on their confidentiality, use, or distribution.

1742 (3) In the proceeding, if the membership nonprofit  
1743 corporation has declined to deliver or make available the  
1744 financial statements because the member had been unwilling to  
1745 agree to restrictions proposed by the membership nonprofit  
1746 corporation on the confidentiality, use, and distribution of  
1747 the financial statements, the membership nonprofit corporation  
1748 shall have the burden of demonstrating that the restrictions  
1749 proposed by the membership nonprofit corporation were  
1750 reasonable.

1751 (4) In the proceeding, if the membership nonprofit  
1752 corporation has declined to deliver or make available the  
1753 financial statements pursuant to Section 10A-3A-4.20(c)(2),  
1754 the membership nonprofit corporation shall have the burden of  
1755 demonstrating that it had reasonably determined that the  
1756 member's request was not made in good faith or for a proper  
1757 purpose.

1758 (5) If the court orders delivery or access to the  
1759 requested financial statements, it shall order the membership  
1760 nonprofit corporation to pay the member's expenses incurred to  
1761 obtain the order unless the membership nonprofit corporation  
1762 establishes that it had refused delivery or access to the  
1763 requested financial statements because the member had refused  
1764 to agree to reasonable restrictions on the confidentiality,



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1765 use, or distribution of the financial statements or that the  
1766 membership nonprofit corporation had reasonably determined  
1767 that the member's request was not made in good faith or for a  
1768 proper purpose.

### ARTICLE 6. MEMBERSHIPS AND FINANCIAL PROVISIONS.

#### DIVISION A. ADMISSION OF MEMBERS.

##### §10A-3A-6.01. Members.

1772 (a) A nonprofit corporation may have one or more  
1773 classes of members or may have no members. If the nonprofit  
1774 corporation has one or more classes of members, the  
1775 designation of the class or classes, the manner of admission  
1776 and the qualifications and rights of the members of each class  
1777 shall be set forth in the certificate of incorporation or  
1778 bylaws. Subject to Section 10A-3A-14.01(c), if the nonprofit  
1779 corporation will have members, that fact shall be set forth in  
1780 the certificate of incorporation. If the nonprofit corporation  
1781 will not have members, that fact shall be set forth in the  
1782 certificate of incorporation.

1783 (b) Except as otherwise provided in this chapter or in  
1784 the certificate of incorporation, if the certificate of  
1785 incorporation of a nonprofit corporation states that the  
1786 nonprofit corporation will have members, but that nonprofit  
1787 corporation has in fact no members entitled to vote on a  
1788 matter, then any provision of this chapter or any other  
1789 provision of law requiring notice to, the presence of, or the  
1790 vote, consent, or other action by members of that nonprofit  
1791 corporation in connection with the matter shall be satisfied  
1792 by notice to, the presence of, or the vote, consent, or other



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1793 action by the board of directors of the nonprofit corporation.

1794 (c) Except as otherwise provided in the certificate of  
1795 incorporation, if the certificate of incorporation of a  
1796 nonprofit corporation states that the nonprofit corporation  
1797 will not have members, then notice to, the presence of, or the  
1798 vote, consent, or other action by board of directors of the  
1799 nonprofit corporation in connection with the matter shall be  
1800 satisfied by notice to, the presence of, or the vote, consent,  
1801 or other action by the board of directors of the nonprofit  
1802 corporation.

1803 §10A-3A-6.02. Membership status.

1804 (a) A person may not be admitted as a member of a  
1805 nonprofit corporation without that person's consent.

1806 (b) If a membership nonprofit corporation provides  
1807 certificates of membership to the members, the certificates  
1808 shall not be registered or transferable except as provided in  
1809 the certificate of incorporation or bylaws. Each certificate  
1810 of membership shall comply with Sections 10A-1-3.42,  
1811 10A-1-3.43(b), and 10A-1-3.44. No membership certificate shall  
1812 be issued in bearer form.

1813 (c) A person is not a member of a nonprofit corporation  
1814 unless (i) the nonprofit corporation is a membership nonprofit  
1815 corporation and (ii) the person meets the definition of a  
1816 "member" in Section 10A-3A-1.02, regardless of whether the  
1817 nonprofit corporation designates or refers to the person as a  
1818 member.

1819 (d) A person is not a member of a nonmembership  
1820 nonprofit corporation, regardless of whether the nonmembership



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1821 nonprofit corporation designates or refers to the person as a  
1822 member.

1823 §10A-3A-6.03. Admission of members.

1824 Unless otherwise provided by law or in the certificate  
1825 of incorporation or bylaws of a membership nonprofit  
1826 corporation, the board of directors shall establish conditions  
1827 for admission of members (for such contribution, if any, as  
1828 the board of directors may determine), admit members, and  
1829 issue memberships.

1830 DIVISION B. RIGHTS AND OBLIGATIONS OF MEMBERS.

1831 §10A-3A-6.10. Differences in rights and obligations of  
1832 members.

1833 Except as otherwise provided in the certificate of  
1834 incorporation or bylaws, each member of a membership nonprofit  
1835 corporation has the same rights and obligations as every other  
1836 member with respect to voting, dissolution, membership  
1837 transfer, and other matters.

1838 §10A-3A-6.11. Transfers.

1839 (a) Except as provided in the certificate of  
1840 incorporation or bylaws, a member of a membership nonprofit  
1841 corporation may not transfer a membership or any right arising  
1842 therefrom.

1843 (b) Where the right to transfer a membership has been  
1844 provided, a restriction on that right shall not be binding  
1845 with respect to a member holding a membership issued prior to  
1846 the adoption of the restriction unless the restriction is  
1847 approved by the affected member.

1848 §10A-3A-6.12. Member's liability to third parties.



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1849           A member of a nonprofit corporation is not personally  
1850 liable for any liabilities of the nonprofit corporation  
1851 (including liabilities arising from acts of the nonprofit  
1852 corporation).

1853           §10A-3A-6.13. Member's liability for dues, assessments,  
1854 and fees.

1855           (a) A membership nonprofit corporation may levy dues,  
1856 assessments, fees, fines, late charges, interest, penalties,  
1857 and other such sums on its members to the extent authorized in  
1858 the certificate of incorporation or bylaws. Dues, assessments,  
1859 fees, fines, late charges, interest, penalties, and other such  
1860 sums may be imposed on members of the same class either alike  
1861 or in different amounts or proportions, and may be imposed on  
1862 a different basis on different classes of members. Members of  
1863 a class may be made exempt from dues, assessments, fees,  
1864 fines, late charges, interest, penalties, and other such sums  
1865 to the extent provided in the certificate of incorporation or  
1866 bylaws.

1867           (b) The amount and method of collection of dues,  
1868 assessments, fees, fines, late charges, interest, penalties,  
1869 and other such sums may be fixed in the certificate of  
1870 incorporation or bylaws, or the certificate of incorporation  
1871 or bylaws may authorize the board of directors or members to  
1872 fix the amount and method of collection.

1873           (c) The certificate of incorporation or bylaws may  
1874 provide reasonable means to enforce the collection of dues,  
1875 assessments, fees, fines, late charges, interest, penalties,  
1876 and other such sums, including, but not limited to,



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1877 termination, suspension, or reinstatement of membership.

1878 DIVISION C. RESIGNATION AND TERMINATION.

1879 §10A-3A-6.20. Resignation.

1880 (a) A member of a membership nonprofit corporation may  
1881 resign at any time.

1882 (b) The resignation of a member does not relieve the  
1883 member from any obligations incurred or commitments made prior  
1884 to resignation.

1885 §10A-3A-6.21. Termination and suspension.

1886 (a) A membership in a membership nonprofit corporation  
1887 may be terminated or suspended for the reasons and in the  
1888 manner provided in the certificate of incorporation or bylaws.

1889 (b) A proceeding challenging a termination or  
1890 suspension for any reason must be commenced within one year  
1891 after the effective date of the termination or suspension.

1892 (c) The termination or suspension of a member does not  
1893 relieve the member from any obligations incurred or  
1894 commitments made prior to the termination or suspension.

1895 DIVISION D. FINANCIAL PROVISIONS.

1896 §10A-3A-6.40. Distributions.

1897 (a) Except as permitted or required by law other than  
1898 this chapter, or contractual obligations, a nonprofit  
1899 corporation shall not make distributions to its members,  
1900 directors, or officers. Any permitted or required distribution  
1901 is subject to the limitations set forth in subsection (c).

1902 (b) The board of directors of a membership nonprofit  
1903 corporation may fix the record date for determining members  
1904 entitled to a distribution, which date may not be retroactive.



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1905 If the board of directors does not fix a record date for  
1906 determining members entitled to a distribution, the record  
1907 date is the date the board of directors authorizes the  
1908 distribution.

1909 (c) No distribution may be made if, after giving it  
1910 effect:

1911 (1) the nonprofit corporation would not be able to pay  
1912 its debts as they become due in the usual course of its  
1913 activities and affairs; or

1914 (2) the nonprofit corporation's unrestricted total  
1915 assets would be less than the sum of its total liabilities  
1916 other than those liabilities which are solely secured by the  
1917 nonprofit corporation's restricted assets.

1918 (d) The board of directors may base a determination  
1919 that a distribution is not prohibited under subsection (c)  
1920 either on financial statements prepared on the basis of  
1921 accounting practices and principles that are reasonable in the  
1922 circumstances or on a fair valuation or other method that is  
1923 reasonable in the circumstances.

1924 (e) The effect of a distribution under subsection (c)  
1925 is measured as of (i) the date the distribution is authorized  
1926 if the payment occurs within 120 days after the date of  
1927 authorization or (ii) the date the payment is made if it  
1928 occurs more than 120 days after the date of authorization.

1929 (f) This section shall not apply to distributions in  
1930 liquidation under Article 11.

1931 (g) This section shall not apply to a contract or  
1932 transaction with a member, director, or officer, which



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1933 contract or transaction is authorized pursuant to Section  
1934 10A-3A-8.60.

1935 §10A-3A-6.41. Compensation and benefits.

1936 A nonprofit corporation may pay reasonable  
1937 compensation, reasonable payments made in the ordinary course  
1938 of the nonprofit corporation's activities and affairs, or  
1939 reimburse reasonable expenses to its members, directors, or  
1940 officers for services rendered and may confer reasonable  
1941 benefits upon its members or nonmembers in conformity with its  
1942 purposes.

1943 §10A-3A-6.42. Capital contributions of members.

1944 (a) A membership nonprofit corporation may provide in  
1945 its certificate of incorporation or bylaws that members, upon  
1946 or subsequent to admission, must make capital contributions.  
1947 Except as provided in the certificate of incorporation or  
1948 bylaws, the amount shall be fixed by the board of directors.  
1949 The requirement of a capital contribution may apply to all  
1950 members, or to the members of a single class, or to members of  
1951 different classes in different amounts or proportions.

1952 (b) The adoption or amendment of a capital contribution  
1953 requirement, whether or not approved by the members, shall not  
1954 apply to a member who did not vote in favor of the adoption or  
1955 amendment until 30 days after notice of the adoption or  
1956 amendment has been delivered to the member.

1957 §10A-3A-6.43. Shares of stock prohibited.

1958 A nonprofit corporation shall not have or issue shares  
1959 of stock.

1960 ARTICLE 7. MEMBER MEETINGS.



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1961 DIVISION A. PROCEDURES.

1962 §10A-3A-7.01. Annual and regular meetings of the  
1963 members.

1964 (a) Unless otherwise provided in the certificate of  
1965 incorporation, a membership nonprofit corporation shall hold a  
1966 meeting of members annually at a time stated in or fixed in  
1967 accordance with the certificate of incorporation or bylaws.

1968 (b) A membership nonprofit corporation may hold regular  
1969 meetings of the members at times stated in or fixed in  
1970 accordance with the certificate of incorporation or bylaws.

1971 (c) Unless the board of directors determines to hold  
1972 the meeting solely by means of remote communication in  
1973 accordance with Section 10A-3A-7.09(c), annual and regular  
1974 meetings of the members may be held (i) in or out of this  
1975 state at the place stated in or fixed in accordance with the  
1976 certificate of incorporation or bylaws or (ii) if no place is  
1977 stated in or fixed in accordance with the certificate of  
1978 incorporation or bylaws, at the membership nonprofit  
1979 corporation's principal office.

1980 (d) The failure to hold an annual or regular meeting of  
1981 the members at the time stated in or fixed in accordance with  
1982 a membership nonprofit corporation's certificate of  
1983 incorporation or bylaws does not affect the validity of any  
1984 corporate action.

1985 §10A-3A-7.02. Special meetings.

1986 (a) Special meetings of the members in a membership  
1987 nonprofit corporation may be called by the board of directors  
1988 or by the person or persons as may be authorized by the



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1989 certificate of incorporation or by the bylaws.

1990 (b) In the event that the certificate of incorporation  
1991 or bylaws of a membership nonprofit corporation allow members  
1992 to demand a special meeting of the members, then if not  
1993 otherwise fixed under Section 10A-3A-7.03 or Section  
1994 10A-3A-7.07, the record date for determining members entitled  
1995 to demand a special meeting shall be the first date on which a  
1996 signed member's demand is delivered to the membership  
1997 nonprofit corporation. No written demand for a special meeting  
1998 shall be effective unless, within 60 days of the earliest date  
1999 on which the demand delivered to the membership nonprofit  
2000 corporation as allowed by the certificate of incorporation or  
2001 bylaws was signed, written demands signed by members holding  
2002 at least the percentage of votes specified in or fixed in  
2003 accordance with the certificate of incorporation or bylaws  
2004 have been delivered to the membership nonprofit corporation.

2005 (c) Unless the board of directors determines to hold  
2006 the meeting solely by means of remote participation in  
2007 accordance with Section 10A-3A-7.09(c), special meetings of  
2008 members may be held (i) in or out of this state at the place  
2009 stated in or fixed in accordance with the certificate of  
2010 incorporation or bylaws or (ii) if no place is stated in or  
2011 fixed in accordance with the certificate of incorporation or  
2012 bylaws, at the membership nonprofit corporation's principal  
2013 office.

2014 (d) Only business within the purpose or purposes  
2015 described in the meeting notice required by Section  
2016 10A-3A-7.05(c) may be conducted at a special meeting of



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2017 members.

2018 §10A-3A-7.03. Court-ordered meetings.

2019 (a) The designated court, and if none, the circuit  
2020 court for the county in which the membership nonprofit  
2021 corporation's principal office is located in this state, and,  
2022 if none in this state, the circuit court for the county in  
2023 which the membership nonprofit corporation's most recent  
2024 registered office is located may summarily order a meeting to  
2025 be held:

2026 (1) on application of any member of the membership  
2027 nonprofit corporation entitled to participate in an annual  
2028 meeting if an annual meeting was not held or action by written  
2029 consent in lieu of an annual meeting did not become effective  
2030 within the earlier of 12 months after the end of the  
2031 membership nonprofit corporation's fiscal year or 15 months  
2032 after its last annual meeting; or

2033 (2) on application of one or more members who signed a  
2034 demand for a special meeting valid under Section 10A-3A-7.02,  
2035 if:

2036 (i) notice of the special meeting was not given within  
2037 30 days after the first day on which the requisite number of  
2038 demands have been delivered to the membership nonprofit  
2039 corporation; or

2040 (ii) the special meeting was not held in accordance  
2041 with the notice.

2042 (b) The court may fix the time and place of the  
2043 meeting, determine the members entitled to participate in the  
2044 meeting, specify a record date or dates for determining



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2045 members entitled to notice of and to vote at the meeting,  
2046 prescribe the form and content of the meeting notice, fix the  
2047 quorum required for specific matters to be considered at the  
2048 meeting (or direct that the members represented at the meeting  
2049 constitute a quorum for action on those matters), and enter  
2050 other orders necessary to accomplish the purpose or purposes  
2051 of the meeting.

2052 §10A-3A-7.04. Action without meeting.

2053 (a) Unless otherwise provided in the certificate of  
2054 incorporation, any action required or permitted by this  
2055 chapter to be taken at any meeting of the members may be taken  
2056 without a meeting, and without prior notice, if one or more  
2057 consents in writing setting forth the action so taken are  
2058 signed by the members having not less than the minimum number  
2059 of votes that would be required to authorize or take the  
2060 action at a meeting at which all members entitled to vote on  
2061 the action were present and voted. The action must be  
2062 evidenced by one or more written consents describing the  
2063 action taken, signed by the members approving the action and  
2064 delivered to the membership nonprofit corporation for filing  
2065 by the membership nonprofit corporation with the minutes or  
2066 corporate records.

2067 (b) If not otherwise fixed under Section 10A-3A-7.07  
2068 and if prior action by the board of directors is not required  
2069 respecting the action to be taken without a meeting, the  
2070 record date for determining the members entitled to take  
2071 action without a meeting shall be the first date on which a  
2072 signed written consent is delivered to the membership



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2073 nonprofit corporation. If not otherwise fixed under Section  
2074 10A-3A-7.07 and if prior action by the board of directors is  
2075 required respecting the action to be taken without a meeting,  
2076 the record date shall be the close of business on the day the  
2077 resolution of the board of directors taking the prior action  
2078 is adopted. No written consent shall be effective to take the  
2079 corporate action referred to therein unless, within 60 days of  
2080 the earliest date on which a consent is delivered to the  
2081 membership nonprofit corporation as required by this section,  
2082 written consents signed by sufficient members to take the  
2083 action have been delivered to the membership nonprofit  
2084 corporation. Any person executing a consent may provide,  
2085 whether through instruction to an agent or otherwise, that the  
2086 consent will be effective at a future time, including a time  
2087 determined upon the happening of an event, occurring not later  
2088 than 60 days after the instruction is given or the provision  
2089 is made, if evidence of the instruction or provision is  
2090 provided to the membership nonprofit corporation. A written  
2091 consent may be revoked by a writing to that effect delivered  
2092 to the membership nonprofit corporation before unrevoked  
2093 written consents sufficient in number to take the corporate  
2094 action have been delivered to the membership nonprofit  
2095 corporation.

2096 (c) A consent signed pursuant to the provisions of this  
2097 section has the effect of a vote taken at a meeting and may be  
2098 described as such in any document. Unless the certificate of  
2099 incorporation, bylaws, or a resolution of the board of  
2100 directors provides for a reasonable delay to permit tabulation



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2101 of written consents, the action taken by written consent shall  
2102 be effective when written consents signed by sufficient  
2103 members to take the action have been delivered to the  
2104 membership nonprofit corporation.

2105 (d) If action is taken by less than unanimous written  
2106 consent of the voting members, the membership nonprofit  
2107 corporation shall give its nonconsenting voting members  
2108 written notice of the action not more than 10 days after (i)  
2109 written consents sufficient to take the action have been  
2110 delivered to the membership nonprofit corporation, or (ii) any  
2111 later date that tabulation of consents is completed pursuant  
2112 to an authorization under subsection (c). The notice must  
2113 reasonably describe the action taken.

2114 (e) The notice requirements in subsection (d) shall not  
2115 delay the effectiveness of actions taken by written consent,  
2116 and a failure to comply with those notice requirements shall  
2117 not invalidate actions taken by written consent, provided that  
2118 this subsection shall not be deemed to limit judicial power to  
2119 fashion any appropriate remedy in favor of a member adversely  
2120 affected by a failure to give the notice within the required  
2121 time period.

2122 §10A-3A-7.05. Notice of meetings.

2123 (a) A membership nonprofit corporation shall notify  
2124 members of the place, if any, date, and time of each annual,  
2125 regular, or special meeting of the members no fewer than 10  
2126 nor more than 60 days before the meeting date. If the board of  
2127 directors has authorized participation by means of remote  
2128 communication pursuant to Section 10A-3A-7.09 for any class of



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2129 members or voting group, the notice to that class of members  
2130 or voting group must describe the means of remote  
2131 communication to be used. The notice must include the record  
2132 date for determining the members entitled to vote at the  
2133 meeting, if that date is different from the record date for  
2134 determining members entitled to notice of the meeting. Unless  
2135 the certificate of incorporation requires otherwise, the  
2136 membership nonprofit corporation is required to give notice  
2137 only to members entitled to vote at the meeting as of the  
2138 record date for determining the members entitled to notice of  
2139 the meeting.

2140 (b) Unless this chapter, the certificate of  
2141 incorporation, or the bylaws require otherwise, notice of an  
2142 annual or regular meeting of the members need not include a  
2143 description of the purpose or purposes for which the meeting  
2144 is called.

2145 (c) Notice of a special meeting of members must include  
2146 a description of the purpose or purposes for which the meeting  
2147 is called.

2148 (d) If not otherwise fixed under Section 10A-3A-7.03 or  
2149 Section 10A-3A-7.07, the record date for determining members  
2150 entitled to notice of and to vote at an annual, regular, or  
2151 special meeting of the members is the day before the first  
2152 notice is delivered to members.

2153 (e) Unless the certificate of incorporation or bylaws  
2154 require otherwise, if an annual, regular, or special meeting  
2155 of the members is adjourned to a different place, if any,  
2156 date, or time, notice need not be given of the new place, if



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2157 any, date, or time if the new place, if any, date, or time is  
2158 announced at the meeting before adjournment. If a new record  
2159 date for the adjourned meeting is or must be fixed under  
2160 Section 10A-3A-7.07, however, notice of the adjourned meeting  
2161 shall be given under this section to members entitled to vote  
2162 at the adjourned meeting as of the record date fixed for  
2163 notice of the adjourned meeting.

2164 §10A-3A-7.06. Waiver of notice.

2165 (a) A member may waive any notice required by this  
2166 chapter or the certificate of incorporation or bylaws, before  
2167 or after the date and time stated in the notice. The waiver  
2168 must be in writing, be signed by the member entitled to the  
2169 notice, and be delivered to the membership nonprofit  
2170 corporation for filing by the membership nonprofit corporation  
2171 with the minutes or corporate records.

2172 (b) A member's attendance at a meeting:

2173 (1) waives objection to lack of notice or defective  
2174 notice of the meeting, unless the member at the beginning of  
2175 the meeting objects to holding the meeting or transacting  
2176 business at the meeting; and

2177 (2) waives objection to consideration of a particular  
2178 matter at the meeting that is not within the purpose or  
2179 purposes described in the meeting notice, unless the member  
2180 objects to considering the matter when it is presented.

2181 §10A-3A-7.07. Record date.

2182 (a) The certificate of incorporation or bylaws may fix  
2183 or provide the manner of fixing the record date or dates for  
2184 one or more voting groups of members to determine the members



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2185 entitled to notice of a members' meeting, to demand a special  
2186 meeting, to vote, or to take any other action. If the  
2187 certificate of incorporation or bylaws do not fix or provide  
2188 for fixing a record date, the board of directors may fix the  
2189 record date.

2190 (b) A record date fixed under this section may not be  
2191 more than 70 days before the meeting or action requiring a  
2192 determination of members and may not be retroactive.

2193 (c) A determination of members entitled to notice of or  
2194 to vote at a members' meeting is effective for any adjournment  
2195 of the meeting unless the board of directors fixes a new  
2196 record date or dates, which it shall do if the meeting is  
2197 adjourned to a date more than 120 days after the date fixed  
2198 for the original meeting.

2199 (d) If a court orders a meeting adjourned to a date  
2200 more than 120 days after the date fixed for the original  
2201 meeting, it may provide that the original record date or dates  
2202 continues in effect or it may fix a new record date or dates.

2203 §10A-3A-7.08. Conduct of member meetings.

2204 (a) At each meeting of members, an individual appointed  
2205 in one of the following ways must preside as chair:

2206 (1) as provided in the certificate of incorporation or  
2207 bylaws;

2208 (2) in the absence of a provision in the certificate of  
2209 incorporation or bylaws, by the board of directors; or

2210 (3) in the absence of both a provision in the  
2211 certificate of incorporation or bylaws and an appointment by  
2212 the board of directors, by the members at the meeting.



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2213 (b) At each meeting of members, the order of business  
2214 and the rules for the conduct of the meeting must be:

2215 (1) as provided in the certificate of incorporation or  
2216 bylaws;

2217 (2) in the absence of a provision in the certificate of  
2218 incorporation or bylaws, established by the board of  
2219 directors; or

2220 (3) in the absence of both a provision in the  
2221 certificate of incorporation or bylaws and the establishment  
2222 by the board of directors, established by the members at the  
2223 meeting.

2224 (c) Any rules established for, and the conduct of, the  
2225 meeting must be fair to the members.

2226 (d) At the meeting the chair may announce when the  
2227 polls close for each matter voted upon. If no announcement is  
2228 made, the polls close upon the final adjournment of the  
2229 meeting. After the polls close, no ballots, proxies, or votes,  
2230 nor any revocations or changes to ballots, proxies, or votes  
2231 may be accepted.

2232 §10A-3A-7.09. Remote participation in member meetings.

2233 (a) Members of any class or voting group may  
2234 participate in any meeting of members by means of remote  
2235 communication to the extent the board of directors authorizes  
2236 that participation for that class or voting group.

2237 Participation as a member by means of remote communication is  
2238 subject to any guidelines and procedures the board of  
2239 directors adopts and shall be in conformity with subsection

2240 (b) .



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2241 (b) Members participating in a members' meeting by  
2242 means of remote communication shall be deemed present and may  
2243 vote at that meeting if the membership nonprofit corporation  
2244 has implemented reasonable measures:

2245 (1) to verify that each person participating remotely  
2246 as a member is a member; and

2247 (2) to provide the members participating remotely a  
2248 reasonable opportunity to participate in the meeting and to  
2249 vote on matters submitted to the members, including an  
2250 opportunity to communicate, and to read or hear the  
2251 proceedings of the meeting, substantially concurrently with  
2252 the proceedings.

2253 (c) Unless the certificate of incorporation or bylaws  
2254 require the meeting of members to be held at a place, the  
2255 board of directors may determine that any meeting of members  
2256 shall not be held at any place and shall instead be held  
2257 solely by means of remote communication, but only if the  
2258 membership nonprofit corporation implements the measures  
2259 specified in subsection (b).

2260 §10A-3A-7.10. Action by ballot.

2261 (a) Except as otherwise provided in the certificate of  
2262 incorporation or bylaws, any action that may be taken at any  
2263 meeting of members may be taken without a meeting if the  
2264 membership nonprofit corporation delivers notice that includes  
2265 a ballot to every member entitled to vote on the matter.

2266 (b) A ballot must:

2267 (1) be in writing;

2268 (2) set forth each proposed action;



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2269 (3) provide an opportunity to vote for, or withhold a  
2270 vote for, each candidate for election as a director, if any;  
2271 and

2272 (4) provide an opportunity to vote for or against each  
2273 other proposed action.

2274 (c) Approval by ballot pursuant to this section of  
2275 action other than election of directors is valid only when the  
2276 number of votes cast by ballot equals or exceeds the quorum  
2277 required to be present at a meeting authorizing the action,  
2278 and the number of approvals equals or exceeds the number of  
2279 votes that would be required to approve the matter at a  
2280 meeting at which the total number of votes cast was the same  
2281 as the number of votes cast by ballot.

2282 (d) All solicitations for votes by ballot must:

2283 (1) indicate the number of responses needed to meet the  
2284 quorum requirements;

2285 (2) state the percentage of approvals necessary to  
2286 approve each matter other than election of directors; and

2287 (3) specify the time by which a ballot must be received  
2288 by the membership nonprofit corporation in order to be  
2289 counted.

2290 (e) Except as otherwise provided in the certificate of  
2291 incorporation or bylaws, a ballot may not be revoked.

2292 DIVISION B. VOTING.

2293 §10A-3A-7.20. Members list for meeting.

2294 (a) After fixing a record date for a meeting, a  
2295 membership nonprofit corporation shall prepare an alphabetical  
2296 list of the names of all its members who are entitled to



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2297 notice of and to vote at the members' meeting. Each list must  
2298 be arranged by voting group (and within each voting group by  
2299 class) and contain the address of, and number and class of  
2300 members and votes held by, each member, and if the notice or  
2301 other communications regarding the meeting have been or will  
2302 be sent by the membership nonprofit corporation to a member by  
2303 electronic mail or other electronic transmission, the  
2304 electronic mail or other electronic transmission address of  
2305 that member.

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



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2325 requirements of Section 10A-3A-4.02(c), to copy a list of  
2326 members, during regular business hours and at the member's  
2327 expense, during the period it is available for inspection. A  
2328 membership nonprofit corporation may satisfy the member's  
2329 right to copy a list of members by furnishing a copy in the  
2330 manner described in Section 10A-3A-4.03(b). A member and the  
2331 member's agent or attorney who inspects or is furnished a copy  
2332 of a list of members under this subsection (b) or who copies  
2333 the list under this subsection (b) may use the information on  
2334 that list only for purposes related to the meeting and its  
2335 subject matter and must keep the information on that list  
2336 confidential.

2337 (c) If the membership nonprofit corporation refuses to  
2338 allow a member, or the member's agent or attorney, to inspect  
2339 a list of members before the meeting or any adjournment (or  
2340 copy a list as permitted by subsection (b)), the designated  
2341 court, and if none, the circuit court for the county in which  
2342 the membership nonprofit corporation's principal office is  
2343 located in this state, and if none in this state, the circuit  
2344 court for the county in which the membership nonprofit  
2345 corporation's most recent registered office is located, on  
2346 application of the member, may summarily order the inspection  
2347 or copying at the membership nonprofit corporation's expense  
2348 and may postpone the meeting for which the list was prepared  
2349 until the inspection or copying is complete.

2350 (d) Refusal or failure to prepare or make available a  
2351 list of members does not affect the validity of action taken  
2352 at the meeting.



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2353 (e) Instead of making the list of members available as  
2354 provided in subsection (b), a membership nonprofit corporation  
2355 may state in a notice of meeting that the membership nonprofit  
2356 corporation has elected to proceed under this subsection (e).  
2357 If a membership nonprofit corporation has elected to proceed  
2358 under this subsection (e), a member of that membership  
2359 nonprofit corporation must state in that member's demand for  
2360 inspection a proper purpose for which inspection is demanded.  
2361 Within three business days after receiving a demand under this  
2362 subsection (e), the membership nonprofit corporation must  
2363 deliver to the member making the demand an offer of a  
2364 reasonable alternative method of achieving the purpose  
2365 identified in the demand without providing access to or a copy  
2366 of the list of members. An alternative method that reasonably  
2367 and in a timely manner accomplishes the proper purpose set  
2368 forth in the demand relieves the membership nonprofit  
2369 corporation from making the list of members available under  
2370 subsection (b), unless within a reasonable time after  
2371 acceptance of the offer the membership nonprofit corporation  
2372 fails to do the things it offered to do. Any rejection of the  
2373 membership nonprofit corporation's offer must be in writing  
2374 and must indicate the reasons the alternative proposed by the  
2375 membership nonprofit corporation does not meet the proper  
2376 purpose of the demand.

2377 (f) The record of members of the membership nonprofit  
2378 corporation shall be prima facie evidence as to who are the  
2379 members entitled to examine the members' list or record of  
2380 members to vote at any meeting of members.



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2381 §10A-3A-7.21. Voting entitlement of members.

2382 The right of the members, or any class or classes of  
2383 members, to vote may be limited, enlarged, or denied as  
2384 provided in the membership nonprofit corporation's certificate  
2385 of incorporation or bylaws. Unless so limited, enlarged, or  
2386 denied, each member, regardless of class, shall be entitled to  
2387 one vote on each matter submitted to a vote of members.

2388 §10A-3A-7.22. Proxies.

2389 (a) Except as otherwise provided in the certificate of  
2390 incorporation or bylaws, a member may vote in person or by  
2391 proxy.

2392 (b) A member or the member's agent or attorney-in-fact  
2393 may appoint a proxy to vote or otherwise act for the member by  
2394 signing an appointment form, or by an electronic transmission.  
2395 An electronic transmission must contain or be accompanied by  
2396 information from which the recipient can determine the date of  
2397 the transmission and that the transmission was authorized by  
2398 the sender or the sender's agent or attorney-in-fact.

2399 (c) An appointment of a proxy is effective when a  
2400 signed appointment form or an electronic transmission of the  
2401 appointment is received by the inspector of election or the  
2402 officer or agent of the membership nonprofit corporation  
2403 authorized to count votes. An appointment is valid for the  
2404 term provided in the appointment form, and, if no term is  
2405 provided, is valid for 11 months unless the appointment is  
2406 irrevocable under subsection (d).

2407 (d) An appointment of a proxy is revocable unless the  
2408 appointment form or electronic transmission states that it is



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2409 irrevocable and the appointment is coupled with an interest.

2410 (e) The death or incapacity of the member appointing a  
2411 proxy does not affect the right of the membership nonprofit  
2412 corporation to accept the proxy's authority unless notice of  
2413 the death or incapacity is received by the secretary or other  
2414 officer or agent authorized to tabulate votes before the proxy  
2415 exercises authority under the appointment.

2416 (f) An appointment made irrevocable under subsection  
2417 (d) is revoked when the interest with which it is coupled is  
2418 extinguished.

2419 (g) Subject to Section 10A-3A-7.23 and to any express  
2420 limitation on the proxy's authority stated in the appointment  
2421 form or electronic transmission, a membership nonprofit  
2422 corporation is entitled to accept the proxy's vote or other  
2423 action as that of the member making the appointment.

2424 (h) Nothing in this section shall be construed as  
2425 limiting, or extending, authority granted under a durable  
2426 power of attorney under Section 26-1-2 or Chapter 1A of Title  
2427 26, and any successor statute or statutes thereto.

2428 §10A-3A-7.23. Acceptance of votes and other  
2429 instruments.

2430 (a) If the name signed on a vote, ballot, consent,  
2431 waiver, member demand, or proxy appointment corresponds to the  
2432 name of a member, the membership nonprofit corporation, if  
2433 acting in good faith, is entitled to accept the vote, ballot,  
2434 consent, waiver, member demand, or proxy appointment and give  
2435 it effect as the act of the member.

2436 (b) If the name signed on a vote, ballot, consent,



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2437 waiver, member demand, or proxy appointment does not  
2438 correspond to the name of its member, the membership nonprofit  
2439 corporation, if acting in good faith, is nevertheless entitled  
2440 to accept the vote, ballot, consent, waiver, member demand, or  
2441 proxy appointment and give it effect as the act of the member  
2442 if:

2443 (1) the member is an entity and the name signed  
2444 purports to be that of an officer or agent of the entity;

2445 (2) the name signed purports to be that of an  
2446 administrator, executor, guardian, or conservator representing  
2447 the member and, if the membership nonprofit corporation  
2448 requests, evidence of fiduciary status acceptable to the  
2449 membership nonprofit corporation has been presented with  
2450 respect to the vote, ballot, consent, waiver, member demand,  
2451 or proxy appointment;

2452 (3) the name signed purports to be that of a receiver  
2453 or trustee in bankruptcy of the member and, if the membership  
2454 nonprofit corporation requests, evidence of this status  
2455 acceptable to the membership nonprofit corporation has been  
2456 presented with respect to the vote, ballot, consent, waiver,  
2457 member demand, or proxy appointment;

2458 (4) the name signed purports to be that of a pledgee,  
2459 beneficial owner, or attorney-in-fact of the member and, if  
2460 the membership nonprofit corporation requests, evidence  
2461 acceptable to the membership nonprofit corporation of the  
2462 signatory's authority to sign for the member has been  
2463 presented with respect to the vote, ballot, consent, waiver,  
2464 member demand, or proxy appointment; or



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2465 (5) two or more persons are the members as co-tenants  
2466 or fiduciaries and the name signed purports to be the name of  
2467 at least one of the co-owners and the person signing appears  
2468 to be acting on behalf of all the co-owners.

2469 (c) The membership nonprofit corporation is entitled to  
2470 reject a vote, ballot, consent, waiver, member demand, or  
2471 proxy appointment if the person authorized to accept or reject  
2472 that instrument, acting in good faith, has reasonable basis  
2473 for doubt about the validity of the signature on it or about  
2474 the signatory's authority to sign for the member.

2475 (d) Neither the membership nonprofit corporation or any  
2476 person authorized by it, nor an inspector of election  
2477 appointed under Section 10A-3A-7.28, that accepts or rejects a  
2478 vote, ballot, consent, waiver, member demand, or proxy  
2479 appointment in good faith and in accordance with the standards  
2480 of this Section 10A-3A-7.23 or Section 10A-3A-7.22(b) is  
2481 liable in damages to the member for the consequences of the  
2482 acceptance or rejection.

2483 (e) Corporate action based on the acceptance or  
2484 rejection of a vote, ballot, consent, waiver, member demand,  
2485 or proxy appointment under this section is valid unless the  
2486 designated court, and if none, the circuit court for the  
2487 county in which the membership nonprofit corporation's  
2488 principal office is located in this state, and if none in this  
2489 state, the circuit court for the county in which the  
2490 membership nonprofit corporation's most recent registered  
2491 office is located, determines otherwise.

2492 (f) If an inspector of election has been appointed



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2493 under Section 10A-2A-7.28, the inspector of election also has  
2494 the authority to request information and make determinations  
2495 under subsections (a), (b), and (c). Unless otherwise provided  
2496 in the certificate of incorporation or bylaws, any  
2497 determination made by the inspector of election under those  
2498 subsections is controlling.

2499 §10A-3A-7.24. Quorum and voting requirements for voting  
2500 groups.

2501 (a) Members entitled to vote as a separate voting group  
2502 may take action on a matter at a meeting only if a quorum of  
2503 those votes exists with respect to that matter. Except as  
2504 provided in the certificate of incorporation or bylaws,  
2505 members representing a majority of the votes entitled to be  
2506 cast on the matter by the voting group constitutes a quorum of  
2507 that voting group for action on that matter.

2508 (b) Except as otherwise provided in the certificate of  
2509 incorporation or bylaws, once a member is present or  
2510 represented for any purpose at a meeting, the member is deemed  
2511 present for quorum purposes for the remainder of the meeting  
2512 and for any adjournment of that meeting unless a new record  
2513 date is or must be fixed for that adjourned meeting.

2514 (c) If a quorum exists, action on a matter (other than  
2515 the election of directors) by a voting group is approved if  
2516 the votes cast within the voting group favoring the action  
2517 exceed the votes cast opposing the action, unless the  
2518 certificate of incorporation or bylaws require a greater  
2519 number of affirmative votes.

2520 (d) An amendment of the certificate of incorporation or



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2521 bylaws adding, changing, or deleting a quorum or voting  
2522 requirement for a voting group greater than specified in  
2523 subsection (a) or subsection (c) is governed by Section  
2524 10A-3A-7.26.

2525 (e) If a meeting cannot be organized because a quorum  
2526 is not present, those members present may adjourn the meeting  
2527 to a time and place as they may determine. The certificate of  
2528 incorporation or bylaws may provide that when a meeting that  
2529 has been adjourned for lack of a quorum is reconvened, those  
2530 members present, although less than a quorum as fixed in this  
2531 section, the certificate of incorporation, or the bylaws,  
2532 nonetheless constitute a quorum if the original notice of the  
2533 meeting, or a notice of the adjourned meeting, states that  
2534 those members who attend a meeting that has been adjourned for  
2535 lack of a quorum will constitute a quorum even though they are  
2536 less than a quorum.

2537 §10A-3A-7.25. Action by single and multiple voting  
2538 groups.

2539 (a) If this chapter, the certificate of incorporation,  
2540 or the bylaws provide for voting by a single voting group on a  
2541 matter, action on that matter is taken when voted upon by that  
2542 voting group as provided in Section 10A-3A-7.24.

2543 (b) If this chapter, the certificate of incorporation,  
2544 or the bylaws provide for voting by two or more voting groups  
2545 on a matter, action on that matter is taken only when voted  
2546 upon by each of those voting groups counted separately as  
2547 provided in Section 10A-3A-7.24. Action may be taken by  
2548 different voting groups on a matter at different times.



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2549 §10A-3A-7.26. Modification of quorum or voting  
2550 requirements.

2551 (a) The certificate of incorporation or bylaws may  
2552 provide for a higher or lower quorum or voting requirement for  
2553 members (or voting groups of members) than is provided for by  
2554 this chapter.

2555 (b) An amendment to the certificate of incorporation or  
2556 bylaws that adds, changes, or deletes a quorum or voting  
2557 requirement must meet the same quorum requirement and be  
2558 adopted by the same vote and voting groups required to take  
2559 action under the quorum and voting requirements then in effect  
2560 or proposed to be adopted, whichever is greater.

2561 §10A-3A-7.27. Voting for directors.

2562 (a) Except as otherwise provided in the certificate of  
2563 incorporation or bylaws, directors of a membership nonprofit  
2564 corporation are elected by a plurality of the votes cast by  
2565 the members entitled to vote in the election at a meeting at  
2566 which a quorum is present.

2567 (b) Members do not have a right to cumulate their votes  
2568 for directors.

2569 §10A-3A-7.28. Inspectors of election.

2570 (a) A membership nonprofit corporation may appoint one  
2571 or more inspectors to act at a meeting of members and make a  
2572 written report thereof. The membership nonprofit corporation  
2573 may designate one or more persons as alternate inspectors to  
2574 replace any inspector who fails to act. If no inspector or  
2575 alternate is able to act at a meeting of members, the person  
2576 presiding at the meeting may appoint one or more inspectors to



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2577 act at the meeting. Each inspector, before entering upon the  
2578 discharge of the duties of inspector, shall take and sign an  
2579 oath faithfully to execute the duties of inspector with strict  
2580 impartiality and according to the best of the inspector's  
2581 ability. The inspectors may appoint or retain other persons to  
2582 assist the inspectors in the performance of the duties of  
2583 inspector under subsection (b), and may rely on information  
2584 provided by those persons and other persons, including those  
2585 appointed to count votes, unless the inspectors believe  
2586 reliance is unwarranted.

2587 (b) The inspectors must:

2588 (1) ascertain the number of members and their voting  
2589 power;

2590 (2) determine the number of votes represented at the  
2591 meeting and the validity of proxies and ballots;

2592 (3) count all votes;

2593 (4) determine and retain for a reasonable period a  
2594 record of the disposition of any challenges made to any  
2595 determination by the inspectors; and

2596 (5) certify their determination of the number of votes  
2597 represented at the meeting, and their count of all votes.

2598 (c) No ballot, proxies, or votes, nor any revocations  
2599 thereof or changes thereto, shall be accepted by the  
2600 inspectors after the closing of the polls unless the  
2601 designated court, and if none, the circuit court for the  
2602 county in which the membership nonprofits corporation's  
2603 principal office is located in this state, and if none in this  
2604 state, in the circuit court for the county in which the



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2605 membership nonprofit corporation's most recent registered  
2606 office is located, upon application by a member, shall  
2607 determine otherwise.

2608 (d) In performing their duties, the inspectors may  
2609 examine:

2610 (1) the proxy appointment forms and any other  
2611 information provided in accordance with Section 10A-3A-7.22;

2612 (2) any envelope or related writing submitted with  
2613 those appointment forms;

2614 (3) any ballots;

2615 (4) any evidence or other information specified in  
2616 Section 10A-3A-7.23; and

2617 (5) the relevant books and records of the membership  
2618 nonprofit corporation relating to its members and their  
2619 entitlement to vote.

2620 (e) The inspectors also may consider other information  
2621 that they believe is relevant and reliable for the purpose of  
2622 performing any of the duties assigned to them pursuant to  
2623 subsection (b).

2624 (f) An inspector and any person appointed by an  
2625 inspector to assist with the inspector's duties may, but need  
2626 not, be a director, member, officer, or employee of the  
2627 membership nonprofit corporation. A person who is a candidate  
2628 for office to be filled at the meeting may not be an inspector  
2629 or a person so appointed.

2630 DIVISION C. VOTING AGREEMENTS.

2631 §10A-3A-7.30. Voting agreements.

2632 (a) Except as provided in the certificate of



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2633 incorporation or bylaws, two or more members may provide for  
2634 the manner in which they will vote by signing a written  
2635 agreement for that purpose. A voting agreement is valid for  
2636 the period provided in the agreement.

2637 (b) A voting agreement created under this section is  
2638 specifically enforceable, except that a voting agreement is  
2639 not enforceable to the extent that enforcement of the  
2640 agreement would violate the purposes of the membership  
2641 nonprofit corporation.

2642 ARTICLE 8. DIRECTORS AND OFFICERS.

2643 DIVISION A. BOARD OF DIRECTORS.

2644 §10A-3A-8.01. Requirement for and functions of board of  
2645 directors.

2646 All corporate powers shall be exercised by or under  
2647 authority of, and the activities and affairs of a nonprofit  
2648 corporation shall be managed by or under the direction and  
2649 subject to the oversight of, the board of directors except as  
2650 may be otherwise provided in this chapter or the certificate  
2651 of incorporation. If the certificate of incorporation provides  
2652 that some of the corporate powers are to be exercised by or  
2653 under the authority of, or some of the activities and affairs  
2654 of the nonprofit corporation are to be managed by or under the  
2655 authority of, a person or group of persons other than the  
2656 board of directors, then the powers and duties conferred or  
2657 imposed upon the board of directors by this chapter with  
2658 respect to those corporate powers, activities and affairs  
2659 shall be exercised and performed by that person or group of  
2660 persons as provided in the certificate of incorporation.



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2661 §10A-3A-8.02. Qualifications of directors.

2662 (a) The certificate of incorporation or bylaws may  
2663 prescribe qualifications for directors or for nominees for  
2664 directors. Qualifications must be reasonable as applied to the  
2665 nonprofit corporation and be lawful. Qualifications may  
2666 include not being or having been subject to specified  
2667 criminal, civil, or regulatory sanctions or not having been  
2668 removed as a director by judicial action or for cause.

2669 (b) A director shall be a natural person of the age of  
2670 at least 19 years but need not be a resident of this state or  
2671 a member unless the certificate of incorporation or bylaws so  
2672 prescribe.

2673 (c) A qualification for nomination, election, or  
2674 appointment for director prescribed before the earlier of a  
2675 person's nomination, election, or appointment shall apply to  
2676 that person at the time of the earlier of that person's  
2677 nomination, election, or appointment and shall apply to that  
2678 director during that director's term. A qualification for  
2679 nomination, election, or appointment for director prescribed  
2680 after the earlier of a person's nomination, election, or  
2681 appointment shall not apply to that person with respect to  
2682 that person's nomination, election, or appointment and shall  
2683 not apply to that director during that director's term.

2684 (d) A person who did not meet a qualification for  
2685 nomination, election, or appointment, but who is elected or  
2686 appointed as a director, may serve as a director until removed  
2687 in accordance with Section 10A-3A-8.08 or 10A-3A-8.09.

2688 §10A-3A-8.03. Number of directors.



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2689 (a) A board of directors shall consist of one or more  
2690 individuals, with the number specified in or fixed in  
2691 accordance with the certificate of incorporation or bylaws.

2692 (b) The number of directors may be increased or  
2693 decreased from time to time by amendment to, or in the manner  
2694 provided in, the certificate of incorporation or bylaws.

2695 §10A-3A-8.04. Selection of directors.

2696 (a) Except as set forth in Section 10A-3A-2.04, the  
2697 directors of a membership nonprofit corporation are elected,  
2698 appointed, or designated as provided in the certificate of  
2699 incorporation or bylaws. If no method of election,  
2700 appointment, or designation is set forth in the certificate of  
2701 incorporation or bylaws, the directors of a membership  
2702 nonprofit corporation are elected by the members entitled to  
2703 vote at the time at the first annual meeting of members, and  
2704 at each annual meeting thereafter.

2705 (b) Except as set forth in Section 10A-3A-2.04, the  
2706 directors of a nonmembership nonprofit corporation are  
2707 elected, appointed, or designated as provided in the  
2708 certificate of incorporation or bylaws. If no method of  
2709 election, appointment, or designation is set forth in the  
2710 certificate of incorporation or bylaws, the directors are  
2711 elected by the board.

2712 (c) If the certificate of incorporation or bylaws  
2713 divide, or authorize dividing, the members into classes, the  
2714 certificate of incorporation or bylaws may also authorize the  
2715 election of all or a specified number of directors by one or  
2716 more authorized classes of members. A class or multiple



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2717 classes of members entitled to elect one or more directors is  
2718 a separate voting group for purposes of the election of  
2719 directors.

2720 §10A-3A-8.05. Terms of directors generally.

2721 (a) The certificate of incorporation or bylaws may  
2722 specify the terms of directors. If a term is not specified in  
2723 the certificate of incorporation or bylaws, the term of a  
2724 director is one year.

2725 (b) A decrease in the number of directors or term of  
2726 office does not shorten an incumbent director's term.

2727 (c) Except as provided in the certificate of  
2728 incorporation or bylaws, the term of a director elected to  
2729 fill a vacancy expires at the end of the unexpired term that  
2730 the director is filling.

2731 (d) Despite the expiration of a director's term, the  
2732 director continues to serve until the director's successor is  
2733 elected, appointed, or designated and until the director's  
2734 successor takes office unless otherwise provided in the  
2735 certificate of incorporation or bylaws or there is a decrease  
2736 in the number of directors.

2737 §10A-3A-8.06. Staggered terms for directors.

2738 The certificate of incorporation or bylaws may provide  
2739 for staggering the terms of directors by dividing the total  
2740 number of directors into groups of one or more directors. The  
2741 terms of office and number of directors in each group do not  
2742 need to be uniform.

2743 §10A-3A-8.07. Resignation of directors.

2744 (a) A director may resign at any time by delivering a



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2745 written notice of resignation to the board of directors or its  
2746 chair, to the secretary, or to the nonprofit corporation.

2747 (b) A resignation is effective as provided in Section  
2748 10A-3A-1.03(i) unless the resignation provides for a delayed  
2749 effectiveness, including effectiveness determined upon a  
2750 future event or events.

2751 §10A-3A-8.08. Removal of directors by members or other  
2752 persons.

2753 (a) Except as provided in the certificate of  
2754 incorporation or bylaws, a director of a membership nonprofit  
2755 corporation may be removed with or without cause by the  
2756 members who are eligible under Section 10A-3A-8.10 to vote to  
2757 fill the vacancy created by the removal of that director.

2758 (b) The notice of a meeting of members of a membership  
2759 nonprofit corporation at which removal of a director is to be  
2760 considered must state that the purpose, or one of the  
2761 purposes, of the meeting is removal of the director.

2762 (c) Except as provided in the certificate of  
2763 incorporation or bylaws, the board of directors of a  
2764 membership nonprofit corporation may not remove a director.

2765 (d) Except as provided in the certificate of  
2766 incorporation or bylaws, the board of directors may remove a  
2767 director of a nonmembership nonprofit corporation with or  
2768 without cause.

2769 (e) In addition to the removal provisions of  
2770 subsections (a) and (d), the board of directors of a  
2771 membership nonprofit corporation or nonmembership nonprofit  
2772 corporation may remove a director who:



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2773 (1) did not satisfy the qualifications for directors as  
2774 set forth in the certificate of incorporation or bylaws at the  
2775 time that director was nominated, elected, appointed, or  
2776 designated to that director's current term, if the decision  
2777 that the director failed to satisfy a qualification is made by  
2778 the vote of a majority of the directors who meet all of the  
2779 required qualifications; or

2780 (2) no longer satisfies the qualifications for  
2781 directors as set forth in the certificate of incorporation or  
2782 bylaws at the time that director was nominated, elected,  
2783 appointed, or designated to that director's current term, if  
2784 the decision that the director failed to satisfy a  
2785 qualification is made by the vote of a majority of the  
2786 directors who meet all of the required qualifications.

2787 §10A-3A-8.09. Removal of directors by judicial  
2788 proceeding.

2789 The designated court, and if none, the circuit court  
2790 for the county in which the nonprofit corporation's principal  
2791 office is located in this state, and if none in this state,  
2792 the circuit court for the county in which the nonprofit  
2793 corporation's most recent registered office is located may  
2794 remove a director from office or may order other relief,  
2795 including barring the director from reelection, redesignation,  
2796 or reappointment for a period prescribed by the court, in a  
2797 proceeding commenced by or in the right of the nonprofit  
2798 corporation if the court finds that: (i) the director engaged  
2799 in fraudulent conduct with respect to the nonprofit  
2800 corporation or its members, grossly abused the position of



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2801 director, or intentionally inflicted harm on the nonprofit  
2802 corporation; and (ii) considering the director's course of  
2803 conduct and the inadequacy of other available remedies,  
2804 removal or such other relief would be in the best interest of  
2805 the nonprofit corporation.

2806 §10A-3A-8.10. Vacancy on board.

2807 (a) Except as otherwise provided in subsection (b), the  
2808 certificate of incorporation, or the bylaws, if a vacancy  
2809 occurs on the board of directors, including a vacancy  
2810 resulting from an increase in the number of directors:

2811 (1) the members may fill the vacancy;

2812 (2) the board of directors may fill the vacancy; or

2813 (3) if the directors remaining in office are less than  
2814 a quorum, they may fill the vacancy by the affirmative vote of  
2815 a majority of all the directors remaining in office.

2816 (b) Unless the certificate of incorporation or bylaws  
2817 provides otherwise, if the vacant office was held by a  
2818 director who is:

2819 (1) elected by a voting group of members, only the  
2820 members of that voting group are entitled to vote to fill the  
2821 vacancy if it is filled by the members, and only the remaining  
2822 directors elected by that voting group, even if less than a  
2823 quorum, are entitled to fill the vacancy if it is filled by  
2824 the directors;

2825 (2) appointed by a person or group of persons specified  
2826 in the certificate of incorporation, may be filled only by  
2827 that person or that group of persons; or

2828 (3) designated in the certificate of incorporation or



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2829 bylaws, may only be filled as specified in the certificate of  
2830 incorporation or bylaws.

2831 (c) A vacancy that will occur at a specific later time  
2832 (by reason of a resignation effective at a later time under  
2833 Section 10A-3A-8.07(b) or otherwise) may be filled before the  
2834 vacancy occurs but the new director may not take office until  
2835 the vacancy occurs.

2836 §10A-3A-8.11. Compensation of directors.

2837 Unless the certificate of incorporation or bylaws  
2838 provide otherwise, the board of directors may fix the  
2839 compensation of directors.

2840 DIVISION B. MEETINGS AND ACTIONS OF THE BOARD.

2841 §10A-3A-8.20. Meetings.

2842 (a) The board of directors may hold regular or special  
2843 meetings in or out of the state.

2844 (b) Unless restricted by the certificate of  
2845 incorporation or bylaws, any or all directors may participate  
2846 in a meeting of the board through the use of any means of  
2847 communication by which all directors participating may  
2848 simultaneously hear each other during the meeting. A director  
2849 participating in a meeting by this means is deemed to be  
2850 present in person at the meeting.

2851 §10A-3A-8.21. Action without meeting.

2852 (a) Except to the extent that the certificate of  
2853 incorporation or bylaws require that action by the board of  
2854 directors be taken at a meeting, action required or permitted  
2855 by this chapter to be taken by the board of directors may be  
2856 taken without a meeting if each director signs a consent in a



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2857 record describing the action to be taken and delivers it to  
2858 the nonprofit corporation.

2859 (b) Action taken under this section is the act of the  
2860 board of directors when one or more consents signed by all the  
2861 directors are delivered to the nonprofit corporation. Any  
2862 director executing a consent may provide, whether through  
2863 instruction to an agent or otherwise, that the consent will be  
2864 effective at a future time, including a time determined upon  
2865 the happening of an event, occurring not later than 60 days  
2866 after the instruction is given or the provision is made, if  
2867 evidence of the instruction or provision is provided to the  
2868 nonprofit corporation. A director's consent may be withdrawn  
2869 by a revocation signed by the director and delivered to the  
2870 nonprofit corporation before delivery to the nonprofit  
2871 corporation of unrevoked consents signed by all the directors.

2872 (c) A consent signed under this section has the effect  
2873 of action taken at a meeting of the board of directors and may  
2874 be described as such in any document.

2875 §10A-3A-8.22. Notice of meeting.

2876 (a) Unless the certificate of incorporation or bylaws  
2877 provide otherwise, regular meetings of the board of directors  
2878 may be held without notice of the place, if any, date, time,  
2879 or purpose of the meeting.

2880 (b) Unless the certificate of incorporation or bylaws  
2881 provide for a longer or shorter period, special meetings of  
2882 the board of directors must be preceded by at least two days'  
2883 notice of the place, if any, date, time, of the meeting. The  
2884 notice need not describe the purpose of the special meeting



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2885 unless required by the certificate of incorporation or bylaws.

2886 §10A-3A-8.23. Waiver of notice.

2887 (a) A director may waive any notice required by this  
2888 chapter, the certificate of incorporation, or the bylaws  
2889 before or after the date and time stated in the notice. Except  
2890 as provided by subsection (b), the waiver must be in writing,  
2891 signed by the director entitled to the notice, and delivered  
2892 to the nonprofit corporation for filing by the nonprofit  
2893 corporation with the minutes or corporate records.

2894 (b) A director's attendance at or participation in a  
2895 meeting waives any required notice to the director of the  
2896 meeting, unless the director at the beginning of the meeting  
2897 (or promptly upon arrival) objects to holding the meeting or  
2898 transacting business at the meeting and does not, after  
2899 objecting, vote for or assent to action taken at the meeting.

2900 §10A-3A-8.24. Quorum and voting.

2901 (a) Unless the certificate of incorporation or bylaws  
2902 provide for a greater or lesser number or unless otherwise  
2903 expressly provided in this chapter, a quorum of a board of  
2904 directors consists of a majority of the number of directors  
2905 specified in or fixed in accordance with the certificate of  
2906 incorporation or bylaws.

2907 (b) The quorum of the board of directors specified in  
2908 or fixed in accordance with the certificate of incorporation  
2909 or bylaws may not consist of less than one-third of the  
2910 specified or fixed number of directors.

2911 (c) If a quorum is present when a vote is taken, the  
2912 affirmative vote of a majority of directors present is the act



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2913 of the board of directors unless the certificate of  
2914 incorporation or bylaws require the vote of a greater number  
2915 of directors or unless otherwise expressly provided in this  
2916 chapter.

2917 (d) A director who is present at a meeting of the board  
2918 of directors or a committee when corporate action is taken is  
2919 deemed to have assented to the action taken unless: (i) the  
2920 director objects at the beginning of the meeting (or promptly  
2921 upon arrival) to holding it or transacting business at the  
2922 meeting; (ii) the dissent or abstention from the action taken  
2923 is entered in the minutes of the meeting; or (iii) the  
2924 director delivers written notice of the director's dissent or  
2925 abstention to the presiding officer of the meeting before its  
2926 adjournment or to the nonprofit corporation immediately after  
2927 adjournment of the meeting. The right of dissent or abstention  
2928 is not available to a director who votes in favor of the  
2929 action taken.

2930 §10A-3A-8.25. Board and advisory committees.

2931 (a) A committee of the board of directors composed  
2932 exclusively of one or more directors may be established to  
2933 perform functions of the board:

2934 (1) by the certificate of incorporation or bylaws; or

2935 (2) except as restricted by the certificate of  
2936 incorporation or bylaws, by the board of directors.

2937 (b) Unless this chapter, the certificate of  
2938 incorporation, or the bylaws provide otherwise, the  
2939 establishment of a committee and appointment of directors to  
2940 it must be approved by the greater of:



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2941 (1) a majority of all the directors in office when the  
2942 action is taken; or

2943 (2) the number of directors required by the certificate  
2944 of incorporation or bylaws to take action under Section  
2945 10A-3A-8.24.

2946 (c) Sections 10A-3A-8.20 through 10A-3A-8.24 apply to  
2947 board committees and their members.

2948 (d) A board committee may exercise the powers of the  
2949 board of directors under Section 10A-3A-8.01, to the extent  
2950 specified by the board of directors or in the certificate of  
2951 incorporation or bylaws, except that a board committee may  
2952 not:

2953 (1) in the case of a membership nonprofit corporation,  
2954 approve or propose to members action that this chapter  
2955 requires be approved by members;

2956 (2) remove a director from office;

2957 (3) fill a vacancy on the board of directors; or,  
2958 subject to subsection (e), on any committee of the board; or

2959 (4) adopt, amend, or repeal a provision of the  
2960 certificate of incorporation or bylaws.

2961 (e) The board of directors may appoint one or more  
2962 directors as alternate members of any board committee to  
2963 replace any absent or disqualified member during the member's  
2964 absence or disqualification. If the certificate of  
2965 incorporation, bylaws, or the action creating a board  
2966 committee so provides, the member or members present at any  
2967 board committee meeting and not disqualified from voting may,  
2968 by unanimous action, appoint another director to act in place



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2969 of an absent or disqualified member during that member's  
2970 absence or disqualification.

2971 (f) The certificate of incorporation, bylaws, or board  
2972 of directors may create or authorize the creation of one or  
2973 more advisory committees whose members need not be directors.  
2974 An advisory committee:

2975 (1) is not a committee of the board; and

2976 (2) may not exercise any of the powers of the board.

2977 DIVISION C. DIRECTORS.

2978 §10A-3A-8.30. Standards of conduct for directors.

2979 Division C of Article 3 of Chapter 1 shall not apply to  
2980 this chapter. Instead:

2981 (a) Each member of the board of directors, when  
2982 discharging the duties of a director, shall act: (i) in good  
2983 faith, and (ii) in a manner the director reasonably believes  
2984 to be in the best interests of the nonprofit corporation.

2985 (b) The members of the board of directors or a board  
2986 committee, when becoming informed in connection with their  
2987 decision-making function or devoting attention to their  
2988 oversight function, shall discharge their duties with the care  
2989 that a person in a like position would reasonably believe  
2990 appropriate under similar circumstances.

2991 (c) In discharging board of directors or board  
2992 committee duties, a director shall disclose, or cause to be  
2993 disclosed, to the other board of directors or board committee  
2994 members information not already known by them but known by the  
2995 director to be material to the discharge of their  
2996 decision-making or oversight functions, except that disclosure



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2997 is not required to the extent that the director reasonably  
2998 believes that doing so would violate a duty imposed under law,  
2999 a legally enforceable obligation of confidentiality, or a  
3000 professional ethics rule.

3001 (d) In discharging board of directors or board  
3002 committee duties, a director who does not have knowledge that  
3003 makes reliance unwarranted is entitled to rely on the  
3004 performance by any of the persons specified in subsection  
3005 (f) (1) or subsection (f) (3) to whom the board of directors may  
3006 have delegated, formally or informally by course of conduct,  
3007 the authority or duty to perform one or more of the board of  
3008 directors' functions that are delegable under applicable law.

3009 (e) In discharging board of directors or board  
3010 committee duties, a director who does not have knowledge that  
3011 makes reliance unwarranted is entitled to rely on information,  
3012 opinions, reports, or statements, including financial  
3013 statements and other financial data, prepared or presented by  
3014 any of the persons specified in subsection (f).

3015 (f) A director is entitled to rely, in accordance with  
3016 subsection (d) or (e), on:

3017 (1) one or more officers, employees, or volunteers of  
3018 the nonprofit corporation or one or more persons associated  
3019 with the nonprofit corporation, whom the director reasonably  
3020 believes to be reliable and competent in the functions  
3021 performed or the information, opinions, reports, or statements  
3022 provided;

3023 (2) legal counsel, public accountants, or other persons  
3024 retained by the nonprofit corporation as to matters involving



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3025 skills or expertise the director reasonably believes are  
3026 matters (i) within the particular person's professional or  
3027 expert competence, or (ii) as to which the particular person  
3028 merits confidence; or

3029 (3) a board committee of which the director is not a  
3030 member if the director reasonably believes the committee  
3031 merits confidence.

3032 (g) Except as set forth in subsections (a) and (b), a  
3033 director, when discharging the duties of a director, has no  
3034 duty to any person other than the nonprofit corporation.

3035 §10A-3A-8.31. Standards of liability for directors.

3036 Division C of Article 3 of Chapter 1 shall not apply to  
3037 this chapter. Instead:

3038 (a) A director shall not be liable to the nonprofit  
3039 corporation or its members for any decision to take or not to  
3040 take action, or any failure to take any action, as a director,  
3041 unless the party asserting liability in a proceeding  
3042 establishes that:

3043 (1) no defense interposed by the director based on: (i)  
3044 any provision in the certificate of incorporation authorized  
3045 by Section 10A-3A-2.02(b)(4) or by Section 10A-3A-2.02(b)(6),  
3046 or (ii) the protection afforded by Section 10A-3A-8.60,  
3047 precludes liability; and

3048 (2) the challenged conduct consisted or was the result  
3049 of:

3050 (i) action not in good faith; or

3051 (ii) a decision:

3052 (A) which the director did not reasonably believe to be



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3053 in the best interests of the nonprofit corporation, or

3054 (B) as to which the director was not informed to an  
3055 extent the director reasonably believed appropriate in the  
3056 circumstances; or

3057 (iii) a lack of objectivity due to the director's  
3058 familial, financial or business relationship with, or a lack  
3059 of independence due to the director's domination or control  
3060 by, another person having a material interest in the  
3061 challenged conduct:

3062 (A) which relationship or which domination or control  
3063 could reasonably be expected to have affected the director's  
3064 judgment respecting the challenged conduct in a manner adverse  
3065 to the nonprofit corporation, and

3066 (B) after a reasonable expectation to that effect has  
3067 been established, the director shall not have established that  
3068 the challenged conduct was reasonably believed by the director  
3069 to be in the best interests of the nonprofit corporation; or

3070 (iv) a sustained failure of the director to devote  
3071 attention to ongoing oversight of the activities and affairs  
3072 of the nonprofit corporation, or a failure to devote timely  
3073 attention, by making (or causing to be made) appropriate  
3074 inquiry, when particular facts and circumstances of  
3075 significant concern materialize that would alert a reasonably  
3076 attentive director to the need for that inquiry; or

3077 (v) receipt of a financial benefit to which the  
3078 director was not entitled or any other breach of the  
3079 director's duties to deal fairly with the nonprofit  
3080 corporation and its members that is actionable under



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3081 applicable law.

3082 (b) The party seeking to hold the director liable:

3083 (1) for money damages, shall also have the burden of  
3084 establishing that:

3085 (i) harm to the nonprofit corporation or its members  
3086 has been suffered, and

3087 (ii) the harm suffered was proximately caused by the  
3088 director's challenged conduct; or

3089 (2) for other money payment under a legal remedy, such  
3090 as compensation for the unauthorized use of corporate assets,  
3091 shall also have whatever persuasion burden may be called for  
3092 to establish that the payment sought is appropriate in the  
3093 circumstances; or

3094 (3) for other money payment under an equitable remedy,  
3095 such as profit recovery by or disgorgement to the nonprofit  
3096 corporation, shall also have whatever persuasion burden may be  
3097 called for to establish that the equitable remedy sought is  
3098 appropriate in the circumstances.

3099 (c) Nothing contained in this section shall:

3100 (1) in any instance where fairness is at issue alter  
3101 the burden of proving the fact or lack of fairness otherwise  
3102 applicable;

3103 (2) alter the fact or lack of liability of a director  
3104 under another section of this chapter, such as the provisions  
3105 governing the consequences of an unlawful distribution under  
3106 Section 10A-3A-8.32 or a transactional interest under Section  
3107 10A-3A-8.60;

3108 (3) affect any rights to which a director may be



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3109 entitled under another statute of this state or the United  
3110 States; or

3111 (4) affect any rights to which the nonprofit  
3112 corporation or a member may be entitled under another statute  
3113 of this state or the United States.

3114 §10A-3A-8.32. Directors' liability for unlawful  
3115 distributions.

3116 (a) A director who votes for or assents to a  
3117 distribution in excess of what may be authorized and made  
3118 pursuant to Section 10A-3A-6.40 or Section 10A-3A-11.07 is  
3119 personally liable to the nonprofit corporation for the amount  
3120 of the distribution that exceeds what could have been  
3121 distributed without violating Section 10A-3A-6.40 or Section  
3122 10A-3A-11.07 if the party asserting liability establishes that  
3123 when taking the action the director did not comply with  
3124 Section 10A-3A-8.30.

3125 (b) A director held liable under subsection (a) for an  
3126 unlawful distribution is entitled to:

3127 (1) contribution from every other director who could be  
3128 held liable under subsection (a) for the unlawful  
3129 distribution; and

3130 (2) recoument from each person of the pro-rata portion  
3131 of the amount of the unlawful distribution the person  
3132 received, whether or not the person knew the distribution was  
3133 made in violation of Section 10A-3A-6.40 or Section  
3134 10A-3A-11.07.

3135 (c) A proceeding to enforce:

3136 (1) the liability of a director under subsection (a) is



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3137 barred unless it is commenced within two years after the date  
3138 on which the distribution was made; or

3139 (2) contribution or recoupment under subsection (b) is  
3140 barred unless it is commenced within one year after the  
3141 liability of the claimant has been finally adjudicated under  
3142 subsection (a).

3143 §10A-3A-8.33. Loans to or guarantees for directors and  
3144 officers.

3145 (a) A nonprofit corporation may not lend money to or  
3146 guarantee the obligation of a director or officer of the  
3147 nonprofit corporation.

3148 (b) The fact that a loan or guarantee is made in  
3149 violation of this section does not affect the borrower's  
3150 liability on the loan.

3151 DIVISION D. OFFICERS.

3152 §10A-3A-8.40. Officers.

3153 (a) A nonprofit corporation has the officers described  
3154 in its certificate of incorporation or bylaws or appointed by  
3155 the board of directors in accordance with the certificate of  
3156 incorporation or bylaws.

3157 (b) The board of directors may elect individuals to  
3158 fill one or more offices of the nonprofit corporation.

3159 (c) The certificate of incorporation, bylaws, or the  
3160 board of directors shall assign to an officer responsibility  
3161 for maintaining and authenticating the records of the  
3162 nonprofit corporation required to be kept under Section  
3163 10A-3A-4.01.

3164 (d) Unless the certificate of incorporation or bylaws



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3165 provide otherwise, the same individual may simultaneously hold  
3166 more than one office in a nonprofit corporation.

3167 §10A-3A-8.41. Functions of officers.

3168 Each officer has the authority and shall perform the  
3169 functions set forth in the certificate of incorporation or  
3170 bylaws or, to the extent consistent with the certificate of  
3171 incorporation or bylaws, the functions prescribed by the board  
3172 of directors or by direction of an officer authorized by the  
3173 board of directors to prescribe the functions of other  
3174 officers.

3175 §10A-3A-8.42. Standards of conduct for officers.

3176 Division C of Article 3 of Chapter 1 shall not apply to  
3177 this chapter. Instead:

3178 (a) An officer, when performing in that capacity, has  
3179 the duty to act:

3180 (1) in good faith;

3181 (2) with the care that a person in a like position  
3182 would reasonably exercise under similar circumstances; and

3183 (3) in a manner the officer reasonably believes to be  
3184 in the best interests of the nonprofit corporation.

3185 (b) The duty of an officer includes the obligation:

3186 (1) to inform the superior officer to whom, or the

3187 board of directors or the board committee to which, the

3188 officer reports of information about the affairs of the

3189 nonprofit corporation known to the officer, within the scope

3190 of the officer's functions, and known to the officer to be

3191 material to the superior officer, board of directors, or board

3192 committee; and



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3193 (2) to inform the officer's superior officer, or  
3194 another appropriate person within the nonprofit corporation,  
3195 or the board of directors, or a board committee, of any actual  
3196 or probable material violation of law involving the nonprofit  
3197 corporation or material breach of duty to the nonprofit  
3198 corporation by an officer, employee, or agent of the nonprofit  
3199 corporation, that the officer believes has occurred or is  
3200 likely to occur.

3201 (c) In discharging the officer's duties, an officer who  
3202 does not have knowledge that makes reliance unwarranted is  
3203 entitled to rely on:

3204 (1) the performance of properly delegated  
3205 responsibilities by one or more employees, one or more  
3206 volunteers of the nonprofit corporation, or one or more other  
3207 persons associated with the nonprofit corporation, to whom  
3208 that officer has delegated responsibilities and whom the  
3209 officer reasonably believes to be reliable and competent in  
3210 performing the responsibilities delegated;

3211 (2) information, opinions, reports, or statements,  
3212 including financial statements and other financial data,  
3213 prepared or presented by one or more officers or employees,  
3214 one or more volunteers of the nonprofit corporation, or one or  
3215 more other persons associated with the nonprofit corporation,  
3216 whom the officer reasonably believes to be reliable and  
3217 competent in the matters presented, or legal counsel, public  
3218 accountants, or other persons retained by the nonprofit  
3219 corporation as to matters involving skills or expertise the  
3220 officer reasonably believes are matters: (i) within the



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3221 particular person's professional or expert competence, or (ii)  
3222 as to which the particular person merits confidence; or

3223 (3) volunteers of the nonprofit corporation or one or  
3224 more persons associated with the nonprofit corporation.

3225 (d) An officer is not liable to the nonprofit  
3226 corporation or its members for any decision to take or not to  
3227 take action, or any failure to take any action, as an officer,  
3228 if the duties of the office are performed in compliance with  
3229 this section. Whether an officer who does not comply with this  
3230 section shall have liability will depend in such instance on  
3231 applicable law, including those principles of Section  
3232 10A-3A-8.31 that have relevance.

3233 §10A-3A-8.43. Resignation and removal of officers.

3234 Division C of Article 3 of Chapter 1 shall not apply to  
3235 this chapter. Instead:

3236 (a) An officer may resign at any time by delivering a  
3237 written notice to the board of directors, its chair, the  
3238 appointing officer, the secretary, or the nonprofit  
3239 corporation. A resignation is effective as provided in Section  
3240 10A-3A-1.03 unless the notice provides for a delayed  
3241 effectiveness, including effectiveness determined upon a  
3242 future event or events. If effectiveness of a resignation is  
3243 stated to be delayed and the board of directors or the  
3244 appointing officer accepts the delay, the board of directors  
3245 or the appointing officer may fill the pending vacancy before  
3246 the delayed effectiveness, but the new officer may not take  
3247 office until the vacancy occurs.

3248 (b) An officer may be removed at any time with or



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3249 without cause by (i) the board of directors; (ii) the  
3250 appointing officer, unless the certificate of incorporation,  
3251 bylaws, or the board of directors provide otherwise; or (iii)  
3252 any other officer if authorized by the certificate of  
3253 incorporation, bylaws, or the board of directors.

3254 (c) In this section, "appointing officer" means the  
3255 officer (including any successor to that officer) who  
3256 appointed the officer resigning or being removed.

3257 §10A-3A-8.44. Contract rights of officers.

3258 (a) The election or appointment of an officer does not  
3259 itself create contract rights.

3260 (b) An officer's removal does not affect the officer's  
3261 contract rights, if any, with the nonprofit corporation. An  
3262 officer's resignation does not affect the nonprofit  
3263 corporation's contract rights, if any, with the officer.

3264 DIVISION E. INDEMNIFICATION AND ADVANCEMENT OF  
3265 EXPENSES.

3266 §10A-3A-8.50. Division definitions.

3267 In this division:

3268 (1) "DIRECTOR" or "OFFICER" means an individual who is  
3269 or was a director or officer, respectively, of a nonprofit  
3270 corporation or who, while a director or officer of the  
3271 nonprofit corporation, is or was serving at the nonprofit  
3272 corporation's request as a director, officer, manager, member,  
3273 partner, trustee, employee, or agent of another entity or  
3274 employee benefit plan. A director or officer is considered to  
3275 be serving an employee benefit plan at the nonprofit  
3276 corporation's request if the individual's duties to the



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3277 nonprofit corporation also impose duties on, or otherwise  
3278 involve services by, the individual to the plan or to  
3279 participants in or beneficiaries of the plan. "Director" or  
3280 "officer" includes, unless the context requires otherwise (i)  
3281 the estate or personal representative of a director or officer  
3282 and (ii) with respect to a director, an individual designated,  
3283 elected, or appointed by that or any other name or title.

3284 (2) "LIABILITY" means the obligation to pay a judgment,  
3285 settlement, penalty, fine (including an excise tax assessed  
3286 with respect to an employee benefit plan), or expenses  
3287 incurred with respect to a proceeding.

3288 (3) "NONPROFIT CORPORATION" includes any domestic or  
3289 foreign predecessor entity of a nonprofit corporation.

3290 (4) "OFFICIAL CAPACITY" means: (i) when used with  
3291 respect to a director, the office of director in a nonprofit  
3292 corporation; and (ii) when used with respect to an officer, as  
3293 contemplated in Section 10A-3A-8.56, the office in a nonprofit  
3294 corporation held by the officer. "Official capacity" does not  
3295 include service for any other corporation or foreign  
3296 corporation or any joint venture, trust, employee benefit  
3297 plan, or other entity.

3298 (5) "PARTY" means an individual who was, is, or is  
3299 threatened to be made, a defendant or respondent in a  
3300 proceeding.

3301 (6) "PROCEEDING" means any threatened, pending, or  
3302 completed action, suit, or proceeding, whether civil,  
3303 criminal, administrative, arbitrative, or investigative and  
3304 whether formal or informal.



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3305 §10A-3A-8.51. Permissible indemnification.

3306 (a) Except as otherwise provided in this section, a  
3307 nonprofit corporation may indemnify an individual who is a  
3308 party to a proceeding because the individual is a director  
3309 against liability incurred in the proceeding if:

3310 (1) (i) the director conducted himself or herself in  
3311 good faith; and

3312 (ii) the director reasonably believed:

3313 (A) in the case of conduct in an official capacity,  
3314 that his or her conduct was in the best interests of the  
3315 nonprofit corporation; and

3316 (B) in all other cases, that the director's conduct was  
3317 at least not opposed to the best interests of the nonprofit  
3318 corporation; and

3319 (iii) in the case of any criminal proceeding, the  
3320 director had no reasonable cause to believe his or her conduct  
3321 was unlawful; or

3322 (2) the director engaged in conduct for which broader  
3323 indemnification has been made permissible or obligatory under  
3324 a provision of the certificate of incorporation (as authorized  
3325 by Section 10A-3A-2.02).

3326 (b) A director's conduct with respect to an employee  
3327 benefit plan for a purpose the director reasonably believed to  
3328 be in the interests of the participants in, and the  
3329 beneficiaries of, the plan is conduct that satisfies the  
3330 requirement of subsection (a) (1) (ii) (B).

3331 (c) The termination of a proceeding by judgment, order,  
3332 settlement, or conviction, or upon a plea of nolo contendere



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3333 or its equivalent, is not, of itself, determinative that the  
3334 director did not meet the relevant standard of conduct  
3335 described in this section.

3336 (d) Unless ordered by a court under Section  
3337 10A-3A-8.54(a)(3), a nonprofit corporation may not indemnify a  
3338 director:

3339 (1) in connection with a proceeding by the nonprofit  
3340 corporation, except for expenses incurred in connection with  
3341 the proceeding if it is determined that the director has met  
3342 the relevant standard of conduct under subsection (a); or

3343 (2) in connection with any proceeding with respect to  
3344 conduct for which the director was adjudged liable on the  
3345 basis of receiving a financial benefit to which the director  
3346 was not entitled, regardless of whether it involved action in  
3347 the director's official capacity.

3348 §10A-3A-8.52. Permitted mandatory indemnification.

3349 A nonprofit corporation may provide in its certificate  
3350 of incorporation or bylaws that the nonprofit corporation  
3351 shall indemnify a director who was wholly successful, on the  
3352 merits or otherwise, in the defense of any proceeding to which  
3353 the director was a party because the director was a director  
3354 of the nonprofit corporation against expenses incurred by the  
3355 director in connection with the proceeding.

3356 §10A-3A-8.53. Advance for expenses.

3357 (a) A nonprofit corporation may, before final  
3358 disposition of a proceeding, advance funds to pay for or  
3359 reimburse expenses incurred in connection with the proceeding  
3360 by an individual who is a party to the proceeding because that



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3361 individual is a director if the director delivers to the  
3362 nonprofit corporation a signed written undertaking of the  
3363 director to repay any funds advanced if (i) the director is  
3364 not entitled to mandatory indemnification under Section  
3365 10A-3A-8.52 and (ii) it is ultimately determined under Section  
3366 10A-3A-8.54 or Section 10A-3A-8.55 that the director is not  
3367 entitled to indemnification.

3368 (b) The undertaking required by subsection (a) must be  
3369 an unlimited general obligation of the director but need not  
3370 be secured and may be accepted without reference to the  
3371 financial ability of the director to make repayment.

3372 (c) Authorizations under this section shall be made:

3373 (1) by the board of directors:

3374 (i) if there are two or more qualified directors, by a  
3375 majority vote of all the qualified directors (a majority of  
3376 whom shall for that purpose constitute a quorum) or by a  
3377 majority of the members of a committee consisting solely of  
3378 two or more qualified directors appointed by a majority vote  
3379 of qualified directors; or

3380 (ii) if there are fewer than two qualified directors,  
3381 by the vote necessary for action by the board of directors in  
3382 accordance with Section 10A-3A-8.24(c), in which authorization  
3383 directors who are not qualified directors may participate; or

3384 (2) by the members, but membership interests owned by  
3385 or voted under the control of a director who at the time is  
3386 not a qualified director may not be voted on the  
3387 authorization.

3388 §10A-3A-8.54. Court-ordered indemnification and advance



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3389 for expenses.

3390 (a) A director who is a party to a proceeding because  
3391 he or she is a director may apply for indemnification or an  
3392 advance for expenses to the court conducting the proceeding or  
3393 to another court of competent jurisdiction. After receipt of  
3394 an application and after giving any notice it considers  
3395 necessary, the court shall:

3396 (1) order indemnification if the court determines that  
3397 the director is entitled to indemnification pursuant to a  
3398 provision authorized by Section 10A-3A-8.52;

3399 (2) order indemnification or advance for expenses if  
3400 the court determines that the director is entitled to  
3401 indemnification or advance for expenses pursuant to a  
3402 provision authorized by Section 10A-3A-8.58(a); or

3403 (3) order indemnification or advance for expenses if  
3404 the court determines, in view of all the relevant  
3405 circumstances, that it is fair and reasonable: (i) to  
3406 indemnify the director, or (ii) to advance expenses to the  
3407 director, even if, in the case of (i) or (ii), the director  
3408 has not met the relevant standard of conduct set forth in  
3409 Section 10A-3A-8.51(a), failed to comply with Section  
3410 10A-3A-8.53, or was adjudged liable in a proceeding referred  
3411 to in Section 10A-3A-8.51(d)(1) or Section 10A-3A-8.51(d)(2),  
3412 but if the director was adjudged so liable indemnification  
3413 shall be limited to expenses incurred in connection with the  
3414 proceeding.

3415 (b) If the court determines that the director is  
3416 entitled to indemnification under subsection (a)(1) or to



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3417 indemnification or advance for expenses under subsection  
3418 (a) (2), it shall also order the nonprofit corporation to pay  
3419 the director's expenses incurred in connection with obtaining  
3420 court-ordered indemnification or advance for expenses. If the  
3421 court determines that the director is entitled to  
3422 indemnification or advance for expenses under subsection  
3423 (a) (3), it may also order the nonprofit corporation to pay the  
3424 director's expenses to obtain court-ordered indemnification or  
3425 advance for expenses.

3426 §10A-3A-8.55. Determination and authorization of  
3427 indemnification.

3428 (a) A nonprofit corporation may not indemnify a  
3429 director under Section 10A-3A-8.51 unless authorized for a  
3430 specific proceeding after a determination has been made that  
3431 indemnification is permissible because the director has met  
3432 the relevant standard of conduct set forth in Section  
3433 10A-3A-8.51.

3434 (b) The determination shall be made:

3435 (1) if there are two or more qualified directors, by  
3436 the board of directors by a majority vote of all the qualified  
3437 directors (a majority of whom shall for that purpose  
3438 constitute a quorum), or by a majority of the members of a  
3439 committee of two or more qualified directors appointed by a  
3440 majority vote of qualified directors;

3441 (2) by special legal counsel:

3442 (i) selected in the manner prescribed in subsection

3443 (b) (1); or

3444 (ii) if there are fewer than two qualified directors,



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3445 selected by the board of directors (in which selection  
3446 directors who are not qualified directors may participate); or  
3447 (3) by the members, but membership interests owned by  
3448 or voted under the control of a director who at the time is  
3449 not a qualified director may not be voted on the  
3450 determination.

3451 (c) Authorization of indemnification shall be made in  
3452 the same manner as the determination that indemnification is  
3453 permissible except that if there are fewer than two qualified  
3454 directors, or if the determination is made by special legal  
3455 counsel, authorization of indemnification shall be made by  
3456 those entitled to select special legal counsel under  
3457 subsection (b) (2) (ii).

3458 §10A-3A-8.56. Indemnification of officers.

3459 (a) A nonprofit corporation may indemnify and advance  
3460 expenses under this Division E of this Article 8 to an officer  
3461 who is a party to a proceeding because he or she is an  
3462 officer:

3463 (1) to the same extent as a director; and

3464 (2) if he or she is an officer but not a director, to  
3465 such further extent as may be provided by the certificate of  
3466 incorporation or the bylaws, or by a resolution adopted or a  
3467 contract approved by the board of directors or members except  
3468 for

3469 (i) liability in connection with a proceeding by the  
3470 nonprofit corporation other than for expenses incurred in  
3471 connection with the proceeding, or

3472 (ii) liability arising out of conduct that constitutes



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3473 (A) receipt by the officer of a financial benefit to  
3474 which the officer is not entitled,

3475 (B) an intentional infliction of harm on the nonprofit  
3476 corporation or the members, or

3477 (C) an intentional violation of criminal law.

3478 (b) Subsection (a)(2) shall apply to an officer who is  
3479 also a director if the person is made a party to the  
3480 proceeding based on an act or omission solely as an officer.

3481 (c) An officer who is not a director is entitled to  
3482 indemnification under Section 10A-3A-8.52 if the certificate  
3483 of incorporation or bylaws of the nonprofit corporation allows  
3484 for such indemnification, and may apply to a court under  
3485 Section 10A-3A-8.54 for indemnification or an advance for  
3486 expenses, in each case to the same extent to which a director  
3487 may be entitled to indemnification or advance for expenses  
3488 under those sections, unless otherwise provided in the  
3489 certificate of incorporation or bylaws.

3490 §10A-3A-8.57. Insurance.

3491 A nonprofit corporation may purchase and maintain  
3492 insurance on behalf of an individual who is a director or  
3493 officer of the nonprofit corporation, or who, while a director  
3494 or officer of the nonprofit corporation, serves at the  
3495 nonprofit corporation's request as a director, officer,  
3496 partner, trustee, employee, or agent of another corporation or  
3497 foreign corporation or a joint venture, trust, employee  
3498 benefit plan, or other entity, against liability asserted  
3499 against or incurred by the individual in that capacity or  
3500 arising from the individual's status as a director or officer,



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3501 regardless of whether the nonprofit corporation would have  
3502 power to indemnify or advance expenses to the individual  
3503 against the same liability under this Division E of this  
3504 Article 8.

3505 §10A-3A-8.58. Variation by corporate action;  
3506 application of division.

3507 (a) A nonprofit corporation may, by a provision in its  
3508 certificate of incorporation, bylaws, or in a resolution  
3509 adopted or a contract approved by the board of directors or  
3510 members, obligate itself in advance of the act or omission  
3511 giving rise to a proceeding to provide indemnification in  
3512 accordance with Section 10A-3A-8.51 or advance funds to pay  
3513 for or reimburse expenses in accordance with Section  
3514 10A-3A-8.53. Any obligatory provision shall be deemed to  
3515 satisfy the requirements for authorization referred to in  
3516 Section 10A-3A-8.53(c) and in Section 10A-3A-8.55(c). Any  
3517 provision that obligates the nonprofit corporation to provide  
3518 indemnification to the fullest extent permitted by law shall  
3519 be deemed to obligate the nonprofit corporation to advance  
3520 funds to pay for or reimburse expenses in accordance with  
3521 Section 10A-3A-8.53 to the fullest extent permitted by law,  
3522 unless the provision expressly provides otherwise.

3523 (b) A right of indemnification or to advances for  
3524 expenses created by this Division E of this Article 8 or under  
3525 subsection (a) and in effect at the time of an act or omission  
3526 shall not be eliminated or impaired with respect to the act or  
3527 omission by an amendment of the certificate of incorporation,  
3528 bylaws, or a resolution of the board of directors or members,



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3529 adopted after the occurrence of the act or omission, unless,  
3530 in the case of a right created under subsection (a), the  
3531 provision creating the right and in effect at the time of the  
3532 act or omission explicitly authorizes elimination or  
3533 impairment after the act or omission has occurred.

3534 (c) Any provision pursuant to subsection (a) shall not  
3535 obligate the nonprofit corporation to indemnify or advance  
3536 expenses to a director of a predecessor of the nonprofit  
3537 corporation, pertaining to conduct with respect to the  
3538 predecessor, unless otherwise expressly provided. Any  
3539 provision for indemnification or advance for expenses in the  
3540 certificate of incorporation, bylaws, or a resolution of the  
3541 board of directors or other similar governing authority of a  
3542 predecessor of the nonprofit corporation in a merger or in a  
3543 contract to which the predecessor is a party, existing at the  
3544 time the merger takes effect, shall be governed by Section  
3545 10A-3A-12.06(a)(4).

3546 (d) Subject to subsection (b), a nonprofit corporation  
3547 may, by a provision in its certificate of incorporation, limit  
3548 any of the rights to indemnification or advance for expenses  
3549 created by or pursuant to this Division E of this Article 8.

3550 (e) This Division E of this Article 8 does not limit a  
3551 nonprofit corporation's power to pay or reimburse expenses  
3552 incurred by a director or an officer in connection with  
3553 appearing as a witness in a proceeding at a time when the  
3554 director or officer is not a party.

3555 (f) This Division E of this Article 8 does not limit a  
3556 nonprofit corporation's power to indemnify, advance expenses



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3557 to or provide or maintain insurance on behalf of an employee,  
3558 agent, or volunteer.

3559 §10A-3A-8.59. Exclusivity of division.

3560 A nonprofit corporation may provide indemnification or  
3561 advance expenses to a director or an officer only as permitted  
3562 by this Division E of this Article 8.

3563 DIVISION F. CONFLICTING INTEREST TRANSACTIONS.

3564 §10A-3A-8.60. Interested directors; quorum.

3565 (a) No contract or transaction between a nonprofit  
3566 corporation and one or more of its directors or officers, or  
3567 between a nonprofit corporation and any other corporation,  
3568 partnership, association, or other entity in which one or more  
3569 of its directors or officers, are directors or officers, or  
3570 have a financial interest, shall be void or voidable solely  
3571 for this reason, or solely because the director or officer is  
3572 present at or participates in the meeting of the board of  
3573 directors or committee which authorizes the contract or  
3574 transaction, or solely because the director's or officer's  
3575 votes are counted for that purpose, if:

3576 (1) The material facts as to the director's or  
3577 officer's relationship or interest and as to the contract or  
3578 transaction are disclosed or are known to the board of  
3579 directors or the committee of a nonmembership nonprofit  
3580 corporation, and the board or committee in good faith  
3581 authorizes the contract or transaction by the affirmative  
3582 votes of a majority of the qualified directors, even though  
3583 the qualified directors be less than a quorum; or

3584 (2) The material facts as to the director's or



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3585 officer's relationship or interest and as to the contract or  
3586 transaction are disclosed or are known to (i) the members in a  
3587 membership nonprofit corporation entitled to vote thereon or  
3588 (ii) the qualified directors of the board of directors in a  
3589 membership nonprofit corporation, and the contract or  
3590 transaction is specifically approved in good faith by vote of  
3591 the members in a membership nonprofit corporation or the  
3592 qualified directors of the board of directors in a membership  
3593 nonprofit corporation; or

3594 (3) The contract or transaction is fair as to the  
3595 nonprofit corporation as of the time it is authorized,  
3596 approved or ratified, by the board of directors, a committee,  
3597 or the members.

3598 (b) Common or interested directors may be counted in  
3599 determining the presence of a quorum at a meeting of the board  
3600 of directors or of a committee which authorizes the contract  
3601 or transaction.

3602 ARTICLE 9. AMENDMENT OF CERTIFICATE OF INCORPORATION  
3603 AND BYLAWS.

3604 DIVISION A. AMENDMENT OF CERTIFICATE OF INCORPORATION.

3605 §10A-3A-9.00. Applicability of Division B of Article 3  
3606 of Chapter 1.

3607 Division B of Article 3 of Chapter 1 shall not apply to  
3608 this chapter.

3609 §10A-3A-9.01. Authority to amend.

3610 (a) A nonprofit corporation may amend its certificate  
3611 of incorporation at any time to add or change a provision that  
3612 is required or permitted in the certificate of incorporation



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3613 as of the effective date of the amendment or to delete a  
3614 provision that is not required to be contained in the  
3615 certificate of incorporation. Whether a provision is required  
3616 or permitted in the certificate of incorporation is determined  
3617 as of the effective date of the amendment.

3618 (b) Neither (i) a member of a membership nonprofit  
3619 corporation nor (ii) a person having rights under the  
3620 certificate of incorporation, has a vested property right  
3621 resulting from any provision in the certificate of  
3622 incorporation, including provisions relating to management,  
3623 control, purpose, or duration of the nonprofit corporation.

3624 §10A-3A-9.02. Amendment of certificate of incorporation  
3625 of membership nonprofit corporation before admission of  
3626 members.

3627 Subject to Section 10A-3A-9.30, if a membership  
3628 nonprofit corporation has not yet admitted any members, the  
3629 board of directors, or its incorporators if it has no board of  
3630 directors, may adopt one or more amendments to the membership  
3631 nonprofit corporation's certificate of incorporation.

3632 §10A-3A-9.03. Amendment of certificate of incorporation  
3633 of membership nonprofit corporation after members have been  
3634 admitted.

3635 If a membership nonprofit corporation has admitted any  
3636 members, an amendment to the certificate of incorporation  
3637 shall be adopted in the following manner:

3638 (a) The proposed amendment shall first be adopted by  
3639 the board of directors.

3640 (b) Except as provided in subsection (g) and Sections



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3641 10A-3A-9.07 and 10A-3A-9.08, the amendment shall then be  
3642 approved by the members entitled to vote on the amendment. In  
3643 submitting the proposed amendment to the members for approval,  
3644 the board of directors shall recommend that the members  
3645 approve the amendment, unless the board of directors makes a  
3646 determination that because of conflicts of interest or other  
3647 special circumstances it should not make such a  
3648 recommendation, in which case the board of directors must  
3649 inform the members of the basis for that determination.

3650 (c) The board of directors may set conditions for the  
3651 approval of the amendment by the members or the effectiveness  
3652 of the amendment.

3653 (d) If the amendment is required to be approved by the  
3654 members, and the approval is to be given at a meeting, the  
3655 membership nonprofit corporation shall notify each member  
3656 entitled to vote on the amendment of the meeting of members at  
3657 which the amendment is to be submitted for approval. The  
3658 notice must state that the purpose, or one of the purposes, of  
3659 the meeting is to consider the amendment. The notice must  
3660 contain or be accompanied by a copy of the amendment.

3661 (e) Unless the certificate of incorporation, or the  
3662 board of directors acting pursuant to subsection (c), requires  
3663 a greater vote or a greater quorum, approval of the amendment  
3664 requires the approval of the members at a meeting at which a  
3665 quorum consisting of a majority of the votes entitled to be  
3666 cast on the amendment exists, and, if any class of members is  
3667 entitled to vote as a separate group on the amendment, except  
3668 as provided in Section 10A-3A-9.04(d), the approval of each



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3669 separate voting group at a meeting at which a quorum of the  
3670 voting group exists consisting of a majority of the votes  
3671 entitled to be cast on the amendment by that voting group.

3672 (f) In addition to the adoption and approval of an  
3673 amendment by the board of directors and members as required by  
3674 this section, an amendment must also be approved by a person  
3675 or group of persons, if any, whose approval is required by the  
3676 certificate of incorporation in accordance with Section  
3677 10A-3A-9.30.

3678 (g) Unless the certificate of incorporation provides  
3679 otherwise, the board of directors of a membership nonprofit  
3680 corporation may adopt amendments to the membership nonprofit  
3681 corporation's certificate of incorporation without approval of  
3682 the members to:

3683 (1) extend the duration of the membership nonprofit  
3684 corporation if it was incorporated at a time when limited  
3685 duration was required by law;

3686 (2) delete the names and addresses of the incorporators  
3687 or initial directors;

3688 (3) delete the name and address of the initial  
3689 registered agent or registered office, if a statement of  
3690 change is on file with the Secretary of State;

3691 (4) delete a class of members from the certificate of  
3692 incorporation when there are no members in that class; or

3693 (5) change the membership nonprofit corporation name,  
3694 provided that the name complies with Article 5 of Chapter 1.

3695 §10A-3A-9.04. Voting on amendments by voting groups.

3696 Except as provided in the certificate of incorporation



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3697 or bylaws:

3698 (a) If a membership nonprofit corporation has more than  
3699 one class of members, the members of each class are entitled  
3700 to vote as a separate voting group (if member voting is  
3701 otherwise required by this chapter) on a proposed amendment to  
3702 the certificate of incorporation if the amendment would:

3703 (1) effect an exchange or reclassification of all or  
3704 part of the memberships of the class into memberships of  
3705 another class;

3706 (2) effect an exchange or reclassification, or create  
3707 the right of exchange, of all or part of the memberships of  
3708 another class into memberships of the class;

3709 (3) change the rights, preferences, or limitations of  
3710 all or part of the memberships of the class;

3711 (4) change the rights, preferences, or limitations of  
3712 all or part of the memberships of the class by changing the  
3713 rights, preferences, or limitations of another class;

3714 (5) create a new class of memberships having rights or  
3715 preferences that are prior or superior to the other  
3716 memberships;

3717 (6) increase or decrease the number of memberships  
3718 authorized for the class;

3719 (7) increase or decrease the number of memberships  
3720 authorized for another class; or

3721 (8) authorize a new class of memberships.

3722 (b) If a class of members will be divided into two or  
3723 more classes by an amendment to the certificate of  
3724 incorporation, the amendment must be approved by a majority of



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3725 the members of each class that will be created.

3726 (c) If a proposed amendment would affect less than all  
3727 of the members of a class in one or more of the ways described  
3728 in subsection (a), the members so affected are entitled to  
3729 vote as a separate voting group on the proposed amendment.

3730 (d) If a proposed amendment that entitles the holders  
3731 of two or more classes of memberships to vote as separate  
3732 voting groups under this section would affect those two or  
3733 more classes in the same or a substantially similar way, the  
3734 holders of the memberships of all the classes so affected  
3735 shall vote together as a single voting group on the proposed  
3736 amendment, unless added as a condition by the board of  
3737 directors pursuant to Section 10A-3A-9.03(c).

3738 §10A-3A-9.05. Amendment of certificate of incorporation  
3739 of nonmembership nonprofit corporation.

3740 Except as otherwise provided in the certificate of  
3741 incorporation:

3742 (1) the board of directors of a nonmembership nonprofit  
3743 corporation may adopt amendments to the nonmembership  
3744 nonprofit corporation's certificate of incorporation; and

3745 (2) an amendment adopted by the board of directors  
3746 under this section must also be approved by that person or  
3747 group of persons, if any, whose approval is required by the  
3748 certificate of incorporation in accordance with Section  
3749 10A-3A-9.30.

3750 §10A-3A-9.06. Certificate of amendment.

3751 (a) After an amendment to the certificate of  
3752 incorporation has been adopted and approved in the manner



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3753 required by this chapter, the certificate of incorporation,  
3754 and bylaws, the nonprofit corporation must deliver to the  
3755 Secretary of State, for filing, a certificate of amendment,  
3756 which must set forth:

3757 (1) the name of the nonprofit corporation;

3758 (2) the text of each amendment adopted or the  
3759 information required by Section 10A-3A-1.04(c) (5);

3760 (3) if an amendment provides for an exchange,  
3761 reclassification, or cancellation of memberships, provisions  
3762 for implementing the amendment if not contained in the  
3763 amendment itself (which may be made dependent upon facts  
3764 objectively ascertainable outside the articles of amendment in  
3765 accordance with Section 10A-3A-1.04(c) (5));

3766 (4) the date of each amendment's adoption;

3767 (5) a statement that the amendment was adopted:

3768 (i) in accordance with Sections 10A-3A-9.02, if the  
3769 nonprofit corporation is a membership nonprofit corporation  
3770 which has not yet admitted one or more members;

3771 (ii) in accordance with Sections 10A-3A-9.03 and  
3772 10A-3A-9.04, if the nonprofit corporation is a membership  
3773 nonprofit corporation which has admitted one of more members;

3774 (iii) in accordance with Section 10A-3A-9.05, if the  
3775 nonprofit corporation is a nonmembership nonprofit  
3776 corporation; or

3777 (iv) in accordance with Section 10A-3A-1.04(c) (5);

3778 (6) a statement that the amendment was adopted in  
3779 accordance with Section 10A-9A-9.30, if applicable; and

3780 (7) the unique identifying number or other designation



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3781 as assigned by the Secretary of State.

3782 (b) A certificate of amendment shall take effect at the  
3783 effective date and time determined in accordance with Article  
3784 4 of Chapter 1.

3785 §10A-3A-9.07. Restated certificate of incorporation.

3786 (a) A membership nonprofit corporation's board of  
3787 directors may restate its certificate of incorporation at any  
3788 time, without member approval, to consolidate all amendments  
3789 into a single document. A nonmembership nonprofit  
3790 corporation's board of directors may restate its certificate  
3791 of incorporation at any time to consolidate all amendments  
3792 into a single document.

3793 (b) If the restated certificate of incorporation  
3794 includes one or more new amendments, the amendments must be  
3795 adopted and approved as provided in (i) Sections 10A-3A-9.03  
3796 and 10A-3A-9.04 or (ii) Section 10A-3A-9.05.

3797 (c) A nonprofit corporation that restates its  
3798 certificate of incorporation shall deliver to the Secretary of  
3799 State for filing a certificate of restatement setting forth:

3800 (1) the name of the nonprofit corporation;

3801 (2) the text of the restated certificate of  
3802 incorporation;

3803 (3) a statement that the restated certificate of  
3804 incorporation consolidates all amendments into a single  
3805 document;

3806 (4) if a new amendment is included in the restated  
3807 certificate of incorporation, the statements required under  
3808 Section 10A-3A-9.06 with respect to the new amendment; and



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3809 (5) the unique identifying number or other designation  
3810 as assigned by the Secretary of State.

3811 (d) The duly adopted restated certificate of  
3812 incorporation supersedes the original certificate of  
3813 incorporation and all amendments to the certificate of  
3814 incorporation.

3815 §10A-3A-9.08. Amendment pursuant to reorganization.

3816 (a) A nonprofit corporation's certificate of  
3817 incorporation may be amended without action by the board of  
3818 directors, the members, if any, or a person or group of  
3819 persons, if any, whose approval is required by the certificate  
3820 of incorporation in accordance with Section 10A-3A-9.30, to  
3821 carry out a plan of reorganization ordered or decreed by a  
3822 court of competent jurisdiction under the authority of a law  
3823 of the United States if the certificate of incorporation after  
3824 the amendment only contains provisions required or permitted  
3825 by Section 10A-3A-2.02.

3826 (b) The individual or individuals designated by the  
3827 court shall deliver to the Secretary of State for filing a  
3828 certificate of amendment setting forth:

3829 (1) the name of the nonprofit corporation;

3830 (2) the text of each amendment approved by the court;

3831 (3) the date of the court's order or decree approving  
3832 the certificate of amendment;

3833 (4) the title of the reorganization proceeding in which  
3834 the order or decree was entered;

3835 (5) a statement that the court had jurisdiction of the  
3836 proceeding under federal statute; and



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3837 (6) the unique identifying number or other designation  
3838 as assigned by the Secretary of State.

3839 (c) This section does not apply after entry of a final  
3840 decree in the reorganization proceeding even though the court  
3841 retains jurisdiction of the proceeding for limited purposes  
3842 unrelated to consummation of the reorganization plan.

3843 §10A-3A-9.09. Effect of amendment to certificate of  
3844 incorporation.

3845 (a) An amendment to the certificate of incorporation  
3846 does not affect:

3847 (1) a cause of action existing against or in favor of  
3848 the nonprofit corporation;

3849 (2) a proceeding to which the nonprofit corporation is  
3850 a party; or

3851 (3) the existing rights of persons other than (i)  
3852 members of the nonprofit corporation, if any, or (ii) a person  
3853 or group of persons, if any, specified in the certificate of  
3854 incorporation as having approval rights under Section  
3855 10A-3A-9.30.

3856 (b) An amendment changing a nonprofit corporation's  
3857 name does not affect a proceeding brought by or against the  
3858 nonprofit corporation in its former name.

3859 §10A-3A-9.10. Effect of restatement of certificate of  
3860 incorporation.

3861 (a) A restated certificate of incorporation takes  
3862 effect when the filing of the restated certificate of  
3863 incorporation takes effect as provided by Article 4 of Chapter  
3864 1.



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3865 (b) On the date and time the restated certificate of  
3866 incorporation takes effect, the original certificate of  
3867 incorporation and each prior amendment or restatement of the  
3868 certificate of incorporation is superseded and the restated  
3869 certificate of incorporation is the effective certificate of  
3870 incorporation.

3871 (c) Section 10A-3A-9.09 applies to an amendment  
3872 effected by a restated certificate of incorporation.

3873 DIVISION B. AMENDMENT OF BYLAWS.

3874 §10A-3A-9.20. Authority to amend.

3875 (a) The members of a membership nonprofit corporation  
3876 may amend or repeal the membership nonprofit corporation's  
3877 bylaws except as provided in the certificate of incorporation  
3878 or bylaws.

3879 (b) The board of directors of a membership nonprofit  
3880 corporation or nonmembership nonprofit corporation may amend  
3881 or repeal the nonprofit corporation's bylaws, except as  
3882 provided in the certificate of incorporation, bylaws, Section  
3883 10A-3A-9.21, or Section 10A-3A-9.22.

3884 (c) Neither (i) a member of a membership nonprofit  
3885 corporation nor (ii) a person or group of persons having  
3886 rights under the certificate of incorporation, has a vested  
3887 property right resulting from any provision in the bylaws,  
3888 including provisions relating to management, control, or  
3889 purpose of the nonprofit corporation.

3890 §10A-3A-9.21. Bylaw increasing quorum or voting  
3891 requirement for directors or requiring a meeting place in a  
3892 membership nonprofit corporation.



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3893 In a membership nonprofit corporation:

3894 (a) A bylaw that increases a quorum or voting  
3895 requirement for the board of directors or that requires a  
3896 meeting of the members to be held at a place may be amended or  
3897 repealed:

3898 (1) if originally adopted by the members, only by the  
3899 members, unless the bylaw otherwise provides;

3900 (2) if adopted by the board of directors, either by the  
3901 members or the board of directors.

3902 (b) A bylaw adopted or amended by the members that  
3903 increases a quorum or voting requirement for the board of  
3904 directors may provide that it can be amended or repealed only  
3905 by a specified vote of either the members or the board of  
3906 directors.

3907 (c) Action by the board of directors under subsection  
3908 (a) to amend or repeal a bylaw that changes a quorum or voting  
3909 requirement for the board of directors shall meet the same  
3910 quorum requirement and be adopted by the same vote required to  
3911 take action under the quorum.

3912 §10A-3A-9.22. Bylaw amendments requiring member  
3913 approval.

3914 In a membership nonprofit corporation, except as  
3915 provided in the certificate of incorporation or bylaws:

3916 (a) The board of directors of a membership nonprofit  
3917 corporation that has one or more members at the time may not  
3918 adopt or amend a bylaw under:

3919 (1) Section 10A-3A-6.10 providing that some of the  
3920 members shall have different rights or obligations than other



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3921 members with respect to voting, dissolution, transfer of  
3922 memberships, or other matters;

3923 (2) Section 10A-3A-6.13 levying dues, assessments, or  
3924 fees on some or all of the members;

3925 (3) Section 10A-3A-6.21 relating to the termination or  
3926 suspension of members;

3927 (4) Section 10A-3A-8.08(a):

3928 (i) requiring cause to remove a director; or

3929 (ii) specifying what constitutes cause to remove a  
3930 director; or

3931 (5) Section 10A-3A-8.08(e) relating to the removal of a  
3932 director who is designated in a manner other than election or  
3933 appointment.

3934 (b) The board of directors of a membership nonprofit  
3935 corporation may not amend the certificate of incorporation or  
3936 bylaws to vary the application of subsection (a) to the  
3937 membership nonprofit corporation.

3938 (c) If a membership nonprofit corporation has more than  
3939 one class of members, the members of a class are entitled to  
3940 vote as a separate voting group on an amendment to the bylaws  
3941 that:

3942 (1) is described in subsection (a) if the amendment  
3943 would affect the members of that class differently than the  
3944 members of another class; or

3945 (2) has any of the effects described in Section  
3946 10A-3A-9.04.

3947 (d) If a class of members will be divided into two or  
3948 more classes by an amendment to the bylaws, the amendment must



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3949 be approved by a majority of the members of each class that  
3950 will be created.

3951 DIVISION C. SPECIAL RIGHTS.

3952 §10A-3A-9.30. Approval by specified person or group of  
3953 persons.

3954 (a) The certificate of incorporation of a membership  
3955 nonprofit corporation may require that an amendment to the  
3956 certificate of incorporation, including amendments under  
3957 Section 10A-3A-9.03(g), be approved in writing by a specified  
3958 person or group of persons in addition to the board of  
3959 directors and members. The certificate of incorporation of a  
3960 nonmembership nonprofit corporation may require that an  
3961 amendment to the certificate of incorporation be approved in  
3962 writing by a specified person or group of persons in addition  
3963 to the board of directors.

3964 (b) The certificate of incorporation or bylaws of a  
3965 membership nonprofit corporation may require that an amendment  
3966 to the bylaws be approved in writing by a specified person or  
3967 group of persons in addition to the board of directors and  
3968 members. The certificate of incorporation or bylaws of a  
3969 nonmembership nonprofit corporation may require that an  
3970 amendment to the bylaws be approved in writing by a specified  
3971 person or group of persons in addition to the board of  
3972 directors.

3973 (c) A requirement in the certificate of incorporation  
3974 or bylaws described in Section 10A-3A-9.30(a) or (b) may only  
3975 be amended with the approval in writing of the specified  
3976 person or group of persons.



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3977 ARTICLE 10. DISPOSITION OF ASSETS.

3978 §10A-3A-10.01. Disposition of assets not requiring  
3979 member approval in membership nonprofit corporation.

3980 In a membership nonprofit corporation, no approval of  
3981 the members is required, unless the certificate of  
3982 incorporation otherwise provides:

3983 (a) to sell, lease, exchange, or otherwise dispose of  
3984 any or all of the membership nonprofit corporation's assets in  
3985 the usual and regular course of the membership nonprofit  
3986 corporation's activities;

3987 (b) to mortgage, pledge, dedicate to the repayment of  
3988 indebtedness (whether with or without recourse), or otherwise  
3989 encumber any or all of the membership nonprofit corporation's  
3990 assets, regardless of whether in the usual and regular course  
3991 of its activities; or

3992 (c) to transfer any or all of the membership nonprofit  
3993 corporation's assets to one or more corporations or other  
3994 entities all of the memberships or interests of which are  
3995 owned by the membership nonprofit corporation.

3996 §10A-3A-10.02. Member approval of certain dispositions  
3997 in membership nonprofit corporation.

3998 (a) A sale, lease, exchange, or other disposition of  
3999 assets, other than a disposition described in Section  
4000 10A-3A-10.01, requires approval of the membership nonprofit  
4001 corporation's members if the disposition would leave the  
4002 membership nonprofit corporation without a significant  
4003 continuing activity. A membership nonprofit corporation will  
4004 conclusively be deemed to have retained a significant



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4005 continuing activity if it retains an activity that  
4006 represented, for the membership nonprofit corporation and its  
4007 subsidiaries on a consolidated basis, at least (i) 25 percent  
4008 of total assets at the end of the most recently completed  
4009 fiscal year, and (ii) either 25 percent of either income from  
4010 continuing operations before taxes or 25 percent of revenues  
4011 from continuing operations, in each case for the most recently  
4012 completed fiscal year.

4013 (b) To obtain the approval of the members under  
4014 subsection (a) the board of directors shall first adopt a  
4015 resolution authorizing the disposition. The disposition shall  
4016 then be approved by the members. In submitting the disposition  
4017 to the members for approval, the board of directors shall  
4018 recommend that the members approve the disposition, unless the  
4019 board of directors makes a determination that because of  
4020 conflicts of interest or other special circumstances it should  
4021 not make a recommendation, in which case the board of  
4022 directors must inform the members of the basis for that  
4023 determination.

4024 (c) The board of directors may set conditions for the  
4025 approval by the members of a disposition or the effectiveness  
4026 of the disposition.

4027 (d) If a disposition is required to be approved by the  
4028 members under subsection (a), and if the approval is to be  
4029 given at a meeting, the membership nonprofit corporation shall  
4030 notify each member entitled to vote on the matter of the  
4031 meeting of members at which the disposition is to be submitted  
4032 for approval. The notice must state that the purpose, or one



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4033 of the purposes, of the meeting is to consider the disposition  
4034 and must contain a description of the disposition, including  
4035 the terms and conditions of the disposition and the  
4036 consideration to be received by the membership nonprofit  
4037 corporation.

4038 (e) Unless the certificate of incorporation, bylaws, or  
4039 the board of directors acting pursuant to subsection (c)  
4040 requires a greater vote or a greater quorum, the approval of a  
4041 disposition by the members shall require the approval of the  
4042 members at a meeting at which a quorum exists consisting of a  
4043 majority of the votes entitled to be cast on the disposition.

4044 (f) After a disposition has been approved by the  
4045 members under this Article 10, and at any time before the  
4046 disposition has been consummated, it may be abandoned by the  
4047 membership nonprofit corporation without action by the  
4048 members, subject to any contractual rights of other parties to  
4049 the disposition.

4050 (g) A disposition of assets in the course of  
4051 dissolution under Article 11 is not governed by this section.

4052 (h) For purposes of this section only, the property and  
4053 assets of the membership nonprofit corporation include the  
4054 property and assets of any subsidiary of the membership  
4055 nonprofit corporation. As used in this subsection,  
4056 "subsidiary" means any entity wholly owned and controlled,  
4057 directly or indirectly, by the membership nonprofit  
4058 corporation and includes, without limitation, nonprofit  
4059 corporations, business corporations, partnerships (including  
4060 limited liability partnerships), limited partnerships



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4061 (including limited liability limited partnerships), limited  
4062 liability companies, and/or statutory trusts, whether domestic  
4063 or foreign.

4064 (i) In addition to the approval of a disposition of  
4065 assets by the board of directors and members as required by  
4066 this section, the disposition must also be approved in writing  
4067 by a person or group of persons whose approval is required  
4068 under the certificate of incorporation in accordance with  
4069 Section 10A-3A-10.04.

4070 §10A-3A-10.03. Disposition of assets in a nonmembership  
4071 nonprofit corporation.

4072 Except as otherwise provided in the certificate of  
4073 incorporation:

4074 (1) a sale, lease, exchange, mortgage, pledge, or other  
4075 disposition of all, or substantially all, the property and  
4076 assets of the nonmembership nonprofit corporation may be  
4077 approved by the board of directors; and

4078 (2) a sale, lease, exchange, mortgage, pledge, or other  
4079 disposition of all, or substantially all, of the property and  
4080 assets of the nonmembership nonprofit corporation approved by  
4081 the board of directors under this section must also be  
4082 approved by that person or group of persons whose approval is  
4083 required by the certificate of incorporation in accordance  
4084 with Section 10A-3A-10.04.

4085 §10A-3A-10.04. Approval by specified person or group of  
4086 persons.

4087 (a) The certificate of incorporation of a membership  
4088 nonprofit corporation may require that a disposition of assets



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4089 under Section 10A-3A-10.02 be approved in writing by a  
4090 specified person or group of persons in addition to the board  
4091 of directors and members.

4092 (b) The certificate of incorporation of a nonmembership  
4093 nonprofit corporation may require that a disposition of assets  
4094 under Section 10A-3A-10.03 be approved in writing by a  
4095 specified person or group of persons in addition to the board  
4096 of directors.

4097 (c) A requirement in the certificate of incorporation  
4098 described in subsection (a) or (b) of this section may only be  
4099 approved by the written approval of the specified person or  
4100 group of persons.

4101 ARTICLE 11. DISSOLUTION.

4102 DIVISION A. VOLUNTARY DISSOLUTION.

4103 §10A-3A-11.01. Dissolution by incorporators or  
4104 directors.

4105 A majority of the incorporators or initial directors of  
4106 a nonprofit corporation that has not commenced activity may  
4107 dissolve the nonprofit corporation by delivering to the  
4108 Secretary of State for filing a certificate of dissolution  
4109 that sets forth:

4110 (1) the name of the nonprofit corporation;

4111 (2) the date of its incorporation;

4112 (3) that the nonprofit corporation has not commenced  
4113 activity;

4114 (4) that no debt of the nonprofit corporation remains  
4115 unpaid;

4116 (5) that the net assets of the nonprofit corporation



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4117 remaining after winding up have been distributed;

4118 (6) that a majority of the incorporators or directors  
4119 authorized the dissolution; and

4120 (7) the unique identifying number or other designation  
4121 as assigned by the Secretary of State.

4122 §10A-3A-11.02. Approval of dissolution of membership  
4123 nonprofit corporations.

4124 (a) The board of directors of a membership nonprofit  
4125 corporation may propose dissolution for submission to the  
4126 members by first adopting a resolution authorizing the  
4127 dissolution.

4128 (b) For a proposal to dissolve to be adopted, it shall  
4129 then be approved by the members entitled to vote thereon. In  
4130 submitting the proposal to dissolve to the members for  
4131 approval, the board of directors shall recommend that the  
4132 members approve the dissolution, unless the board of directors  
4133 determines that because of conflict of interest or other  
4134 special circumstances it should make no recommendation in  
4135 which case the board of directors must inform the members of  
4136 the basis for that determination.

4137 (c) The board of directors may set conditions for the  
4138 approval of the proposal for dissolution by the members or the  
4139 effectiveness of the dissolution.

4140 (d) If the approval of the members is to be given at a  
4141 meeting, the membership nonprofit corporation shall notify  
4142 each member entitled to vote on the dissolution, of the  
4143 meeting of members at which the dissolution is to be submitted  
4144 for approval. The notice must state that the purpose, or one



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4145 of the purposes, of the meeting is to consider dissolving the  
4146 membership nonprofit corporation and how the assets of the  
4147 membership nonprofit corporation will be distributed after all  
4148 creditors have been paid, or how the distribution of assets  
4149 will be determined.

4150 (e) Unless the certificate of incorporation, the  
4151 bylaws, or the board of directors acting pursuant to  
4152 subsection (c), requires a greater vote, a greater quorum, or  
4153 a vote by voting groups, adoption of the proposal to dissolve  
4154 shall require the approval of the members at a meeting at  
4155 which a quorum exists consisting of a majority of the votes  
4156 entitled to be cast on the proposal to dissolve.

4157 (f) Dissolution of a membership nonprofit corporation  
4158 may also be authorized without action of the directors if all  
4159 the members entitled to vote thereon shall consent in writing  
4160 and a certificate of dissolution shall be delivered to the  
4161 Secretary of State for filing pursuant to Section  
4162 10A-3A-11.05.

4163 (g) In addition to the approval of the dissolution of a  
4164 membership nonprofit corporation as set forth in subsections  
4165 (a) through (f), the dissolution must also be approved in  
4166 writing by a person or group of persons whose approval is  
4167 required under the certificate of incorporation in accordance  
4168 with Section 10A-3A-11.04.

4169 §10A-3A-11.03. Approval of dissolution of nonmembership  
4170 nonprofit corporations.

4171 Except as otherwise provided in the certificate of  
4172 incorporation:



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4173 (1) the dissolution of a nonmembership nonprofit  
4174 corporation may be approved by the board of directors; and

4175 (2) the dissolution of the nonmembership nonprofit  
4176 corporation approved by the board of directors under this  
4177 section must also be approved by those persons whose approval  
4178 is required by the certificate of incorporation in accordance  
4179 with Section 10A-3A-11.04.

4180 §10A-3A-11.04. Approval by specified person or group of  
4181 persons.

4182 (a) The certificate of incorporation of a membership  
4183 nonprofit corporation may require that a dissolution of a  
4184 membership nonprofit corporation under Section 10A-3A-11.02 be  
4185 approved in writing by a specified person or group of persons  
4186 in addition to the board of directors and members.

4187 (b) The certificate of incorporation of a nonmembership  
4188 nonprofit corporation may require that a dissolution of a  
4189 nonmembership nonprofit corporation under Section 10A-3A-11.03  
4190 be approved in writing by a specified person or group of  
4191 persons in addition to the board of directors.

4192 (c) A requirement in the certificate of incorporation  
4193 described in subsection (a) or (b) of this section may only be  
4194 approved by the written approval of the specified person or  
4195 group of persons.

4196 §10A-3A-11.05. Certificate of dissolution.

4197 (a) At any time after dissolution is authorized, the  
4198 nonprofit corporation may dissolve by delivering to the  
4199 Secretary of State for filing a certificate of dissolution  
4200 setting forth:



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4201 (1) the name of the nonprofit corporation;  
4202 (2) the date that dissolution was authorized;  
4203 (3) if dissolution of a membership nonprofit  
4204 corporation was approved in accordance with Section  
4205 10A-3A-11.02, 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 (4) if dissolution of a nonmembership nonprofit  
4209 corporation was approved in accordance with Section  
4210 10A-3A-11.03, a statement that the proposal to dissolve was  
4211 duly approved in the manner required by this chapter and by  
4212 the certificate of incorporation;

4213 (5) if dissolution of a nonprofit corporation was  
4214 approved in accordance with Section 10A-3A-11.02 or Section  
4215 10A-3A-11.03, and the certificate of incorporation required  
4216 the dissolution to also be approved by a specified person or  
4217 group of persons in accordance with Section 10A-3A-11.04, a  
4218 statement that the proposal to dissolve was duly approved by  
4219 the manner required by this chapter and by the certificate of  
4220 incorporation; and

4221 (6) the unique identifying number or other designation  
4222 as assigned by the Secretary of State.

4223 (b) The certificate of dissolution shall take effect at  
4224 the effective date determined in accordance with Article 4 of  
4225 Chapter 1. A nonprofit corporation is dissolved upon the  
4226 effective date of its certificate of dissolution.

4227 (c) For purposes of this Division A of this Article 11,  
4228 "dissolved nonprofit corporation" means a nonprofit



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4229 corporation whose certificate of dissolution has become  
4230 effective and includes a successor entity to which the  
4231 remaining assets of the nonprofit corporation are transferred  
4232 subject to its liabilities for purposes of liquidation.

4233 §10A-3A-11.06. Revocation of dissolution.

4234 (a) A nonprofit corporation may revoke its dissolution  
4235 within 120 days after its effective date and be reinstated.

4236 (b) Revocation of dissolution and reinstatement shall  
4237 be authorized in the same manner as the dissolution was  
4238 authorized unless that authorization permitted revocation and  
4239 reinstatement by action of the board of directors alone, in  
4240 which event the board of directors may revoke the dissolution  
4241 and effect the reinstatement without member action and without  
4242 the action of the specified person or group of persons set  
4243 forth in the certificate of incorporation in accordance with  
4244 Section 10A-3A-11.04.

4245 (c) After the revocation of dissolution and  
4246 reinstatement is authorized, the nonprofit corporation may  
4247 revoke the dissolution and effect the reinstatement by  
4248 delivering to the Secretary of State for filing a certificate  
4249 of revocation of dissolution and reinstatement, together with  
4250 a copy of its certificate of dissolution, that sets forth:

4251 (1) the name of the nonprofit corporation;

4252 (2) the effective date of the dissolution that was  
4253 revoked;

4254 (3) the date that the revocation of dissolution and  
4255 reinstatement was authorized;

4256 (4) if the nonprofit corporation's board of directors



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4257 (or incorporators) revoked the dissolution and effected the  
4258 reinstatement, a statement to that effect;

4259 (5) if the nonprofit corporation's board of directors  
4260 revoked a dissolution and effected the reinstatement as  
4261 authorized by the members and any specified person or group of  
4262 persons set forth in the certificate of incorporation in  
4263 accordance with Section 10A-3A-11.04, a statement that  
4264 revocation and reinstatement was permitted by action by the  
4265 board of directors alone pursuant to that authorization;

4266 (6) if member action was required to revoke the  
4267 dissolution and effect the reinstatement, a statement that the  
4268 revocation and reinstatement was duly approved by the members  
4269 in the manner required by this chapter and by the certificate  
4270 of incorporation;

4271 (7) if the action of a specified person or group of  
4272 persons set forth in the certificate of incorporation in  
4273 accordance with Section 10A-3A-11.04 was required to revoke  
4274 the dissolution and effect the reinstatement, a statement that  
4275 the revocation and reinstatement was duly approved by that  
4276 specified person or group of persons in the manner required by  
4277 this chapter and by the certificate of incorporation; and

4278 (8) the unique identifying number or other designation  
4279 as assigned by the Secretary of State.

4280 (d) The certificate of revocation of dissolution and  
4281 reinstatement shall take effect at the effective date  
4282 determined in accordance with Article 4 of Chapter 1.  
4283 Revocation of dissolution and reinstatement is effective upon  
4284 the effective date of the certificate of revocation of



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4285 dissolution and reinstatement.

4286 (e)(1) Subject to subsection (e)(2), upon revocation  
4287 and reinstatement, the nonprofit corporation shall be deemed  
4288 for all purposes to have continued its activities and affairs  
4289 as if dissolution had never occurred; and each right inuring  
4290 to, and each debt, obligation, and liability incurred by, the  
4291 nonprofit corporation after the dissolution shall be  
4292 determined as if the dissolution had never occurred.

4293 (2) The rights of persons acting in reliance on the  
4294 dissolution before those persons had notice of the revocation  
4295 and reinstatement shall not be adversely affected by the  
4296 revocation and reinstatement.

4297 (f) If the nonprofit corporation is listed in the  
4298 Secretary of State's records as a nonprofit corporation that  
4299 has been dissolved, then the name of the nonprofit corporation  
4300 following revocation and reinstatement shall be that nonprofit  
4301 corporation name at the time of revocation and reinstatement  
4302 if that nonprofit corporation name complies with Article 5 of  
4303 Chapter 1 at the time of revocation and reinstatement. If that  
4304 nonprofit corporation name does not comply with Article 5 of  
4305 Chapter 1, the name of the nonprofit corporation following  
4306 revocation and reinstatement shall be that nonprofit  
4307 corporation name followed by the word "reinstated."

4308 §10A-3A-11.07. Effect of dissolution.

4309 (a) A dissolved nonprofit corporation continues its  
4310 existence as a nonprofit corporation but may not carry on any  
4311 activity except as is appropriate to wind up and liquidate its  
4312 activities and affairs, including:



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- 4313 (1) collecting its assets;
- 4314 (2) disposing of its properties that will not be  
4315 distributed in kind;
- 4316 (3) discharging or making provisions for discharging  
4317 its liabilities;
- 4318 (4) distributing its remaining property among as  
4319 required by law, its certificate of incorporation, bylaws, and  
4320 as approved when the dissolution was authorized; and
- 4321 (5) doing every other act necessary to wind up and  
4322 liquidate its activities and affairs.
- 4323 (b) In winding up its activities and affairs, a  
4324 dissolved nonprofit corporation may:
- 4325 (1) preserve the nonprofit corporation's activities and  
4326 affairs and property as a going concern for a reasonable time;
- 4327 (2) prosecute, defend, or settle actions or proceedings  
4328 whether civil, criminal, or administrative;
- 4329 (3) transfer the nonprofit corporation's assets;
- 4330 (4) resolve disputes by mediation or arbitration; and
- 4331 (5) merge or convert in accordance with Article 12 or  
4332 13 of this chapter or Article 8 of Chapter 1.
- 4333 (c) Dissolution of a nonprofit corporation does not:
- 4334 (1) transfer title to the nonprofit corporation's  
4335 property;
- 4336 (2) subject its directors or officers to standards of  
4337 conduct different from those prescribed in Article 8;
- 4338 (3) change:
- 4339 (i) quorum or voting requirements for its board of  
4340 directors or members;



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4341 (ii) provisions for selection, resignation, or removal  
4342 of its directors or officers or both; or

4343 (iii) provisions for amending its bylaws;

4344 (4) prevent commencement of a proceeding by or against  
4345 the nonprofit corporation in its corporate name;

4346 (5) abate or suspend a proceeding pending by or against  
4347 the nonprofit corporation on the effective date of  
4348 dissolution; or

4349 (6) terminate the authority of the registered agent of  
4350 the nonprofit corporation.

4351 (d) A distribution in liquidation under this section  
4352 may only be made by a dissolved nonprofit corporation.

4353 §10A-3A-11.08. Known claims against dissolved nonprofit  
4354 corporation.

4355 (a) A dissolved nonprofit corporation may dispose of  
4356 any known claims against it by following the procedures  
4357 described in subsection (b) at any time after the effective  
4358 date of the dissolution of the nonprofit corporation.

4359 (b) A dissolved nonprofit corporation may give written  
4360 notice of the dissolution to the holder of any known claim.

4361 The notice must:

4362 (1) identify the dissolved nonprofit corporation;

4363 (2) describe the information required to be included in  
4364 a claim;

4365 (3) provide a mailing address to which the claim is to  
4366 be sent;

4367 (4) state the deadline, which may not be fewer than 120  
4368 days from the effective date of the notice, by which the



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4369 dissolved nonprofit corporation must receive the claim; and

4370 (5) state that if not sooner barred, the claim will be  
4371 barred if not received by the deadline.

4372 (c) Unless sooner barred by any other statute limiting  
4373 actions, a claim against a dissolved nonprofit corporation is  
4374 barred:

4375 (1) if a claimant who was given notice under subsection  
4376 (b) does not deliver the claim to the dissolved nonprofit  
4377 corporation by the deadline; or

4378 (2) if a claimant whose claim was rejected by the  
4379 dissolved nonprofit corporation does not commence a proceeding  
4380 to enforce the claim within 90 days from the effective date of  
4381 the rejection notice.

4382 (d) For purposes of this section, "known claim" or  
4383 "claim" includes unliquidated claims, but does not include a  
4384 contingent liability that has not matured so that there is no  
4385 immediate right to bring suit or a claim based on an event  
4386 occurring after the effective date of dissolution.

4387 (e) Nothing in this section shall be deemed to extend  
4388 any otherwise applicable statute of limitations.

4389 §10A-3A-11.09. Other claims against dissolved nonprofit  
4390 corporation.

4391 (a) A dissolved nonprofit corporation may publish  
4392 notice of its dissolution and request that persons with claims  
4393 against the dissolved nonprofit corporation present them in  
4394 accordance with the notice.

4395 (b) The notice authorized by subsection (a) must:

4396 (1) be published at least one time in a newspaper of



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4397 general circulation in the county in which the dissolved  
4398 nonprofit corporation's principal office is located or, if it  
4399 has none in this state, in the county in which the nonprofit  
4400 corporation's most recent registered office is located;

4401 (2) describe the information that must be included in a  
4402 claim and provide a mailing address to which the claim is to  
4403 be sent; and

4404 (3) state that if not sooner barred, a claim against  
4405 the dissolved nonprofit corporation will be barred unless a  
4406 proceeding to enforce the claim is commenced within two years  
4407 after the publication of the notice.

4408 (c) If a dissolved nonprofit corporation publishes a  
4409 newspaper notice in accordance with subsection (b), unless  
4410 sooner barred by any other statute limiting actions, the claim  
4411 of each of the following claimants is barred unless the  
4412 claimant commences a proceeding to enforce the claim against  
4413 the dissolved nonprofit corporation within two years after the  
4414 publication date of the newspaper notice:

4415 (1) a claimant who was not given notice under Section  
4416 10A-3A-11.08;

4417 (2) a claimant whose claim was timely sent to the  
4418 dissolved nonprofit corporation but not acted on by the  
4419 dissolved nonprofit corporation; and

4420 (3) a claimant whose claim is contingent at the  
4421 effective date of the dissolution of the nonprofit  
4422 corporation, or is based on an event occurring after the  
4423 effective date of the dissolution of the nonprofit  
4424 corporation.



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4425 (d) A claim that is not barred under this section, any  
4426 other statute limiting actions, or Section 10A-3A-11.08 may be  
4427 enforced:

4428 (1) against a dissolved nonprofit corporation, to the  
4429 extent of its undistributed assets; and

4430 (2) except as provided in subsection (h), if the assets  
4431 of a dissolved nonprofit corporation have been distributed  
4432 after dissolution, against any person, other than a creditor  
4433 of the dissolved nonprofit corporation, to whom the nonprofit  
4434 corporation distributed its property to the extent of the  
4435 distributee's pro rata share of the claim or the corporate  
4436 assets distributed to the distributee in liquidation,  
4437 whichever is less, but a distributee's total liability for all  
4438 claims under this section may not exceed the total amount of  
4439 assets distributed to the distributee.

4440 (e) A dissolved nonprofit corporation that published a  
4441 notice under this section may file an application with the  
4442 circuit court for the county in which the dissolved nonprofit  
4443 corporation's principal office is located in this state and if  
4444 the dissolved nonprofit corporation does not have a principal  
4445 office within this state, with the circuit court for the  
4446 county in which the dissolved nonprofit corporation's most  
4447 recent registered office is located, for a determination of  
4448 the amount and form of security to be provided for payment of  
4449 claims that are contingent or have not been made known to the  
4450 dissolved nonprofit corporation or that are based on an event  
4451 occurring after the effective date of the dissolution of the  
4452 nonprofit corporation but that, based on the facts known to



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4453 the dissolved nonprofit corporation, are reasonably estimated  
4454 to arise after the effective date of the dissolution of the  
4455 nonprofit corporation. Provision need not be made for any  
4456 claim that is or is reasonably anticipated to be barred under  
4457 subsection (c).

4458 (f) Within 10 days after the filing of the application  
4459 provided for in subsection (e), notice of the proceeding shall  
4460 be given by the dissolved nonprofit corporation to each  
4461 potential claimant as described in subsection (e).

4462 (g) The circuit court under subsection (e) may appoint  
4463 a guardian ad litem to represent all claimants whose  
4464 identities are unknown in any proceeding brought under this  
4465 section. The reasonable fees and expenses of the guardian,  
4466 including all reasonable expert witness fees, shall be paid by  
4467 the dissolved nonprofit corporation.

4468 (h) Provision by the dissolved nonprofit corporation  
4469 for security in the amount and the form ordered by the circuit  
4470 court under subsection (e) shall satisfy the dissolved  
4471 nonprofit corporation's obligation with respect to claims that  
4472 are contingent, have not been made known to the dissolved  
4473 nonprofit corporation, or are based on an event occurring  
4474 after the effective date of the dissolution of the nonprofit  
4475 corporation, and those claims may not be enforced against a  
4476 distributee to whom assets have been distributed by the  
4477 dissolved nonprofit corporation after the effective date of  
4478 the dissolution of the nonprofit corporation.

4479 (i) Nothing in this section shall be deemed to extend  
4480 any otherwise applicable statute of limitations.



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4481 (j) If a claim has been satisfied, disposed of, or  
4482 barred under Section 10A-3A-11.08, this section, or other law,  
4483 the person or persons designated to wind up the affairs of a  
4484 dissolved nonprofit corporation, and the distributees  
4485 receiving assets from the dissolved nonprofit corporation,  
4486 shall not be liable for that claim.

4487 §10A-3A-11.10. Director duties.

4488 (a) Directors shall cause the dissolved nonprofit  
4489 corporation to discharge or make reasonable provision for the  
4490 payment of claims and make distributions in liquidation of  
4491 assets to the persons designated to receive the assets of the  
4492 dissolved nonprofit corporation after payment or provision for  
4493 claims.

4494 (b) Directors of a dissolved nonprofit corporation  
4495 which has disposed of claims under Section 10A-3A-11.08 or  
4496 Section 10A-3A-11.09 shall not be liable for breach of Section  
4497 10A-3A-11.10(a) with respect to claims against the dissolved  
4498 nonprofit corporation that are barred or satisfied under  
4499 Section 10A-3A-11.08 or Section 10A-3A-11.09.

4500 DIVISION B. JUDICIAL DISSOLUTION.

4501 §10A-3A-11.20. Grounds for judicial dissolution.

4502 The circuit court for the county in which the nonprofit  
4503 corporation's principal office is located in this state, and  
4504 if none in this state, the circuit court for the county in  
4505 which the nonprofit corporation's most recent registered  
4506 office is located may dissolve a nonprofit corporation:

4507 (1) in a proceeding by the Attorney General if it is  
4508 established that:



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4509 (i) the nonprofit corporation obtained its certificate  
4510 of incorporation through fraud; or

4511 (ii) the nonprofit corporation has continued to exceed  
4512 or abuse the authority conferred upon it by law;

4513 (2) in a proceeding by a director, or members holding  
4514 at least 25 percent of the aggregate voting power of all of  
4515 the members entitled to vote on dissolution, unless the  
4516 certificate of incorporation reduces or eliminates that  
4517 percentage requirement, if it is established that:

4518 (i) the directors are deadlocked in the management of  
4519 the corporate affairs, the members, if any, are unable to  
4520 break the deadlock, and irreparable injury to the nonprofit  
4521 corporation or its mission is threatened or being suffered,  
4522 because of the deadlock;

4523 (ii) the directors or those in control of the nonprofit  
4524 corporation have acted, are acting, or will act in a manner  
4525 that is illegal, oppressive, or fraudulent;

4526 (iii) the members are deadlocked in voting power and  
4527 have failed, for a period that includes at least two  
4528 consecutive annual meeting dates, to elect successors to  
4529 directors whose terms have expired;

4530 (iv) the corporate assets are being misapplied or  
4531 wasted;

4532 (v) the nonprofit corporation has insufficient assets  
4533 to continue its activities and affairs;

4534 (vi) the nonprofit corporation is not able to assemble  
4535 a quorum of directors or members; or

4536 (vii) the nonprofit corporation has abandoned its



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4537 activities and affairs and has failed within a reasonable time  
4538 to liquidate and distribute its assets and dissolve; or

4539 (3) in a proceeding by a creditor if it is established  
4540 that:

4541 (i) the creditor's claim has been reduced to judgment,  
4542 the execution on the judgment returned unsatisfied, and the  
4543 nonprofit corporation is insolvent; or

4544 (ii) the nonprofit corporation has admitted in writing  
4545 that the creditor's claim is due and owing and the nonprofit  
4546 corporation is insolvent;

4547 (4) in a proceeding by the nonprofit corporation to  
4548 have its voluntary dissolution continued under court  
4549 supervision; or

4550 (5) in a proceeding by an interested person, as  
4551 determined by the court, if it is established that:

4552 (i) there is not at least one member or director of the  
4553 nonprofit corporation; and

4554 (ii) a member or director cannot be elected in  
4555 accordance with the certificate of incorporation or bylaws of  
4556 the nonprofit corporation.

4557 §10A-3A-11.21. Procedure for judicial dissolution.

4558 (a) Venue for a proceeding by the Attorney General to  
4559 dissolve a nonprofit corporation lies in circuit court for the  
4560 county in which the nonprofit corporation's principal office  
4561 is located in this state, and if none in this state, in the  
4562 circuit court for the county in which the nonprofit  
4563 corporation's most recent registered office is located. Venue  
4564 for a proceeding brought by any other party named in Section



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4565 10A-3A-11.20 lies in circuit court for the county in which the  
4566 nonprofit corporation's principal office is located in this  
4567 state, and if none in this state, in the circuit court for the  
4568 county in which the nonprofit corporation's most recent  
4569 registered office is located.

4570 (b) It is not necessary to make members or directors  
4571 parties to a proceeding to dissolve a nonprofit corporation  
4572 unless relief is sought against them individually.

4573 (c) A court in a proceeding brought to dissolve a  
4574 nonprofit corporation may issue injunctions, appoint a  
4575 receiver or custodian during the proceeding with all powers  
4576 and duties the court directs, take other action required to  
4577 preserve the corporate assets wherever located, and carry on  
4578 the activities and affairs of the nonprofit corporation until  
4579 a full hearing can be held.

4580 §10A-3A-11.22. Receivership; custodianship;  
4581 continuation.

4582 (a) A court in a judicial proceeding brought to  
4583 dissolve a nonprofit corporation may (i) appoint one or more  
4584 receivers to wind up and liquidate, (ii) appoint one or more  
4585 custodians to manage the activities and affairs of the  
4586 nonprofit corporation, or (iii) appoint one or more custodians  
4587 to determine whether the nonprofit corporation should be  
4588 dissolved. The court shall hold a hearing, after notifying all  
4589 parties to the proceeding and any interested persons  
4590 designated by the court, before appointing a receiver or  
4591 custodian. The court appointing a receiver or custodian has  
4592 jurisdiction over the nonprofit corporation and all of its



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4593 property wherever located.

4594 (b) The court may appoint an individual, nonprofit  
4595 corporation, or other entity as a receiver or custodian,  
4596 which, if a foreign entity, must be registered to do business  
4597 in this state. The court may require the receiver or custodian  
4598 to post bond, with or without sureties, in an amount the court  
4599 directs.

4600 (c) The court shall describe the powers and duties of  
4601 the receiver or custodian in its appointing order, which may  
4602 be amended from time to time. Among other powers:

4603 (1) the receiver: (i) may dispose of all or any part of  
4604 the assets of the nonprofit corporation wherever located, at a  
4605 public or private sale; and (ii) may sue and defend in the  
4606 receiver's own name as receiver of the nonprofit corporation  
4607 in all courts of this state.

4608 (2) the custodian may exercise all of the powers of the  
4609 nonprofit corporation, through or in place of its board of  
4610 directors, to the extent necessary to manage the affairs of  
4611 the nonprofit corporation in the best interests of the mission  
4612 of the nonprofit corporation and in the best interests of the  
4613 nonprofit corporation, its members, if any, and creditors.

4614 (3) in lieu of dissolution, the court may authorize a  
4615 custodian in a proceeding brought under Section 10A-3A-11.20,  
4616 to determine whether the nonprofit corporation should be  
4617 dissolved. If the custodian determines that the nonprofit  
4618 corporation should not be dissolved, the custodian shall  
4619 prepare and present to the court a plan of operation which  
4620 shall set forth:



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4621 (i) the reasons that it is in the best interest of the  
4622 nonprofit corporation to continue its activities and affairs  
4623 and not be dissolved;

4624 (ii) that the continuation of the activities and  
4625 affairs of the nonprofit corporation will not be in  
4626 contravention of the certificate of incorporation or bylaws of  
4627 the nonprofit corporation;

4628 (iii) any amendments to the certificate of  
4629 incorporation or bylaws necessary for the nonprofit  
4630 corporation to continue its activities and affairs in  
4631 accordance with the plan of operation;

4632 (iv) for a membership nonprofit corporation that does  
4633 not have any members, the name of at least one person proposed  
4634 to be a member; and

4635 (v) for a nonmembership nonprofit corporation that does  
4636 not have any directors, the name of at least one person  
4637 proposed to be a director.

4638 (4) the receiver or custodian shall have any other  
4639 powers and duties as the court may provide in the appointing  
4640 order, which may be amended from time to time.

4641 (d) The court during a receivership may redesignate the  
4642 receiver a custodian and during a custodianship may  
4643 redesignate the custodian a receiver.

4644 (e) The court from time to time during the receivership  
4645 or custodianship may order compensation paid and expenses paid  
4646 or reimbursed to the receiver or custodian from the assets of  
4647 the nonprofit corporation or proceeds from the sale of the  
4648 assets.



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4649 §10A-3A-11.23. Decree of dissolution or continuation.

4650 (a) If after a hearing the court determines that one or  
4651 more grounds for judicial dissolution described in Section  
4652 10A-3A-11.20 exist, the court may enter a decree dissolving  
4653 the nonprofit corporation and specifying the effective date of  
4654 the dissolution. If the court enters a decree dissolving the  
4655 nonprofit corporation, then the clerk of the court shall  
4656 deliver a certified copy of the decree to the Secretary of  
4657 State for filing.

4658 (b) After entering the decree of dissolution, the court  
4659 shall direct the winding up and liquidation of the nonprofit  
4660 corporation's activities and affairs in accordance with  
4661 Section 10A-3A-11.07 and the notification of claimants in  
4662 accordance with Sections 10A-3A-11.08 and 10A-3A-11.09.

4663 (c) If after a hearing the court determines pursuant to  
4664 Section 10A-3A-11.22(c)(3) that a nonprofit corporation should  
4665 not be dissolved, but should continue its activities and  
4666 affairs, the court shall issue a decree naming at least one  
4667 person as a member of the nonprofit corporation if it is a  
4668 membership nonprofit corporation, naming at least one director  
4669 if the nonprofit corporation is a nonmembership nonprofit  
4670 corporation, and such other matters as the court may  
4671 determine. If the court approves an amendment to the  
4672 certificate of incorporation in accordance with Section  
4673 10A-3A-11.22(c)(3), then the court's decree shall also set  
4674 forth that amendment, specifying the effective date of that  
4675 amendment, and the clerk of the court shall deliver a  
4676 certified copy of the decree to the Secretary of State for



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4677 filing.

4678 §10A-3A-11.24. Deposit with State Treasurer.

4679 Assets of a dissolved nonprofit corporation that should  
4680 be transferred to a creditor, claimant, or a person designated  
4681 to receive the assets of the nonprofit corporation who cannot  
4682 be found or who is not competent to receive them shall be  
4683 reduced to cash and deposited with the State Treasurer or  
4684 other appropriate state official for safekeeping. When the  
4685 creditor, claimant, or person designated to receive the assets  
4686 of the nonprofit corporation furnishes satisfactory proof of  
4687 entitlement to the amount deposited, the State Treasurer or  
4688 other appropriate state official shall pay that person or that  
4689 person's representative that amount.

4690 ARTICLE 12. MERGERS.

4691 §10A-3A-12.01. Definitions.

4692 As used in this article, unless the context otherwise  
4693 requires, the following terms mean:

4694 (1) CONSTITUENT CORPORATION means a constituent  
4695 organization that is a nonprofit corporation.

4696 (2) CONSTITUENT ORGANIZATION means an organization that  
4697 is party to a merger under this article.

4698 (3) GOVERNING STATUTE of an organization means the  
4699 statute that governs the organization's internal affairs.

4700 (4) ORGANIZATION means a general partnership, including  
4701 a limited liability partnership; limited partnership,  
4702 including a limited liability limited partnership; limited  
4703 liability company; business trust; business corporation;  
4704 nonprofit corporation; professional corporation; or any other



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4705 person having a governing statute. The term includes domestic  
4706 and foreign organizations whether or not organized for profit.

4707 (5) ORGANIZATIONAL DOCUMENTS means:

4708 (A) for a general partnership or foreign general  
4709 partnership, its partnership agreement and if applicable, its  
4710 registration as a limited liability partnership or a foreign  
4711 limited liability partnership;

4712 (B) for a limited partnership or foreign limited  
4713 partnership, its certificate of formation and partnership  
4714 agreement, or comparable writings as provided in its governing  
4715 statute;

4716 (C) for a limited liability company or foreign limited  
4717 liability company, its certificate of formation and limited  
4718 liability company agreement, or comparable writings as  
4719 provided in its governing statute;

4720 (D) for a business or statutory trust or foreign  
4721 business or statutory trust its agreement of trust and  
4722 declaration of trust, or comparable writings as provided in  
4723 its governing statute;

4724 (E) for a business corporation or foreign business  
4725 corporation, its certificate of incorporation, bylaws, and  
4726 other agreements among its stockholders that are authorized by  
4727 its governing statute, or comparable writings as provided in  
4728 its governing statute;

4729 (F) for a nonprofit corporation or foreign nonprofit  
4730 corporation, its certificate of incorporation, bylaws, and  
4731 other agreements that are authorized by its governing statute,  
4732 or comparable writings as provided in its governing statute;



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4733 (G) for a professional corporation or foreign  
4734 professional corporation, its certificate of incorporation,  
4735 bylaws, and other agreements among its stockholders that are  
4736 authorized by its governing statute, or comparable writings as  
4737 provided in its governing statute; and

4738 (H) for any other organization, the basic writings that  
4739 create the organization and determine its internal governance  
4740 and the relations among the persons that own it, have an  
4741 interest in it, or are members of it.

4742 (6) SURVIVING ORGANIZATION means an organization into  
4743 which one or more other organizations are merged under this  
4744 article, whether the organization pre-existed the merger or  
4745 was created pursuant to the merger.

4746 §10A-3A-12.02. Merger.

4747 (a) A nonprofit corporation may merge with one or more  
4748 other constituent organizations pursuant to this article, and  
4749 a plan of merger, if:

4750 (1) the governing statute of each of the other  
4751 organizations authorizes the merger;

4752 (2) the merger is not prohibited by the law of a  
4753 jurisdiction that enacted any of those governing statutes; and

4754 (3) each of the other organizations complies with its  
4755 governing statute in effecting the merger.

4756 (b) A plan of merger must be in writing and must  
4757 include:

4758 (1) the name, type of organization, and mailing address  
4759 of the principal office of each constituent organization, the  
4760 jurisdiction of the governing statute of each constituent



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4761 organization, and the respective unique identifying number or  
4762 other designation as assigned by the Secretary of State, if  
4763 any, of each constituent organization;

4764 (2) the name, type of organization, and mailing address  
4765 of the principal office of the surviving organization, the  
4766 unique identifying number or other designation as assigned by  
4767 the Secretary of State, if any, of the surviving organization,  
4768 the jurisdiction of the governing statute of the surviving  
4769 organization, and, if the surviving organization is created  
4770 pursuant to the merger, a statement to that effect;

4771 (3) the terms and conditions of the merger, including  
4772 the manner and basis for converting the interests in each  
4773 constituent organization into any combination of money,  
4774 securities, interests in the surviving organization, and other  
4775 consideration as allowed by subsection (c);

4776 (4) if the surviving organization is to be created  
4777 pursuant to the merger, the surviving organization's  
4778 organizational documents; and

4779 (5) if the surviving organization is not to be created  
4780 pursuant to the merger, any amendments to be made by the  
4781 merger to the surviving organization's organizational  
4782 documents.

4783 (c) In connection with a merger, rights, securities, or  
4784 interests, if any, in a constituent organization may be  
4785 exchanged for or converted into cash, property, rights,  
4786 securities, or interests, if any, in the surviving  
4787 organization, or, in addition to or in lieu thereof, may be  
4788 exchanged for or converted into cash, property, rights,



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4789 securities, or interests, if any, in another organization, or  
4790 may be cancelled.

4791 (d) In addition to the requirements of subsection (b),  
4792 a plan of merger may contain any other provision not  
4793 prohibited by law.

4794 (e) Terms of a plan of merger may be made dependent on  
4795 facts objectively ascertainable outside the plan in accordance  
4796 with Section 10A-3A-1.04(c)(5).

4797 (f) A plan of merger may be amended only with the  
4798 consent of each constituent organization, except as provided  
4799 in the plan. A domestic constituent organization may approve  
4800 an amendment to a plan:

4801 (1) in the same manner as the plan was approved, if the  
4802 plan does not provide for the manner in which it may be  
4803 amended; or

4804 (2) in the manner provided in the plan, except that if  
4805 the plan has been approved by the interest holders that were  
4806 entitled to vote on, consent to, or approve of, the plan, then  
4807 those interest holders are entitled to vote on, consent to, or  
4808 approve of any amendment of the plan that will change:

4809 (i) the amount or kind of securities, interests,  
4810 obligations, rights to acquire other interests or securities,  
4811 cash, or other property to be received under the plan by the  
4812 interest holders of a constituent organization;

4813 (ii) the certificate of incorporation of any nonprofit  
4814 corporation, foreign nonprofit corporation, business  
4815 corporation, foreign business corporation or the  
4816 organizational documents of any other organization, that will



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4817 be the surviving organization, except for changes permitted by  
4818 Section 10A-3A-9.03(g) or by comparable provisions of the  
4819 governing statute of the foreign nonprofit corporation,  
4820 business corporation, foreign business corporation, or other  
4821 organization; or

4822 (iii) any of the other terms or conditions of the plan  
4823 if the change would adversely affect the interest holders in  
4824 any material respect.

4825 §10A-3A-12.03. Action on a plan of merger in a  
4826 membership nonprofit corporation.

4827 In the case of a membership nonprofit corporation that  
4828 is a constituent organization, the plan of merger shall be  
4829 adopted in the following manner:

4830 (a) The plan of merger shall first be adopted by the  
4831 board of directors.

4832 (b) Except as provided in subsection (h), the plan of  
4833 merger shall then be approved by the members entitled to vote  
4834 thereon. In submitting the plan of merger to the members for  
4835 approval, the board of directors shall recommend that the  
4836 members approve the plan of merger, unless the board of  
4837 directors makes a determination that because of conflicts of  
4838 interest or other special circumstances it should not make a  
4839 recommendation, in which case the board of directors shall  
4840 inform the members of the basis for its so proceeding.

4841 (c) The board of directors may set conditions for the  
4842 approval of the plan of merger by the members or the  
4843 effectiveness of the plan of merger.

4844 (d) If the plan of merger is required to be approved by



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4845 the members, and if the approval is to be given at a meeting,  
4846 the membership nonprofit corporation shall notify each member  
4847 who is entitled to vote, of the meeting of the members at  
4848 which the plan of merger is to be submitted for approval. The  
4849 notice must state that the purpose, or one of the purposes, of  
4850 the meeting is to consider the plan of merger and must contain  
4851 or be accompanied by a copy or summary of the plan of merger.  
4852 If the membership nonprofit corporation is to be merged into  
4853 an existing nonprofit corporation, foreign nonprofit  
4854 corporation, or other organization, the notice must also  
4855 include or be accompanied by a copy or summary of the  
4856 certificate of incorporation and bylaws or the organizational  
4857 documents of that nonprofit corporation, foreign nonprofit  
4858 corporation, or other organization. If the membership  
4859 nonprofit corporation is to be merged with a nonprofit  
4860 corporation, foreign nonprofit corporation, or other  
4861 organization and a new nonprofit corporation, foreign  
4862 nonprofit corporation, or organization is to be created  
4863 pursuant to the merger, the notice must include or be  
4864 accompanied by a copy or a summary of the certificate of  
4865 incorporation and bylaws or the organizational documents of  
4866 the new nonprofit corporation, foreign nonprofit corporation,  
4867 or other organization.

4868 (e) Unless the certificate of incorporation, or the  
4869 board of directors acting pursuant to subsection (c), requires  
4870 a greater vote or a greater quorum, approval of the plan of  
4871 merger requires the approval of the members entitled to vote  
4872 at a meeting at which a quorum exists consisting of a majority



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4873 of the votes entitled to be cast on the plan of merger, and,  
4874 if any class of membership interests entitled to vote as a  
4875 separate group on the plan of merger, the approval of each  
4876 separate voting group at a meeting at which a quorum of the  
4877 voting group is present consisting of a majority of the votes  
4878 entitled to be cast on the merger by that voting group.

4879 (f) Subject to subsection (g), separate voting by  
4880 voting groups is required:

4881 (1) on a plan of merger, by each class of membership  
4882 interests that:

4883 (i) are to be converted under the plan of merger into  
4884 securities, interests, obligations, rights to acquire other  
4885 securities or interests, cash, other property, or any  
4886 combination of the foregoing; or

4887 (ii) are entitled to vote as a separate group on a  
4888 provision in the plan of merger that constitutes a proposed  
4889 amendment to the certificate of incorporation of a surviving  
4890 nonprofit corporation that requires action by separate voting  
4891 groups under Section 10A-3A-9.04; and

4892 (2) on a plan of merger, if the voting group is  
4893 entitled under the certificate of incorporation or bylaws to  
4894 vote as a voting group to approve a plan of merger,  
4895 respectively.

4896 (g) The certificate of incorporation may expressly  
4897 limit or eliminate the separate voting rights provided in  
4898 subsection (f)(1)(i) and subsection (f)(2) as to any class of  
4899 membership, except when the plan of merger includes what is or  
4900 would be in effect an amendment subject to subsection



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4901 (f) (1) (ii).

4902 (h) Unless the certificate of incorporation otherwise  
4903 provides, approval by the membership nonprofit corporation's  
4904 members of a plan of merger is not required if:

4905 (1) the membership nonprofit corporation will survive  
4906 the merger;

4907 (2) except for amendments that do not require member  
4908 approval under Section 10A-3A-9.03(g) or the approval of a  
4909 person or group of persons under Section 10A-3A-9.30, its  
4910 certificate of incorporation will not be changed;

4911 (3) except for amendments that do not require member  
4912 approval under Section 10A-3A-9.22 or the approval of a person  
4913 or group of persons under Section 10A-3A-9.30, its bylaws will  
4914 not be changed; and

4915 (4) each member of the membership nonprofit corporation  
4916 whose membership interest was outstanding immediately before  
4917 the effective date of the merger will hold the same number of  
4918 membership interests, with identical preferences, rights, and  
4919 limitations, immediately after the effective date of the  
4920 merger.

4921 (i) In addition to the adoption and approval of the  
4922 plan of merger as required by this section, the plan must also  
4923 be approved in writing by a person or group of persons, if  
4924 any, whose approval is required under Section 10A-3A-12.08.

4925 §10A-3A-12.04. Action on a plan of merger in a  
4926 nonmembership nonprofit corporation.

4927 In the case of a merger of a nonmembership nonprofit  
4928 corporation the plan of merger shall be adopted in the



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4929 following manner:

4930 (a) The plan of merger shall be adopted by the board of  
4931 directors; and

4932 (b) A plan of merger adopted by the board of directors  
4933 under this section must also be approved in writing by a  
4934 person or group of persons, if any, whose approval is required  
4935 under Section 10A-3A-12.08.

4936 §10A-3A-12.05. Statement of merger.

4937 (a) After a plan of merger has been adopted and  
4938 approved as required by this article, then a statement of  
4939 merger shall be signed by each party to the merger. The  
4940 statement of merger must set forth:

4941 (1) the name, type of organization, and mailing address  
4942 of the principal office of each constituent organization, the  
4943 jurisdiction of the governing statute of each constituent  
4944 organization, and the respective unique identifying number or  
4945 other designation as assigned by the Secretary of State, if  
4946 any, of each constituent organization;

4947 (2) the name, type of organization, and mailing address  
4948 of the principal office of the surviving organization, the  
4949 unique identifying number or other designation as assigned by  
4950 the Secretary of State, if any, of the surviving organization,  
4951 the jurisdiction of the governing statute of the surviving  
4952 organization, and, if the surviving organization is created  
4953 pursuant to the merger, a statement to that effect;

4954 (3) the date the merger is effective under the  
4955 governing statute of the surviving organization;

4956 (4) if the surviving organization is to be created



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4957 pursuant to the merger:

4958 (A) if it will be a nonprofit corporation, the  
4959 nonprofit corporation's certificate of incorporation; or

4960 (B) if it will be an organization other than a  
4961 nonprofit corporation, any organizational document that  
4962 creates the organization that is required to be in a public  
4963 writing or in the case of a limited liability partnership, its  
4964 statement of limited liability partnership;

4965 (5) if the surviving organization exists before the  
4966 merger, any amendments provided for in the plan of merger for  
4967 the organizational document that created the organization that  
4968 are in a public writing;

4969 (6) a statement as to each constituent organization  
4970 that the merger was approved as required by the organization's  
4971 governing statute;

4972 (7) if the surviving organization is a foreign  
4973 organization not authorized to conduct activities and affairs  
4974 in this state, the street and mailing address of an office for  
4975 the purposes of Section 10A-3A-12.06(b);

4976 (8) any additional information required by the  
4977 governing statute of any constituent organization;

4978 (9) if the plan of merger required approval by the  
4979 members of a membership nonprofit corporation that is a  
4980 constituent organization, a statement that the plan was duly  
4981 approved by the members and, if voting by any separate voting  
4982 group was required, by each separate voting group, in the  
4983 manner required by this chapter, the certificate of  
4984 incorporation or bylaws;



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4985 (10) if the plan of merger required approval by a  
4986 person or group of persons as specified in the certificate of  
4987 incorporation pursuant to Section 10A-3A-12.08, a statement  
4988 that the plan was duly approved by that person or group of  
4989 persons;

4990 (11) if the plan of merger did not require approval by  
4991 the members of a membership nonprofit corporation that is a  
4992 constituent organization, a statement to that effect; and

4993 (12) a statement that the plan of merger will be  
4994 furnished by the surviving organization, on request and  
4995 without cost, to any member or owner of any constituent  
4996 organization which is a party to the merger.

4997 (b) In addition to the requirements of subsection (a),  
4998 a statement of merger may contain any other provision not  
4999 prohibited by law.

5000 (c) The statement of merger shall be delivered to the  
5001 Secretary of State for filing and, subject to subsection (d),  
5002 the merger shall take effect at the effective date and time  
5003 determined in accordance with Article 4 of Chapter 1.

5004 (d) With respect to a merger in which one or more  
5005 foreign organizations is a constituent organization or a  
5006 foreign organization created by the merger is the surviving  
5007 organization, the merger itself shall become effective at the  
5008 later of:

5009 (1) when all documents required to be filed in foreign  
5010 jurisdictions to effect the merger have become effective, or

5011 (2) when the statement of merger takes effect.

5012 (e) A statement of merger filed under this section may



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5013 be combined with any filing required under the governing  
5014 statute governing any domestic organization involved in the  
5015 transaction if the combined filing satisfies the requirements  
5016 of this section, the other governing statute, and Article 4 of  
5017 Chapter 1.

5018 (f) A certified copy of the statement of merger  
5019 required to be filed under this section may be filed in the  
5020 real estate records in the office of the judge of probate in  
5021 any county in which any constituent organization owned real  
5022 property, without payment and without collection by the judge  
5023 of probate of any deed or other transfer tax or fee. The judge  
5024 of probate, however, shall be entitled to collect the filing  
5025 fee of five dollars (\$5). Any filing shall evidence chain of  
5026 title, but lack of filing shall not affect the surviving  
5027 organization's title to real property.

5028 (g) A statement of conversion is a filing instrument  
5029 under Chapter 1.

5030 (h) The filing fees for a statement of conversion shall  
5031 be as set forth in Chapter 1.

5032 §10A-3A-12.06. Effect of merger.

5033 (a) When a merger becomes effective:

5034 (1) the surviving organization continues or, in the  
5035 case of a surviving organization created pursuant to the  
5036 merger, comes into existence;

5037 (2) each constituent organization that merges into the  
5038 surviving organization ceases to exist as a separate entity;

5039 (3) except as provided in the plan of merger, all  
5040 property owned by, and every contract right possessed by, each



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5041 constituent organization that ceases to exist vests in the  
5042 surviving organization without transfer, reversion, or  
5043 impairment and the title to any property and contract rights  
5044 vested by deed or otherwise in the surviving organization  
5045 shall not revert, be in any way impaired, or be deemed to be a  
5046 transfer by reason of the merger;

5047 (4) all debts, obligations, and other liabilities of  
5048 each constituent organization, other than the surviving  
5049 organization, are debts, obligations, and liabilities of the  
5050 surviving organization, and neither the rights of creditors,  
5051 nor any liens upon the property of any constituent  
5052 organization, shall be impaired by the merger;

5053 (5) an action or proceeding pending by or against any  
5054 constituent organization continues as if the merger had not  
5055 occurred and the name of the surviving organization may, but  
5056 need not be, substituted in any pending proceeding for the  
5057 name of any constituent organization whose separate existence  
5058 ceased in the merger;

5059 (6) except as prohibited by law other than this chapter  
5060 or as provided in the plan of merger, all the rights,  
5061 privileges, franchises, immunities, powers, and purposes of  
5062 each constituent organization, other than the surviving  
5063 organization, vest in the surviving organization;

5064 (7) except as otherwise provided in the plan of merger,  
5065 the terms and conditions of the plan of merger take effect;

5066 (8) except as otherwise agreed, if a constituent  
5067 organization that is a nonprofit corporation ceases to exist,  
5068 the merger does not dissolve the nonprofit corporation;



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5069 (9) if the surviving organization is created pursuant  
5070 to the merger:

5071 (A) if it is a nonprofit corporation, the certificate  
5072 of incorporation and bylaws become effective; or

5073 (B) if it is an organization other than a nonprofit  
5074 corporation, the organizational documents that create the  
5075 organization becomes effective;

5076 (10) if the surviving organization existed before the  
5077 merger, any amendments provided for in the statement of merger  
5078 for the organizational documents of that organization become  
5079 effective;

5080 (11) the membership interests, if any, of each  
5081 nonprofit corporation or foreign nonprofit corporation that is  
5082 a constituent organization to the merger, and the interests in  
5083 an organization that is a constituent organization, that are  
5084 to be converted in accordance with the terms of the merger  
5085 into securities, interests, obligations, rights to acquire  
5086 other securities or interests, cash, other property, or any  
5087 combination of the foregoing, are converted, and the former  
5088 holders of membership interests, if any, or interests are  
5089 entitled only to the rights provided to them by those terms or  
5090 to any rights they may have under the governing statute  
5091 governing that constituent organization;

5092 (12) if the surviving organization exists before the  
5093 merger:

5094 (A) except as provided in the plan of merger, all  
5095 property and contract rights of the surviving organization  
5096 remain its property and contract rights without transfer,



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5097 reversion, or impairment;

5098 (B) the surviving organization remains subject to all  
5099 its debts, obligations, and other liabilities; and

5100 (C) except as provided by law other than this chapter  
5101 or the plan of merger, the surviving organization continues to  
5102 hold all of its rights, privileges, franchises, immunities,  
5103 powers and purposes.

5104 (b) A surviving organization that is a foreign  
5105 organization:

5106 (1) consents to the jurisdiction of this state to  
5107 enforce any debt, obligation, or other liability owed by a  
5108 constituent organization, if before the merger the constituent  
5109 organization was subject to suit in this state on the debt,  
5110 obligation, or other liability; and

5111 (2) consents that if it fails to designate or maintain  
5112 a registered agent, or the designated registered agent cannot  
5113 with reasonable diligence be served, then the service of  
5114 process on that surviving organization for the purposes of  
5115 enforcing a debt, obligation, or other liability under this  
5116 subsection and for enforcing the rights, if any, of members of  
5117 each nonprofit corporation that is a constituent organization  
5118 may be made in the same manner and has the same consequences  
5119 as provided in Section 10A-1-5.35.

5120 §10A-3A-12.07. Abandonment of a merger.

5121 (a) After a plan of merger has been adopted and  
5122 approved as required by this Article 12, and before the  
5123 statement of merger has become effective, the plan may be  
5124 abandoned by a nonprofit corporation that is a party to the



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5125 plan without action by its members, if any, or a person or  
5126 group of persons under Section 10A-3A-12.08, if any, in  
5127 accordance with any procedures set forth in the plan of merger  
5128 or, if no procedures are set forth in the plan, in the manner  
5129 determined by the board of directors.

5130 (b) If a merger is abandoned under subsection (a) after  
5131 the statement of merger has been delivered to the Secretary of  
5132 State for filing but before the merger has become effective, a  
5133 statement of abandonment signed by all the parties that signed  
5134 the statement of merger shall be delivered to the Secretary of  
5135 State for filing before the statement of merger becomes  
5136 effective. The statement shall take effect on filing and the  
5137 merger shall be deemed abandoned and shall not become  
5138 effective. The statement of abandonment must contain:

5139 (1) the name of each party to the merger;

5140 (2) the date on which the statement of merger was filed  
5141 by the Secretary of State; and

5142 (3) a statement that the merger has been abandoned in  
5143 accordance with this section.

5144 §10A-3A-12.08. Approval by specified person or group of  
5145 persons.

5146 (a) The certificate of incorporation of a membership  
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 and members.

5151 (b) The certificate of incorporation of a nonmembership  
5152 nonprofit corporation may require that a merger under this



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5153 article or under Article 8 of Chapter 1 be approved in writing  
5154 by a specified person or group of persons in addition to the  
5155 board of directors.

5156 (c) A requirement in the certificate of incorporation  
5157 described in subsections (a) or (b) of this section may only  
5158 be approved by the written approval of the specified person or  
5159 group of persons.

5160 §10A-3A-12.09. Nonexclusive.

5161 This article is not exclusive. This article does not  
5162 preclude a nonprofit corporation from merging under law other  
5163 than this chapter.

5164 ARTICLE 13. CONVERSIONS.

5165 §10A-3A-13.01. Definitions.

5166 As used in this article, unless the context otherwise  
5167 requires, the following terms mean:

5168 (1) CONVERTED ORGANIZATION means the organization into  
5169 which a converting organization converts pursuant to this  
5170 article.

5171 (2) CONVERTING NONPROFIT CORPORATION means a converting  
5172 organization that is a nonprofit corporation.

5173 (3) CONVERTING ORGANIZATION means an organization that  
5174 converts into another organization pursuant to this article.

5175 (4) GOVERNING STATUTE of an organization means the  
5176 statute that governs the organization's internal affairs.

5177 (5) ORGANIZATION means a general partnership, including  
5178 a limited liability partnership; limited partnership,  
5179 including a limited liability limited partnership; limited  
5180 liability company; business trust; business corporation;



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5181 nonprofit corporation; professional corporation; or any other  
5182 person having a governing statute. The term includes domestic  
5183 and foreign organizations whether or not organized for profit.

5184 (6) ORGANIZATIONAL DOCUMENTS means:

5185 (A) for a general partnership or foreign general  
5186 partnership, its partnership agreement and if applicable, its  
5187 registration as a limited liability partnership or a foreign  
5188 limited liability partnership;

5189 (B) for a limited partnership or foreign limited  
5190 partnership, its certificate of formation and partnership  
5191 agreement, or comparable writings as provided in its governing  
5192 statute;

5193 (C) for a limited liability company or foreign limited  
5194 liability company, its certificate of formation and limited  
5195 liability company agreement, or comparable writings as  
5196 provided in its governing statute;

5197 (D) for a business or statutory trust or foreign  
5198 business or statutory trust, its agreement of trust and  
5199 declaration of trust, or comparable writings as provided in  
5200 its governing statute;

5201 (E) for a business corporation or foreign business  
5202 corporation, its certificate of incorporation, bylaws, and  
5203 other agreements among its stockholders that are authorized by  
5204 its governing statute or comparable writings as provided in  
5205 its governing statute;

5206 (F) for a nonprofit corporation or foreign nonprofit  
5207 corporation, its certificate of incorporation, bylaws, and  
5208 other agreements that are authorized by its governing statute,



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5209 or comparable writings as provided in its governing statute;

5210 (G) for a professional corporation or foreign  
5211 professional corporation, its certificate of incorporation,  
5212 bylaws, and other agreements among its stockholders that are  
5213 authorized by its governing statute or comparable writings as  
5214 provided in its governing statute; and

5215 (H) for any other organization, the basic writings that  
5216 create the organization and determine its internal governance  
5217 and the relations among the persons that own it, have an  
5218 interest in it, or are members of it.

5219 §10A-3A-13.02. Conversion.

5220 (a) An organization other than a nonprofit corporation  
5221 may convert to a nonprofit corporation, and a nonprofit  
5222 corporation may convert to an organization other than a  
5223 nonprofit corporation pursuant to this article, and a plan of  
5224 conversion, if:

5225 (1) the governing statute of the organization that is  
5226 not a nonprofit corporation authorizes the conversion;

5227 (2) the law of the jurisdiction governing the  
5228 converting organization and the converted organization does  
5229 not prohibit the conversion; and

5230 (3) the converting organization and the converted  
5231 organization each comply with the governing statute and  
5232 organizational documents applicable to that organization in  
5233 effecting the conversion.

5234 (b) A plan of conversion must be in writing and must  
5235 include:

5236 (1) the name, type of organization, and mailing address



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5237 of the principal office of the converting organization and its  
5238 unique identifying number or other designation as assigned by  
5239 the Secretary of State, if any, before conversion;

5240 (2) the name, type of organization, and mailing address  
5241 of the principal office of the converted organization after  
5242 conversion;

5243 (3) the terms and conditions of the conversion,  
5244 including the manner and basis for converting interests, if  
5245 any, in the converting organization into any combination of  
5246 money, interests in the converted organization, and other  
5247 consideration allowed in subsection (c); and

5248 (4) the organizational documents of the converted  
5249 organization.

5250 (c) In connection with a conversion, rights or  
5251 securities of or interests, if any, in the converting  
5252 organization may be exchanged for or converted into cash,  
5253 property, or rights or securities of or interests, if any, in  
5254 the converted organization, or, in addition to or in lieu  
5255 thereof, may be exchanged for or converted into cash,  
5256 property, rights, securities, or interests, if any, in another  
5257 organization, or may be cancelled.

5258 (d) In addition to the requirements of subsection (b),  
5259 a plan of conversion may contain any other provision not  
5260 prohibited by law.

5261 (e) Terms of a plan of conversion may be made dependent  
5262 on facts objectively ascertainable outside the plan in  
5263 accordance with Section 10A-3A-1.04(c).

5264 §10A-3A-13.03. Action on a plan of conversion in a



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5265 membership nonprofit corporation.

5266           In the case of a conversion of a membership nonprofit  
5267 corporation the plan of conversion shall be adopted in the  
5268 following manner:

5269           (a) The plan of conversion shall first be adopted by  
5270 the board of directors.

5271           (b) The plan of conversion shall then be approved by  
5272 the members entitled to vote thereon. In submitting the plan  
5273 of conversion to the members for their approval, the board of  
5274 directors must recommend that the members approve the plan of  
5275 conversion, unless the board of directors makes a  
5276 determination that because of conflicts of interest or other  
5277 special circumstances it should not make a recommendation, in  
5278 which case the board of directors shall inform the members of  
5279 the basis for its so proceeding.

5280           (c) The board of directors may set conditions for the  
5281 approval of the plan of conversion by the members or the  
5282 effectiveness of the plan of conversion.

5283           (d) If the approval of the members is to be given at a  
5284 meeting, the nonprofit corporation shall notify each member  
5285 entitled to vote of the meeting of members at which the plan  
5286 of conversion is to be submitted for approval. The notice must  
5287 state that the purpose, or one of the purposes, of the meeting  
5288 is to consider the plan of conversion and must contain or be  
5289 accompanied by a copy or summary of the plan of conversion.  
5290 The notice must include or be accompanied by a copy of the  
5291 organizational documents of the converted organization which  
5292 are to be in writing as they will be in effect immediately



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5293 after the conversion.

5294 (e) Unless the certificate of incorporation or the  
5295 board of directors acting pursuant to subsection (c), requires  
5296 a greater vote or a greater quorum, approval of the plan of  
5297 conversion requires (i) the approval of the members entitled  
5298 to vote at a meeting at which a quorum exists consisting of a  
5299 majority of the votes entitled to be cast on the plan of  
5300 conversion, and (ii) the approval of each class of members  
5301 voting as a separate voting group at a meeting at which a  
5302 quorum of the voting group exists consisting of a majority of  
5303 the votes entitled to be cast on the plan of conversion by  
5304 that voting group.

5305 (f) In addition to the adoption and approval of the  
5306 plan of conversion as required by this section, the plan of  
5307 conversion must also be approved in writing by a person or  
5308 group of persons, if any, whose approval is required under  
5309 Section 10A-3A-13.08.

5310 §10A-3A-13.04. Action on a plan of conversion in a  
5311 nonmembership nonprofit corporation.

5312 In the case of a conversion of a nonmembership  
5313 nonprofit corporation the plan of conversion shall be adopted  
5314 in the following manner:

5315 (a) The plan of conversion shall be adopted by the  
5316 board of directors; and

5317 (b) A plan of conversion adopted by the board of  
5318 directors under this section must also be approved in writing  
5319 by a person or group of persons, if any, whose approval is  
5320 required under Section 10A-3A-13.08.



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5321 §10A-3A-13.05. Statement of conversion; effectiveness.

5322 (a) After a plan of conversion is approved:

5323 (1) if the converting organization is an organization  
5324 formed under, or its internal affairs are governed by, the  
5325 laws of this state, the converting organization shall file a  
5326 statement of conversion in accordance with subsection (c),  
5327 which statement of conversion must be signed in accordance  
5328 with Section 10A-1-4.01 and which must include:

5329 (A) the name, type of organization, and mailing address  
5330 of the principal office of the converting organization, and  
5331 its unique identifying number or other designation as assigned  
5332 by the Secretary of State, if any;

5333 (B) a statement that the converting organization has  
5334 been converted into the converted organization;

5335 (C) the name and type of organization of the converted  
5336 organization and the jurisdiction of its governing statute;

5337 (D) the street and mailing address of the principal  
5338 office of the converted organization;

5339 (E) the date the conversion is effective under the  
5340 governing statute of the converted organization;

5341 (F) a statement that the conversion was approved as  
5342 required by this chapter;

5343 (G) a statement that the conversion was approved as  
5344 required by the governing statute of the converted  
5345 organization;

5346 (H) a statement that a copy of the plan of conversion  
5347 will be furnished by the converted organization, on request  
5348 and without cost, to any owner of the converting organization;



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5349 and

5350 (I) if the converted organization is a foreign  
5351 organization not authorized to conduct activities and affairs  
5352 in this state, the street and mailing address of an office for  
5353 the purposes of Section 10A-3A-13.07(b); and

5354 (2) if the converted organization is a nonprofit  
5355 corporation, the converting organization shall deliver for  
5356 filing a certificate of incorporation in accordance with  
5357 subsection (d), which certificate of incorporation must  
5358 include, in addition to the information required by Section  
5359 10A-3A-2.02:

5360 (A) a statement that the nonprofit corporation was  
5361 converted from the converting organization;

5362 (B) the name and type of organization of the converting  
5363 organization, the jurisdiction of the converting  
5364 organization's governing statute, and the converting  
5365 organization's unique identifying number or other designation  
5366 as assigned by the Secretary of State, if any; and

5367 (C) a statement that the conversion was approved in a  
5368 manner that complied with the converting organization's  
5369 governing statute.

5370 (b) A conversion becomes effective:

5371 (1) if the converted organization is a nonprofit  
5372 corporation, when the certificate of incorporation takes  
5373 effect; and

5374 (2) if the converted organization is not a nonprofit  
5375 corporation, as provided by the governing statute of the  
5376 converted organization.



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5377 (c) If the converting organization is an organization  
5378 formed under, or its internal affairs are governed by, the  
5379 laws of this state, then the converting organization shall  
5380 deliver for filing the statement of conversion required under  
5381 subsection (a)(1) to the Secretary of State.

5382 (d) If the converted organization is a nonprofit  
5383 corporation, then, the converting organization shall deliver  
5384 for filing the certificate of incorporation required under  
5385 subsection (a)(2) to the Secretary of State.

5386 (e) If the converting organization is required to  
5387 deliver for filing a statement of conversion and a certificate  
5388 of formation or a certificate of incorporation to the  
5389 Secretary of State, then the converting organization shall  
5390 deliver for filing the statement of conversion and the  
5391 certificate of formation or certificate of incorporation to  
5392 the Secretary of State simultaneously.

5393 (f) If:

5394 (1) the converting organization is a filing entity or a  
5395 foreign filing entity registered to conduct activities and  
5396 affairs in this state;

5397 (2) the converted organization will be a filing entity  
5398 or a foreign filing entity registered to conduct activities  
5399 and affairs in this state;

5400 (3) the name of the converting organization and the  
5401 converted organization are to be the same, other than words,  
5402 phrases, or abbreviations indicating the type of entity; and

5403 (4) the name of the converted organization complies  
5404 with Division A of Article 5 of Chapter 1 or Section



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5405 10A-1-7.07, as the case may be; then notwithstanding Division  
5406 B of Article 5 of Chapter 1, no name reservation shall be  
5407 required and the converted organization shall for all purposes  
5408 of this title be entitled to utilize the name of the  
5409 converting organization without any further action by the  
5410 converting organization or the converted organization.

5411 (g) A certified copy of any document required to be  
5412 filed under this section may be filed in the real estate  
5413 records in the office of the judge of probate in any county in  
5414 which the converting organization owned real property, without  
5415 payment and without collection by the judge of probate of any  
5416 deed or other transfer tax or fee. The judge of probate shall,  
5417 however, be entitled to collect a filing fee of five dollars  
5418 (\$5). Any such filing with the judge of probate shall evidence  
5419 chain of title, but lack of filing shall not affect the  
5420 converted organization's title to such real property.

5421 (h) A statement of conversion is a filing instrument  
5422 under Chapter 1.

5423 (i) The filing fees for a statement of conversion shall  
5424 be as set forth in Chapter 1.

5425 §10A-3A-13.06. Amendment of plan of conversion;  
5426 abandonment.

5427 (a) A plan of conversion of a converting organization  
5428 that is a nonprofit corporation may be amended:

5429 (1) in the same manner as the plan was approved, if the  
5430 plan does not provide for the manner in which it may be  
5431 amended; or

5432 (2) in the manner provided in the plan, except that if



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5433 the plan has been approved by the members that were entitled  
5434 to vote on, consent to, or approve of the plan, then those  
5435 members are entitled to vote on, consent to, or approve of any  
5436 amendment of the plan that will change:

5437 (i) the amount or kind of interests, if any, or other  
5438 securities, obligations, rights to acquire interests, if any,  
5439 or other securities, cash, other property, or any combination  
5440 of the foregoing, to be received by the members, if any, of  
5441 the converting nonprofit corporation under the plan;

5442 (ii) the organizational documents of the converted  
5443 organization that will be in effect immediately after the  
5444 conversion becomes effective, except for changes that do not  
5445 require approval of the interest holders of the converted  
5446 organization under its governing statute or organizational  
5447 documents; or

5448 (iii) any other terms or conditions of the plan, if the  
5449 change would adversely affect the members in any material  
5450 respect.

5451 (b) After a plan of conversion has been approved by a  
5452 converting organization that is a nonprofit corporation in the  
5453 manner required by this article and before the statement of  
5454 conversion becomes effective, the plan may be abandoned by the  
5455 nonprofit corporation without action by its members, if any,  
5456 or a person or group of persons under Section 10A-3A-13.08, in  
5457 accordance with any procedures set forth in the plan or, if no  
5458 procedures are set forth in the plan, in the manner determined  
5459 by the board of directors.

5460 (c) If a conversion is abandoned after the statement of



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5461 conversion has been delivered to the Secretary of State for  
5462 filing and before the statement of conversion becomes  
5463 effective, a statement of abandonment, signed by the  
5464 converting organization, must be delivered to the Secretary of  
5465 State for filing before the statement of conversion becomes  
5466 effective. The statement of abandonment takes effect on  
5467 filing, and the conversion is abandoned and does not become  
5468 effective. The statement of abandonment must contain:

5469 (1) the name of the converting organization;

5470 (2) the date on which the statement of conversion was  
5471 filed by the Secretary of State; and

5472 (3) a statement that the conversion has been abandoned  
5473 in accordance with this section.

5474 §10A-3A-13.07. Effect of conversion.

5475 (a) When a conversion takes effect:

5476 (1) all property and contract rights owned by the  
5477 converting organization remain vested in the converted  
5478 organization without transfer, reversion, or impairment, and  
5479 the title to any property vested by deed or otherwise in the  
5480 converting organization shall not revert or be in any way  
5481 impaired by reason of the conversion;

5482 (2) all debts, obligations, or other liabilities of the  
5483 converting organization continue as debts, obligations, or  
5484 other liabilities of the converted organization and neither  
5485 the rights of creditors, nor the liens upon the property of  
5486 the converting organization shall be impaired by the  
5487 conversion;

5488 (3) an action or proceeding pending by or against the



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5489 converting organization continues as if the conversion had not  
5490 occurred and the name of the converted organization may, but  
5491 need not, be substituted for the name of the converting  
5492 organization in any pending action or proceeding;

5493 (4) except as prohibited by law other than this  
5494 chapter, all of the rights, privileges, immunities, powers,  
5495 and purposes of the converting organization remain vested in  
5496 the converted organization;

5497 (5) except as otherwise provided in the plan of  
5498 conversion, the terms and conditions of the plan of conversion  
5499 take effect;

5500 (6) except as otherwise agreed, for all purposes of the  
5501 laws of this state, the converting organization shall not be  
5502 required to wind up its affairs or pay its liabilities and  
5503 distribute its assets, and the conversion shall not be deemed  
5504 to constitute a dissolution of the converting organization;

5505 (7) for all purposes of the laws of this state, the  
5506 rights, privileges, powers, interests in property, debts,  
5507 liabilities, and duties of the converting organization, shall  
5508 be the rights, privileges, powers, interests in property,  
5509 debts, liabilities, and duties of the converted organization,  
5510 and shall not be deemed as a consequence of the conversion, to  
5511 have been transferred to the converted organization;

5512 (8) if the converted organization is a nonprofit  
5513 corporation, for all purposes of the laws of this state, the  
5514 nonprofit corporation shall be deemed to be the same  
5515 organization as the converting organization, and the  
5516 conversion shall constitute a continuation of the existence of



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5517 the converting organization in the form of a nonprofit  
5518 corporation;

5519 (9) if the converted organization is a nonprofit  
5520 corporation, the existence of the nonprofit corporation shall  
5521 be deemed to have commenced on the date the converting  
5522 organization commenced its existence in the jurisdiction in  
5523 which the converting organization was first created, formed,  
5524 organized, incorporated, or otherwise came into being;

5525 (10) the conversion shall not affect the choice of law  
5526 applicable to matters arising prior to conversion;

5527 (11) if the Secretary of State has assigned a unique  
5528 identifying number or other designation to the converting  
5529 organization and (i) the converted organization is formed  
5530 pursuant to, or its internal affairs are governed by, the laws  
5531 of this state, or (ii) the converted organization is, within  
5532 30 days after the effective date of the conversion, registered  
5533 to transact business in this state, then that unique  
5534 identifying number or other designation shall continue to be  
5535 assigned to the converted organization; and

5536 (12) the interests, if any, of the converting  
5537 organization are reclassified into interests or other  
5538 securities, obligations, rights to acquire interests or other  
5539 securities, cash, or other property in accordance with the  
5540 terms of the conversion, and the interest holders, if any, of  
5541 the converting organization are entitled only to the rights  
5542 provided to them by those terms and to any rights they may  
5543 have under the governing statute of the converting  
5544 organization.



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5545 (b) A converted organization that is a foreign entity  
5546 consents to the jurisdiction of the courts of this state to  
5547 enforce any debt, obligation, or other liability for which the  
5548 converting nonprofit corporation, is liable if, before the  
5549 conversion, the converting nonprofit corporation was subject  
5550 to suit in this state on the debt, obligation, or other  
5551 liability. If a converted organization is a foreign entity and  
5552 fails to designate or maintain a registered agent, or the  
5553 designated registered agent cannot with reasonable diligence  
5554 be served, then service of process on that converted  
5555 organization for the purposes of enforcing a debt, obligation,  
5556 or other liability under this subsection may be made in the  
5557 same manner and has the same consequences as provided in  
5558 Section 10A-1-5.35.

5559 §10A-3A-13.08. Approval by specified person or group of  
5560 persons.

5561 (a) The certificate of incorporation of a membership  
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 and members.

5566 (b) The certificate of incorporation of a nonmembership  
5567 nonprofit corporation may require that a conversion under this  
5568 article or under Article 8 of Chapter 1 be approved in writing  
5569 by a specified person or group of persons in addition to the  
5570 board of directors.

5571 (c) A requirement in the certificate of incorporation  
5572 described in subsections (a) or (b) of this section may only



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5573 be approved by the written approval of the specified person or  
5574 group of persons.

5575 §10A-3A-13.09. Nonexclusive.

5576 This article is not exclusive. This article does not  
5577 preclude a nonprofit corporation from converting under law  
5578 other than this chapter.

5579 ARTICLE 14. TRANSITIONAL PROVISIONS.

5580 §10A-3A-14.01. Application to existing nonprofit  
5581 corporations.

5582 (a) Before January 1, 2025, this chapter governs only:

5583 (1) a nonprofit corporation incorporated on or after  
5584 January 1, 2024; and

5585 (2) a nonprofit corporation incorporated before January  
5586 1, 2024, which elects, by amending or restating that nonprofit  
5587 corporation's certificate of incorporation, to be governed by  
5588 this chapter.

5589 (b) On and after January 1, 2025, this chapter governs  
5590 all existing nonprofit corporations incorporated under:

5591 (1) any general or special law of this state providing  
5592 for the incorporation of nonprofit corporations for a purpose  
5593 or purposes for which a nonprofit corporation might be  
5594 incorporated under this chapter, where the power has been  
5595 reserved to amend, repeal, or modify the law under which the  
5596 nonprofit corporation was incorporated; and

5597 (2) any predecessor statute hereto.

5598 (c) For purposes of applying this chapter to a  
5599 nonprofit corporation incorporated before January 1, 2024:

5600 (1) the nonprofit corporation is not required to amend



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5601 its certificate of incorporation to comply with Section  
5602 10A-3A-2.02(a) (5); but once amended or restated, the  
5603 certificate of incorporation must comply with Section  
5604 10A-3A-2.02(a) (5);

5605 (2) if on December 31, 2023, the certificate of  
5606 incorporation or bylaws of a nonprofit corporation in  
5607 existence on that date provides members with the right to  
5608 cumulate their votes for the election of directors, that right  
5609 to cumulate their votes shall continue unless the certificate  
5610 of incorporation or bylaws of the nonprofit corporation are  
5611 amended to deny that right. Notwithstanding the foregoing, no  
5612 such members may cumulate their votes for the election of  
5613 directors by utilizing an action by written consent.

5614 (3) the nonprofit corporation's incorporation document,  
5615 whether a certificate of incorporation, certificate of  
5616 formation, charter, or articles of incorporation is deemed to  
5617 be the nonprofit corporation's certificate of incorporation;

5618 (4) the nonprofit corporation's bylaws are deemed to be  
5619 the nonprofit corporation's bylaws;

5620 (5) any amendment or restatement of a nonprofit  
5621 corporation's certificate of incorporation or bylaws on or  
5622 after January 1, 2024, shall conform with this chapter; and

5623 (d) No nonprofit corporation may be incorporated after  
5624 December 31, 2023, pursuant to Sections 10A-3-1.01 to  
5625 10A-3-8.02, inclusive.

5626 §10-3A-14.02. Application to existing foreign nonprofit  
5627 corporations.

5628 A foreign nonprofit corporation registered or



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5629 authorized to transact business in this state on January 1,  
5630 2024, is subject to this chapter and is deemed to be  
5631 registered to transact business in this state, and is not  
5632 required to renew its registration to transact business under  
5633 Article 7 of Chapter 1, except as required by Article 7 of  
5634 Chapter 1.

5635 §10A-3A-14.03. Saving Provisions.

5636 (a) Except as provided in subsection (b), the repeal of  
5637 a statute by this chapter does not affect:

5638 (1) the operation of the statute or any action taken  
5639 under it before its repeal;

5640 (2) any ratification, right, remedy, privilege,  
5641 obligation, or liability acquired, accrued, or incurred under  
5642 the statute before its repeal;

5643 (3) any violation of the statute, or any penalty,  
5644 forfeiture, or punishment incurred because of the violation  
5645 before its repeal; or

5646 (4) any proceeding, reorganization, or dissolution  
5647 commenced under the statute before its repeal, and the  
5648 proceeding, reorganization, or dissolution may be completed in  
5649 accordance with the statute as if it had not been repealed.

5650 (5) the application of Article 16 of Chapter 20 of this  
5651 Title to any "officer" and "qualified entity" as such terms  
5652 are defined in Article 16 of Chapter 20 of this Title.

5653 (b) If a penalty or punishment imposed for violation of  
5654 a statute repealed by this chapter is reduced by this chapter,  
5655 the penalty or punishment, if not already imposed, shall be  
5656 imposed in accordance with this chapter.

5657 §10A-3A-14.04. Severability.



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5658           If any provision of this chapter or its application to  
5659 any person or circumstance is held invalid by a court of  
5660 competent jurisdiction, the invalidity does not affect other  
5661 provisions or applications of this chapter that can be given  
5662 effect without the invalid provision or application, and to  
5663 this end the provisions of this chapter are severable.

5664           §10A-3A-14.05. Relation to electronic signatures in  
5665 global and national commerce act.

5666           This chapter modifies, limits, and supersedes the  
5667 Federal Electronic Signatures in Global and National Commerce  
5668 Act, 15 U.S.C. § 7001 et seq., but does not modify, limit, or  
5669 supersede Section 101(c) of that act, 15 U.S.C. § 7001(c), or  
5670 authorize electronic delivery of any of the notices described  
5671 in Section 103(b) of that act, 15 U.S.C. § 7003(b).

5672           §10A-3A-14.06. Interstate application.

5673           A nonprofit corporation formed and existing under this  
5674 chapter may conduct its activities and affairs, carry on its  
5675 operations, and have and exercise the powers granted by this  
5676 chapter in any state, foreign country, or other jurisdiction.

5677           Section 2. Sections 10A-1-1.03, 10A-1-1.08, 10A-1-3.32,  
5678 10A-1-8.01, 10A-1-8.02, and 10A-1-9.01 of the Code of Alabama  
5679 1975, are amended to read as follows:

5680           "§10A-1-1.03

5681           (a) If a term, including a term that is defined in  
5682 subsection (b) of this section, is defined in a chapter of  
5683 this title, then, when used in that chapter, the term shall  
5684 have the meaning set forth in that chapter.

5685           (b) As used in this title, except as provided in



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5686 subsection (a) of this section or where the context otherwise  
5687 requires, the following terms mean:

5688 (1) AFFILIATE. A person who controls, is controlled by,  
5689 or is under common control with another person. An affiliate  
5690 of an individual includes the spouse, or a parent or sibling  
5691 thereof, of the individual, or a child, grandchild, sibling,  
5692 parent, or spouse of any thereof, of the individual, or an  
5693 individual having the same home as the individual, or a trust  
5694 or estate of which an individual specified in this sentence is  
5695 a substantial beneficiary; a trust, estate, incompetent,  
5696 conservatee, protected person, or minor of which the  
5697 individual is a fiduciary; or an entity of which the  
5698 individual is director, general partner, agent, employee or  
5699 the governing authority or member of the governing authority.

5700 (2) ASSOCIATE. When used to indicate a relationship  
5701 with:

5702 (A) a domestic or foreign entity for which the person  
5703 is:

5704 (i) an officer or governing person; or

5705 (ii) a beneficial owner of 10 percent or more of a  
5706 class of voting ownership interests or similar securities of  
5707 the entity;

5708 (B) a trust or estate in which the person has a  
5709 substantial beneficial interest or for which the person serves  
5710 as trustee or in a similar fiduciary capacity;

5711 (C) the person's spouse or a relative of the person  
5712 related by consanguinity or affinity within the fifth degree  
5713 who resides with the person; or



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5714 (D) a governing person or an affiliate or officer of  
5715 the person.

5716 (3) ASSOCIATION. Includes, but is not limited to, an  
5717 unincorporated nonprofit association as defined in Chapter 17  
5718 and an unincorporated professional association as defined in  
5719 Article 1 of Chapter 30.

5720 (4) BENEFIT CORPORATION. A benefit corporation as  
5721 defined in Chapter 2A.

5722 (5) BUSINESS CORPORATION. A corporation or foreign  
5723 corporation as defined in Chapter 2A. The term includes a  
5724 benefit corporation as defined in Chapter 2A.

5725 (6) BUSINESS TRUST. A business trust as defined in  
5726 Chapter 16.

5727 (7) CERTIFICATE OF DISSOLUTION. Any document such as a  
5728 certificate of dissolution, statement of dissolution, or  
5729 articles of dissolution, required or permitted to be filed  
5730 publicly with respect to an entity's dissolution and winding  
5731 up of its business, activity, activities, not for profit  
5732 activity, or affairs.

5733 (8) CERTIFICATE OF FORMATION.

5734 (A) The document required to be filed publicly under  
5735 this title to form a filing entity; and

5736 (B) if appropriate, a restated certificate of formation  
5737 and all amendments of an original or restated certificate of  
5738 formation; provided that a restated certificate of formation  
5739 and an amendment of an original or restated certificate of  
5740 formation shall not be deemed to be a certificate of formation  
5741 for purposes of Section 10A-1-4.31.



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5742 (9) CERTIFICATE OF OWNERSHIP. An instrument evidencing  
5743 an ownership interest or membership interest in an entity.

5744 (10) CERTIFICATED OWNERSHIP INTEREST. An ownership  
5745 interest of a domestic entity represented by a certificate.

5746 (11) CERTIFICATION or CERTIFIED. Duly authenticated by  
5747 the proper officer or filing officer of the jurisdiction the  
5748 laws of which govern the internal affairs of an entity.

5749 (12) CONTRIBUTION. A tangible or intangible benefit  
5750 that a person transfers to an entity in consideration for an  
5751 ownership interest in the entity or otherwise in the person's  
5752 capacity as an owner or a member. A benefit that may  
5753 constitute a contribution transferred in exchange for an  
5754 ownership interest or transferred in the transferor's capacity  
5755 as an owner or member may include cash, property, services  
5756 rendered, a contract for services to be performed, a  
5757 promissory note or other obligation of a person to pay cash or  
5758 transfer property to the entity, or securities or other  
5759 interests in or obligations of an entity. In either case, the  
5760 benefit does not include cash or property received by the  
5761 entity:

5762 (A) with respect to a promissory note or other  
5763 obligation to the extent that the agreed value of the note or  
5764 obligation has previously been included as a contribution; or

5765 (B) that the person intends to be a loan to the entity.

5766 (13) CONVERSION. A conversion, whether referred to as a  
5767 conversion, domestication, or otherwise, means:

5768 (A) the continuance of a domestic entity as a foreign  
5769 entity of any type;



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5770 (B) the continuance of a foreign entity as a domestic  
5771 entity of any type; or

5772 (C) the continuance of a domestic entity of one type as  
5773 a domestic entity of another type.

5774 (14) CONVERTED ENTITY. An entity resulting from a  
5775 conversion.

5776 (15) CONVERTING ENTITY. An entity as the entity existed  
5777 before the entity's conversion.

5778 (16) COOPERATIVE. Includes an employee cooperative as  
5779 defined in Chapter 11.

5780 (17) CORPORATION. Includes a domestic or foreign  
5781 business corporation, including a benefit corporation, as  
5782 defined in Chapter 2A, a domestic or foreign nonprofit  
5783 corporation as defined in Chapter 3 or Chapter 3A, a domestic  
5784 or foreign professional corporation as defined in Chapter 4,  
5785 and those entities specified in Chapter 20 as corporate.

5786 (18) COURT. The designated court, and if none, the  
5787 circuit court specifically set forth in this title, and if  
5788 none, any other court having jurisdiction in a case.

5789 (19) DAY. When used in the computation of time,  
5790 excludes the first day and includes the last day of the period  
5791 so computed, unless the last day is a Saturday, Sunday, or  
5792 legal holiday, in which event the period runs until the end of  
5793 the next day that is not a Saturday, a Sunday, or a legal  
5794 holiday. When the period of time to be computed is less than 7  
5795 days, intermediate Saturdays, Sundays, and legal holidays  
5796 shall be excluded.

5797 (20) DEBTOR IN BANKRUPTCY. A person who is the subject



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5798 of:

5799 (A) an order for relief under the United States  
5800 bankruptcy laws, Title 11, United States Code, or comparable  
5801 order under a successor statute of general application; or

5802 (B) a comparable order under federal, state, or foreign  
5803 law governing insolvency.

5804 (21) DESIGNATED COURT. The court or courts that are  
5805 designated in the (i) certificate of incorporation or bylaws  
5806 of a corporation as authorized by Chapter 2A, (ii) certificate  
5807 of incorporation or bylaws of a nonprofit corporation as  
5808 authorized by Chapter 3A, (iii) limited liability company  
5809 agreement of a limited liability company formed pursuant to or  
5810 governed by Chapter 5A, ~~(iii)~~ (iv) partnership agreement of a  
5811 partnership formed pursuant to or governed by Chapter 8A, or  
5812 ~~(iv)~~ (v) limited partnership agreement of a limited partnership  
5813 formed pursuant to or governed by Chapter 9A.

5814 (22) DIRECTOR. An individual who serves on the board of  
5815 directors, by whatever name known, of a foreign or domestic  
5816 corporation.

5817 (23) DISTRIBUTION. A transfer of property, including  
5818 cash, from an entity to an owner or member of the entity in  
5819 the owner's or member's capacity as an owner or member. The  
5820 term includes a dividend, a redemption or purchase of an  
5821 ownership interest, or a liquidating distribution.

5822 (24) DOMESTIC. With respect to an entity, means  
5823 governed as to its internal affairs by this title.

5824 (25) DOMESTIC ENTITY. An entity governed as to its  
5825 internal affairs by this title.



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5826 (26) EFFECTIVE DATE OF THIS TITLE. January 1, 2011.

5827 (27) ELECTRONIC. Relating to technology having  
5828 electrical, digital, magnetic, wireless, optical,  
5829 electromagnetic, or similar capabilities.

5830 (28) ELECTRONIC SIGNATURE. An electronic signature as  
5831 that term is defined in the Alabama Electronic Transactions  
5832 Act, Chapter 1A of Title 8, or any successor statute.

5833 (29) ELECTRONIC TRANSMISSION or ELECTRONICALLY  
5834 TRANSMITTED. Any form or process of communication not directly  
5835 involving the physical transfer of paper or another tangible  
5836 medium, which (i) is suitable for the retention, retrieval,  
5837 and reproduction of information by the recipient, and (ii) is  
5838 retrievable in paper form by the recipient through an  
5839 automated process used in conventional commercial practice.

5840 (30) ELECTRONIC WRITING. Information that is stored in  
5841 an electronic or other nontangible medium and is retrievable  
5842 in paper form through an automated process used in  
5843 conventional commercial practice.

5844 (31) ENTITY. A domestic or foreign organization.

5845 (32) FILING ENTITY. A domestic entity that is a  
5846 corporation, limited partnership, limited liability limited  
5847 partnership, limited liability company, professional  
5848 association, employee cooperative corporation, or real estate  
5849 investment trust.

5850 (33) FILING INSTRUMENT. An instrument, document, or  
5851 statement that is required or permitted by this title to be  
5852 delivered for filing by or for an entity to a filing officer.

5853 (34) FILING OFFICER. An officer of this state with whom



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5854 a filing instrument is required or permitted to be delivered  
5855 for filing pursuant to this title.

5856 (35) FOREIGN. With respect to an entity, means governed  
5857 as to its internal affairs by the laws of a jurisdiction other  
5858 than this state.

5859 (36) FOREIGN ENTITY. An entity governed as to its  
5860 internal affairs by the laws of a jurisdiction other than this  
5861 state.

5862 (37) FOREIGN FILING ENTITY. A foreign entity that  
5863 registers or is required to register as a foreign entity under  
5864 Article 7.

5865 (38) FOREIGN GOVERNMENTAL AUTHORITY. A governmental  
5866 official, agency, or instrumentality of a jurisdiction other  
5867 than this state.

5868 (39) FOREIGN NONFILING ENTITY. A foreign entity that is  
5869 not a foreign filing entity.

5870 (40) GENERAL PARTNER.

5871 (A) Each partner in a general partnership; or

5872 (B) a person who is admitted to a limited partnership  
5873 as a general partner in accordance with the governing  
5874 documents of the limited partnership.

5875 (41) GENERAL PARTNERSHIP. A partnership as defined in  
5876 Chapter 8A. The term includes a limited liability partnership  
5877 as defined in Chapter 8A.

5878 (42) GOVERNING AUTHORITY. A person or group of persons  
5879 who are entitled to manage and direct the affairs of an entity  
5880 pursuant to this title and the governing documents of the  
5881 entity, except that if the governing documents of the entity



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5882 or this title divide the authority to manage and direct the  
5883 affairs of the entity among different persons or groups of  
5884 persons according to different matters, governing authority  
5885 means the person or group of persons entitled to manage and  
5886 direct the affairs of the entity with respect to a matter  
5887 under the governing documents of the entity or this title. The  
5888 term includes the board of directors of a corporation, by  
5889 whatever name known, or other persons authorized to perform  
5890 the functions of the board of directors of a corporation, the  
5891 general partners of a general partnership or limited  
5892 partnership, the persons who have direction and oversight of a  
5893 limited liability company, and the trust managers of a real  
5894 estate investment trust. The term does not include an officer  
5895 who is acting in the capacity of an officer.

5896 (43) GOVERNING DOCUMENTS.

5897 (A) In the case of a domestic entity:

5898 (i) the certificate of formation for a filing entity or  
5899 the document or agreement under which a nonfiling entity is  
5900 formed; and

5901 (ii) the other documents or agreements, including  
5902 bylaws, partnership agreements of partnerships, limited  
5903 liability company agreements of limited liability companies,  
5904 or similar documents, adopted by the entity pursuant to this  
5905 title to govern the formation or the internal affairs of the  
5906 entity; or

5907 (B) in the case of a foreign entity, the instruments,  
5908 documents, or agreements adopted under the law of its  
5909 jurisdiction of formation to govern the formation or the



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5910 internal affairs of the entity.

5911 (44) GOVERNING PERSON. A person serving as part of the  
5912 governing authority of an entity.

5913 (45) INDIVIDUAL. A natural person and the estate of an  
5914 incompetent or deceased natural person.

5915 (46) INSOLVENCY. The inability of a person to pay the  
5916 person's debts as they become due in the usual course of  
5917 business or affairs.

5918 (47) INSOLVENT. A person who is unable to pay the  
5919 person's debts as they become due in the usual course of  
5920 business or affairs.

5921 (48) JUDGE OF PROBATE. The judge of probate of the  
5922 county in which an entity is required or permitted to deliver  
5923 a filing instrument for filing pursuant to this title.

5924 (49) JURISDICTION OF FORMATION.

5925 (A) In the case of a filing entity, this state;

5926 (B) in the case of a foreign entity, the jurisdiction  
5927 in which the entity's certificate of formation or similar  
5928 organizational instrument is filed, or if no certificate of  
5929 formation or similar organizational instrument is filed, then  
5930 the laws of the jurisdiction which govern the internal affairs  
5931 of the foreign entity;

5932 (C) in the case of a general partnership which has  
5933 filed a statement of partnership, a statement of not for  
5934 profit partnership, or a statement of limited liability  
5935 partnership in accordance with Chapter 8A, in this state;

5936 (D) in the case of a foreign limited liability  
5937 partnership, the laws of the jurisdiction which govern the



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5938 filing of the foreign limited liability partnership's  
5939 statement of limited liability partnership or such filing in  
5940 that jurisdiction; and

5941 (E) in the case of a foreign or domestic nonfiling  
5942 entity other than those entities described in subsection (C)  
5943 or (D):

5944 (i) the jurisdiction the laws of which are chosen in  
5945 the entity's governing documents to govern its internal  
5946 affairs if that jurisdiction bears a reasonable relation to  
5947 the owners or members or to the domestic or foreign nonfiling  
5948 entity's business, activities, and affairs under the  
5949 principles of this state that otherwise would apply to a  
5950 contract among the owners or members; or

5951 (ii) if subparagraph (i) does not apply, the  
5952 jurisdiction in which the entity has its principal office.

5953 (50) LAW. Unless the context requires otherwise, both  
5954 statutory and common law.

5955 (51) LICENSE. A license, certificate of registration,  
5956 or other legal authorization.

5957 (52) LICENSING AUTHORITY. The state court, state  
5958 regulatory licensing board, or other like agency which has the  
5959 power to issue a license or other legal authorization to  
5960 render professional services.

5961 (53) LIMITED LIABILITY COMPANY. A limited liability  
5962 company as defined in Chapter 5A.

5963 (54) LIMITED LIABILITY LIMITED PARTNERSHIP. A limited  
5964 liability limited partnership as defined in Chapter 9A.

5965 (55) LIMITED LIABILITY PARTNERSHIP. A limited liability



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5966 partnership as defined in Chapter 8A.

5967 (56) LIMITED PARTNER. A person who has been admitted to  
5968 a limited partnership as a limited partner as provided by:

5969 (A) in the case of a domestic limited partnership,  
5970 Chapter 9A; or

5971 (B) in the case of a foreign limited partnership, the  
5972 laws of its jurisdiction of formation.

5973 (57) LIMITED PARTNERSHIP. A limited partnership as  
5974 defined in Chapter 9A. The term includes a limited liability  
5975 limited partnership as defined in Chapter 9A.

5976 (58) MANAGERIAL OFFICIAL. An officer or a governing  
5977 person.

5978 (59) MEMBER.

5979 (A) A person defined as a member under Chapter 5A;

5980 (B) in the case of a nonprofit corporation formed  
5981 pursuant to or governed by Chapter 3, a person having  
5982 membership rights in the nonprofit corporation in accordance  
5983 with its governing documents as provided in Chapter 3, and in  
5984 the case of a nonprofit corporation formed pursuant to or  
5985 governed by Chapter 3A, a person defined as a member under  
5986 Chapter 3A;

5987 (C) in the case of an employee cooperative corporation  
5988 formed pursuant to or governed by Chapter 11, a natural person  
5989 who, as provided in Chapter 11, has been accepted for  
5990 membership in and owns a membership share in an employee  
5991 cooperative;

5992 (D) in the case of a nonprofit association, a person  
5993 who, as provided in Chapter 17, may participate in the



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5994 selection of persons authorized to manage the affairs of the  
5995 nonprofit association or in the development of its policy.

5996 (60) MERGER. The combination of one or more domestic  
5997 entities with one or more domestic entities or foreign  
5998 entities resulting in:

5999 (A) one or more surviving domestic entities or foreign  
6000 entities;

6001 (B) the creation of one or more new domestic entities  
6002 or foreign entities, or one or more surviving domestic  
6003 entities or foreign entities; or

6004 (C) one or more surviving domestic entities or foreign  
6005 entities and the creation of one or more new domestic entities  
6006 or foreign entities.

6007 (61) NONFILING ENTITY. A domestic entity that is not a  
6008 filing entity. The term includes a domestic general  
6009 partnership, a limited liability partnership, and a nonprofit  
6010 association.

6011 (62) NONPROFIT ASSOCIATION. An unincorporated nonprofit  
6012 association as defined in Chapter 17. The term does not  
6013 include a general partnership which has filed a statement of  
6014 not for profit partnership in accordance with Chapter 8A, a  
6015 limited partnership which is carrying on a not for profit  
6016 purpose, or a limited liability company which is carrying on a  
6017 not for profit purpose.

6018 (63) NONPROFIT CORPORATION. A domestic or foreign  
6019 nonprofit corporation as defined in Chapter 3 or Chapter 3A.

6020 (64) NONPROFIT ENTITY. An entity that is a nonprofit  
6021 corporation, nonprofit association, or other entity that is



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6022 organized solely for one or more nonprofit purposes.

6023 (65) OFFICER. An individual elected, appointed, or  
6024 designated as an officer of an entity by the entity's  
6025 governing authority or under the entity's governing documents.

6026 (66) ORGANIZATION. A corporation, limited partnership,  
6027 general partnership, limited liability company, business  
6028 trust, real estate investment trust, joint venture, joint  
6029 stock company, cooperative, association, or other  
6030 organization, including, regardless of its organizational  
6031 form, a bank, insurance company, credit union, and savings and  
6032 loan association, whether for profit, not for profit,  
6033 nonprofit, domestic, or foreign.

6034 (67) ORGANIZER. A person, who need not be an owner or  
6035 member of the entity, who, having the capacity to contract, is  
6036 authorized to execute documents in connection with the  
6037 formation of the entity. The term includes an incorporator.

6038 (68) OWNER.

6039 (A) With respect to a foreign or domestic business  
6040 corporation or real estate investment trust, a stockholder or  
6041 a shareholder;

6042 (B) with respect to a foreign or domestic partnership,  
6043 a partner;

6044 (C) with respect to a foreign or domestic limited  
6045 liability company or association, a member; and

6046 (D) with respect to another foreign or domestic entity,  
6047 an owner of an equity interest in that entity.

6048 (69) OWNERSHIP INTEREST. An owner's interest in an  
6049 entity. The term includes the owner's share of profits and



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6050 losses or similar items and the right to receive  
6051 distributions. The term does not include an owner's right to  
6052 participate in management or participate in the direction or  
6053 oversight of the entity. An ownership interest is personal  
6054 property.

6055 (70) PARENT or PARENT ENTITY. An entity that:

6056 (A) owns at least 50 percent of the ownership or  
6057 membership interest of a subsidiary; or

6058 (B) possesses at least 50 percent of the voting power  
6059 of the owners or members of a subsidiary.

6060 (71) PARTNER. A limited partner or general partner.

6061 (72) PARTNERSHIP. Includes a general partnership, a  
6062 limited liability partnership, a foreign limited liability  
6063 partnership, a limited partnership, a foreign limited  
6064 partnership, a limited liability limited partnership, and a  
6065 foreign limited liability limited partnership.

6066 (73) PARTNERSHIP AGREEMENT. Any agreement (whether  
6067 referred to as a partnership agreement or otherwise), written,  
6068 oral or implied, of the partners as to the activities and  
6069 affairs of a general partnership or a limited partnership. The  
6070 partnership agreement includes any amendments to the  
6071 partnership agreement. In the case of limited partnerships  
6072 formed prior to October 1, 1998, partnership agreement  
6073 includes the certificate of partnership.

6074 (74) PARTY TO THE MERGER. A domestic entity or foreign  
6075 entity that under a plan of merger is combined by a merger.  
6076 The term does not include a domestic entity or foreign entity  
6077 that is not to be combined into or with one or more domestic



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6078 entities or foreign entities, regardless of whether ownership  
6079 interests of the entity are to be issued under the plan of  
6080 merger.

6081 (75) PERSON. An individual, including the estate of an  
6082 incompetent or deceased individual, or an entity, whether  
6083 created by the laws of this state or another state or foreign  
6084 country, including, without limitation, a general partnership,  
6085 limited liability partnership, limited partnership, limited  
6086 liability limited partnership, limited liability company,  
6087 corporation, professional corporation, nonprofit corporation,  
6088 professional association, trustee, personal representative,  
6089 fiduciary, as defined in Section 19-3-150 or person performing  
6090 in any similar capacity, business trust, estate, trust,  
6091 association, joint venture, government, governmental  
6092 subdivision, agency, or instrumentality, or any other legal or  
6093 commercial entity.

6094 (76) PRESIDENT.

6095 (A) The individual designated as president of an entity  
6096 under the entity's governing documents; or

6097 (B) the officer or committee of persons authorized to  
6098 perform the functions of the principal executive officer of an  
6099 entity without regard to the designated name of the officer or  
6100 committee.

6101 (77) PRINCIPAL OFFICE. The office, in or out of this  
6102 state, where the principal executive office, whether referred  
6103 to as the principal executive office, chief executive office,  
6104 or otherwise, of an entity is located.

6105 (78) PROFESSIONAL ASSOCIATION. A professional



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6106 association as defined in Chapter 30.

6107 (79) PROFESSIONAL CORPORATION. A domestic or foreign  
6108 professional corporation as defined in Chapter 4.

6109 (80) PROFESSIONAL ENTITY. A professional association  
6110 and a professional corporation.

6111 (81) PROFESSIONAL SERVICE. Any type of service that may  
6112 lawfully be performed only pursuant to a license issued by a  
6113 state court, state regulatory licensing board, or other like  
6114 agency pursuant to state laws.

6115 (82) PROPERTY. Includes all property, whether real,  
6116 personal, or mixed, or tangible or intangible, or any right or  
6117 interest therein.

6118 (83) REAL ESTATE INVESTMENT TRUST. An unincorporated  
6119 trust, association, or other entity as defined in Chapter 10.

6120 (84) SECRETARY.

6121 (A) The individual designated as secretary of an entity  
6122 under the entity's governing documents; or

6123 (B) the officer or committee of persons authorized to  
6124 perform the functions of secretary of an entity without regard  
6125 to the designated name of the officer or committee.

6126 (85) SECRETARY OF STATE. The Secretary of State of the  
6127 State of Alabama.

6128 (86) SIGN or SIGNATURE. With the present intent to  
6129 authenticate or adopt a writing:

6130 (A) to execute or adopt a tangible symbol to a writing,  
6131 and includes any manual, facsimile, or conformed signature; or

6132 (B) to attach to or logically associate with an  
6133 electronic transmission an electronic sound, symbol, or



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6134 process, and includes an electronic signature in an electronic  
6135 transmission.

6136 (87) STATE. Includes, when referring to a part of the  
6137 United States, a state or commonwealth, and its agencies and  
6138 governmental subdivisions, and a territory or possession, and  
6139 its agencies and governmental subdivisions, of the United  
6140 States.

6141 (88) SUBSCRIBER. A person who agrees with or makes an  
6142 offer to an entity to purchase by subscription an ownership  
6143 interest in the entity.

6144 (89) SUBSCRIPTION. An agreement between a subscriber  
6145 and an entity, or a written offer made by a subscriber to an  
6146 entity before or after the entity's formation, in which the  
6147 subscriber agrees or offers to purchase a specified ownership  
6148 interest in the entity.

6149 (90) SUBSIDIARY. An entity at least 50 percent of:

6150 (A) the ownership or membership interest of which is  
6151 owned by a parent entity; or

6152 (B) the voting power of which is possessed by a parent  
6153 entity.

6154 (91) TREASURER.

6155 (A) The individual designated as treasurer of an entity  
6156 under the entity's governing documents; or

6157 (B) the officer or committee of persons authorized to  
6158 perform the functions of treasurer of an entity without regard  
6159 to the designated name of the officer or committee.

6160 (92) TRUSTEE. A person who serves as a trustee of a  
6161 trust, including a real estate investment trust.



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6162 (93) UNCERTIFICATED OWNERSHIP INTEREST. An ownership  
6163 interest in a domestic entity that is not represented by a  
6164 certificate.

6165 (94) VICE PRESIDENT.

6166 (A) The individual designated as vice president of an  
6167 entity under the governing documents of the entity; or

6168 (B) the officer or committee of persons authorized to  
6169 perform the functions of the president of the entity on the  
6170 death, absence, or resignation of the president or on the  
6171 inability of the president to perform the functions of office  
6172 without regard to the designated name of the officer or  
6173 committee.

6174 (95) WRITING or WRITTEN. Information that is inscribed  
6175 on a tangible medium or that is stored in an electronic or  
6176 other medium and is retrievable in perceivable form."

6177 "§10A-1-1.08

6178 (a) The provisions of this title as described by this  
6179 section may be cited as provided by this section.

6180 (b) Chapter 2A and the provisions of Chapter 1 to the  
6181 extent applicable to business corporations may be cited as the  
6182 Alabama Business Corporation Law.

6183 (c) Chapter 3 or Chapter 3A and the provisions of  
6184 Chapter 1 to the extent applicable to nonprofit corporations  
6185 may be cited as the Alabama Nonprofit Corporation Law.

6186 (d) Chapter 4 and the provisions of Chapter 1 to the  
6187 extent applicable to professional corporations may be cited as  
6188 the Alabama Professional Corporation Law.

6189 (e) Chapter 5A and the provisions of Chapter 1 to the



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6190 extent applicable to limited liability companies may be cited  
6191 as the Alabama Limited Liability Company Law.

6192 (f) Chapter 8A and the provisions of Chapter 1 to the  
6193 extent applicable to general partnerships may be cited as the  
6194 Alabama Partnership Law.

6195 (g) Chapter 9A and the provisions of Chapter 1 to the  
6196 extent applicable to limited partnerships may be cited as the  
6197 Alabama Limited Partnership Law.

6198 (h) Chapter 10 and the provisions of Chapter 1 to the  
6199 extent applicable to real estate investment trusts may be  
6200 cited as the Alabama Real Estate Investment Trust Law.

6201 (i) Chapter 11 and the provisions of Chapter 1 and  
6202 Chapter 2A to the extent applicable to employee cooperative  
6203 corporations may be cited as the Alabama Employee Cooperative  
6204 Corporations Law.

6205 (j) Chapter 17 and the provisions of Chapter 1 to the  
6206 extent applicable to unincorporated nonprofit associations may  
6207 be cited as the Alabama Unincorporated Nonprofit Association  
6208 Law."

6209 "§10A-1-3.32

6210 (a) This section applies to domestic entities other  
6211 than (i) corporations formed pursuant to or governed by  
6212 Chapter 2A or Chapter 4, and real estate investment trusts  
6213 formed pursuant to or governed by Chapter 10, each of which is  
6214 governed by the separate recordkeeping requirements and record  
6215 inspections provisions of Chapter 2A and (ii) nonprofit  
6216 corporations formed pursuant to or governed by Chapter 3 or  
6217 Chapter 3A, limited liability companies formed pursuant to or



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6218 governed by Chapter 5A, general partnerships formed pursuant  
6219 to or governed by Chapter 8A, and limited partnerships formed  
6220 pursuant to or governed by Chapter 9A, each of which are  
6221 governed by the separate recordkeeping requirements and record  
6222 inspection provisions set forth in each entity's respective  
6223 chapter governing that entity.

6224 (b) With respect to a domestic entity covered by this  
6225 section, the books and records maintained under the chapter of  
6226 this title applicable to that entity and any other books and  
6227 records of that entity, wherever situated, are subject to  
6228 inspection and copying at the reasonable request, and at the  
6229 expense of, any owner or member or the owner's or member's  
6230 agent or attorney during regular business hours. The right of  
6231 access extends to the legal representative of a deceased owner  
6232 or member or owner or member under legal disability. The  
6233 entity shall also provide former owners and members with  
6234 access to its books and records pertaining to the period  
6235 during which they were owners or members.

6236 (c) The governing documents of a domestic entity may  
6237 not unreasonably restrict an owner's or member's right to  
6238 information or access to books and records.

6239 (d) Any agent or governing person of a domestic entity  
6240 who, without reasonable cause, refuses to allow any owner or  
6241 member or the owner's or member's agent or legal counsel to  
6242 inspect any books or records of that entity shall be  
6243 personally liable to the agent or member for a penalty in an  
6244 amount not to exceed 10 percent of the fair market value of  
6245 the ownership interest of the owner or member, in addition to



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6246 any other damages or remedy."

6247 "§10A-1-8.01

6248 ~~(a)~~ A conversion of an entity may be accomplished as  
6249 provided in this section:

6250 (a) The plan of conversion must be in writing, and:

6251 (1) must include the following:

6252 (A) the name, type of entity, and mailing address of  
6253 the principal office of the converting entity, and its unique  
6254 identifying number or other designation as assigned by the  
6255 Secretary of State, if any, before conversion;

6256 (B) the name, type of entity, and mailing address of  
6257 the principal office of the converted entity after conversion;

6258 (C) the terms and conditions of the conversion,  
6259 including the manner and basis for converting interests in the  
6260 converting entity into any combination of money, interests in  
6261 the converted entity, and other consideration allowed in  
6262 subsection (b); and

6263 (D) the organizational documents of the converted  
6264 entity; and

6265 (2) may include other provisions relating to the  
6266 conversion not prohibited by law.

6267 (b) In connection with a conversion, rights or  
6268 securities of or interests in a converting entity may be  
6269 exchanged for or converted into cash, property, or rights or  
6270 securities of or interests in the converted entity, or, in  
6271 addition to or in lieu thereof, may be exchanged for or  
6272 converted into cash, property, or rights or securities of or  
6273 interests in another entity, or may be cancelled.



6274 (c) The plan of conversion of an entity must be  
 6275 approved as follows:

6276 (1) CORPORATIONS.

6277 ~~(A) a. The terms and conditions of a plan of conversion~~  
 6278 ~~of a corporation, other than a nonprofit corporation, If a~~  
 6279 ~~corporation is governed by Chapter 2A and that corporation is~~  
 6280 ~~a converting entity, the plan of conversion under subsection~~  
 6281 ~~(a) must be approved in accordance with the procedures and by~~  
 6282 ~~the stockholder vote required by Article 9 of Chapter 2A. If~~  
 6283 ~~the governing documents provide for approval of a conversion~~  
 6284 ~~by less than all of a corporation's stockholders, approval of~~  
 6285 ~~the conversion shall constitute corporate action subject to~~  
 6286 ~~appraisal rights pursuant to Article 13 of Chapter 2A. No~~  
 6287 ~~conversion of a corporation to a general or limited~~  
 6288 ~~partnership may be effected without the consent in writing of~~  
 6289 ~~each stockholder who will have personal liability with respect~~  
 6290 ~~to the converted entity, notwithstanding any provision in the~~  
 6291 ~~governing documents of the converting corporation providing~~  
 6292 ~~for less than unanimous stockholder approval for the~~  
 6293 ~~conversion.~~ If the conversion is a corporate action as  
 6294 described in Section 10A-2A-13.02, then the rights,  
 6295 obligations, and procedures under Article 13 of Chapter 2A  
 6296 shall be applicable to that conversion.

6297 ~~(B) b. The terms and conditions of a plan of conversion~~  
 6298 ~~of a nonprofit corporation must be approved by all the~~  
 6299 ~~nonprofit corporation's members entitled to vote thereon, if~~  
 6300 ~~it is a nonprofit corporation with members with voting rights,~~  
 6301 ~~or as otherwise provided in the nonprofit corporation's~~

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6302 ~~governing documents; but in no case may the governing~~  
6303 ~~documents provide for approval by less than a majority of the~~  
6304 ~~members entitled to vote thereon. If the converting nonprofit~~  
6305 ~~corporation has no members, or no members entitled to vote~~  
6306 ~~thereon, the terms and conditions of the plan of conversion~~  
6307 ~~must be approved by a unanimous vote of the board of directors~~  
6308 ~~of the converting nonprofit corporation, or as otherwise~~  
6309 ~~provided in the governing documents; but in no case may the~~  
6310 ~~governing documents provide for approval by less than a~~  
6311 ~~majority of the board of directors. If a corporation is~~  
6312 ~~governed by Chapter 3A and that corporation is a converting~~  
6313 ~~entity, the plan of conversion under subsection (a) must be~~  
6314 ~~approved in accordance with Article 13 of Chapter 3A.~~

6315 (C) If a corporation is not governed by Chapter 2A or  
6316 Chapter 3A and that corporation is a converting entity, the  
6317 plan of conversion under subsection (a) must be approved in  
6318 accordance with the law of the jurisdiction of formation of  
6319 that corporation.

6320 (2) LIMITED PARTNERSHIPS, INCLUDING LIMITED LIABILITY  
6321 LIMITED PARTNERSHIPS. ~~The terms and conditions of a plan of~~  
6322 ~~conversion of a limited partnership must be approved by all of~~  
6323 ~~the partners or as otherwise provided in the partnership~~  
6324 ~~agreement. No conversion of a limited partnership to a general~~  
6325 ~~partnership may be effected without the consent in writing of~~  
6326 ~~each limited partner who will have personal liability with~~  
6327 ~~respect to the converted entity, notwithstanding any provision~~  
6328 ~~in the limited partnership agreement of the converting limited~~  
6329 ~~partnership providing for approval of the conversion by less~~



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6330 ~~than all partners.~~ If a limited partnership is a converting  
6331 entity, the plan of conversion under subsection (a) must be  
6332 approved in accordance with Article 10 of Chapter 9A.

6333 (3) LIMITED LIABILITY COMPANIES. ~~The terms and~~  
6334 ~~conditions of a plan of conversion of a limited liability~~  
6335 ~~company must be approved by all of the limited liability~~  
6336 ~~company's members or as otherwise provided in the limited~~  
6337 ~~liability company's governing documents. No conversion of a~~  
6338 ~~limited liability company to a general or limited partnership~~  
6339 ~~may be effected without the consent in writing of each member~~  
6340 ~~who will have personal liability with respect to the converted~~  
6341 ~~entity, notwithstanding any provision in the governing~~  
6342 ~~documents of the converting limited liability company~~  
6343 ~~providing for less than unanimous member approval for the~~  
6344 ~~conversion.~~ If a limited liability company is a converting  
6345 entity, the plan of conversion under subsection (a) must be  
6346 approved in accordance with Article 10 of Chapter 5A.

6347 (4) GENERAL PARTNERSHIPS, INCLUDING LIMITED LIABILITY  
6348 PARTNERSHIPS. ~~The terms and conditions of a plan of conversion~~  
6349 ~~of a general partnership must be approved by all of the~~  
6350 ~~partners or as otherwise provided in the partnership~~  
6351 ~~agreement. No conversion of a limited liability partnership to~~  
6352 ~~a general or limited partnership may be effected without the~~  
6353 ~~consent in writing of each partner who will have personal~~  
6354 ~~liability with respect to the converted entity,~~  
6355 ~~notwithstanding any provision in the partnership agreement of~~  
6356 ~~the converting limited liability partnership providing for~~  
6357 ~~less than unanimous partner approval for the conversion.~~ If a



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6358 general partnership is a converting entity, the plan of  
6359 conversion under subsection (a) must be approved in accordance  
6360 with Article 9 of Chapter 8A. If a general partnership is the  
6361 converting entity and that general partnership does not have  
6362 an effective statement of partnership, statement of not for  
6363 profit partnership, or statement of limited liability  
6364 partnership on file with the Secretary of State, then that  
6365 general partnership must, before proceeding with a conversion  
6366 deliver to the Secretary of State for filing, a statement of  
6367 partnership, statement of not for profit partnership, or  
6368 statement of limited liability partnership simultaneously with  
6369 the delivery to the Secretary of State for filing, of a  
6370 statement of conversion.

6371 (5) REAL ESTATE INVESTMENT TRUST. The terms and  
6372 conditions of ~~a~~ the plan of conversion under subsection (a) of  
6373 a real estate investment trust must be approved by all of the  
6374 trust's shareholders or as otherwise provided in the trust's  
6375 declaration of trust; but in no case may the vote required for  
6376 shareholder approval be set at less than a majority of all the  
6377 votes entitled to be cast. No conversion of a real estate  
6378 investment trust to a general or limited partnership may be  
6379 effected without the consent in writing of each shareholder  
6380 who will have personal liability with respect to the converted  
6381 entity, notwithstanding any provision in the declaration of  
6382 trust of the converting real estate investment trust providing  
6383 for less than unanimous shareholder approval for the  
6384 conversion.

6385 (6) OTHER ENTITY. ~~The terms and conditions of a plan of~~

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6386 ~~conversion of any entity not specified above must be approved~~  
6387 ~~by all owners of the converting entity. No conversion of any~~  
6388 ~~entity shall be effected without the consent in writing of any~~  
6389 ~~owner of the converting entity who has limited liability and~~  
6390 ~~who shall become an owner without limited liability protection~~  
6391 ~~of the converted entity.~~ In the case of an entity not  
6392 specified in paragraphs (1) through (5) above, a plan of  
6393 conversion under subsection (a) must be approved in writing by  
6394 all owners of that entity or, if the entity has no owners,  
6395 then by all members of the governing authority of that entity.

6396 ~~(7) ENTITY WITHOUT OWNERS. If the converting entity~~  
6397 ~~does not have owners, the terms and conditions of the plan of~~  
6398 ~~conversion must be unanimously approved by the governing~~  
6399 ~~authority of the converting entity.~~

6400 ~~(b) The plan of conversion must be in writing, and:~~  
6401 ~~(1) must include the following:~~

6402 ~~a. the name, type of entity, and mailing address of the~~  
6403 ~~principal office of the converting entity, and its unique~~  
6404 ~~identifying number or other designation as assigned by the~~  
6405 ~~Secretary of State, if any, before conversion;~~

6406 ~~b. the name, type of entity, and mailing address of the~~  
6407 ~~principal office of the converted entity after conversion;~~

6408 ~~c. the terms and conditions of the conversion,~~  
6409 ~~including the manner and basis for converting interests in the~~  
6410 ~~converting entity into any combination of money, interests in~~  
6411 ~~the converted entity, and other consideration allowed in~~  
6412 ~~subsection (c); and~~

6413 ~~d. the organizational documents of the converted~~



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6414 ~~entity; and~~

6415 ~~(2) may include other provisions relating to the~~  
6416 ~~conversion not prohibited by law.~~

6417 ~~(c) In connection with a conversion, rights or~~  
6418 ~~securities of or interests in a converting entity may be~~  
6419 ~~exchanged for or converted into cash, property, or rights or~~  
6420 ~~securities of or interests in the converted entity, or, in~~  
6421 ~~addition to or in lieu thereof, may be exchanged for or~~  
6422 ~~converted into cash, property, or rights or securities of or~~  
6423 ~~interests in another entity or may be cancelled.~~

6424 ~~(d) After a plan of conversion is approved and before~~  
6425 ~~the conversion takes effect, the plan may be amended or~~  
6426 ~~abandoned as provided in the plan, or if the plan does not~~  
6427 ~~provide for amendment or abandonment, in the same manner as~~  
6428 ~~required for the approval of the plan of conversion~~  
6429 ~~originally.~~

6430 ~~(e)~~ (d) After the plan of conversion is approved  
6431 pursuant to subsection ~~(a)~~ (c):

6432 (1) if the converting entity is a ~~domestic~~ filing  
6433 entity, the converting entity shall deliver to the Secretary  
6434 of State for filing, a statement of conversion, which must  
6435 include:

6436 a. (A) the name, type of entity, and mailing address of  
6437 the principal office of the converting entity, and its unique  
6438 identifying number or other designation as assigned by the  
6439 Secretary of State, if any, before conversion;

6440 ~~b. the date of the filing of the certificate of~~  
6441 ~~formation of the converting entity, if any, and all prior~~



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6442 ~~amendments and the filing office or offices, if any, where~~  
6443 ~~such is filed;~~

6444 ~~e.~~ (B) a statement that the converting entity has been  
6445 converted into the converted entity;

6446 ~~d.~~ (C) the name and type of entity of the converted  
6447 entity and the jurisdiction of its governing statute;

6448 ~~e.~~ (D) the street and mailing address of the principal  
6449 office of the converted entity;

6450 ~~f.~~ (E) the date the conversion is effective under the  
6451 governing statute of the converted entity;

6452 ~~g.~~ (F) a statement that the conversion was approved as  
6453 required by this chapter;

6454 ~~h.~~ (G) a statement that the conversion was approved as  
6455 required by the governing statute of the converted entity;

6456 ~~i.~~ (H) a statement that a copy of the plan of conversion  
6457 will be furnished by the converted entity, on request and  
6458 without cost, to any owner of the converted or converting  
6459 entity; and

6460 ~~j.~~ (I) if the converted entity is a foreign entity not  
6461 authorized to conduct activities and affairs in this state,  
6462 the street and mailing address of an office for the purposes  
6463 of Section 10A-1-8.04(b); and

6464 (2) if the converted entity is (I) a filing entity, the  
6465 converting entity shall deliver to the Secretary of State for  
6466 filing a certificate of formation or (II) a general  
6467 partnership, the converting entity shall deliver to the  
6468 Secretary of State for filing a statement of partnership, a  
6469 statement of not for profit partnership, or a statement of



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6470 limited liability partnership, as applicable, which  
6471 certificate of formation or statement of partnership,  
6472 statement of not for profit partnership, or statement of  
6473 limited liability partnership, as applicable, must include, in  
6474 addition to the information required in the chapter governing  
6475 the certificate of formation of the converted entity, the  
6476 following:

6477 ~~a.~~ (A) The name, mailing address of the principal office  
6478 of, type of entity, and the jurisdiction of the governing  
6479 statute of the converting entity and its unique identifying  
6480 number or other designation as assigned by the Secretary of  
6481 State, if any, before conversion;

6482 ~~b.~~ (B) A statement that the converting entity has been  
6483 converted into the converted entity;

6484 ~~c.~~ (C) The filing office where the certificate of  
6485 formation, if any, of the converting entity is filed and the  
6486 date of the filing thereof;

6487 ~~d.~~ (D) If the converted entity is one in which one or  
6488 more owners lack limited liability protection, a statement  
6489 that each owner of the converting entity who is to become an  
6490 owner without limited liability protection of the converted  
6491 entity has consented in writing to the conversion as required  
6492 by this section; and

6493 ~~e.~~ (E) A statement that the conversion was approved  
6494 pursuant to this section and, if the converting entity is a  
6495 foreign entity, that the conversion was approved as required  
6496 by the governing statute of such foreign entity;

6497 (3) if the converting entity is required pursuant to



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6498 subsections (e) (2) and (3) to deliver to the Secretary of  
6499 State for filing both (I) a statement of conversion and  
6500 (II) (A) a certificate of formation, or (B) a statement of  
6501 partnership, statement of not for profit partnership, or  
6502 statement of limited liability partnership, as applicable,  
6503 then the converting entity shall deliver the statement of  
6504 conversion and the certificate of formation or the statement  
6505 of partnership, statement of not for profit partnership, or  
6506 statement of limited liability partnership, as applicable, to  
6507 the Secretary of State simultaneously; and

6508 (4) if the converting entity is a general partnership  
6509 and that partnership does not have an effective statement of  
6510 partnership, statement of not for profit partnership, or  
6511 statement of limited liability partnership on file with the  
6512 Secretary of State, then the converting entity must deliver to  
6513 the Secretary of State for filing, a statement of partnership,  
6514 statement of not for profit partnership, or statement of  
6515 limited liability partnership simultaneously with the delivery  
6516 to the Secretary of State for filing, of a statement of  
6517 conversion.

6518 (e) After a plan of conversion is approved and before  
6519 the conversion takes effect, the plan may be amended or  
6520 abandoned as provided in the plan, or if the plan does not  
6521 provide for amendment or abandonment, in the same manner as  
6522 required for the approval of the plan of conversion  
6523 originally.

6524 (f) A conversion becomes effective:

6525 (1) if the converted entity is a ~~domestic~~ filing



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6526 entity, the effective date determined in accordance with  
6527 Article 4 of this chapter; and

6528 (2) if the converted entity is not a domestic filing  
6529 entity, as provided by the governing statute of the converted  
6530 entity.

6531 (g) When a conversion becomes effective:

6532 (1) all property and contract rights owned by the  
6533 converting entity remain vested in the converted entity  
6534 without transfer, reversion, or impairment, and the title to  
6535 any property vested by deed or otherwise in the converting  
6536 entity shall not revert or be in any way impaired by reason of  
6537 the conversion;

6538 (2) all debts, obligations, or other liabilities of the  
6539 converting entity continue as debts, obligations, or other  
6540 liabilities of the converted entity and neither the rights of  
6541 creditors nor the liens upon the property of the converting  
6542 entity shall be impaired by the conversion;

6543 (3) an action or proceeding pending by or against the  
6544 converting entity continues as if the conversion had not  
6545 occurred and the name of the converted entity may, but need  
6546 not, be substituted for the name of the converting entity in  
6547 any pending action or proceeding;

6548 (4) except as prohibited by law other than this  
6549 chapter, all of the rights, privileges, immunities, powers,  
6550 and purposes of the converting entity remain vested in the  
6551 converted entity;

6552 (5) except as otherwise provided in the statement of  
6553 conversion, the terms and conditions of the statement of



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6554 conversion take effect;

6555 (6) except as otherwise agreed, for all purposes of the  
6556 laws of this state, the converting entity shall not be  
6557 required to wind up its affairs or pay its liabilities and  
6558 distribute its assets, and the conversion shall not be deemed  
6559 to constitute a dissolution of the converting entity;

6560 (7) for all purposes of the laws of this state, the  
6561 rights, privileges, powers, interests in property, debts,  
6562 liabilities, and duties of the converting entity, shall be the  
6563 rights, privileges, powers, interests in property, debts,  
6564 liabilities, and duties of the converted entity, and shall not  
6565 be deemed as a consequence of the conversion, to have been  
6566 transferred to the converted entity;

6567 (8) if the converted entity is a domestic entity, for  
6568 all purposes of the laws of this state, the converted entity  
6569 shall be deemed to be the same entity as the converting  
6570 entity, and the conversion shall constitute a continuation of  
6571 the existence of the converting entity in the form of the  
6572 converted entity;

6573 (9) if the converting entity is a domestic entity, the  
6574 existence of the converted entity shall be deemed to have  
6575 commenced on the date the converting entity commenced its  
6576 existence in the jurisdiction in which the converting entity  
6577 was first created, formed, organized, incorporated, or  
6578 otherwise came into being;

6579 (10) the conversion shall not affect the choice of law  
6580 applicable to matters arising prior to conversion;

6581 (11) if the Secretary of State has assigned a unique



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6582 identifying number or other designation to the converting  
6583 entity and (i) the converted entity is formed pursuant to the  
6584 laws of this state, or (ii) the converted entity is, within 30  
6585 days after the effective date of the conversion, registered to  
6586 transact business in this state, then that unique identifying  
6587 number or other designation shall continue to be assigned to  
6588 the converted entity; and

6589           (12) ~~a.~~ (A) An owner with limited liability protection  
6590 remains liable, if at all, for an obligation incurred by the  
6591 converting entity before the conversion takes effect only to  
6592 the extent, if any, the owner would have been liable if the  
6593 conversion had not occurred.

6594           ~~b.~~ (B) An owner with limited liability protection who  
6595 becomes an owner without limited liability protection is  
6596 liable for an obligation of the converted entity incurred  
6597 after conversion to the extent provided for by the laws  
6598 applicable to the converted entity.

6599           (13) An owner without limited liability protection who  
6600 as a result of a conversion becomes an owner of a converted  
6601 entity with limited liability protection remains liable for an  
6602 obligation incurred by the converting entity before the  
6603 conversion takes effect only to the extent, if any, the owner  
6604 would have been liable if the conversion had not occurred.

6605           (h) If:

6606           (1) the converting entity is a filing entity, a general  
6607 partnership with an effective statement of partnership,  
6608 statement of not for profit partnership, or statement of  
6609 limited liability partnership on file with the Secretary of



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6610 State, a foreign filing entity registered to transact business  
6611 or not for profit activity in this state, or a qualified  
6612 foreign limited liability partnership;

6613 (2) the converted entity will be a filing entity, a  
6614 general partnership with an effective statement of  
6615 partnership, statement of not for profit partnership, or  
6616 statement of limited liability partnership on file with the  
6617 Secretary of State, a foreign filing entity registered to  
6618 transact business or not for profit activity in this state, or  
6619 a qualified foreign limited liability partnership;

6620 (3) the name of the converting entity and the converted  
6621 entity are to be the same, other than words, phrases, or  
6622 abbreviations indicating the type of entity; and

6623 (4) the name of the converted entity complies with  
6624 Division A of Article 5 or Section 10A-1-7.07, as the case may  
6625 be;

6626 then, notwithstanding Division B of Article 5, no name  
6627 reservation shall be required and the converted entity shall  
6628 for all purposes of this title be entitled to utilize the name  
6629 of the converting entity without any further action by the  
6630 converting entity or the converted entity.

6631 (i) A certified copy of the statement of conversion may  
6632 be delivered to the office of the judge of probate in any  
6633 county in which the converting entity owned real property, to  
6634 be recorded without payment and without collection by the  
6635 judge of probate of any deed or other transfer tax or fee. The  
6636 judge of probate shall, however, be entitled to collect a  
6637 filing fee of five dollars (\$5). Any filing shall evidence



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6638 chain of title, but lack of filing shall not affect the  
6639 converted entity's title to the real property."

6640 "§10A-1-8.02

6641 ~~(a)~~ A merger of two or more entities, whether the other  
6642 entity or entities are the same or another form of entity, may  
6643 be accomplished as provided in this section.

6644 (a) The plan of merger must be in writing, and:

6645 (1) must include the following:

6646 (A) the name, type of entity, and mailing address of  
6647 the principal office of each entity that is a party to the  
6648 merger, the jurisdiction of the governing statute of each  
6649 entity that is a party to the merger, and the respective  
6650 unique identifying number or other designation as assigned by  
6651 the Secretary of State, if any, of each entity that is a party  
6652 to the merger;

6653 (B) the name, type of entity, and mailing address of  
6654 the principal office of the surviving entity and, if the  
6655 surviving entity is to be created pursuant to the merger, the  
6656 surviving entity's organizational documents;

6657 (C) the terms and conditions of the merger, including  
6658 the manner and basis for converting the interests in each  
6659 entity that is a party to the merger into any combination of  
6660 money, interests in the surviving entity, and other  
6661 consideration as allowed by subsection (b); and

6662 (D) if the surviving entity is not to be created  
6663 pursuant to the merger, any amendments to be made by the  
6664 merger to the surviving entity's organizational documents; and  
6665 (2) may include other provisions relating to the merger

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6666 not prohibited by law.

6667 (b) In connection with a merger, rights or securities  
6668 of or interests in a merged entity may be exchanged for or  
6669 converted into cash, property, or rights or securities of or  
6670 interests in the surviving entity, or, in addition to or in  
6671 lieu thereof, may be exchanged for or converted into cash,  
6672 property, or rights or securities of or interests in another  
6673 entity, or may be cancelled.

6674 (c) The plan of merger of an entity must be approved as  
6675 follows:

6676 (1) CORPORATIONS.

6677 ~~(A) a. In the case of a corporation, other than a~~  
6678 ~~nonprofit corporation, that~~ If a corporation is governed by  
6679 Chapter 2A and that corporation is a party to a merger, a plan  
6680 of merger under subsection (a) must be approved in accordance  
6681 with ~~the procedures and by the stockholder vote required by~~  
6682 Article 11 of Chapter 2A. ~~If the governing documents of the~~  
6683 ~~corporation provide for approval of a merger by less than all~~  
6684 ~~of the corporation's stockholders, approval of the merger~~  
6685 ~~shall constitute corporate action subject to appraisal rights~~  
6686 ~~pursuant to Article 13 of Chapter 2A, as applicable. No merger~~  
6687 ~~of a corporation into a general or limited partnership may be~~  
6688 ~~effected without the consent in writing of each stockholder~~  
6689 ~~who will have personal liability with respect to the surviving~~  
6690 ~~entity, notwithstanding any provision in the governing~~  
6691 ~~documents of the corporation that is a party to the merger~~  
6692 ~~providing for less than unanimous stockholder approval for the~~  
6693 ~~conversion.~~ If the merger is a corporate action as described



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6694 in Section 10A-2A-13.02, then the rights, obligations, and  
6695 procedures under Article 13 of Chapter 2A shall be applicable  
6696 to that merger.

6697 ~~(B) b. In the case of a nonprofit corporation that is a~~  
6698 ~~party to the merger, a plan of merger must be approved by all~~  
6699 ~~the nonprofit corporation's members entitled to vote thereon,~~  
6700 ~~if it is a nonprofit corporation with members with voting~~  
6701 ~~rights, or as otherwise provided in the nonprofit~~  
6702 ~~corporation's governing documents; but in no case may the~~  
6703 ~~governing documents provide for approval by less than a~~  
6704 ~~majority of the members entitled to vote thereon. If the~~  
6705 ~~nonprofit corporation has no members, or no members entitled~~  
6706 ~~to vote thereon, the plan of merger must be approved by a~~  
6707 ~~unanimous vote of the board of directors of the nonprofit~~  
6708 ~~corporation, except as otherwise provided in the governing~~  
6709 ~~documents; but in no case may the governing documents provide~~  
6710 ~~for approval by less than a majority of the board of~~  
6711 ~~directors.~~ If a nonprofit corporation is governed by Chapter  
6712 3A and that corporation is a party to a merger, a plan of  
6713 merger under subsection (a) must be approved in accordance  
6714 with Article 12 of Chapter 3A.

6715 (C) If a corporation is not governed by Chapter 2A or  
6716 Chapter 3A and that corporation is a party to a merger, the  
6717 plan of merger under subsection (a) must be approved in  
6718 accordance with the law of the jurisdiction of formation of  
6719 that corporation.

6720 (2) LIMITED PARTNERSHIPS. In the case of a limited  
6721 partnership that is a party to the merger, a plan of merger

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6722 under subsection (a) must be approved in ~~writing by all of the~~  
6723 ~~partners or as otherwise provided in the partnership~~  
6724 ~~agreement. No merger of a limited partnership with a general~~  
6725 ~~partnership in which the general partnership is the surviving~~  
6726 ~~entity may be effected without the consent in writing of each~~  
6727 ~~limited partner who will have personal liability with respect~~  
6728 ~~to the surviving entity, notwithstanding any provision in the~~  
6729 ~~limited partnership agreement of the merging limited~~  
6730 ~~partnership providing for approval of the merger by less than~~  
6731 ~~all partners~~ accordance with Article 10 of Chapter 9A.

6732 (3) LIMITED LIABILITY COMPANIES. In the case of a  
6733 limited liability company that is a party to the merger, a  
6734 plan of merger under subsection (a) must be approved in  
6735 ~~writing by all of the limited liability company's members or~~  
6736 ~~as otherwise provided in the limited liability company's~~  
6737 ~~governing documents. No merger of a limited liability company~~  
6738 ~~with a general or limited partnership that is the surviving~~  
6739 ~~entity may be effected without the consent in writing of each~~  
6740 ~~member who will have personal liability with respect to the~~  
6741 ~~surviving entity, notwithstanding any provision in the~~  
6742 ~~governing documents of the merging limited liability company~~  
6743 ~~providing for less than unanimous member approval for a merger~~  
6744 accordance with Article 10 of Chapter 5A.

6745 (4) GENERAL PARTNERSHIPS, INCLUDING LIMITED LIABILITY  
6746 PARTNERSHIPS. In the case of a general partnership that is a  
6747 party to the merger, a plan of merger under subsection (a)  
6748 must be approved in ~~writing by all of the partners or as~~  
6749 ~~otherwise provided in the partnership agreement. No merger of~~

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6750 ~~a limited liability partnership into a general or limited~~  
6751 ~~partnership may be effected without the consent in writing of~~  
6752 ~~each partner who will have personal liability with respect to~~  
6753 ~~the surviving entity, notwithstanding any provision in the~~  
6754 ~~partnership agreement of the limited liability partnership~~  
6755 ~~providing for less than unanimous partner approval for a~~  
6756 ~~merger~~ accordance with Article 9 of Chapter 8A. All general  
6757 partnerships, other than a general partnership that is created  
6758 pursuant to the merger, that are parties to a merger must have  
6759 on file with the Secretary of State a statement of  
6760 partnership, statement of not for profit partnership, or  
6761 statement of limited liability partnership prior to delivering  
6762 the statement of merger to the Secretary of State for filing.

6763 (5) REAL ESTATE INVESTMENT TRUST. In the case of a real  
6764 estate investment trust that is a party to the merger, a plan  
6765 of merger under subsection (a) must be approved in writing by  
6766 all of the trust's shareholders or as otherwise provided in  
6767 the trust's declaration of trust, but in no case may the vote  
6768 required for shareholder approval be set at less than a  
6769 majority of all the votes entitled to be cast. No merger of a  
6770 real estate investment trust with a general or limited  
6771 partnership that is to be the surviving entity may be effected  
6772 without the consent in writing of each shareholder who will  
6773 have personal liability with respect to the surviving entity,  
6774 notwithstanding any provision in the declaration of trust of  
6775 the converting real estate investment trust providing for less  
6776 than unanimous shareholder approval for the merger.

6777 (6) OTHER ENTITY. ~~In the case of an entity other than a~~

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6778 ~~corporation, limited partnership, limited liability company,~~  
6779 ~~general partnership, or real estate investment trust that is a~~  
6780 ~~party to the merger, a plan of merger must be approved in~~  
6781 ~~writing by all owners of the entity. No merger of any entity~~  
6782 ~~shall be effected without the consent in writing of any owner~~  
6783 ~~who has limited liability as an owner of an entity party to~~  
6784 ~~the merger, and who will have personal liability with respect~~  
6785 ~~to the surviving entity. In the case of an entity not~~  
6786 ~~specified in paragraphs (1) through (5) above, a plan of~~  
6787 ~~merger under subsection (a) must be approved in writing by all~~  
6788 ~~owners of that entity or, if the entity has no owners, then by~~  
6789 ~~all members of the governing authority of that entity.~~

6790 ~~(b) The plan of merger must be in writing, and:~~

6791 ~~(1) must include the following:~~

6792 ~~a. the name, type of entity, and mailing address of the~~  
6793 ~~principal office of each entity that is a party to the merger,~~  
6794 ~~the jurisdiction of the governing statute of each entity that~~  
6795 ~~is a party to the merger, and the respective unique~~  
6796 ~~identifying number or other designation as assigned by the~~  
6797 ~~Secretary of State, if any, of each entity that is a party to~~  
6798 ~~the merger;~~

6799 ~~b. the name, type of entity, and mailing address of the~~  
6800 ~~principal office of the surviving entity and, if the surviving~~  
6801 ~~entity is to be created pursuant to the merger, the surviving~~  
6802 ~~entity's organizational documents;~~

6803 ~~c. the terms and conditions of the merger, including~~  
6804 ~~the manner and basis for converting the interests in each~~  
6805 ~~entity that is a party to the merger into any combination of~~



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6806 ~~money, interests in the surviving entity, and other~~  
6807 ~~consideration as allowed by subsection (c); and~~  
6808 ~~d. if the surviving entity is not to be created~~  
6809 ~~pursuant to the merger, any amendments to be made by the~~  
6810 ~~merger to the surviving entity's organizational documents; and~~

6811 ~~(2) may include other provisions relating to the merger~~  
6812 ~~not prohibited by law.~~

6813 ~~(c) In connection with a merger, rights or securities~~  
6814 ~~of or interests in a merged entity may be exchanged for or~~  
6815 ~~converted into cash, property, or rights or securities of or~~  
6816 ~~interests in the surviving entity, or, in addition to or in~~  
6817 ~~lieu thereof, may be exchanged for or converted into cash,~~  
6818 ~~property, or rights or securities of or interests in another~~  
6819 ~~entity or may be cancelled.~~

6820 ~~(d) After a plan of merger is approved and before the~~  
6821 ~~merger takes effect, the plan may be amended or abandoned as~~  
6822 ~~provided in the plan, or if the plan does not provide for~~  
6823 ~~amendment or abandonment, in the same manner as required for~~  
6824 ~~the approval of the plan of merger originally.~~

6825 ~~(e)~~ (d) After each entity has approved the plan of  
6826 merger pursuant to subsection (c), the entities must deliver  
6827 to the Secretary of State for filing a statement of merger  
6828 signed on behalf of each entity as provided by its governing  
6829 statute which must include:

6830 (1) the name, type of entity, and mailing address of  
6831 the principal office of each entity that is a party to the  
6832 merger, the jurisdiction of the governing statute of each  
6833 entity that is a party to the merger, and the respective



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6834 unique identifying number or other designation as assigned by  
6835 the Secretary of State, if any, of each entity that is a party  
6836 to the merger;

6837 (2) the name, type of entity, and mailing address of  
6838 the principal office of the surviving entity, the unique  
6839 identifying number or other designation as assigned by the  
6840 Secretary of State, if any, of the surviving entity, the  
6841 jurisdiction of the governing statute of the surviving entity,  
6842 and, if the surviving entity is created pursuant to the  
6843 merger, a statement to that effect;

6844 ~~(3) for each entity other than a general partnership,~~  
6845 ~~the date of the filing of the certificate of formation, if~~  
6846 ~~any, and all prior amendments and the filing office or~~  
6847 ~~offices, if any, where such is filed;~~

6848 ~~(4)~~ (3) for each general partnership, the date of the  
6849 filing of the statement of partnership, statement of not for  
6850 profit partnership, or statement of limited liability  
6851 partnership, if any, and all prior amendments and the filing  
6852 office or offices, if any, where such is filed;

6853 ~~(5)~~ (4) the date the merger is effective under the  
6854 governing statute of the surviving entity;

6855 ~~(6)~~ (5) if the surviving entity is to be created  
6856 pursuant to the merger, (i) if it will be a filing entity, its  
6857 certificate of formation; or (ii) if it will be a non-filing  
6858 entity, any document that creates the entity that is required  
6859 to be in a public writing or in the case of a general  
6860 partnership, its statement of partnership, statement of not  
6861 for profit partnership, or statement of limited liability



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6862 partnership, as applicable;

6863 ~~(7)~~ (6) if the surviving entity is a domestic entity  
6864 that exists before the merger, any amendments provided for in  
6865 the plan of merger for the organizational documents that  
6866 created the domestic entity that are required to be in a  
6867 public writing, or in the case of a general partnership, its  
6868 statement of partnership, statement of not for profit  
6869 partnership, or statement of limited liability partnership, as  
6870 applicable;

6871 ~~(8)~~ (7) a statement as to each entity that the merger  
6872 was approved as required by the entity's governing statute;

6873 ~~(9)~~ (8) a statement that a copy of the plan of merger  
6874 will be furnished by the surviving entity, on request and  
6875 without cost, to any owner of any entity which is a party to  
6876 the merger;

6877 ~~(10)~~ (9) if the surviving entity is a foreign entity not  
6878 authorized to conduct activities and affairs in this state,  
6879 the street and mailing address of an office for the purposes  
6880 of Section 10A-1-8.04; and

6881 ~~(11)~~ (10) any additional information required by the  
6882 governing statute of any entity that is a party to the merger.

6883 ~~(f)~~ (e) Prior to the statement of merger being delivered  
6884 for filing to the Secretary of State in accordance with  
6885 subsection ~~(e)~~ (d), all parties to the merger that are general  
6886 partnerships, other than a general partnership that is created  
6887 pursuant to the merger, must have on file with the Secretary  
6888 of State a statement of partnership, statement of not for  
6889 profit partnership, or statement of limited liability



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6890 partnership.

6891 (f) After a plan of merger is approved and before the  
6892 merger takes effect, the plan may be amended or abandoned as  
6893 provided in the plan, or if the plan does not provide for  
6894 amendment or abandonment, in the same manner as required for  
6895 the approval of the plan of merger originally.

6896 (g) If all of the entities that are parties to the  
6897 merger are domestic entities, the merger becomes effective on  
6898 the effective date determined in accordance with Article 4. If  
6899 one or more parties to the merger is a foreign entity, or a  
6900 foreign entity created by the merger is the surviving entity,  
6901 the merger shall become effective at the later of:

6902 (1) when all documents required to be filed in foreign  
6903 jurisdictions to effect the merger have become effective, or

6904 (2) the effective date determined in accordance with  
6905 Article 4.

6906 (h) When a merger becomes effective:

6907 (1) the surviving entity continues or, in the case of a  
6908 surviving entity created pursuant to the merger, comes into  
6909 existence;

6910 (2) each entity that merges into the surviving entity  
6911 ceases to exist as a separate entity;

6912 (3) except as provided in the plan of merger, all  
6913 property owned by, and every contract right possessed by, each  
6914 merging entity that ceases to exist vests in the surviving  
6915 entity without transfer, reversion, or impairment and the  
6916 title to any property and contract rights vested by deed or  
6917 otherwise in the surviving entity shall not revert, be in any



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6918 way impaired, or be deemed to be a transfer by reason of the  
6919 merger;

6920 (4) all debts, obligations, and other liabilities of  
6921 each merging entity, other than the surviving entity, are  
6922 debts, obligations, and liabilities of the surviving entity,  
6923 and neither the rights of creditors, nor any liens upon the  
6924 property of any entity that is a party to the merger, shall be  
6925 impaired by the merger;

6926 (5) an action or proceeding, pending by or against any  
6927 merging entity that ceases to exist continues as if the merger  
6928 had not occurred and the name of the surviving entity may, but  
6929 need not be substituted in any pending proceeding for the name  
6930 of any merging entity whose separate existence ceased in the  
6931 merger;

6932 (6) except as prohibited by law other than this chapter  
6933 or as provided in the plan of merger, all the rights,  
6934 privileges, franchises, immunities, powers, and purposes of  
6935 each merging entity, other than the surviving entity, vest in  
6936 the surviving entity;

6937 (7) except as otherwise provided in the plan of merger,  
6938 the terms and conditions of the plan of merger take effect;

6939 (8) except as otherwise agreed, if a merged entity  
6940 ceases to exist, the merger does not dissolve the merged  
6941 entity;

6942 (9) if the surviving entity is created pursuant to the  
6943 merger:

6944 ~~(i)~~ (A) if it is a general partnership, the statement of  
6945 partnership, statement of not for profit partnership, or



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6946 statement of limited liability partnership becomes effective;  
6947 or

6948 ~~(ii)~~ (B) if it is an entity other than a partnership,  
6949 the organizational documents that create the entity become  
6950 effective;

6951 (10) the interests in a merging entity that are to be  
6952 converted in accordance with the terms of the merger into  
6953 interests, obligations, rights to acquire interests, cash,  
6954 other property, or any combination of the foregoing, are  
6955 converted as provided in the plan of merger, and the former  
6956 holders of interests are entitled only to the rights provided  
6957 to them by those terms or to any appraisal or dissenters'  
6958 rights they may have under the governing statute governing the  
6959 merging entity;

6960 (11) if the surviving entity exists before the merger:

6961 ~~(i)~~ (A) except as provided in the plan of merger, all  
6962 the property and contract rights of the surviving entity  
6963 remain its property and contract rights without transfer,  
6964 reversion, or impairment;

6965 ~~(ii)~~ (B) the surviving entity remains subject to all its  
6966 debts, obligations, and other liabilities; and

6967 ~~(iii)~~ (C) except as provided by law other than this  
6968 chapter or the plan of merger, the surviving entity continues  
6969 to hold all of its rights, privileges, franchises, immunities,  
6970 powers, and purposes.

6971 (12) Service of process in an action or proceeding  
6972 against a surviving foreign entity to enforce an obligation of  
6973 a domestic entity that is a party to a merger may be made by



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6974 registered mail addressed to the surviving entity at the  
6975 address set forth in the statement of merger or by any method  
6976 provided by the Alabama Rules of Civil Procedure. Any notice  
6977 or demand required or permitted by law to be served on a  
6978 domestic entity may be served on the surviving foreign entity  
6979 by registered mail addressed to the surviving entity at the  
6980 address set forth in the statement of merger or in any other  
6981 manner similar to the procedure provided by the Alabama Rules  
6982 of Civil Procedure for the service of process.

6983 (13) ~~a.~~ (A) An owner of an entity with limited liability  
6984 protection remains liable, if at all, for an obligation  
6985 incurred prior to the merger by an entity that ceases to exist  
6986 as a result of the merger only to the extent, if any, that the  
6987 owner would have been liable under the laws applicable to  
6988 owners of the form of entity that ceased to exist if the  
6989 merger had not occurred.

6990 ~~b.~~ (B) An owner with limited liability protection who,  
6991 as a result of the merger, becomes an owner without limited  
6992 liability protection of the surviving entity is liable for an  
6993 obligation of the surviving entity incurred after merger to  
6994 the extent provided for by the laws applicable to the  
6995 surviving entity.

6996 (14) An owner without limited liability protection of  
6997 an entity that ceases to exist as a result of a merger and who  
6998 as a result of the merger becomes an owner of a surviving  
6999 entity with limited liability protection remains liable for an  
7000 obligation of the entity that ceases to exist incurred before  
7001 the merger takes effect only to the extent, if any, that the



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7002 owner would have been liable if the merger had not occurred.

7003 (i) A certified copy of the statement of merger  
7004 required to be filed under this section may be filed in the  
7005 real estate records in the office of the judge of probate in  
7006 any county in which any merged entity owned real property,  
7007 without payment and without collection by the judge of probate  
7008 of any deed or other transfer tax or fee. The judge of  
7009 probate, however, shall be entitled to collect a filing fee of  
7010 five dollars (\$5). Any such filing shall evidence chain of  
7011 title, but lack of filing shall not affect the surviving  
7012 entity's title to such real property."

7013 "§10A-1-9.01

7014 This article does not apply to business corporations,  
7015 nonprofit corporations, limited liability companies, general  
7016 partnerships, and limited partnerships."

7017 Section 3. Sections 10A-2A-1.40, 10A-2A-1.43,  
7018 10A-2A-1.51, 10A-2A-2.02, 10A-2A-2.06, 10A-2A-7.04,  
7019 10A-2A-7.32, 10A-2A-7.20, 10A-2A-8.10, 10A-2A-8.21,  
7020 10A-2A-8.22, 10A-2A-8.24, 10A-2A-8.59, 10A-2A-10.06,  
7021 10A-2A-10.07, 10A-2A-10.08, 10A-2A-11.02, 10A-2A-11.06,  
7022 10A-2A-12.02, and 10A-2A-14.13 of the Code of Alabama 1975,  
7023 are amended to read as follows:

7024 "§10A-2A-1.40

7025 As used in this chapter, unless otherwise specified or  
7026 unless the context otherwise requires, the following terms  
7027 have the following meanings:

7028 (1) AUTHORIZED STOCK means the stock of all classes and  
7029 series a corporation or foreign corporation is authorized to



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7030 issue.

7031 (2) BENEFICIAL STOCKHOLDER means a person who owns the  
7032 beneficial interest in stock, which is either a record  
7033 stockholder or a person on whose behalf shares of stock are  
7034 registered in the name of an intermediary or nominee.

7035 (3) CERTIFICATE OF INCORPORATION means the certificate  
7036 of incorporation described in Section 10A-2A-2.02, all  
7037 amendments to the certificate of incorporation, and any other  
7038 documents permitted or required to be delivered for filing by  
7039 a corporation with the Secretary of State under this chapter  
7040 or Chapter 1 that modify, amend, supplement, restate, or  
7041 replace the certificate of incorporation. After an amendment  
7042 of the certificate of incorporation or any other document  
7043 filed under this chapter or Chapter 1 that restates the  
7044 certificate of incorporation in its entirety, the certificate  
7045 of incorporation shall not include any prior documents. When  
7046 used with respect to a corporation incorporated and existing  
7047 on December 31, 2019, under a predecessor law of this state,  
7048 the term "certificate of incorporation" means articles of  
7049 incorporation, charter, or similar incorporating document, and  
7050 all amendments and restatements to the certificate of  
7051 incorporation, charter, or similar incorporating document.  
7052 When used with respect to a foreign corporation, a nonprofit  
7053 corporation, or a foreign nonprofit corporation, the  
7054 "certificate of incorporation" of such an entity means the  
7055 document of such entity that is equivalent to the certificate  
7056 of incorporation of a corporation. The term "certificate of  
7057 incorporation" as used in this chapter is synonymous to the



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7058 term "certificate of formation" used in Chapter 1.

7059 (4) CORPORATION, except in the phrase foreign  
7060 corporation, means an entity incorporated or existing under  
7061 this chapter.

7062 (5) DELIVER or DELIVERY means any method of delivery  
7063 used in conventional commercial practice, including delivery  
7064 by hand, mail, commercial delivery, and, if authorized in  
7065 accordance with Section 10A-2A-1.41, by electronic  
7066 transmission.

7067 (6) DISTRIBUTION means a direct or indirect transfer of  
7068 cash or other property (except a corporation's own stock) or  
7069 incurrence of indebtedness by a corporation to or for the  
7070 benefit of its stockholders in respect of any of its stock. A  
7071 distribution may be in the form of a payment of a dividend; a  
7072 purchase, redemption, or other acquisition of stock; a  
7073 distribution of indebtedness; a distribution in liquidation;  
7074 or otherwise.

7075 (7) DOCUMENT means a writing as defined in Chapter 1.

7076 (8) EFFECTIVE DATE, when referring to a document  
7077 accepted for filing by the Secretary of State, means the time  
7078 and date determined in accordance with Article 4 of Chapter 1.

7079 (9) ELECTRONIC MAIL means an electronic transmission  
7080 directed to a unique electronic mail address.

7081 (10) ELECTRONIC MAIL ADDRESS means a destination,  
7082 commonly expressed as a string of characters, consisting of a  
7083 unique user name or mailbox (commonly referred to as the  
7084 "local part" of the address) and a reference to an internet  
7085 domain (commonly referred to as the "domain part" of the



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7086 address), whether or not displayed, to which electronic mail  
7087 can be sent or delivered.

7088 (11) ELIGIBLE ENTITY means an unincorporated entity,  
7089 foreign unincorporated entity, nonprofit corporation, or  
7090 foreign nonprofit corporation.

7091 (12) ELIGIBLE INTERESTS means interests or memberships.

7092 (13) EMPLOYEE includes an officer, but not a director.  
7093 A director may accept duties that make the director also an  
7094 employee.

7095 (14) ENTITY includes corporation; foreign corporation;  
7096 nonprofit corporation; foreign nonprofit corporation; estate;  
7097 trust; unincorporated entity; foreign unincorporated entity;  
7098 and state, United States, and foreign government.

7099 (15) EXPENSES means reasonable expenses of any kind  
7100 that are incurred in connection with a matter.

7101 (16) FILING ENTITY means an unincorporated entity,  
7102 other than a limited liability partnership, that is of a type  
7103 that is created by filing a public organic record or is  
7104 required to file a public organic record that evidences its  
7105 creation.

7106 (17) FOREIGN CORPORATION means a corporation  
7107 incorporated under a law other than the law of this state  
7108 which would be a corporation if incorporated under the law of  
7109 this state.

7110 (18) FOREIGN NONPROFIT CORPORATION means a corporation  
7111 incorporated under a law other than the law of this state  
7112 which would be a nonprofit corporation if incorporated under  
7113 the law of this state.



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7114 (19) GOVERNING STATUTE means the statute governing the  
7115 internal affairs of a corporation, foreign corporation,  
7116 nonprofit corporation, foreign nonprofit corporation,  
7117 unincorporated entity, or foreign unincorporated entity.

7118 (20) GOVERNMENTAL SUBDIVISION includes authority,  
7119 county, district, and municipality.

7120 (21) INCLUDES and INCLUDING denote a partial definition  
7121 or a nonexclusive list.

7122 (22) INTEREST means either or both of the following  
7123 rights under the governing statute governing an unincorporated  
7124 entity:

7125 (i) the right to receive distributions from the entity  
7126 either in the ordinary course or upon liquidation; or

7127 (ii) the right to receive notice or vote on issues  
7128 involving its internal affairs, other than as an agent,  
7129 assignee, proxy, or person responsible for managing its  
7130 business and affairs.

7131 (23) INTEREST HOLDER means a person who holds of record  
7132 an interest.

7133 (24) KNOWLEDGE is determined as follows:

7134 (a) A person knows a fact when the person:

7135 (1) has actual knowledge of it; or

7136 (2) is deemed to know it under law other than this  
7137 chapter.

7138 (b) A person has notice of a fact when the person:

7139 (1) knows of it;

7140 (2) receives notification of it in accordance with  
7141 Section 10A-2A-1.41;



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7142 (3) has reason to know the fact from all of the facts  
7143 known to the person at the time in question; or

7144 (4) is deemed to have notice of the fact under  
7145 subsection (d).

7146 (c) A person notifies another of a fact by taking steps  
7147 reasonably required to inform the other person in ordinary  
7148 course in accordance with Section 10A-2A-1.41, whether or not  
7149 the other person knows the fact.

7150 (d) A person is deemed to have notice of a  
7151 corporation's:

7152 (1) matters included in the certificate of  
7153 incorporation upon filing;

7154 (2) dissolution, 90 days after a certificate of  
7155 dissolution under Section 10A-2A-14.03 becomes effective;

7156 (3) conversion, merger, or interest exchange under  
7157 Article 9 or Article 11, 90 days after a statement of  
7158 conversion, or statement of merger or interest exchange  
7159 becomes effective;

7160 (4) conversion or merger under Article 8 of Chapter 1,  
7161 90 days after a statement of conversion or statement of merger  
7162 becomes effective; and

7163 (5) revocation of dissolution and reinstatement, 90  
7164 days after certificate of revocation of dissolution and  
7165 reinstatement under Section 10A-2A-14.04 becomes effective.

7166 (e) A stockholder's knowledge, notice, or receipt of a  
7167 notification of a fact relating to the corporation is not  
7168 knowledge, notice, or receipt of a notification of a fact by  
7169 the corporation solely by reason of the stockholder's capacity



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7170 as a stockholder.

7171 (f) The date and time of the effectiveness of a notice  
7172 delivered in accordance with Section 10A-2A-1.41, is  
7173 determined by Section 10A-2A-1.41.

7174 (25) MEANS denotes an exhaustive definition.

7175 (26) MEMBERSHIP means the rights of a member in a  
7176 nonprofit corporation or foreign nonprofit corporation.

7177 ~~(27) MERGER means a transaction pursuant to Section~~  
7178 ~~10A-2A-11.02.~~

7179 ~~(28)~~ (27) ORGANIZATIONAL DOCUMENTS means the public  
7180 organic record and private organizational documents of a  
7181 corporation, foreign corporation, or eligible entity.

7182 ~~(29)~~ (28) PRINCIPAL OFFICE means the office (in or out  
7183 of this state) so designated in the annual report where the  
7184 principal executive offices of a corporation or foreign  
7185 corporation are located.

7186 ~~(30)~~ (29) PRIVATE ORGANIZATIONAL DOCUMENTS means (i) the  
7187 bylaws of a corporation, foreign corporation, nonprofit  
7188 corporation, or foreign nonprofit corporation, or (ii) the  
7189 rules, regardless of whether in writing, that govern the  
7190 internal affairs of an unincorporated entity or foreign  
7191 unincorporated entity, are binding on all its interest  
7192 holders, and are not part of its public organic record, if  
7193 any. Where private organizational documents have been amended  
7194 or restated, the term means the private organizational  
7195 documents as last amended or restated.

7196 ~~(31)~~ (30) PROCEEDING includes any civil suit and  
7197 criminal, administrative, and investigatory action.



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7198           ~~(32)~~ (31) PUBLIC ORGANIC RECORD means (i) the  
7199 certificate of incorporation of a corporation, foreign  
7200 corporation, nonprofit corporation, or foreign nonprofit  
7201 corporation, or (ii) the document, if any, the filing of which  
7202 is required to create an unincorporated entity or foreign  
7203 unincorporated entity, or which creates the unincorporated  
7204 entity or foreign unincorporated entity and is required to be  
7205 filed. Where a public organic record has been amended or  
7206 restated, the term means the public organic record as last  
7207 amended or restated.

7208           ~~(33)~~ (32) RECORD DATE means the date fixed for  
7209 determining the identity of the corporation's stockholders and  
7210 their stockholdings for purposes of this chapter. Unless  
7211 another time is specified when the record date is fixed, the  
7212 determination shall be made as of the close of business at the  
7213 principal office of the corporation on the date so fixed.

7214           ~~(34)~~ (33) RECORD STOCKHOLDER means (i) the person in  
7215 whose name shares of stock are registered in the records of  
7216 the corporation, or (ii) the person identified as the  
7217 beneficial owner of stock in a beneficial ownership  
7218 certificate pursuant to Section 10A-2A-7.23 on file with the  
7219 corporation to the extent of the rights granted by such  
7220 certificate.

7221           ~~(35)~~ (34) SECRETARY means the corporate officer to whom  
7222 the board of directors has delegated responsibility under  
7223 Section 10A-2A-8.40(c) to maintain the minutes of the meetings  
7224 of the board of directors and of the stockholders and for  
7225 authenticating records of the corporation.



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7226           ~~(36)~~ (35) STOCK EXCHANGE means a transaction pursuant to  
7227 Section 10A-2A-11.03.

7228           ~~(37)~~ (36) STOCKHOLDER means a record stockholder.

7229           ~~(38)~~ (37) STOCK means the units into which the  
7230 proprietary interests in a corporation or foreign corporation  
7231 are divided.

7232           ~~(39)~~ (38) TYPE OF ENTITY means a generic form of entity:  
7233 (i) recognized at common law; or (ii) formed under a governing  
7234 statute, regardless of whether some entities formed under that  
7235 law are subject to provisions of that law that create  
7236 different categories of the form of entity.

7237           ~~(40)~~ (39) UNINCORPORATED ENTITY means an organization or  
7238 artificial legal person that either has a separate legal  
7239 existence or has the power to acquire an estate in real  
7240 property in its own name and that is not any of the following:  
7241 a corporation, foreign corporation, nonprofit corporation,  
7242 foreign nonprofit corporation, a series of a limited liability  
7243 company or of another type of entity, an estate, a trust, a  
7244 state, United States, or foreign government. The term includes  
7245 a general partnership, limited liability company, limited  
7246 partnership, business trust, joint stock association, and  
7247 unincorporated nonprofit association.

7248           ~~(41)~~ (40) UNITED STATES includes any district,  
7249 authority, bureau, commission, department, and any other  
7250 agency of the United States.

7251           ~~(42)~~ (41) UNRESTRICTED VOTING TRUST BENEFICIAL OWNER  
7252 means, with respect to any stockholder rights, a voting trust  
7253 beneficial owner whose entitlement to exercise the stockholder



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7254 right in question is not inconsistent with the voting trust  
7255 agreement.

7256 ~~(43)~~ (42) VOTING GROUP means all stock of one or more  
7257 classes or series that under the certificate of incorporation  
7258 or this chapter are entitled to vote and be counted together  
7259 collectively on a matter at a meeting of stockholders. All  
7260 stock entitled by the certificate of incorporation or this  
7261 chapter to vote generally on the matter is for that purpose a  
7262 single voting group.

7263 ~~(44)~~ (43) VOTING POWER means the current power to vote  
7264 in the election of directors.

7265 ~~(45)~~ (44) VOTING TRUST BENEFICIAL OWNER means an owner  
7266 of a beneficial interest in stock of the corporation held in a  
7267 voting trust established pursuant to Section 10A-2A-7.30(a)."

7268 "§10A-2A-1.43

7269 (a) A "qualified director" is a director who, at the  
7270 time action is to be taken under:

7271 (1) Section 10A-2A-2.02(b)(6), is not a director (i) to  
7272 whom the limitation or elimination of the duty of an officer  
7273 to offer potential business opportunities to the corporation  
7274 would apply, or (ii) who has a material relationship with any  
7275 other person to whom the limitation or elimination would  
7276 apply;

7277 ~~(2) Section 10A-2A-7.44, does not have (i) a material~~  
7278 ~~interest in the outcome of the proceeding, or (ii) a material~~  
7279 ~~relationship with a person who has such an interest;~~

7280 ~~(3)~~ (2) Section 10A-2A-8.53 or Section 10A-2A-8.55, (i)  
7281 is not a party to the proceeding, (ii) is not a director as to



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7282 whom a transaction is a director's conflicting interest  
7283 transaction or who sought a disclaimer of the corporation's  
7284 interest in a business opportunity under Section 10A-2A-8.60,  
7285 which transaction or disclaimer is challenged, and (iii) does  
7286 not have a material relationship with a director described in  
7287 either clause (i) or clause (ii) of this subsection ~~(a)(3)~~  
7288 (a)(2); or

7289 ~~(4)~~ (3) Section 10A-2A-8.60, is not a director (i) as to  
7290 whom the contract or transaction is a director's conflicting  
7291 interest transaction, (ii) who has a material relationship  
7292 with another director as to whom the transaction is a  
7293 director's conflicting interest transaction, (iii) pursues or  
7294 takes advantage of the business opportunity, directly, or  
7295 indirectly through or on behalf of another person, or (iv) has  
7296 a material relationship with a director or officer who pursues  
7297 or takes advantage of the business opportunity, directly, or  
7298 indirectly through or on behalf of another person.

7299 (b) For purposes of this section:

7300 (1) "material relationship" means a familial,  
7301 financial, professional, employment, or other relationship  
7302 that would reasonably be expected to impair the objectivity of  
7303 the director's judgment when participating in the action to be  
7304 taken; and

7305 (2) "material interest" means an actual or potential  
7306 benefit or detriment (other than one which would devolve on  
7307 the corporation or the stockholders generally) that would  
7308 reasonably be expected to impair the objectivity of the  
7309 director's judgment when participating in the action to be



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7310 taken.

7311 (c) The presence of one or more of the following  
7312 circumstances shall not automatically prevent a director from  
7313 being a qualified director:

7314 (1) nomination or election of the director to the  
7315 current board of directors by any director who is not a  
7316 qualified director with respect to the matter (or by any  
7317 person that has a material relationship with that director),  
7318 acting alone or participating with others; or

7319 (2) service as a director of another corporation of  
7320 which a director who is not a qualified director with respect  
7321 to the matter (or any individual who has a material  
7322 relationship with that director), is or was also a director;  
7323 ~~or~~.

7324 ~~(3) with respect to action to be taken under Section~~  
7325 ~~10A-2A-7.44, status as a named defendant, as a director~~  
7326 ~~against whom action is demanded, or as a director who approved~~  
7327 ~~the conduct being challenged."~~

7328 "§10A-2A-1.51

7329 (a) If the defective corporate action ratified under  
7330 this Division D of Article 1 would have required under any  
7331 other section of this chapter a filing in accordance with this  
7332 chapter, then, regardless of whether a filing was previously  
7333 made in respect of such defective corporate action and in lieu  
7334 of a filing otherwise required by this chapter, the  
7335 corporation shall file a certificate of validation in  
7336 accordance with this section, and that certificate of  
7337 validation shall serve to amend or substitute for any other



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7338 filing with respect to such defective corporate action  
7339 required by this chapter.

7340 (b) The certificate of validation must set forth:

7341 (1) the name of the corporation;

7342 (2) the unique identifying number or other designation

7343 as assigned by the Secretary of State;

7344 ~~(1)~~ (3) the defective corporate action that is the  
7345 subject of the certificate of validation (including, in the  
7346 case of any defective corporate action involving the issuance  
7347 of putative stock, the number and type of shares of putative  
7348 stock issued and the date or dates upon which that putative  
7349 stock was purported to have been issued);

7350 ~~(2)~~ (4) the date of the defective corporate action;

7351 ~~(3)~~ (5) the nature of the failure of authorization in  
7352 respect of the defective corporate action;

7353 ~~(4)~~ (6) a statement that the defective corporate action  
7354 was ratified in accordance with Section 10A-2A-1.47, including  
7355 the date on which the board of directors ratified that  
7356 defective corporate action and the date, if any, on which the  
7357 stockholders approved the ratification of that defective  
7358 corporate action; and

7359 ~~(5)~~ (7) the information required by subsection (c).

7360 (c) The certificate of validation must also contain the  
7361 following information:

7362 (1) if a filing was previously made in respect of the  
7363 defective corporate action and no changes to that filing are  
7364 required to give effect to the ratification of that defective  
7365 corporate action in accordance with Section 10A-2A-1.47, the



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7366 certificate of validation must set forth (i) the name, title,  
7367 and filing date of the filing previously made and any  
7368 certificate of correction to that filing, and (ii) a statement  
7369 that a copy of the filing previously made, together with any  
7370 certificate of correction to that filing, is attached as an  
7371 exhibit to the certificate of validation;

7372 (2) if a filing was previously made in respect of the  
7373 defective corporate action and that filing requires any change  
7374 to give effect to the ratification of that defective corporate  
7375 action in accordance with Section 10A-2A-1.47, the certificate  
7376 of validation must set forth (i) the name, title, and filing  
7377 date of the filing previously made and any certificate of  
7378 correction to that filing, and (ii) a statement that a filing  
7379 containing all of the information required to be included  
7380 under the applicable section or sections of this chapter to  
7381 give effect to that defective corporate action is attached as  
7382 an exhibit to the certificate of validation, and (iii) the  
7383 date and time that filing is deemed to have become effective;  
7384 or

7385 (3) if a filing was not previously made in respect of  
7386 the defective corporate action and the defective corporate  
7387 action ratified under Section 10A-2A-1.47 would have required  
7388 a filing under any other section of this chapter, the  
7389 certificate of validation must set forth (i) a statement that  
7390 a filing containing all of the information required to be  
7391 included under the applicable section or sections of this  
7392 chapter to give effect to that defective corporate action is  
7393 attached as an exhibit to the certificate of validation, and



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7394 (ii) the date and time that filing is deemed to have become  
7395 effective."

7396 "§10A-2A-2.02

7397 Section 10A-1-3.05 shall not apply to this chapter.

7398 Instead:

7399 (a) The certificate of incorporation must set forth:

7400 (1) a corporate name for the corporation that satisfies  
7401 the requirements of Article 5 of Chapter 1;

7402 (2) the number of shares of stock the corporation is  
7403 authorized to issue;

7404 (3) the street and mailing addresses of the  
7405 corporation's initial registered office, the county within  
7406 this state in which the street and mailing address is located,  
7407 and the name of the corporation's initial registered agent at  
7408 that office as required by Article 5 of Chapter 1; and

7409 (4) the name and address of each incorporator.

7410 (b) The certificate of incorporation may set forth:

7411 (1) the names and addresses of the individuals who are  
7412 to serve as the initial directors;

7413 (2) provisions not inconsistent with law regarding:

7414 (i) the purpose or purposes for which the corporation  
7415 is organized;

7416 (ii) managing the business and regulating the affairs  
7417 of the corporation;

7418 (iii) defining, limiting, and regulating the powers of  
7419 the corporation, its board of directors, and stockholders;

7420 (iv) a par value for authorized stock or classes of  
7421 stock; or



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7422 (v) subject to subsection (f), a provision imposing  
7423 personal liability for the debts of the corporation on its  
7424 stockholders to a specified extent and upon specified  
7425 conditions; otherwise, the stockholders of a corporation shall  
7426 not be personally liable for the payment of the corporation's  
7427 debts, except as they may be liable by reason of their own  
7428 conduct or acts;

7429 (3) any provision that under this chapter is permitted  
7430 to be set forth in the certificate of incorporation or  
7431 required or permitted to be set forth in the bylaws;

7432 (4) a provision eliminating or limiting the liability  
7433 of a director to the corporation or its stockholders for money  
7434 damages for any action taken, or any failure to take any  
7435 action, as a director, except liability for (i) the amount of  
7436 a financial benefit received by a director to which the  
7437 director is not entitled; (ii) an intentional infliction of  
7438 harm on the corporation or the stockholders; (iii) a violation  
7439 of Section 10A-2A-8.32; or (iv) an intentional violation of  
7440 criminal law;

7441 (5) a provision permitting or making obligatory  
7442 indemnification of a director for liability as defined in  
7443 Section 10A-2A-8.50 to any person for any action taken, or any  
7444 failure to take any action, as a director, except liability  
7445 for (i) receipt of a financial benefit to which the director  
7446 is not entitled, (ii) an intentional infliction of harm on the  
7447 corporation or its stockholders, (iii) a violation of Section  
7448 10A-2A-8.32, or (iv) an intentional violation of criminal law;  
7449 and



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7450 (6) a provision limiting or eliminating any duty of a  
7451 director or any other person to offer the corporation the  
7452 right to have or participate in any, or one or more classes or  
7453 categories of, business opportunities, before the pursuit or  
7454 taking of the opportunity by the director or other person;  
7455 provided that any application of that provision to an officer  
7456 or a related person of that officer (i) also requires approval  
7457 of that application by the board of directors, subsequent to  
7458 the effective date of the provision, by action of qualified  
7459 directors taken in compliance with the same procedures as are  
7460 set forth in Section 10A-2A-8.60, and (ii) may be limited by  
7461 the authorizing action of the board of directors.

7462 (c) The certificate of incorporation need not set forth  
7463 any of the corporate powers enumerated in Sections 10A-1-2.11,  
7464 10A-1-2.12, and 10A-1-2.13.

7465 (d) Provisions of the certificate of incorporation may  
7466 be made dependent upon facts objectively ascertainable outside  
7467 the certificate of incorporation in accordance with Section  
7468 10A-2A-1.20(c).

7469 (e) As used in this section, "related person" ~~has the~~  
7470 ~~meaning specified in Section 10A-2A-8.60~~ means:

7471 (i) the individual's spouse;

7472 (ii) a child, stepchild, grandchild, parent,  
7473 stepparent, grandparent, sibling, stepsibling, half sibling,  
7474 aunt, uncle, niece, or nephew (or spouse of any such person)  
7475 of the individual or of the individual's spouse;

7476 (iii) a natural person living in the same home as the  
7477 individual;

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7478 (iv) an entity (other than the corporation or an entity  
7479 controlled by the corporation) controlled by the individual or  
7480 any person specified above in this definition;

7481 (v) a domestic or foreign:

7482 (A) business or nonprofit corporation (other than the  
7483 corporation or an entity controlled by the corporation) of  
7484 which the individual is a director;

7485 (B) unincorporated entity of which the individual is a  
7486 general partner or a member of the governing authority; or

7487 (C) individual, trust or estate for whom or of which  
7488 the individual is a trustee, guardian, personal  
7489 representative, or like fiduciary; or

7490 (vi) a person that is, or an entity that is, controlled  
7491 by an employer of the individual.

7492 (f) The certificate of incorporation may not contain  
7493 any provision that would impose liability on a stockholder for  
7494 the attorney's fees or expenses of the corporation or any  
7495 other party in connection with an internal corporate claim, as  
7496 defined in Section 10A-2A-2.07(d).

7497 (g) The certificate of incorporation is part of a  
7498 binding contract between the corporation and the stockholders,  
7499 subject to the provisions of this chapter."

7500 "§10A-2A-2.06

7501 (a) Unless the certificate of incorporation provides  
7502 otherwise, ~~the board of directors may adopt~~ bylaws may be  
7503 adopted to be effective only in an emergency defined in  
7504 subsection (d). The emergency bylaws, which are subject to  
7505 amendment or repeal by the stockholders, may make all



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7506 provisions necessary for managing the corporation during the  
7507 emergency, including:

7508 (1) procedures for calling a meeting of the board of  
7509 directors;

7510 (2) quorum requirements for the meeting; and

7511 (3) designation of additional or substitute directors.

7512 (b) All provisions of the regular bylaws not  
7513 inconsistent with the emergency bylaws remain effective during  
7514 the emergency. The emergency bylaws are not effective after  
7515 the emergency ends.

7516 (c) Corporate action taken in good faith in accordance  
7517 with the emergency bylaws:

7518 (1) binds the corporation; and

7519 (2) may not be used to impose liability on a director,  
7520 officer, employee, or agent of the corporation.

7521 (d) An emergency exists for purposes of this section if  
7522 a quorum of the board of directors cannot readily be assembled  
7523 because of some catastrophic event."

7524 "§10A-2A-7.04

7525 (a) Unless otherwise provided in the certificate of  
7526 incorporation, any action required or permitted by this  
7527 chapter to be taken at any meeting of the stockholders may be  
7528 taken without a meeting, and without prior notice, if one or  
7529 more consents in writing setting forth the action so taken are  
7530 signed by the holders of outstanding stock having not less  
7531 than the minimum number of votes that would be required to  
7532 authorize or take the action at a meeting at which all shares  
7533 of stock entitled to vote on the action were present and



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7534 voted; provided, however, that if a corporation's certificate  
7535 of incorporation authorizes stockholders to cumulate their  
7536 votes when electing directors pursuant to Section 10A-2A-7.28,  
7537 directors may not be elected by less than unanimous written  
7538 consent. The action must be evidenced by one or more written  
7539 consents describing the action taken, signed by the  
7540 stockholders approving the action and delivered to the  
7541 corporation for filing by the corporation with the minutes or  
7542 corporate records.

7543 (b) If not otherwise fixed under Section 10A-2A-7.07  
7544 and if prior action by the board of directors is not required  
7545 respecting the action to be taken without a meeting, the  
7546 record date for determining the stockholders entitled to take  
7547 action without a meeting shall be the first date on which a  
7548 signed written consent is delivered to the corporation. If not  
7549 otherwise fixed under Section 10A-2A-7.07 and if prior action  
7550 by the board of directors is required respecting the action to  
7551 be taken without a meeting, the record date shall be the close  
7552 of business on the day the resolution of the board of  
7553 directors taking the prior action is adopted. No written  
7554 consent shall be effective to take the corporate action  
7555 referred to therein unless, within 60 days of the earliest  
7556 date on which a consent is delivered to the corporation as  
7557 required by this section, written consents signed by  
7558 sufficient stockholders to take the action have been delivered  
7559 to the corporation. Any person executing a consent may  
7560 provide, whether through instruction to an agent or otherwise,  
7561 that such consent will be effective at a future time,



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7562 including a time determined upon the happening of an event,  
7563 occurring not later than 60 days after such instruction is  
7564 given or such provision is made, if evidence of the  
7565 instruction or provision is provided to the corporation. A  
7566 written consent may be revoked by a writing to that effect  
7567 delivered to the corporation before unrevoked written consents  
7568 sufficient in number to take the corporate action have been  
7569 delivered to the corporation.

7570 (c) A consent signed pursuant to the provisions of this  
7571 section has the effect of a vote taken at a meeting and may be  
7572 described as such in any document. Unless the certificate of  
7573 incorporation, bylaws or a resolution of the board of  
7574 directors provides for a reasonable delay to permit tabulation  
7575 of written consents, the action taken by written consent shall  
7576 be effective when written consents signed by sufficient  
7577 stockholders to take the action have been delivered to the  
7578 corporation.

7579 (d) If this chapter requires that notice of a proposed  
7580 action be given to nonvoting stockholders and the action is to  
7581 be taken by written consent of the voting stockholders, the  
7582 corporation shall give its nonvoting stockholders written  
7583 notice of the action not more than 10 days after (i) written  
7584 consents sufficient to take the action have been delivered to  
7585 the corporation, or (ii) any later date that tabulation of  
7586 consents is completed pursuant to an authorization under  
7587 subsection (c). The notice must reasonably describe the action  
7588 taken and contain or be accompanied by the same material that,  
7589 under any provision of this chapter, would have been required



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7590 to be sent to nonvoting stockholders in a notice of a meeting  
7591 at which the proposed action would have been submitted to the  
7592 stockholders for action.

7593 (e) If action is taken by less than unanimous written  
7594 consent of the voting stockholders, the corporation shall give  
7595 its nonconsenting voting stockholders written notice of the  
7596 action not more than 10 days after (i) written consents  
7597 sufficient to take the action have been delivered to the  
7598 corporation, or (ii) any later date that tabulation of  
7599 consents is completed pursuant to an authorization under  
7600 subsection (c). The notice must reasonably describe the action  
7601 taken and contain or be accompanied by the same material that,  
7602 under any provision of this chapter, would have been required  
7603 to be sent to voting stockholders in a notice of a meeting at  
7604 which the action would have been submitted to the stockholders  
7605 for action.

7606 (f) The notice requirements in subsections (d) and (e)  
7607 shall not delay the effectiveness of actions taken by written  
7608 consent, and a failure to comply with those notice  
7609 requirements shall not invalidate actions taken by written  
7610 consent, provided that this subsection shall not be deemed to  
7611 limit judicial power to fashion any appropriate remedy in  
7612 favor of a stockholder adversely affected by a failure to give  
7613 the notice within the required time period."

7614 "§10A-2A-7.20

7615 (a) After fixing a record date for a meeting, a  
7616 corporation shall prepare an alphabetical list of the names of  
7617 all its stockholders who are entitled to notice of the



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7618 stockholders' meeting. If the board of directors fixes a  
7619 different record date under Section 10A-2A-7.07(e) to  
7620 determine the stockholders entitled to vote at the meeting, a  
7621 corporation also shall prepare an alphabetical list of the  
7622 names of all its stockholders who are entitled to vote at the  
7623 meeting. Each list must be arranged by voting group (and  
7624 within each voting group by class or series of stock) and  
7625 contain the address of, and number and class or series of  
7626 shares of stock held by, each stockholder, and if the notice  
7627 or other communications regarding the meeting have been or  
7628 will be sent by the corporation to a stockholder by electronic  
7629 mail or other electronic transmission, the electronic mail or  
7630 other electronic transmission address of that stockholder.

7631 (b) The list of stockholders entitled to notice and to  
7632 vote shall be available for inspection by any stockholder~~7~~  
7633 ~~beginning two business days after notice of~~ no later than the  
7634 tenth day before each meeting of stockholders; provided,  
7635 however, if the record date for determining the stockholders  
7636 entitled to vote is less than 10 days before the meeting~~is~~  
7637 ~~given for which the list was prepared and continuing through~~  
7638 ~~the meeting,~~ date, the list shall reflect the stockholders  
7639 entitled to vote as of the tenth day before the meeting date.  
7640 The list shall be available (i) at the corporation's principal  
7641 office or at a place identified in the meeting notice in the  
7642 city where the meeting will be held or (ii) on a reasonably  
7643 accessible electronic network, provided that the information  
7644 required to gain access to such list is provided with the  
7645 notice of the meeting. ~~The list of stockholders entitled to~~



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7646 ~~vote shall be similarly available for inspection promptly~~  
7647 ~~after the record date for voting.~~ In the event that the  
7648 corporation determines to make a list of stockholders  
7649 available on an electronic network, the corporation may take  
7650 reasonable steps to ensure that such information is available  
7651 only to stockholders of the corporation. A stockholder, or the  
7652 stockholder's agent or attorney, is entitled on written demand  
7653 to inspect and, subject to the requirements of Section  
7654 10A-2A-16.02(c), to copy a list of stockholders, during  
7655 regular business hours and at the stockholder's expense,  
7656 during the period it is available for inspection. A  
7657 corporation may satisfy the stockholder's right to copy a list  
7658 of stockholders by furnishing a copy in the manner described  
7659 in Section 10A-2A-16.03(b). A stockholder and the  
7660 stockholder's agent or attorney who inspects or is furnished a  
7661 copy of a list of stockholders under this subsection (b) ~~or~~  
7662 ~~under subsection (c)~~ or who copies the list under this  
7663 subsection (b) may use the information on that list only for  
7664 purposes related to the meeting and its subject matter and  
7665 must keep the information on that list confidential.

7666 ~~(c) If the meeting is to be held at a place, the~~  
7667 ~~corporation shall make the list of stockholders entitled to~~  
7668 ~~vote available at the meeting and any adjournment, and any~~  
7669 ~~stockholder, or the stockholder's agent or attorney, is~~  
7670 ~~entitled to inspect the list at any time during the meeting~~  
7671 ~~and any adjournment. If the meeting is to be held solely by~~  
7672 ~~means of remote communication, then such list shall also be~~  
7673 ~~available for such inspection during the meeting and any~~



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7674 ~~adjournment on a reasonably accessible electronic network, and~~  
7675 ~~the information required to access such list shall be provided~~  
7676 ~~with the notice of the meeting. The corporation may satisfy~~  
7677 ~~its obligation to make such list available for inspection~~  
7678 ~~during a meeting by furnishing a copy of the list in the~~  
7679 ~~manner described in Section 10A-2A-16.03(b) to the~~  
7680 ~~stockholders prior to the meeting.~~

7681 ~~(d)~~ (c) If the corporation refuses to allow a  
7682 stockholder, or the stockholder's agent or attorney, to  
7683 inspect a list of stockholders before ~~or at~~ the meeting or any  
7684 adjournment (or copy a list as permitted by subsection (b)),  
7685 the designated court, and if none, the circuit court for the  
7686 county in which the corporation's principal office is located  
7687 in this state, and if none in this state, the circuit court  
7688 for the county in which the corporation's most recent  
7689 registered office is located, on application of the  
7690 stockholder, may summarily order the inspection or copying at  
7691 the corporation's expense and may postpone the meeting for  
7692 which the list was prepared until the inspection or copying is  
7693 complete.

7694 ~~(e)~~ (d) Refusal or failure to prepare or make available  
7695 a list of stockholders does not affect the validity of action  
7696 taken at the meeting.

7697 ~~(f)~~ (e) The stock transfer records of the corporation  
7698 shall be prima facie evidence as to who are the stockholders  
7699 entitled to examine the stockholders' list or transfer records  
7700 or to vote at any meeting of stockholders."

7701 "§10A-2A-7.32



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7702 (a) An agreement among the stockholders of a  
7703 corporation that complies with this section is effective among  
7704 the stockholders and the corporation even though it is  
7705 inconsistent with one or more other provisions of this chapter  
7706 in that it:

7707 (1) eliminates the board of directors or restricts the  
7708 discretion or powers of the board of directors;

7709 (2) governs the authorization or making of  
7710 distributions, regardless of whether they are in proportion to  
7711 ownership of stock, subject to the limitations in Section  
7712 10A-2A-6.40;

7713 (3) establishes who shall be directors or officers of  
7714 the corporation, or their terms of office or manner of  
7715 selection or removal;

7716 (4) governs, in general or in regard to specific  
7717 matters, the exercise or division of voting power by or  
7718 between the stockholders and directors or by or among any of  
7719 them, including use of weighted voting rights ~~or director~~  
7720 ~~proxies~~;

7721 (5) establishes the terms and conditions of any  
7722 agreement for the transfer or use of property or the provision  
7723 of services between the corporation and any stockholder,  
7724 director, officer, l or employee of the corporation or among any  
7725 of them;

7726 (6) transfers to one or more stockholders or other  
7727 persons all or part of the authority to exercise the corporate  
7728 powers or to manage the business and affairs of the  
7729 corporation, including the resolution of any issue about which



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7730 there exists a deadlock among directors or stockholders;

7731 (7) requires dissolution of the corporation at the  
7732 request of one or more of the stockholders or upon the  
7733 occurrence of a specified event or contingency; or

7734 (8) otherwise governs the exercise of the corporate  
7735 powers or the management of the business and affairs of the  
7736 corporation or the relationship among the stockholders, the  
7737 directors and the corporation, or among any of them, and is  
7738 not contrary to public policy.

7739 (b) An agreement authorized by this section shall be:

7740 (1) as set forth (i) in the certificate of  
7741 incorporation or bylaws and approved by all persons who are  
7742 stockholders at the time of the agreement, or (ii) in a  
7743 written agreement that is signed by all persons who are  
7744 stockholders at the time of the agreement and is made known to  
7745 the corporation; and

7746 (2) subject to amendment only by all persons who are  
7747 stockholders at the time of the amendment, unless the  
7748 agreement provides otherwise.

7749 (c) The existence of an agreement authorized by this  
7750 section shall be noted conspicuously on the front or back of  
7751 each certificate for outstanding stock or in the information  
7752 required by Section 10A-1-3.45. If at the time of the  
7753 agreement the corporation has stock outstanding represented by  
7754 certificates, the corporation shall recall the outstanding  
7755 certificates and issue substitute certificates that comply  
7756 with this subsection. The failure to note the existence of the  
7757 agreement as required by this subsection shall not affect the



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7758 validity of the agreement or any action taken pursuant to it.  
7759 Any purchaser of stock who, at the time of purchase, did not  
7760 have knowledge of the existence of the agreement shall be  
7761 entitled to rescission of the purchase. A purchaser shall be  
7762 deemed to have knowledge of the existence of the agreement if  
7763 its existence is noted on the certificate or if the stock is  
7764 not represented by a certificate, the information required by  
7765 Section 10A-1-3.45 is delivered to the purchaser at or before  
7766 the time of purchase of the stock. An action to enforce the  
7767 right of rescission authorized by this subsection shall be  
7768 commenced within the earlier of 90 days after discovery of the  
7769 existence of the agreement or two years after the time of  
7770 purchase of the stock.

7771 (d) If the agreement ceases to be effective for any  
7772 reason, the board of directors may, if the agreement is  
7773 contained or referred to in the corporation's certificate of  
7774 incorporation or bylaws, adopt an amendment to the certificate  
7775 of incorporation or bylaws, without stockholder action, to  
7776 delete the agreement and any references to it.

7777 (e) An agreement authorized by this section that limits  
7778 the discretion or powers of the board of directors shall  
7779 relieve the directors of, and impose upon the person or  
7780 persons in whom the discretion or powers are vested, liability  
7781 for acts or omissions imposed by law on directors to the  
7782 extent that the discretion or powers of the directors are  
7783 limited by the agreement. An agreement authorized by this  
7784 section that eliminates the board of directors shall impose on  
7785 the person or persons in whom the discretion or powers of the



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7786 directors are vested the liability for acts or omissions as  
7787 are imposed by law on directors.

7788 (f) The existence or performance of an agreement  
7789 authorized by this section shall not be a ground for imposing  
7790 personal liability on any stockholder for the acts or debts of  
7791 the corporation even if the agreement or its performance  
7792 treats the corporation as if it were a partnership or results  
7793 in failure to observe the corporate formalities otherwise  
7794 applicable to the matters governed by the agreement.

7795 (g) Incorporators or subscribers for stock may act as  
7796 stockholders with respect to an agreement authorized by this  
7797 section if no stock has been issued when the agreement is  
7798 made.

7799 (h) Limits, if any, on the duration of an agreement  
7800 authorized by this section must be set forth in the  
7801 agreement."

7802 "§10A-2A-8.10

7803 (a) ~~Unless the certificate of incorporation provides~~  
7804 ~~otherwise~~ Except as otherwise provided in Section  
7805 10A-2A-8.10(b) or the certificate of incorporation, if a  
7806 vacancy occurs on ~~a~~ the board of directors, including a  
7807 vacancy resulting from an increase in the number of directors:

7808 (1) the stockholders may fill the vacancy;  
7809 (2) the board of directors may fill the vacancy; or  
7810 (3) if the directors remaining in office are less than  
7811 a quorum, they may fill the vacancy by the affirmative vote of  
7812 a majority of all the directors remaining in office.

7813 (b) ~~If~~ Unless the certificate of incorporation provides



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7814 otherwise, if the vacant office was held by a director elected  
7815 by a voting group of stockholders, only the holders of stock  
7816 of that voting group are entitled to vote to fill the vacancy  
7817 if it is filled by the stockholders, and only the remaining  
7818 directors elected by that voting group, even if less than a  
7819 quorum, are entitled to fill the vacancy if it is filled by  
7820 the directors.

7821 (c) A vacancy that will occur at a specific later date  
7822 (by reason of a resignation effective at a later date under  
7823 Section 10A-2A-8.07(b) or otherwise) may be filled before the  
7824 vacancy occurs but the new director may not take office until  
7825 the vacancy occurs."

7826 "§10A-2A-8.21

7827 (a) Except to the extent that the certificate of  
7828 incorporation or bylaws require that action by the board of  
7829 directors be taken at a meeting, action required or permitted  
7830 by this chapter to be taken by the board of directors may be  
7831 taken without a meeting if each director signs a consent  
7832 describing the action to be taken and delivers it to the  
7833 corporation.

7834 (b) Action taken under this section is the act of the  
7835 board of directors when one or more consents signed by all the  
7836 directors are delivered to the corporation. ~~The consent may~~  
7837 ~~specify a later time as the time at which the action taken is~~  
7838 ~~to be effective.~~ Any director executing a consent may provide,  
7839 whether through instruction to an agent or otherwise, that  
7840 such consent will be effective at a future time, including a  
7841 time determined upon the happening of an event, occurring not

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7842 later than 60 days after such instruction is given or such  
7843 provision is made, if evidence of the instruction or provision  
7844 is provided to the corporation. A director's consent may be  
7845 withdrawn by a revocation signed by the director and delivered  
7846 to the corporation before delivery to the corporation of  
7847 unrevoked written consents signed by all the directors.

7848 (c) A consent signed under this section has the effect  
7849 of action taken at a meeting of the board of directors and may  
7850 be described as such in any document."

7851 "§10A-2A-8.22

7852 (a) Unless the certificate of incorporation or bylaws  
7853 provide otherwise, regular meetings of the board of directors  
7854 may be held without notice of the place, if any, date, time,  
7855 ~~place,~~ or purpose of the meeting.

7856 (b) Unless the certificate of incorporation or bylaws  
7857 provide for a longer or shorter period, special meetings of  
7858 the board of directors shall be preceded by at least two days'  
7859 notice of the place, if any, date, and time, ~~and place~~ of the  
7860 meeting. The notice need not describe the purpose of the  
7861 special meeting unless required by the certificate of  
7862 incorporation or bylaws."

7863 "§10A-2A-8.24

7864 (a) Unless the certificate of incorporation or bylaws  
7865 provide for a greater or lesser number or unless otherwise  
7866 expressly provided in this chapter, a quorum of a board of  
7867 directors consists of a majority of the number of directors  
7868 specified in or fixed in accordance with the certificate of  
7869 incorporation or bylaws.



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7870 (b) The quorum of the board of directors specified in  
7871 or fixed in accordance with the certificate of incorporation  
7872 or bylaws may not consist of less than one-third of the  
7873 specified or fixed number of directors.

7874 (c) If a quorum is present when a vote is taken, the  
7875 affirmative vote of a majority of directors present is the act  
7876 of the board of directors unless the certificate of  
7877 incorporation or bylaws require the vote of a greater number  
7878 of directors or unless otherwise expressly provided in this  
7879 chapter.

7880 (d) A director who is present at a meeting of the board  
7881 of directors or a committee when corporate action is taken is  
7882 deemed to have assented to the action taken unless: (i) the  
7883 director objects at the beginning of the meeting (or promptly  
7884 upon arrival) to holding it or transacting business at the  
7885 meeting; (ii) the dissent or abstention from the action taken  
7886 is entered in the minutes of the meeting; or (iii) the  
7887 director delivers written notice of the director's dissent or  
7888 abstention to the presiding officer of the meeting before its  
7889 adjournment or to the corporation immediately after  
7890 adjournment of the meeting. The right of dissent or abstention  
7891 is not available to a director who votes in favor of the  
7892 action taken."

7893 "§10A-2A-8.59

7894 ~~Division A of Article 6 of Chapter 1 shall not apply to~~  
7895 ~~this chapter. Instead, a A corporation may provide~~  
7896 indemnification or advance expenses to a director or an  
7897 officer only as permitted by this Division E of this Article



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7898 8."

7899 "§10A-2A-10.06

7900 ~~Division B of Article 3 of Chapter 1 shall not apply to~~  
7901 ~~this chapter. Instead:~~

7902 (a) After an amendment to the certificate of  
7903 incorporation has been adopted and approved in the manner  
7904 required by this chapter and by the certificate of  
7905 incorporation, the corporation shall deliver to the Secretary  
7906 of State for filing a certificate of amendment, which must set  
7907 forth:

7908 (1) the name of the corporation;

7909 (2) the text of each amendment adopted, or the  
7910 information required by Section 10A-2A-1.20(c)(5);

7911 (3) if an amendment provides for an exchange,  
7912 reclassification, or cancellation of issued stock, provisions  
7913 for implementing the amendment if not contained in the  
7914 amendment itself, (which may be made dependent upon facts  
7915 objectively ascertainable outside the certificate of amendment  
7916 in accordance with Section 10A-2A-1.20(c)(5));

7917 (4) the date of each amendment's adoption;

7918 (5) if an amendment:

7919 (i) was adopted by the incorporators or board of  
7920 directors without stockholder approval, a statement that the  
7921 amendment was duly adopted by the incorporators or by the  
7922 board of directors, as the case may be, and that stockholder  
7923 approval was not required;

7924 (ii) required approval by the stockholders, a statement  
7925 that the amendment was duly approved by the stockholders in



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7926 the manner required by this chapter and by the certificate of  
7927 incorporation; or

7928 (iii) is being filed pursuant to Section  
7929 10A-2A-1.20(c) (5), a statement to that effect; and

7930 (6) the unique identifying number or other designation  
7931 as assigned by the Secretary of State.

7932 (b) A certificate of amendment shall take effect at the  
7933 effective date determined in accordance with Article 4 of  
7934 Chapter 1."

7935 "§10A-2A-10.07

7936 ~~Division B of Article 3 of Chapter 1 shall not apply to~~  
7937 ~~this chapter. Instead:~~

7938 (a) A corporation's board of directors may restate its  
7939 certificate of incorporation at any time, without stockholder  
7940 approval, to consolidate all amendments into a single  
7941 document.

7942 (b) If the restated certificate of incorporation  
7943 includes one or more new amendments that require stockholder  
7944 approval, the amendments shall be adopted and approved as  
7945 provided in Section 10A-2A-10.03.

7946 (c) A corporation that restates its certificate of  
7947 incorporation shall deliver to the Secretary of State for  
7948 filing a certificate of restatement setting forth:

7949 (1) the name of the corporation;

7950 (2) the text of the restated certificate of  
7951 incorporation;

7952 (3) a statement that the restated certificate of  
7953 incorporation consolidates all amendments into a single



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7954 document;

7955 (4) if a new amendment is included in the restated  
7956 certificate of incorporation, the statements required under  
7957 Section 10A-2A-10.06 with respect to the new amendment; and

7958 (5) the unique identifying number or other designation  
7959 as assigned by the Secretary of State.

7960 (d) The duly adopted restated certificate of  
7961 incorporation supersedes the original certificate of  
7962 incorporation and all amendments to the certificate of  
7963 incorporation.

7964 ~~(e) The Secretary of State may certify the restated~~  
7965 ~~certificate of incorporation as the certificate of~~  
7966 ~~incorporation currently in effect, without including the~~  
7967 ~~statements required by subsection (c)(4)."~~

7968 "§10A-2A-10.08

7969 ~~Division B of Article 3 of Chapter 1 shall not apply to~~  
7970 ~~this chapter. Instead:~~

7971 (a) A corporation's certificate of incorporation may be  
7972 amended without action by the board of directors or  
7973 stockholders to carry out a plan of reorganization ordered or  
7974 decreed by a court of competent jurisdiction under the  
7975 authority of a law of the United States if the certificate of  
7976 incorporation after the amendment only contains provisions  
7977 required or permitted by Section 10A-2A-2.02.

7978 (b) The individual or individuals designated by the  
7979 court shall deliver to the Secretary of State for filing a  
7980 certificate of amendment setting forth:

7981 (1) the name of the corporation;



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7982 (2) the text of each amendment approved by the court;

7983 (3) the date of the court's order or decree approving  
7984 the certificate of amendment;

7985 (4) the title of the reorganization proceeding in which  
7986 the order or decree was entered;

7987 (5) a statement that the court had jurisdiction of the  
7988 proceeding under federal statute; and

7989 (6) the unique identifying number or other designation  
7990 as assigned by the Secretary of State.

7991 (c) Stockholders of a corporation undergoing  
7992 reorganization do not have dissenters' rights except as and to  
7993 the extent provided in the reorganization plan.

7994 (d) This section does not apply after entry of a final  
7995 decree in the reorganization proceeding even though the court  
7996 retains jurisdiction of the proceeding for limited purposes  
7997 unrelated to consummation of the reorganization plan."

7998 "§10A-2A-11.02

7999 (a) A corporation may merge with one or more other  
8000 constituent organizations pursuant to this article, and a plan  
8001 of merger, if:

8002 (1) the governing statute of each of the other  
8003 organizations authorizes the merger;

8004 (2) the merger is not prohibited by the law of a  
8005 jurisdiction that enacted any of those governing statutes; and

8006 (3) each of the other organizations complies with its  
8007 governing statute in effecting the merger.

8008 (b) A plan of merger must be in writing and must  
8009 include:



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8010 (1) the name, type of organization, and mailing address  
8011 of the principal office of each constituent organization, the  
8012 jurisdiction of the governing statute of each constituent  
8013 organization, and the respective unique identifying number or  
8014 other designation as assigned by the Secretary of State, if  
8015 any, of each constituent organization;

8016 (2) the name, type of organization, and mailing address  
8017 of the principal office of the surviving organization, the  
8018 unique identifying number or other designation as assigned by  
8019 the Secretary of State, if any, of the surviving organization,  
8020 the jurisdiction of the governing statute of the surviving  
8021 organization, and, if the surviving organization is created  
8022 pursuant to the merger, a statement to that effect;

8023 (3) the terms and conditions of the merger, including  
8024 the manner and basis for converting the stock or eligible  
8025 interests in each constituent organization into any  
8026 combination of money, stock, eligible interests in the  
8027 surviving organization, and other consideration as allowed by  
8028 subsection (c);

8029 (4) if the surviving organization is to be created  
8030 pursuant to the merger, the surviving organization's  
8031 organizational documents; and

8032 (5) if the surviving organization is not to be created  
8033 pursuant to the merger, any amendments to be made by the  
8034 merger to the surviving organization's organizational  
8035 documents.

8036 (c) In connection with a merger, rights, securities,  
8037 stock, or eligible interests, if any, in a constituent



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8038 organization may be exchanged for or converted into cash,  
8039 property, rights, securities, stock, or eligible interests, if  
8040 any, in the surviving organization, or, in addition to or in  
8041 lieu thereof, may be exchanged for or converted into cash,  
8042 property, rights, securities, stock, or eligible interests, if  
8043 any, in another organization, or may be cancelled.

8044 (d) In addition to the requirements of subsection (b),  
8045 a plan of merger may contain any other provision not  
8046 prohibited by law.

8047 (e) Terms of a plan of merger may be made dependent on  
8048 facts objectively ascertainable outside the plan in accordance  
8049 with Section 10A-2A-1.20(c).

8050 (f) A plan of merger may be amended only with the  
8051 consent of each constituent organization, except as provided  
8052 in the plan. A domestic constituent organization may approve  
8053 an amendment to a plan:

8054 (1) in the same manner as the plan was approved, if the  
8055 plan does not provide for the manner in which it may be  
8056 amended; or

8057 (2) in the manner provided in the plan, except that if  
8058 the plan has been approved by the stockholders, members, or  
8059 interest holders that were entitled to vote on, consent to, or  
8060 approve of, the plan, then those stockholders, members, or  
8061 interest holders are entitled to vote on, consent to, or  
8062 approve of any amendment of the plan that will change:

8063 (i) the amount or kind of stock or other securities,  
8064 eligible interests, obligations, rights to acquire stock,  
8065 other securities or eligible interests, cash, or other



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8066 property to be received under the plan by the stockholders,  
8067 members, or interest holders of a constituent organization;

8068 (ii) the certificate of incorporation of any  
8069 corporation, foreign corporation, nonprofit corporation,  
8070 foreign nonprofit corporation or the organizational documents  
8071 of any unincorporated entity or foreign unincorporated entity,  
8072 that will be the surviving organization, except for changes  
8073 permitted by Section 10A-2A-10.05 or by comparable provisions  
8074 of the governing statute of the foreign corporation, nonprofit  
8075 corporation, foreign nonprofit corporation, unincorporated  
8076 entity, or foreign unincorporated entity; or

8077 (iii) any of the other terms or conditions of the plan  
8078 if the change would adversely affect the stockholders,  
8079 members, or interest holders in any material respect."

8080 "§10A-2A-11.06

8081 (a) After a plan of merger has been adopted and  
8082 approved as required by this article, then a statement of  
8083 merger shall be signed by each party to the merger except as  
8084 provided in Section 10A-2A-11.05(a). The statement of merger  
8085 must set forth:

8086 (1) the name, type of organization, and mailing address  
8087 of the principal office of each constituent organization, the  
8088 jurisdiction of the governing statute of each constituent  
8089 organization, and the respective unique identifying number or  
8090 other designation as assigned by the Secretary of State, if  
8091 any, of each constituent organization;

8092 (2) the name, type of organization, and mailing address  
8093 of the principal office of the surviving organization, the



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8094 unique identifying number or other designation as assigned by  
8095 the Secretary of State, if any, of the surviving organization,  
8096 the jurisdiction of the governing statute of the surviving  
8097 organization, and, if the surviving organization is created  
8098 pursuant to the merger, a statement to that effect;

8099 ~~(3) the date of the filing of the certificate of~~  
8100 ~~formation, if any, and all prior amendments and the filing~~  
8101 ~~office or offices, if any, and where the certificate of~~  
8102 ~~formation is filed of each constituent organization which was~~  
8103 ~~formed under the laws of this state;~~

8104 ~~(4)~~ (3) the date the merger is effective under the  
8105 governing statute of the surviving organization;

8106 ~~(5)~~ (4) if the surviving organization is to be created  
8107 pursuant to the merger:

8108 (A) if it will be a corporation, the corporation's  
8109 certificate of incorporation; or

8110 (B) if it will be an organization other than a  
8111 corporation, any organizational document that creates the  
8112 organization that is required to be in a public writing or in  
8113 the case of a limited liability partnership, its statement of  
8114 limited liability partnership;

8115 ~~(6)~~ (5) if the surviving organization exists before the  
8116 merger, any amendments provided for in the plan of merger for  
8117 the organizational document that created the organization that  
8118 are in a public writing;

8119 ~~(7)~~ (6) a statement as to each constituent organization  
8120 that the merger was approved as required by the organization's  
8121 governing statute;



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8122 ~~(8)~~ (7) if the surviving organization is a foreign  
8123 organization not authorized to conduct activities and affairs  
8124 in this state, the street and mailing address of an office for  
8125 the purposes of Section 10A-2A-11.07(c);

8126 ~~(9)~~ (8) any additional information required by the  
8127 governing statute of any constituent organization;

8128 ~~(10)~~ (9) if the plan of merger required approval by the  
8129 stockholders of a corporation that is a constituent  
8130 organization, a statement that the plan was duly approved by  
8131 the stockholders and, if voting by any separate voting group  
8132 was required, by each separate voting group, in the manner  
8133 required by this chapter and the certificate of incorporation;

8134 ~~(11)~~ (10) if the plan of merger did not require approval  
8135 by the stockholders of a corporation that is a constituent  
8136 organization, a statement to that effect; and

8137 ~~(12)~~ (11) a statement that the plan of merger will be  
8138 furnished by the surviving organization, on request and  
8139 without cost, to any owner of any constituent organization  
8140 which is a party to the merger.

8141 (b) After a plan of stock exchange in which the  
8142 acquired entity is a corporation has been adopted and approved  
8143 as required by this chapter, a statement of stock exchange  
8144 shall be signed by the acquired entity and the acquiring  
8145 entity. The statement of stock exchange shall set forth:

8146 (1) the name and mailing address of the principal  
8147 office of the acquired entity, and the jurisdiction of its  
8148 governing statute, and its unique identifying number or other  
8149 designation as assigned by the Secretary of State, if any;



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8150 (2) the name, jurisdiction of formation, and type of  
8151 entity of the corporation or foreign corporation that is the  
8152 acquiring entity;

8153 (3) a statement that the plan of stock exchange was  
8154 duly approved by the acquired entity by:

8155 (i) the required vote or consent of each class or  
8156 series of stock included in the exchange; and

8157 (ii) the required vote or consent of each other class  
8158 or series of stock entitled to vote on approval of the  
8159 exchange by the certificate of incorporation of the acquired  
8160 entity; and

8161 (4) if the stock exchange did not require the approval  
8162 by the stockholders of a corporation that is a party to the  
8163 stock exchange, a statement to that effect.

8164 (c) In addition to the requirements of subsection (a)  
8165 or subsection (b), a statement of merger or stock exchange may  
8166 contain any other provision not prohibited by law.

8167 (d) The statement of merger or stock exchange shall be  
8168 delivered to the Secretary of State for filing and, subject to  
8169 subsection (e), the merger or stock exchange shall take effect  
8170 at the effective date determined in accordance with Article 4  
8171 of Chapter 1.

8172 (e) With respect to a merger in which one or more  
8173 foreign organizations is a constituent organization or a  
8174 foreign organization created by the merger is the surviving  
8175 organization, the merger itself shall become effective at the  
8176 later of:

8177 (1) when all documents required to be filed in foreign



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8178 jurisdictions to effect the merger have become effective, or  
8179 (2) when the statement of merger takes effect.

8180 (f) A statement of merger filed under this section may  
8181 be combined with any filing required under the governing  
8182 statute governing any domestic organization involved in the  
8183 transaction if the combined filing satisfies the requirements  
8184 of this section, the other governing statute, and Article 4 of  
8185 Chapter 1.

8186 ~~(g) After a merger becomes effective, if the surviving~~  
8187 ~~organization is a corporation, then, except for certified~~  
8188 ~~copies of the statement of merger permitted to be delivered to~~  
8189 ~~the judge of probate for filing pursuant to subsection (h),~~  
8190 ~~all filing instruments required to be filed under this title~~  
8191 ~~regarding that surviving organization shall be delivered for~~  
8192 ~~filing to the Secretary of State.~~

8193 ~~(h)~~ (g) A certified copy of the statement of merger  
8194 required to be filed under this section may be filed in the  
8195 real estate records in the office of the judge of probate in  
8196 any county in which any constituent organization owned real  
8197 property, without payment and without collection by the judge  
8198 of probate of any deed or other transfer tax or fee. The judge  
8199 of probate, however, shall be entitled to collect the filing  
8200 fee of five dollars (\$5). Any filing shall evidence chain of  
8201 title, but lack of filing shall not affect the surviving  
8202 organization's title to real property."

8203 "§10A-2A-12.02

8204 (a) A sale, lease, exchange, or other disposition of  
8205 assets, other than a disposition described in Section



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8206 10A-2A-12.01, requires approval of the corporation's  
8207 stockholders if the disposition would leave the corporation  
8208 without a significant continuing business activity. A  
8209 corporation will conclusively be deemed to have retained a  
8210 significant continuing business activity if it retains a  
8211 business activity that represented, for the corporation and  
8212 its subsidiaries on a consolidated basis, at least (i) 25  
8213 percent of total assets at the end of the most recently  
8214 completed fiscal year, and (ii) either 25 percent of either  
8215 income from continuing operations before taxes or 25 percent  
8216 of revenues from continuing operations, in each case for the  
8217 most recently completed fiscal year.

8218 (b) To obtain the approval of the stockholders under  
8219 subsection (a) the board of directors shall first adopt a  
8220 resolution authorizing the disposition. The disposition shall  
8221 then be approved by the stockholders. In submitting the  
8222 disposition to the stockholders for approval, the board of  
8223 directors shall recommend that the stockholders approve the  
8224 disposition, unless (i) the board of directors makes a  
8225 determination that because of conflicts of interest or other  
8226 special circumstances it should not make a recommendation, or  
8227 (ii) Section 10A-2A-8.26 applies. If either (i) or (ii)  
8228 applies, the board of directors shall inform the stockholders  
8229 of the basis for its so proceeding.

8230 (c) The board of directors may set conditions for the  
8231 approval by the stockholders of a disposition or the  
8232 effectiveness of the disposition.

8233 (d) If a disposition is required to be approved by the



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8234 stockholders under subsection (a), and if the approval is to  
8235 be given at a meeting, the corporation shall notify each  
8236 stockholder, regardless of whether entitled to vote, of the  
8237 meeting of stockholders at which the disposition is to be  
8238 submitted for approval. The notice must state that the  
8239 purpose, or one of the purposes, of the meeting is to consider  
8240 the disposition and must contain a description of the  
8241 disposition, including the terms and conditions of the  
8242 disposition and the consideration to be received by the  
8243 corporation.

8244 (e) Unless the certificate of incorporation or the  
8245 board of directors acting pursuant to subsection (c) requires  
8246 a greater vote or a greater quorum, the approval of a  
8247 disposition by the stockholders shall require the approval of  
8248 the stockholders at a meeting at which a quorum exists  
8249 consisting of a majority of the votes entitled to be cast on  
8250 the disposition.

8251 (f) After a disposition has been approved by the  
8252 stockholders under this Article 12, and at any time before the  
8253 disposition has been consummated, it may be abandoned by the  
8254 corporation without action by the stockholders, subject to any  
8255 contractual rights of other parties to the disposition.

8256 (g) A disposition of assets in the course of  
8257 dissolution under Article 14 is not governed by this section.

8258 (h) For purposes of this section only, the property and  
8259 assets of the corporation include the property and assets of  
8260 any subsidiary of the corporation. As used in this subsection,  
8261 "subsidiary" means any entity wholly owned and controlled,



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8262 directly or indirectly, by the corporation and includes,  
8263 without limitation, corporations, partnerships, limited  
8264 partnerships, limited liability partnerships, limited  
8265 liability companies, and/or statutory trusts. ~~Notwithstanding~~  
8266 ~~subsection (a) of this section, except to the extent the~~  
8267 ~~certificate of incorporation otherwise provides, no vote by~~  
8268 ~~stockholders shall be required for a sale, lease, or exchange~~  
8269 ~~of property and assets of the corporation to a subsidiary."~~

8270 "§10A-2A-14.13

8271 (a) If after a hearing the court determines that one or  
8272 more grounds for judicial dissolution described in Section  
8273 10A-2A-14.10 exist, ~~it~~ the court may enter a decree dissolving  
8274 the corporation and specifying the effective date of the  
8275 dissolution, ~~and~~. If the court enters a decree dissolving the  
8276 corporation, then the clerk of the court shall deliver a  
8277 certified copy of the decree to the Secretary of State for  
8278 filing.

8279 (b) After entering the decree of dissolution, the court  
8280 shall direct the winding-up and liquidation of the  
8281 corporation's business and affairs in accordance with Section  
8282 10A-2A-14.05 and the notification of claimants in accordance  
8283 with Sections 10A-2A-14.06 and 10A-2A-14.07."

8284 Section 4. Sections 10A-2A-10.00 and 10A-2A-10.10 are  
8285 added to the Code of Alabama 1975, to read as follows:

8286 §10A-2A-10.00. Applicability of Chapter 1.

8287 Division B of Article 3 of Chapter 1 shall not apply to  
8288 this chapter.

8289 §10A-2A-10.10. Effect of filing of restated certificate



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8290 of incorporation.

8291 (a) A restated certificate of incorporation takes  
8292 effect when the filing of the restated certificate of  
8293 incorporation takes effect as provided by Article 4 of Chapter  
8294 1.

8295 (b) On the date and time the restated certificate of  
8296 incorporation takes effect, the original certificate of  
8297 incorporation and each prior amendment or restatement of the  
8298 certificate of incorporation is superseded and the restated  
8299 certificate of incorporation is the effective certificate of  
8300 incorporation.

8301 (c) Section 10A-2A-10.09 applies to an amendment  
8302 effected by a restated certificate of incorporation.

8303 Section 5. Sections 10A-5A-2.03 and 10A-5A-10.07 of the  
8304 Code of Alabama 1975, are amended to read as follows:

8305 "§10A-5A-2.03

8306 ~~(a) The filing of a certificate of amendment to the~~  
8307 ~~certificate of formation shall have the effect, and shall take~~  
8308 ~~effect, as provided in Section 10A-1-3.14.~~

8309 ~~(b) The filing of a restated certificate of formation~~  
8310 ~~shall have the effect, and shall take effect, as provided in~~  
8311 ~~Section 10A-1-3.18.~~

8312 (a) (1) An amendment to a certificate of formation takes  
8313 effect when the filing of the certificate of amendment takes  
8314 effect as provided by Article 4 of Chapter 1.

8315 (2) An amendment to a certificate of formation does not  
8316 affect:

8317 (i) an existing cause of action in favor of or against



8318 the limited liability company for which the certificate of  
8319 amendment is sought;

8320 (ii) a pending suit to which the limited liability  
8321 company is a party; or

8322 (iii) an existing right of a person other than an  
8323 existing member.

8324 (3) If the name of a limited liability company is  
8325 changed by amendment, an action brought by or against the  
8326 limited liability company in the former name of that limited  
8327 liability company does not abate because of the name change.

8328 (b) (1) A restated certificate of formation takes effect  
8329 when the filing of the restated certificate of formation takes  
8330 effect as provided by Article 4 of Chapter 1.

8331 (2) On the date and time the restated certificate of  
8332 formation takes effect, the original certificate of formation  
8333 and each prior amendment or restatement of the certificate of  
8334 formation is superseded and the restated certificate of  
8335 formation is the effective certificate of formation.

8336 (3) Subsections (b) (1) and (2) apply to an amendment  
8337 effected by a restated certificate of formation."

8338 "§10A-5A-10.07

8339 (a) After each constituent organization has approved  
8340 the plan of merger, a statement of merger must be signed on  
8341 behalf of:

8342 (1) each constituent limited liability company, as  
8343 provided in Section 10A-5A-2.04(a); and

8344 (2) each other constituent organization, as provided by  
8345 its governing statute.



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8346 (b) A statement of merger under this section must  
8347 include:

8348 (1) the name, type of organization, and mailing address  
8349 of the principal office of each constituent organization, the  
8350 jurisdiction of the governing statute of each constituent  
8351 organization, and the respective unique identifying number or  
8352 other designation as assigned by the Secretary of State, if  
8353 any, of each constituent organization;

8354 (2) the name, type of organization, and mailing address  
8355 of the principal office of the surviving organization, the  
8356 unique identifying number or other designation as assigned by  
8357 the Secretary of State, if any, of the surviving organization,  
8358 the jurisdiction of the governing statute of the surviving  
8359 organization, and, if the surviving organization is created  
8360 pursuant to the merger, a statement to that effect;

8361 ~~(3) the date of the filing of the certificate of~~  
8362 ~~formation, if any, and all prior amendments and the filing~~  
8363 ~~office or offices, if any, and where such is filed of each~~  
8364 ~~constituent organization which was formed under the laws of~~  
8365 ~~this state;~~

8366 ~~(4)~~ (3) the date the merger is effective under the  
8367 governing statute of the surviving organization;

8368 ~~(5)~~ (4) if the surviving organization is to be created  
8369 pursuant to the merger:

8370 (A) if it will be a limited liability company, the  
8371 limited liability company's certificate of formation; or

8372 (B) if it will be an organization other than a limited  
8373 liability company, any organizational document that creates



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8374 the organization that is required to be in a public writing;  
8375 ~~(6)~~ (5) if the surviving organization exists before the  
8376 merger, any amendments provided for in the plan of merger for  
8377 the organizational document that created the organization that  
8378 are required to be in a public writing;

8379 ~~(7)~~ (6) a statement as to each constituent organization  
8380 that the merger was approved as required by the organization's  
8381 governing statute;

8382 ~~(8)~~ (7) a statement that a copy of the plan of merger  
8383 will be furnished by the surviving organization, on request  
8384 and without cost, to any owner of any constituent organization  
8385 which is a party to the merger;

8386 ~~(9)~~ (8) if the surviving organization is a foreign  
8387 organization not authorized to conduct activities and affairs  
8388 in this state, the street and mailing address of an office for  
8389 the purposes of Section 10A-5A-10.08(b); and

8390 ~~(10)~~ (9) any additional information required by the  
8391 governing statute of any constituent organization.

8392 (c) The statement of merger shall be delivered for  
8393 filing to the Secretary of State.

8394 (d) A merger becomes effective under this article:

8395 (1) if the surviving organization is a limited  
8396 liability company, upon the later of:

8397 (A) the filing of the statement of merger with the  
8398 Secretary of State; or

8399 (B) as specified in the statement of merger; or

8400 (2) if the surviving organization is not a limited  
8401 liability company, as provided by the governing statute of the



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8402 surviving organization.

8403 ~~(e) After a merger becomes effective, if the surviving~~  
8404 ~~organization is a limited liability company, then, except for~~  
8405 ~~certified copies of the statement of merger permitted to be~~  
8406 ~~delivered to the judge of probate for filing pursuant to~~  
8407 ~~subsection (f), all filing instruments required to be filed~~  
8408 ~~under this title regarding that surviving organization shall~~  
8409 ~~be delivered for filing to the Secretary of State.~~

8410 ~~(f)~~ (e) A certified copy of the statement of merger  
8411 required to be filed under this section may be filed in the  
8412 real estate records in the office of the judge of probate in  
8413 any county in which any constituent organization owned real  
8414 property, without payment and without collection by the judge  
8415 of probate of any deed or other transfer tax or fee. The judge  
8416 of probate, however, shall be entitled to collect the filing  
8417 fee of five dollars (\$5). Any such filing shall evidence chain  
8418 of title, but lack of filing shall not affect the surviving  
8419 organization's title to such real property.

8420 ~~(g)~~ (f) A statement of merger is a filing instrument  
8421 under Chapter 1.

8422 ~~(h)~~ (g) The filing fees for a statement of merger shall  
8423 be as set forth in Chapter 1."

8424 Section 6. Section 10A-8A-9.08 of the Code of Alabama  
8425 1975, is amended to read as follows:

8426 "§10A-8A-9.08

8427 (a) After each constituent organization has approved  
8428 the plan of merger, a statement of merger must be signed on  
8429 behalf of:



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8430 (1) each constituent partnership, as provided in  
8431 Section 10A-8A-2.03(a); and

8432 (2) each other constituent organization, as provided by  
8433 its governing statute.

8434 (b) A statement of merger under this section must  
8435 include:

8436 (1) the name, type of organization, and mailing address  
8437 of the principal office of each constituent organization, the  
8438 jurisdiction of the governing statute of each constituent  
8439 organization, and the respective unique identifying numbers or  
8440 other designations as assigned by the Secretary of State, if  
8441 any, of each constituent organization;

8442 (2) the name, type of organization, and mailing address  
8443 of the principal office of the surviving organization, the  
8444 unique identifying number or other designation as assigned by  
8445 the Secretary of State, if any, of the surviving organization,  
8446 the jurisdiction of the governing statute of the surviving  
8447 organization, and, if the surviving organization is created  
8448 pursuant to the merger, a statement to that effect;

8449 ~~(3) the date of the filing of the certificate of~~  
8450 ~~formation, if any, and all prior amendments and the filing~~  
8451 ~~office or offices, if any, and where such is filed of each~~  
8452 ~~constituent organization which was formed under the laws of~~  
8453 ~~this state;~~

8454 ~~(4)~~ (3) the date of the filing of the statement of  
8455 partnership, statement of not for profit partnership, or  
8456 statement of limited liability partnership, if any, and all  
8457 prior amendments and the filing office or offices, if any, and



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8458 where such is filed of each constituent organization which is  
8459 a partnership;

8460 ~~(5)~~ (4) the date the merger is effective under the  
8461 governing statute of the surviving organization;

8462 ~~(6)~~ (5) if the surviving organization is to be created  
8463 pursuant to the merger:

8464 (A) if it will be a partnership, the partnership's  
8465 statement of partnership, statement of not for profit  
8466 partnership, or statement of limited liability partnership; or

8467 (B) if it will be an organization other than a  
8468 partnership, any organizational document that creates the  
8469 organization that is required to be in a public writing;

8470 ~~(7)~~ (6) if the surviving organization exists before the  
8471 merger, any amendments provided for in the plan of merger for  
8472 the organizational document that are required to be in a  
8473 public writing;

8474 ~~(8)~~ (7) a statement as to each constituent organization  
8475 that the merger was approved as required by the organization's  
8476 governing statute;

8477 ~~(9)~~ (8) a statement that a copy of the plan of merger  
8478 will be furnished by the surviving organization, on request  
8479 and without cost, to any owner of any constituent organization  
8480 which is a party to the merger;

8481 ~~(10)~~ (9) if the surviving organization is a foreign  
8482 organization not authorized to conduct business or not for  
8483 profit activity in this state, the street and mailing address  
8484 of an office for the purposes of Section 10A-8A-9.09(b); and

8485 ~~(11)~~ (10) any additional information required by the



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8486 governing statute of any constituent organization.

8487 (c) Prior to the statement of merger being delivered  
8488 for filing to the Secretary of State in accordance with  
8489 subsection (d), all constituent organizations that are  
8490 partnerships, other than a partnership that is created  
8491 pursuant to the merger, must have on file with the Secretary  
8492 of State a statement of partnership, statement of not for  
8493 profit partnership, or statement of limited liability  
8494 partnership.

8495 (d) The statement of merger shall be delivered for  
8496 filing to the Secretary of State.

8497 (e) A merger becomes effective under this article:

8498 (1) if the surviving organization is a partnership,  
8499 upon the later of:

8500 (A) the filing of the statement of merger with the  
8501 Secretary of State; or

8502 (B) as specified in the statement of merger; or

8503 (2) if the surviving organization is not a partnership,  
8504 as provided by the governing statute of the surviving  
8505 organization.

8506 ~~(f) After a merger becomes effective, if the surviving~~  
8507 ~~organization is a partnership, then, except (I) the statement~~  
8508 ~~of merger permitted to be delivered to the judge of probate~~  
8509 ~~for filing pursuant to subsection (g) and (II) certified~~  
8510 ~~copies of statements of authority, denial, and cancellations~~  
8511 ~~thereof permitted to be delivered to the judge of probate for~~  
8512 ~~filing pursuant to Sections 10A-8A-3.03 and 10A-8A-3.04 for~~  
8513 ~~certified copies of, all filing instruments required to be~~



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8514 ~~filed under this title regarding that surviving organization~~  
8515 ~~shall be delivered for filing to the Secretary of State.~~

8516 ~~(g)~~ (f) A certified copy of the statement of merger  
8517 required to be filed under this section may be filed in the  
8518 real estate records in the office of the judge of probate in  
8519 any county in which any constituent organization owned real  
8520 property, without payment and without collection by the judge  
8521 of probate of any deed or other transfer tax or fee. The judge  
8522 of probate, however, shall be entitled to collect the filing  
8523 fee of five dollars (\$5). Any such filing shall evidence chain  
8524 of title, but lack of filing shall not affect the surviving  
8525 organization's title to such real property.

8526 ~~(h)~~ (g) A statement of merger is a filing instrument  
8527 under Chapter 1.

8528 ~~(i)~~ (h) The filing fees for a statement of merger shall  
8529 be as set forth in Chapter 1."

8530 Section 7. Sections 10A-9A-2.02 and 10A-9A-10.08 of the  
8531 Code of Alabama 1975, are amended to read as follows:

8532 "§10A-9A-2.02

8533 Division B of Article 3 of Chapter 1 shall not apply to  
8534 this chapter. Instead:

8535 (a) A certificate of formation may be amended at any  
8536 time.

8537 (b) A certificate of formation may be restated with or  
8538 without amendment at any time.

8539 (c) To amend its certificate of formation, a limited  
8540 partnership must deliver a certificate of amendment for filing  
8541 to the Secretary of State which certificate of amendment shall



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8542 state:

8543 (1) the name of the limited partnership;

8544 (2) the unique identifying number or other designation  
8545 as assigned by the Secretary of State; and

8546 (3) the changes the amendment makes to the certificate  
8547 of formation as most recently amended or restated.

8548 (d) Prior to a statement of dissolution being delivered  
8549 to the Secretary of State for filing, a limited partnership  
8550 shall promptly deliver a certificate of amendment for filing  
8551 with the Secretary of State to reflect:

8552 (1) the admission of a new general partner; or

8553 (2) the dissociation of a person as a general partner.

8554 (e) Prior to a statement of dissolution being delivered  
8555 to the Secretary of State for filing, if a general partner  
8556 knows that any information in a filed certificate of formation  
8557 was inaccurate when the certificate of formation was filed or  
8558 has become inaccurate due to changed circumstances and if such  
8559 information is required to be set forth in a newly filed  
8560 certificate of formation under this chapter, the general  
8561 partner shall promptly:

8562 (1) cause the certificate of formation to be amended;

8563 or

8564 (2) if appropriate, deliver for filing with the  
8565 Secretary of State a certificate of correction in accordance  
8566 with Chapter 1.

8567 (f) A certificate of formation may be amended at any  
8568 time pursuant to this section for any other proper purpose as  
8569 determined by the limited partnership. A certificate of



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8570 formation may also be amended in a statement of merger  
8571 pursuant to Article 8 of Chapter 1 or Article 10 of this  
8572 chapter.

8573 (g) In order to restate its certificate of formation, a  
8574 limited partnership must deliver a restated certificate of  
8575 formation for filing with the Secretary of State. A restated  
8576 certificate of formation must:

8577 (1) be designated as such in the heading;

8578 (2) state the name of the limited partnership;

8579 (3) state the unique identifying number or other  
8580 designation as assigned by the Secretary of State;

8581 (4) set forth any amendment or change effected in  
8582 connection with the restatement of the certificate of  
8583 formation. Any such restatement that effects an amendment  
8584 shall be subject to any other provision of this chapter not  
8585 inconsistent with this section, which would apply if a  
8586 separate certificate of amendment were filed to effect the  
8587 amendment or change;

8588 (5) set forth the text of the restated certificate of  
8589 formation; and

8590 (6) state that the restated certificate of formation  
8591 consolidates all amendments into a single document.

8592 (h) The original certificate of formation, as  
8593 theretofore amended, shall be superseded by the restated  
8594 certificate of formation and thenceforth, the restated  
8595 certificate of formation, including any further amendment or  
8596 changes made thereby, shall be the certificate of formation of  
8597 the limited partnership, but the original effective date of



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8598 formation shall remain unchanged.

8599 (i) An amended or restated certificate of formation may  
8600 contain only the provisions that would be permitted at the  
8601 time of the amendment if the amended or restated certificate  
8602 of formation were a newly filed original certificate of  
8603 formation.

8604 ~~(j) The filing of a certificate of amendment to the~~  
8605 ~~certificate of formation shall have the effect, and shall take~~  
8606 ~~effect, as provided in Section 10A-1-3.14.~~

8607 ~~(k) The filing of a restated certificate of formation~~  
8608 ~~shall have the effect, and shall take effect, as provided in~~  
8609 ~~Section 10A-1-3.18.~~

8610 (j) (1) An amendment to a certificate of formation takes  
8611 effect when the filing of the certificate of amendment takes  
8612 effect as provided by Article 4 of Chapter 1.

8613 (2) An amendment to a certificate of formation does not  
8614 affect:

8615 (i) an existing cause of action in favor of or against  
8616 the limited partnership for which the certificate of amendment  
8617 is sought;

8618 (ii) a pending suit to which the limited partnership is  
8619 a party; or

8620 (iii) an existing right of a person other than an  
8621 existing partner.

8622 (3) If the name of a limited partnership is changed by  
8623 amendment, an action brought by or against the limited  
8624 partnership in the former name of that limited partnership  
8625 does not abate because of the name change.



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8626 (k) (1) A restated certificate of formation takes effect  
8627 when the filing of the restated certificate of formation takes  
8628 effect as provided by Article 4 of Chapter 1.

8629 (2) On the date and time the restated certificate of  
8630 formation takes effect, the original certificate of formation  
8631 and each prior amendment or restatement of the certificate of  
8632 formation is superseded and the restated certificate of  
8633 formation is the effective certificate of formation.

8634 (3) Subsections (j) (2) and (3) apply to an amendment  
8635 effected by a restated certificate of formation."

8636 "§10A-9A-10.08

8637 (a) After each constituent organization has approved  
8638 the plan of merger, a statement of merger must be signed on  
8639 behalf of:

8640 (1) each constituent limited partnership, as provided  
8641 in Section 10A-9A-2.03(a); and

8642 (2) each other constituent organization, as provided by  
8643 its governing statute.

8644 (b) A statement of merger under this section must  
8645 include:

8646 (1) the name, type of organization, and mailing address  
8647 of the principal office of each constituent organization, the  
8648 jurisdiction of the governing statute of each constituent  
8649 organization, and the respective unique identifying numbers or  
8650 other designations as assigned by the Secretary of State, if  
8651 any, of each constituent organization;

8652 (2) the name, type of organization, and mailing address  
8653 of the principal office of the surviving organization, the



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8654 unique identifying number or other designation as assigned by  
8655 the Secretary of State, if any, of the surviving organization,  
8656 the jurisdiction of the governing statute of the surviving  
8657 organization, and, if the surviving organization is created  
8658 pursuant to the merger, a statement to that effect;

8659 ~~(3) the date of the filing of the certificate of~~  
8660 ~~formation, if any, and all prior amendments and the filing~~  
8661 ~~office or offices, if any, and where such is filed of each~~  
8662 ~~constituent organization which was formed under the laws of~~  
8663 ~~this state;~~

8664 ~~(4)~~ (3) the date the merger is effective under the  
8665 governing statute of the surviving organization;

8666 ~~(5)~~ (4) if the surviving organization is to be created  
8667 pursuant to the merger:

8668 (A) if it will be a limited partnership, the limited  
8669 partnership's certificate of formation; or

8670 (B) if it will be an organization other than a limited  
8671 partnership, any organizational document that creates the  
8672 organization that is required to be in a public writing;

8673 ~~(6)~~ (5) if the surviving organization exists before the  
8674 merger, any amendments provided for in the plan of merger for  
8675 the organizational document that created the organization that  
8676 are required to be in a public writing;

8677 ~~(7)~~ (6) a statement as to each constituent organization  
8678 that the merger was approved as required by the organization's  
8679 governing statute;

8680 ~~(8)~~ (7) a statement that a copy of the plan of merger  
8681 will be furnished by the surviving organization, on request



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8682 and without cost, to any owner of any constituent organization  
8683 which is a party to the merger;

8684 ~~(9)~~ (8) if the surviving organization is a foreign  
8685 organization not authorized to conduct activities and affairs  
8686 in this state, the street and mailing address of an office for  
8687 the purposes of Section 10A-9A-10.09(b); and

8688 ~~(10)~~ (9) any additional information required by the  
8689 governing statute of any constituent organization.

8690 (c) The statement of merger shall be delivered for  
8691 filing to the Secretary of State.

8692 (d) A merger becomes effective under this article:

8693 (1) if the surviving organization is a limited  
8694 partnership, upon the later of:

8695 (A) the filing of the statement of merger with the  
8696 Secretary of State; or

8697 (B) as specified in the statement of merger; or

8698 (2) if the surviving organization is not a limited  
8699 partnership, as provided by the governing statute of the  
8700 surviving organization.

8701 ~~(e) After a merger becomes effective, if the surviving~~  
8702 ~~organization is a limited partnership, then, except for~~  
8703 ~~certified copies of the statement of merger permitted to be~~  
8704 ~~delivered to the judge of probate for filing pursuant to~~  
8705 ~~subsection (f), all filing instruments required to be filed~~  
8706 ~~under this title regarding that surviving organization shall~~  
8707 ~~be delivered for filing to the Secretary of State.~~

8708 ~~(f)~~ (e) A certified copy of the statement of merger  
8709 required to be filed under this section may be filed in the



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8710 real estate records in the office of the judge of probate in  
8711 any county in which any constituent organization owned real  
8712 property, without payment and without collection by the judge  
8713 of probate of any deed or other transfer tax or fee. The judge  
8714 of probate, however, shall be entitled to collect the filing  
8715 fee of five dollars (\$5). Any such filing shall evidence chain  
8716 of title, but lack of filing shall not affect the surviving  
8717 organization's title to such real property.

8718 ~~(g)~~ (f) A statement of merger is a filing instrument  
8719 under Chapter 1.

8720 ~~(h)~~ (g) The filing fees for a statement of merger shall  
8721 be as set forth in Chapter 1."

8722 Section 8. This act shall become effective January 1,  
8723 2024, following its passage and approval by the Governor, or  
8724 its otherwise becoming law.

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8725  
8726  
8727 Senate

8728 Read for the first time and referred .....25-Apr-23  
8729 to the Senate committee on Judiciary  
8730  
8731 Read for the second time and placed .....17-May-23  
8732 on the calendar:  
8733 1 amendment  
8734  
8735 Read for the third time and passed .....24-May-23  
8736 as amended  
8737 Yeas 32  
8738 Nays 0  
8739 Abstains 0

8740  
8741  
8742 Patrick Harris,  
8743 Secretary.  
8744